

**Study to analyse and assess the practical implementation of
national legislation of safety and health at work**

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

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1. Background

The European Commission DG Employment, Social Affairs and Equal Opportunities, Labour Law and Work Organisation Unit, appointed Labour Asociados S.L.L., Madrid to undertake a study to analyse and assess the impact of the practical implementation of national legislation in the field of safety and health at work relating to Council Directive 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 for each of the 15 Member States which belonged to the EU before 30 April 2004.

The main tasks to be developed are linked to assess the situation as regards the implementation of the mentioned Directive into the national law of the Member States and specifically to assess:

- a. the specific protection instruments provided for by Directive 91/383 as transposed by the Member States and implemented by the undertakings and public sector bodies;
- b. the impact of the introduction of these specific protection instruments on the levels of safety and health protection at work for persons covered by the scope of Directive 91/383;
- c. the difficulties encountered in, and positive consequences of, the practical application of the national legislation transposing Directive 91/383 in the field of safety and health at work by undertakings and public sector bodies;
- d. questions which may have arisen in the practical application of the national legislation transposing Directive 91/383 on safety and health at work.

Furthermore, as an essential objective of this assessment the difficulties encountered, both in the transposition process and in the implementation of the national measures adopted to favour implementation, must be highlighted. The tasks commended are based on the elaboration of National reports at EU-15 level on the implementation of the aforementioned Directive at a first stage, and elaborating a Final report on the results obtained at a second stage.

Among other sources and material, this report is built on the contribution of the network of national experts which Labour Asociados S.L.L. put into practice to fulfil this assignment. As Scientific Director of the study, Ph.D. Law Miguel Rodríguez-Piñero Royo is the main author of this report. Ricardo Rodríguez Contreras has acted as executive coordinator of the study, conducting the work at European level. National experts in charge of national reporting on the implementation of the mentioned Directive are:

- Helmut Hägele, Institut für Sozialforschung und Gesellschaftspolitik, ISG-Dresden; (Germany and Austria);
- Wendy Ver Heyen and Tom Vandenbrande, Higher Institute for Labour Studies (HIVA) Catholic University of Leuven (Belgium);
- Stephan Le Husson and Pierre Coutaz, *émergences* (France);

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- Jenny Lundberg, Oxford Research. (Sweden and Denmark);
- Domenico Taddeo, Società Nazionale Operatori della Prevenzione (SNOP), (Italy);
- John Warmerdam with the collaboration of Hermann Katteler and Frank Hugen, Institute for Applied Social Sciences (ITS) – Radboud University, Nijmegen, (The Netherlands);
- Luis Conceição Freitas, Universidade Lusófona (Portugal);
- Miguel Rodríguez-Piñero Royo, supported by Francisco Javier Calvo, Universidad de Sevilla¹ (Spain);
- Paul Hampton, Labour Research Department, London, (United Kingdom)
- Seppo Koskinen, with the support of Timo Tammilehto and Vesa Ullakonoja, University of Lapland (Finland);
- Antonis Papadakis, Hellenic Institute for Occupational Health and Safety (ELINYAE), Athens. (Greece);
- Kevin P O’Kelly, (Ireland);
- Marc Feyeseren (Luxembourg).

According to the methodology proposed in the invitation to tender presented and later developed, a final report was to be presented at a first stage, the main objective of which was the analysis on the transposition of Directive 91/383/EEC into national legislation. This interim report was situated closer to the field of juridical analysis, understanding and becoming familiar with the national legislation transposed; whereas practical implementation corresponded to the second stage of the study. Having finished both first and second stages, this final report will deal with all aspects concerning the implementation of the directive, the interim report’s conclusions integrated in the final report as an independent chapter.

The main tasks carried within the framework of the study are the following:

1. Preparation and submission of a report on methodological development for DG Employment, Social Affairs and Equal Opportunities, containing a definition of the study approach, methodology, draft questionnaire and a work plan to be carried out.
2. Holding a kick-off meeting with the EC staff in charge of the development of the contract with the aim to focus the expected results of the study.
3. Preparation and submission to the experts’ team of a Work Guide to prepare the national reports, containing homogeneous specifications in order to carry out the tasks, criteria for data collection, specifically statistical data, and the results expected with regard to the reports.

¹ In the framework of the following Projects: DGCIT SEC 2003-09605-JUR, “El papel de las Comunidades Autónomas en el sistema de relaciones laborales europeo”; and SEJ 2005-05488-JUR, “La aplicación del Derecho Internacional y Europeo de los derechos humanos en España”.

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4. Organizing and holding a work meeting in Brussels with most of the national experts in order to coordinate criteria and clarify doubts on the methodology of the study.
5. Document analysis and review of the information contained in the national reports submitted to the EC by Member States in 2004.
6. Preparation of the interim report regarding the state of the study, based on the work carried out by the different Member States, containing an advance of preliminary results.
7. Presentation and discussion of the interim report submitted to the European Commission, to assess it, together with the Commission, including suggestions and comments deemed necessary.
8. Organising and holding a second work meeting in Brussels with most of the national experts.
9. Preparation and submission to the experts' team of specific guidelines for the final national reports.
10. Collection and validation of all national reports.
11. Preparation of a final draft report to conclude the project, based on the final national reports carried out by the team of experts on the situation in the different Member States, to be submitted to the European Commission.

This paper is the final draft report in which a first presentation of the results of the whole project is offered to the European Commission.

PART ONE: ANALYSIS OF IMPLEMENTATION

2. Context of Implementation

This chapter of this report deals with the contextual factors of its production. This “context” involves two things. On the one hand, the circumstances surrounding the process of implementation of Directive 91/383/EEC, a critical element to understand it properly and to have relevant data in order to assess its efficiency. On the other hand, all relevant factors affecting the drafting of this report, particularly methodological questions which have somehow conditioned the final result. The former and the latter have to be taken into account before studying the report itself, and must be underlined.

The first aspect we must point out is that this study analyses the implementation of a rather peculiar European piece of legislation, and we consider this a crucial factor to be taken into account when dealing with this project.

To begin with, we considered that the Directive’s seniority, being drafted 15 years ago, was probably a relevant fact. Many of the national reports support this idea, suggesting that this text is somehow outdated, needing a reform or even a new text. The extent to which this seniority has affected its efficiency, once implemented, is not clear, though, as there are other factors to be taken into account. It is clear, anyway, that the many years passed since it was drafted have affected its efficiency in a number of ways.

Labour markets have changed substantially during this period, and this seems to have affected if not the Directive’s effectiveness, at least its own justification. The composition of the workforce is different, and some of these changes are having an effect on safety and health levels in Member States. This is important as the Directive is based on a clear assumption that the kind of employment a worker has affects his risks of sickness and accidents at the workplace. This not being discussed by the national reports, they nonetheless point out that nowadays there are other factors affecting these risks, notably the national origin of workers, as immigration has considerably grown all over Europe. Following the same logic, there are probably other distinctive factors –national origin, age, level of training-, which should be taken into account in order to draft specific safety and health directives.

Another element which has influenced the Directive’s capacity to regulate effectively is the change in the situation of temporary work in Europe from the moment of its drafting, fifteen years ago, till now. We also suggested that European labour markets had suffered profound changes in the presence of atypical forms of employment. All reports elaborated by national experts share the finding that the presence of both forms of atypical employment to which Directive 91/383/EEC applies is a common feature of labour markets in all Member States. Although there are important differences and variations among them, it is true that the overall situation has changed dramatically, and not only speaking from a strictly statistical point of view; on the contrary, changes are not only quantitative but qualitative as well. Thus, flexible forms of employment have spread through all sectors of economy and all kinds of jobs, even the highly qualified ones. Industry and services sectors are using extensively these forms of work, which is present in all sectors of the economy, including the public one. Temporary work does not spread uniformly through all layers of the labour market, being concentrated primarily in some groups of workers, particularly young workers. This is a feature of temporary work which has clearly increased in the last years. And it can have effects in issues of health and safety, as the typical temporary worker is a young one,

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with little experience and on the job training, higher availability to accept worse working conditions, etc.

Besides, the use of fixed term contracts and of temporary work agencies by European employers has also changed, being no longer an occasional instrument to face temporary shortages of manpower, but a permanent alternative in the management of human resources. Undertakings tend to have a strategy in the use of these forms of employment; the problem is that in many cases this strategy does not combine with general safety and health strategies, thus these workers tend to be excluded from it.

There is also a general process of “normalisation” of these forms of work, as social actors are accepting them as a structural element of labour markets, with an important presence which is not discussed. The debate now is about the consequences they produce on workers affected by them, their effects on the overall performance of the labour market, how to regulate them in order to combine flexibility with security, etc. In some Member States their impact on safety and health has been a major issue in these debates.

Another change occurred during this period, already known by 1991 but strongly developed later, is the connection between temporary work, particularly fixed-term contracts, and employment policies. This tendency has produced new kinds of employment contracts, most of them fixed-term, and many of them aimed at specific groups of workers. This aspect is important, as from 1997 the European Institutions have developed a European Employment Strategy, which has coordinated national labour market policies. This strategy had to cope with this new role of temporary work and fixed-term contracts, an aspect which was almost completely absent from the 1990s European policy on atypical work.

During this period a number of legal reforms have occurred, and most if not all of them were in the direction of widening the legal space for temporary forms of employment. In general terms the situation today is one in which employers have ample possibilities for using temporary work, which explains its increased presence in Member States' labour markets. National labour legislation tends to be modern, so most of them have had the opportunity to implement the Directive. This should have made things easier for the national researchers, as these recent pieces of legislation could be considered as national implementation measures, and thus the main object of analysis. A methodological difficulty, however, was found when drafting the guidelines for the final report, and this was how to identify the relevant moment on which to build the necessary comparisons and analysis in each Member State. The Directive was drafted at a given date, and it has also a clear implementation period; but these two dates had no relevance at all in Member State's labour markets, for which no special rules existed for these workers until the European regulation was put into practice by national legislation. This problem is, of course, common for all studies on the implementation of European legislation by Member States. But in the case of Directive 91/383/EEC the question is probably trickier, as they have used very many different options in this task and in many countries the implementation of this Directive has coincided in time with the process of implementing the framework Directive of 1989. So when analysing the performance of national legislation implementing the Directive we had to be very careful in setting the terms for any comparison.

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Another element which has been relevant for the drafting of both national and final reports is the availability of sources of information. This report demands a cross-section analysis of labour statistics from the perspective of two dimensions, the kind of employment relationships and the health and safety levels for individual workers. To assess in practice how the Directive has to be implemented, specific information organized along these two coordinates is needed. Many national reports express that statistical information was not available in such a way, or that it was insufficient. The degree of difficulties varied from one Member State to another, affecting in some cases only partial aspects of the research. This conclusion is relevant, as European institutions do have an important role in the harmonisation and homogenization of labour statistics at a European level.

The fact that monographic studies on this issue, the influence of employment patterns in health and safety, have been elaborated in a number of Member States is noteworthy. Most of them have been at the initiative of public authorities. This is coherent with the overall feeling that these atypical workers do have a problem affecting their working conditions. In some cases, these studies have been a consequence of the need to implement the Directive. But in others this has not been the case, but rather the detection of specific problems for these groups of workers. This is another element supporting the conclusion that a special situation needing a specific solution really exists.

The analysis of the opinion of relevant stakeholders at different Member States, expressed in the respective national reports, has been extremely useful in order to assess the real situation of the implementation of the Directive. As national experts were asked to use a wide sample of persons occupying relevant positions in the labour market, their opinions vary considerably. Nevertheless, in most cases they coincide in some common opinions, making it easier to use this information.

The list of persons that were interviewed for this project is really long, and includes representatives of all relevant stakeholders of the labour market. Thus, union representatives, employers' associations, members of the public administration and experts in labour relations have been contacted.

It is noteworthy to point out that different actors have been chosen to represent the views of undertakings with regard to this issue, including officials of the general employers' associations, and also managers of temporary work agencies and officials of their associations. Their views on safety and health tend to be elaborated as, in most Member States; this issue is a major concern for them, at least at the level of public opinion and general strategic policies.

With regard to trade unions, specific organisations representing the interests of agency workers have, in some cases, been found and the opinions and views of their officials gathered. The situation is different for workers with fixed-term contracts as they are represented by general unions in their sector of activity or enterprise. Special attention has been paid to unions working in those sectors with higher rates of occupational diseases and accidents, and those in which a bigger use of temporary work is present.

In the group of members of the public authorities, identification of stakeholders varies more from one Member State to another, as the distribution of competences in this field varies widely. There are public bodies with direct responsibilities in safety and health issues, others in charge of controlling the operations of temporary work agencies and others with

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competences in the field of controlling the application of national labour legislation. Their opinions provide a picture which is, generally speaking, very complete about what public authorities are doing in Member States to deal with this problem. In many Member States the picture is rather complex; specifically, when working on politically decentralised States in which central, regional and local authorities share competences in protecting safe working conditions for temporary workers. Therefore the number of individuals to be interviewed has, in some cases, been high.

A number of experts of different research institutions have also been questioned with regard to the situation. Hence, their opinion has been available in two ways, directly through interviews and questionnaires; and indirectly through their published studies.

The final result is a rather clear and complete picture of the situation in all EU-15 Member States. This allows us to understand the way in which the directive has been implemented, and the way in which national implementation measures have worked in these countries so far. The general objective of this research has been, at least in this reporter's view, fulfilled.

3. Transposition of the Directive into Members' States Labour Law

According to the project's plan, the main focus of attention for this report had to be the legal framework for these particular forms of atypical work, presenting and analysing it from the point of view of the duties and obligations imposed on Member States by Directive 91/383/EEC.

Such an analysis means the control of the different aspects and contents of the Directive, verifying whether each Member State has fully implemented them in national law. This would give us a fair view on the situation in this country regarding European law in this field. Nonetheless, at least in this expert's view, this control would fall short if dedicated exclusively to a formal analysis of the specific legislative measures being taken to put European rules into practice. On the contrary, a broader perspective will be needed. European legislation does not affect national law just by imposing specific duties on particular institutions, producing limited legal reforms; on the contrary, it has also a wider effect on the dynamics of the legal systems in Member States, introducing in them not only specific obligations but also new debates, fresh ideas, new terminology and concepts, a new focus of attention.

This factor is particularly true with regard to the scope of application of this particular piece of European legislation. First of all, Labour Law as a whole has been subject to a major process of reforms in the last decades, a process in which a number of different trends and directions have arisen. European law has played a significant role in this process, by directing national labour laws towards certain specific directions and acting as an evolution factor. Secondly, the European Union has assumed a leading role in this process, not only through traditional law-making in this field, but also with the new European Employment Strategy, whose open method of coordination has guided the evolution of labour market-related policies in all Member States in the last decades. Thirdly, the European Union has a very special role in the specific field of safety and health; its work has been undisputedly recognized as the main factor in the modernizing and improvement of labour law in Europe, gaining a high level of *autoritas* and respect for European institutions.

Moreover, in the case of this particular Directive this effect seems to be especially relevant, as it has produced a general awareness of the specific problems these workers face in their workplaces as a consequence of their employment relationship. This effect is noteworthy, and many national reports indicate this. According to many, the Directive has placed the issue of safety and health protection for temporary and fixed-term workers in the labour agenda of Member States, from which it was previously excluded. The mere effect of having to apply a European Directive on this issue has moved States to consider and evaluate this situation.

It will be necessary, then, to analyse the impact of the Directive on the Member States' national legislation as a whole, how it has affected the evolution of their own national labour law and the shaping of legal institutions in their labour markets.

3.1 National measures to implement Directive 91/383/EEC

The first result of the research has been the identification of specific national legislation implementing the Directive in each and every Member State. The situation is the following:

In the case of **Austria**, there is a general Health and Safety Act (ASchG), which transposed 21 Directives. In this Act there is a specific section (section 9) dealing explicitly with temporary work agencies. Two further sections mention temporary work agencies only to supplement the general provisions (sections 76 and 81 dealing with preventive services). Following the principle of equal treatment, the further provisions of the Health and Safety Act apply for both temporary agency workers and workers with fixed-term contracts.

In the case of **Belgium**, general legislation is represented by Act of 4 August 1996 regarding the well-being of workers during the execution of their work; this act is the transposition of framework directive 89/391/EEC into Belgian law, and contains the legal basis with regard to safety and health at work in Belgium. Two decrees have transposed directive 91/383/EEG into Belgian legislation:

- Royal decree of 19 February 1997 establishing measures with regard to safety and health at work of workers with a temporary employment relationship.
- Royal decree of 4 December 1997 establishing a central prevention service for the agency work sector.

In **Denmark**, both the Framework Directive 89/391/EEC and Directive 91/383/EEC were implemented in Danish legislation by an amendment of the Danish Working Environment legislation. More specifically, Directive 91/383/EEC was transposed by amendments to the executive order on the Performance of work (BEK 492 of 20 June 2002), which came into force on 1 January 1993. BEK 492 on the Performance of work has later been updated and the most recent BEK is 559 of 17 June 2004. The general legislation on health and safety is constituted by the executive order on the Performance of work no. 559 of 17 June 2004 and the executive order on Undertakings' work with safety and health measures no. 575 of 21 June 2001 (including later amendments). The current Working Environment Act (WEA) is in force by the executive order no. 268 of 18 March 2005. (The Work Environment Authority)

The basic text in occupational health and safety in **Finland** is the Occupational Safety and Health Act (738/2002). This Act applies to work carried out under the terms of an employment contract and to work carried out in an employment relationship in the public sector or in comparable service relationships subject to public law. This Act does not apply to ordinary hobby activities or professional sports activities. This legislation was reformed in 1993 in order to implement Directive 91/383/EEC simultaneously with Directive 89/391/EEC and a number of other specific directives concerning occupational safety and health. Completing this piece of legislation for the purposes of Directive 91/383/EEC there is a Decision of the Council of State concerning some requirements of industrial safety with hired employees (782/1997), the purpose of which is to ensure an equal level of occupational safety and health for hired workers and other workers

In **France** the implementation of Directive 91/383/EEC has been undertaken through a number of pieces of legislation and of collective agreements. Thus, a number of provisions originated in this directive can be found in the main text of French Labour Law, the Code du

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travail. This State legislation is completed by a number of collective rules, primarily contained in the «Accord national interprofessionnel» of 24 March 1990, on fixed-term employment contracts and temporary work agencies. There is also a “Convention collective Travail temporaire » JO 3212. Besides, there are a number of agreements on specific issues which also apply to these forms of employment:

- Accord du 10 avril 1996 relatif aux équipements de protection individuelle
- Accord cadre du 28 février 1984 sur la médecine du travail
- Accord du 26 septembre 2002 relatif à la santé et à la sécurité au travail
- Accord complémentaire du 26 septembre 2002 relatif à la santé et à la sécurité au travail

In **Germany** the basic text on health and safety is the Law on Occupational Safety and Health (*Arbeitsschutzgesetz* - ArbSchG). The Labour Placement Act (*Arbeitnehmerüberlassungsgesetz* - AÜG) is the basic law regulating temporary agency work, whereas the Law on Part-Time Work and Fixed-Term Employment (*Gesetz über Teilzeitarbeit und befristete Arbeitsverträge*) is for fixed-term employment relationships. For temporary agency workers as well as for workers with fixed-term contracts, the general regulations on social protection and occupational safety and health apply. The Framework Directive was implemented through the 1996 “*Gesetz zur Umsetzung der EG-Rahmenrichtlinie Arbeitsschutz und weiterer Arbeitsschutz-Richtlinien*” (Law on the implementation of the EC Framework Directive to encourage improvements in safety and health at work and other Directives concerning OSH). This “transposition law” consists of several chapters. The most important chapter No.1 contains the new Occupational Health and Safety Act (*Arbeitsschutzgesetz* - ArbSchG). The other articles include amendments of several existing laws. The transposition of the Framework Directive combined with the transposition of Directive 91/383/EEC within the Law on Occupational Safety and Health text is noteworthy. As a consequence, it is very difficult to distinguish clearly between transposition and implementation of individual articles or aspects of the Directive on temporary work, on the one hand, and transposition and implementation of the Framework Directive and the other individual Directives, on the other hand. Two additional laws had to be amended. First, the Law on Temporary Employment (*Arbeitnehmerüberlassungsgesetz* – AÜG). Second, the Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists (*Arbeitssicherheitsgesetz* – ASiG).

In **Greece** the legal situation is rather complex. To begin with, there is the Civil Code, Chapter 18 of which regulates issues of “Employment Contract” in general. Particularly relevant to this study’s object is article 662, on ‘Health and Safety at Work’, as well as Articles 648,650 and 651, which is where the basis on which the practice of “worker leasing”, in a certain interpretation of courts’ decisions, was acceptable. Then there is Statutory Law 1568/85 “Health and Safety at Work”, the law that set the general framework of Health and Safety policy in the private sector for the first time; and Statutory Law 1836/89, with which the provisions of 1568/85 were made applicable to the public sector as well. These pieces of legislation constitute the basic structure of occupational health and safety law in Greek legislation.

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

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- Presidential Decree 81/2003 “Regulations regarding workers with fixed-duration employment contracts”, a first attempt to regulate the working status of this type of workers in the private sector
- Presidential Decree 164/2004 “Regulations regarding workers with fixed-duration employment contracts in the public sector” which regulated the working status of this type of workers in the public sector
- Presidential Decree 180/2004 [Amendment of Presidential Decree 81/2003 “Regulations regarding workers with fixed-duration employment contracts (77/A)” which finally regulated the working status of this type of workers in the private sector

For workers hired by temporary work agencies the basic texts are Statutory Law 2956/2001 “Reorganization of OAED (Employment Observatory) and other provisions” which introduced the statute of Temporary Employment Agencies; Ministerial Decision with Protocol number 30342, issued on 6/3/2002, “Regulation of terms, conditions and procedure on the implementation of Statutory law 2956/2001, regarding Temporary Employment Agencies” which regulated the role of Temporary Employment Agencies. It is worthy to note that Greece was the last EU-15 Member State to allow temporary work agencies in its labour market, Directive 91/383/EEC being a major argument in the debate that preceded this decision.

For the purposes of this study a number of additional texts are to be mentioned:

- Presidential Decree 17/1996 “Measures for the improvement of workers’ health and safety in the course of their work in compliance with Directives 89/391/EEC and 91/383/EEC” which transposed the Directives officially
- Circular 130297/15.7.96 “Circular on the implementation of Presidential Decree 17/96”, a valuable explanatory circular of the aforementioned Decree.
- Statutory Law 2639/98 “Regulation of working relationships, establishment of the Labour Inspectorate and other provisions” which established the monitoring office for the implementation of labour legislation, the Labour Inspectorate
- Presidential Decree 159/1999, [Amendment of Presidential Decree 17/96] “measures for the improvement of workers’ health and safety in the course of their work in compliance with Directives 89/391/EEC and 91/383/EEC” (11/A) and Presidential Decree 70a/88 “Protection of workers who are exposed to asbestos in the course of their work” (31/A) as it was amended by Presidential Decree 175/97 (150/A) with which Presidential Decree 17/96 was transposed, although without major alterations.
- Presidential Decree 219/2000 “Measures for the protection of expatriate workers in the land of Greece, in order to work temporarily within the framework of an international services supply” regulating the fixed-duration employment relationship for a very specific group of workers, foreign workers who come to work temporarily in Greece

General safety and health legislation was first introduced in **Ireland** in 1989, in conjunction with the European Community’s Framework Directive (89/391/EEC), with the enactment of the Safety, Health and Welfare at Work Act, 1989. This Act was replaced with new

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legislation in June, 2005, updating the 1989 Act and, in doing so, transposes Council Directive 91/383/EEC on safety and health at work of fixed-duration and temporary employees. As Directive 91/383/EEC was only transposed into Irish law within the past year, there is no experience with regard to the operation of the new legislation or any relevant case law with regard to its operation, as yet. In fact, as it is a very new legislation, having completed the legislative process through the Oireachtas (parliament) in June 2005, it is still in the process of being implemented and no in-depth assessment of its impact or of any case law can be made at this stage.

In **Italy** the legislative implementation of Directive 91/383/EEC has been complicated. Agency work was illegal in this country until relatively recent times, and was initially regulated by the law of 24 June 1997, n.196. Its legal framework was substantially modified by Legislative Decree n° 276/03 of 2003. The Directive was enacted for this sector both by this act n.196 of 1997 and by Legislative Decree 626/94, as modified by Legislative Decree of 19 March 1996, n. 242. Some specific lower-level regulations exist that apply to this sector, such as Decree of 31 May 1999; some national collective agreements for temporary workers, agreed in 1998 and 2002 also exist.

In the case of fixed-term contracts, their working relationship is disciplined by D.Lgs.368/01, and the transposition of the Community legislation has been operated, on a purely formal level, with the simple reference to the directive in the premise of D.Lgs.n.242/1996, of reform and integration of D.Lgs.n.626/1994.

In **Luxembourg** the basic regulation on forms of employment is found in the Loi du 24 Mai 1989 sur le contrat de travail. The central text in occupational health and safety, which implements Directive 89/391/EEC, is the Loi du 17 juin 1994 «concernant la sécurité et la santé des travailleurs au travail ». This piece of legislation has been amended by the Loi du 6 mars 1998; and by the Loi du 13 Janvier 2002.

In the **Netherlands** the implementation of Directive 91/383/EEC was complicated by the process of general legislation reforms on atypical employment during the 1990s, affecting temporary work agencies particularly. Different Dutch legal complexes were involved in this implementation:

- The Civil Code, which gives the basic rules for labour contracts and, within that context, also the rules regarding responsibility of employers for health and safety at work; these rules already existed at the beginning of the nineties.
- Specific legislation regarding occupational safety and health: the Dutch OSH Act and related ministerial Decrees (Arbeidsomstandighedenwet or: Arbowet); already existing, but revised and shaped into its actual form in 1994 and amended again in 1998.
- Specific new legislation regarding the employment of temporary workers by intermediate agencies (like temporary work agencies): the Law on Allocation of Workers by Intermediates (Wet Allocatie van Arbeidskrachten Door Intermediairs or: WAADI), introduced in 1999.
- Specific (new) legislation regarding labour contracts for temporary workers: the Law on Flexibility and Security (Wet Flexibiliteit en Zekerheid or: 'Flexwet'), introduced in 1999;

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- Specific legislation regarding workers' participation: the Works Councils Act (Wet op de Ondernemingsraden or: WOR); already existing at the beginning of the nineties.

In this country, collective bargaining has also played an important role in this implementation process, especially as the branch of temporary work agencies itself concluded a collective labour agreement for agency workers during the nineties. In this agreement the social partners, among other relevant issues, have agreed upon the need for an adequate health and safety policy and extra training provisions for temporary agency workers.

Portugal recently enacted a Labour Code, which contains the basic rules and contents of Portuguese Labour Law. This Code is registered as Law 99/2003, and was enacted in 2003. It applies, among other atypical forms of employment, to workers with fixed-term contracts, whose working terms and conditions are thus regulated by this Code. Workers hired by a temporary work agency to perform their work at a user firm are, on the contrary, not expressly regulated in the Labour Code, and therefore are regulated by specific legislation on this kind of work. The Framework Act on Safety and Health was enacted by Decree-Law 441/91, of 14th November, and transposed the Framework Directive on Safety and Health at Workplace (89/391/CEE). Specific laws concerning agency work exist in Portugal since 1989. Decree-Law 358/89, of 17th October, was the first official regulation of this activity; therefore, Portugal is among the last European countries to legislate on this form of work. Decree-Law 358/89 established the obligation of a social protection system for temporary workers and insurance against work accidents, having, however, omitted safety and health issues.

As a consequence of this shortage, Law 146/99, of 1st September, amending Decree-Law 358/87, had to be enacted, introducing among other elements specific provisions on this issue for these workers. Even if there is no formal transposition of Directive 91/383/EEC (not even a reference in Portuguese law), the changes introduced in Portuguese legislation through Law 146/99, of 1st September, implied an attempt to adapt the legal system to the obligations imposed upon Member States by this European piece of legislation. A project for a new Law was submitted in 2004 to social partners - CES - Economic and Social Committee and is presently under discussion of a Specialized Technical Committee.

In **Spain**, the main legislative body in the field of Health and Safety at the moment is Act n° 31/1995 on the Prevention of Occupational Hazards. This piece of legislation implements the 1989 Framework Directive on Health and Safety into Spanish law, setting general rules and obligations for employers, workers and public bodies; it also acts as a basic text on which the extensive number of specific regulations in this field is based. Article 28 of Act n° 31/1995 on the Prevention of Occupational Hazards is devoted to the specific situation of temporary workers, applying indistinctly to "temporary workers, fixed-term contracts and temporary work agencies"; its scope coincides, then, with that of Directive 91/383/EEC, and can therefore be considered as a national instrument of implementation. Likewise, articles 12.3 and 16 of Act n° 14/1994 on the Regulation of Temporary Work Agencies also deal with these issues. However, the bulk of the regulation is contained in Royal Decree 216/1999, a piece of legislation that is monographic on these issues. This regulation was presented, by the way, as the implementation, with some delay, of Directive 91/383/EEC. All these pieces of legislation apply, though, only to workers with temporary employment relationships. For

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workers engaged in fixed-term contracts regulation is much poorer, article 28 of Act n° 31/1995 being the most relevant reference; general legislation on health and safety, the application of which is out of discussion with regard to these workers, is the way in which the Directive's objectives are to be ensured.

In **Sweden**, Council Directive 91/383/EEC has been implemented in the Work Environment Act (1977:1160) by adding an additional section. The amendment to the Act came into force on 1 October 1994, prior to becoming a member of the European Union in 1995, through a Law amending the Work Environment Act. The added section states that “a person contracting hired labour to work in their activity shall take the safety measures which are needed in that work” (section 3.12). Besides, some of the Directive's mandates have been implemented in other Swedish pieces of legislation, such as the Systematic Work Environment Act (AFS 2001:1) and the Medical Controls Act (AFS 2005:06).

In the **United Kingdom**, Directive 91/383/EEC has mainly been incorporated into successive versions of the Management of Health and Safety at Work Regulations 1999 (MHSWR). More specifically, the basic text in this field is the Health and Safety at Work Act 1974, which applies to all workers, including those employed with fixed-term contracts and through temporary work agencies. Besides, the Directive was implemented in United Kingdom through the Management of Health and Safety at Work Regulations 1992, known as the Management Regulations. These regulations came into force on 1 January 1993. Regulation 13 of the Management Regulations contained the specific provisions for temporary workers. The Management Regulations were revised in 1999, as the Management of Health and Safety at Work Regulations 1999, though this did not affect the contents of the text with regard to temporary workers. These regulations came into force on 29 December 1999. Regulations 15 of the revised Management Regulations contain the specific provisions for temporary workers. In Northern Ireland, the Directive was implemented through the Management of Health and Safety at Work Regulations (Northern Ireland) 1992. These were revised as the Management of Health and Safety at Work Regulations (Northern Ireland) 2000, (Regulation 15), which came into force on 1 February 2001. In Gibraltar, the Directive was implemented by the Management of Health and Safety at Work Regulations 1996, (Regulation 17), which came into effect on 1 February 1996.

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

3.2 Technical issues of the implementation process of Directive 91/383/EEC

1. A first aspect to remark is the low level of uniformity which can be found in the legal treatment of these two forms of employment. This can be explained as the consequence of a number of facts.

The first of them is the profound differences which exist among Member States in the legal treatment of atypical work. The concept itself does not exist in all European legislations, as in some legislation all kinds of employment contracts are considered as equal. The degree of predominance of open-ended contracts varies from one State to the other, and consequently the legal framework for these particular forms of employment shows profound differences.

This is also a consequence of the limited reach of European harmonisation in this field. In the case of temporary work agencies, only health and safety issues have been dealt with at a European level. This explains that the level of harmonisation among national legislations is much lower than in other aspects of labour law.

2. It is common to find a double regulation of health and safety issues for these workers. In some Member States the Directive's mandates can be found both in the general texts on health and safety and in specific texts on these particular forms of employment. This legislative technique implies more difficulties in the assessment of the implementation process, as well as some reiteration and defective coordination of national legal texts. This is a consequence of the particular nature of this Directive, which is at the same time a text on atypical work and a regulation of specific health and safety measures; as in all Member States atypical forms of employment are subject to special rules and regulations, the Directive has an impact on two sets of regulations, those regulating working conditions for these workers and those implementing workers protection policies.

It is not very common to have a piece of legislation in which both aspects coincide, a regulation that is specific and monographic on occupational safety for workers employed with fixed-term contracts and by temporary work agencies. In those cases where this occurs this is a clear consequence of Directive 91/383/EEC.

Neither is it common to find references to workers employed with fixed-term contracts and by temporary work agencies in regulations of specific aspects of the health and safety policy, such as Labour Inspectorate or medical controls at the workplace. France and the United Kingdom are a clear exception to this rule. This means that special rules for these workers are concentrated in a small number of countries.

A mainstreaming effect of Directive 91/383/EEC has not existed, except in some countries, in the sense that the particular situation of temporary workers is taken into account when designing and framing legislative measures in the field of health and safety. This can reduce the effectiveness of the national measures to put into practice the general objective of ensuring that these workers are afforded, as regards safety and health at work, the same level of protection as that of other workers.

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3. A common feature is to find the same piece of legislation implementing both Directive 91/383/EEC and the Framework Directive 89/393/EEC. This is a practice which does not occur with other specific Directives. A number of reasons can be suggested to explain this fact. Firstly, the date of enactment of both Directives, rather close in time, which can explain why Member States would use the same national legislative measure to fulfil their obligations regarding both; but a number of other European Directives on health and safety were enacted in those years –the transition between the 1980s and the 1990s–, and they were in most cases implemented in different and separated pieces of legislation. There is a second reason which can explain better this particularity of the implementation process: the content and objective of this Directive, rather peculiar and distinctive, which distinguishes this from other specific Directives. It does not confront a technical environment or a given risk, but rather a “legal” or organisational aspect of a given group of workers. In this text the most distinctive feature is the peculiar risk factor being dealt with, a legal and organisational aspect of work, the kind of employment contract through which the worker’s services are obtained

The fact that Directive 91/383/EEC is part of a general category of “specific directives” can be misleading from this point of view. This category is defined in negative terms, thus being “specific” every directive on health and safety besides the Framework Directive of 1989, and the latter being the “basic” and “general” text in this field. But within this group a number of very different texts can be found, covering a wide array of subjects and risk factors. **Directive 91/383/EEC operates, in practice, as a complementary framework directive for a special group of workers, completing and adapting the regulation of Directive 89/393/EEC to the special circumstances of these atypical workers.**

4. Generally speaking, much more attention has been paid to workers employed by temporary work agencies than to those with fixed-term employment contracts. This fact is somehow paradoxical, at least from a statistics point of view, as the number of the former is much lower than that of the latter, fixed-term contracts being a much more common form of employment than agency work. In the perspective of the European labour market, temporary work agencies employ an extremely small percentage of the labour force, whereas fixed term contracts, with all the variations which can be found, involve a substantial part of it in all Member States.

We can suggest a number of reasons to explain this fact:

- i) First of all, the Directive’s regulation is in itself bigger and more complex for agency workers than for workers employed with fixed-term contracts; so much so that some articles apply only to them;
- ii) Secondly, the situation is much more complicated for agency workers, whose employment relationship is trilateral, and for which the obligations imposed upon employers must be split among two persons, the agency and the user firm; some specific risks appear for these workers, which are not present for those with regular fixed-term contracts;
- iii) Thirdly, the legislative technique used in EU Member States when dealing with these forms of employment; whereas the form in which fixed-term contracts are regulated may vary from one country to another, with temporary work agencies

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the situation is rather common: the existence of a specific piece of legislation regulating it, monographic and completely.

The result of this in practice is that, besides a complete regulation of occupational safety for agency workers –the minority with temporary employment-, those with fixed-term contracts –the majority- are covered just by general declarations of equal treatment in this field.

5. From the Member States' perspective, the impact of the Directive on national legislation has differed substantially. For some it was a real challenge, due to the scarce development of the safety and health regulation for these workers, if it existed. One must remember that at the time the Directive was enacted there were still some Member States with no regulation whatsoever on agency work. For many, the implementation of the Directive was the occasion for a major reform of their legislation in this field.

In other Member States the approach was completely different, and new regulations were passed only in case the existing law showed gaps. This was done in some Member States, such as Austria or Germany that considered their national standards of protection to be already high; for these States, the transposition of the European Directives was not seen as an opportunity to implement higher standards of protection than provided by European law.

This different approach to the Directive can be easily seen in the way Member States have put it into practice in their respective national labour law. In some cases, a major reform has been undertaken either with specific provisions in general texts on health and safety and/or atypical work, or with a monographic piece of legislation on this topic, or both. In other words, pre-existing texts have remained untouched, except for the introduction of some provisions regarding specific duties imposed by European legislation.

3.3 Specific implementation of the directive's content

3.3.1 The principle of equal treatment

The basic objective of Directive 91/383 is to guarantee an equal treatment in the field of health and safety for those workers with fixed-term contracts and temporary employment relationships. According to article 2.1 thereof, *“the purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment”*. This principle implies that the existence of one of such employment relationships shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.

This principle is recognized in all Member States, so Directive 91/383/EEC has been rather successful in putting it into practice. In the case of workers employed by fixed-term contracts it is common to find general statements declaring a general right to equal treatment, applying to all aspects of their employment relationship, although specific equal treatment rights in the field of safety and health can also be found. The same happens to agency workers

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The practical effect of this general principle has been, nonetheless, relatively **small**, as Member States tend to implement it through a general declaration, as the Directive does. The specific measures put into practice to guarantee this right to equal treatment are, generally speaking, the same as established by Directive 91/383/EEC.

3.3.2 Information to temporary workers

Information is a central element of the special system of protection set by Directive 91/383/EEC to ensure workers with fixed-term contracts and temporary employment relationships a level of protection against work-related hazards at least equal to other workers. Article 3 of Directive 91/383/EEC states that *‘without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:*

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;

2. such information:

- covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and

- states clearly any increased specific risks, as defined in national legislation, that the job may entail.

Under **Austrian** law, Section 12 in conjunction with section 9, paragraph 2 of the Health and Safety Act states that the hirer has to provide temporary agency workers with sufficient information on safety and health risks and hazards. Moreover, the user has to inform workers on preventive measures. This information has to be given before any activity starts. Section 9, paragraph 2 of the Health and Safety Act (ASchG) determines that during the period of hiring-out, the user company is deemed to be the employer. Temporary agency workers have to be informed on hazards, necessary skills, training, etc. to the same extent as permanent workers.

In **Belgium**, the Royal decree of 19 February 1997 imposes in its article 5 a duty to provide information prior to the performance of an assignment in a user firm. The contents of this obligatory information are: specific risks that the organisation or job may entail special occupational qualifications or skills needed. If the evaluation of the job indicates a specific risk for the safety and health, the user takes additional measures with regard to the temporary worker: provision of information and safety instructions and information about dangerous entrances. The user undertaking does not inform the temporary worker on special medical surveillance, but the temporary work agency does.

In **Finland** Section 14 of the Occupational Safety and Health Act states that employers shall give their employees the necessary information on the hazards and risk factors of the workplace and ensure taking the employees' occupational skills and work experience into consideration. This also includes a fixed-duration employment relationship and a temporary employment relationship. According to section 3 of the Occupational Safety and Health Act anyone who has labour employed by someone else (leased labour) under their direction is

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required during work to observe the provisions of this Act regarding employers. Section 3 of the Occupational Safety and Health Act imposes upon the user firm an obligation to inform the employer, not the employee directly as the Directive requires. In the Decision of the Council of State concerning some requirements of industrial safety with hired employees (782/1997) there are detailed provisions about the duty of information of the recipient of labour, specific obligations of the recipient towards hired workers and with regard to specific obligations of the assigning employer.

In **France** the *Code du Travail* imposes different rules for workers with fixed-term contracts and for agency workers. For the former, article L-122-3-1 imposes a written contract of employment, with a minimum content including the qualifications needed for the position, and the detailed identification of the position to be filled. For the latter, article L 124-3 defines the content of the contract between the user firm and the temporary work agency, which should include, among other items, the qualifications needed for the position, the specific characteristics of the position, protection equipment needed for the job. These items are to be included also in the contract of employment between the worker and the agency.

In **Germany** there is a general information obligation which is set by the Health and Safety Act (ArbSchG), including when workers from several employers are working at the same workplace (Art. 10, paragraph 2 of the Framework Directive). Moreover, the Act on Works Councils had to be amended. In addition, an amendment of the Law on Temporary Work (AÜG) was necessary. Section 11, paragraph 6 was added, including the following points: The hirer has to inform the temporary worker on safety and health risks at the workplace. Also, the hirer has to inform the temporary worker on measures and equipment. Information has to take place before starting the work or any related activity. The content of information stated in Art. 3 No. 2 of the Directive is transposed literally in this section.

In **Greece**, Presidential Decree 17/1996 does not contain specific provisions for workers with an employment relationship as referred to in Article 1 of the Directive. The general provisions about the information of workers that the Decree and the explanatory circular entail are valid for all workers, irrespective of the type of employment relationship, and this includes Article 7 (6), General Responsibilities of the Employer, according to which the employer is obliged to inform workers about the occupational hazards derived from the job they perform. In the explanatory circular, the passage referring to Article 7 (9) of the Presidential Decree, highlights the fact that in the case that more than one employer exercises their activities in the same establishment, each one is responsible of informing their own workers and their representatives. Article 22(8) Statutory Law 2956/2001, Consolidation of the Working Rights of Temporary Employees, stipulates that the indirect employer must define, before the temporary worker is at his disposal through contract, the occupational qualifications or skills required; special medical surveillance; particular characteristics of the job position to be covered; and the higher or specific risks related to the specific job. The Temporary Employment Agency is legally obliged to notify this information to the workers.

In **Ireland** the Safety, Health and Welfare at Work Act 2005 imposes a general duty to provide information on occupational safety to workers in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and includes a number of relevant items specified in text of the Act. This Act also states that where an employee of another undertaking is engaged in work activities in an employer's

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undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning these matters. Finally, where an employer proposes to use the services of a fixed term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to any potential risks to the safety, health and welfare of the employee at work; health surveillance; any special occupational qualifications or skills required in the workplace; and any increased specific risks which the work may involve.

In **Italy** the duty to inform agency workers is set in article 3.5 of Act n° 196/97. The specific contents of obligatory information can be found in Legislative Decree 626 /94.

In **Luxembourg** the employer's duties to inform on health and safety issues are set in article 5 3. f) of *Loi du 17 juin 1994 concernant la sécurité et la santé des travailleurs*. Article 7 of this piece of legislation stipulates that the user firm shall provide the temporary work agency with the necessary information concerning the qualifications needed for the position to be filled and the special characteristics of the workplace. The agency must bring this information to the knowledge of its employee who is to be sent to perform his work at the user firm.

In the case of **the Netherlands**, according to the Organizational Safety and Health Act the hiring company has to inform workers before the commencement of the job. Workers have to receive relevant sections of the contracts between the two firms with information about job features, job risks, safety regulations and protective measures.

Spanish legislation makes an extensive use of information duties as a way to improve the worker's knowledge and awareness of risks and hazards at the workplace. These obligations can be found with a general scope of application, in Act n° 31/1995 on the Prevention of Occupational Hazards, article 18 of which is fully devoted to "Information, consultation and participation of workers". Besides this general duty of information, article 28.2, applying only to these specific workers, rules that the employer shall adopt the necessary measures to ensure that, before the commencement of duties, these workers are provided with information on the risks which they are going to be exposed to, particularly with regard to any special occupational qualifications or skills required, any special health surveillance required to be provided or the presence of specific risks of the job to be carried out, and measures of prevention and protection from those risks. In the case of workers hired by temporary work firms to perform their duties at user firms' facilities, both Act no. 14/1994 and its regulatory development establish a mutual exchange of information between both firms, affecting a number of subjects.

Under **Portuguese** law, the user must inform the TEA and the temporary worker about the risks for safety and health emerging from the specific workplace where he will work. This rule is stipulated in article 20, n° 2 of Act 358/89. Besides, article 275 - n° 1 of the Labour Code provides that workers must have full information regarding: risks for safety and health and preventive measures related specifically to the workplace or task or, in general, to the undertaking and/or establishment; preventive measures and safety instructions in case of severe and imminent hazard/danger; and first aid measures, fire prevention and worker's evacuation in case of accident. According to paragraph 2 of this article 275, information must always be provided in a number of situations, including activities that involve workers from different companies.

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As for **Sweden**, section 3.3. of the Work Environment Act of 1997 provides that the employer shall ensure that the employee acquires knowledge of the conditions in which work is conducted. Only workers who have received adequate instructions shall gain access to areas where there is a risk of ill-health or accidents. A person hiring rented labour to work in his activity shall take the safety measures which are needed in that work (Section 3.12). The employer shall make sure that the employee knows what measures shall be taken to avoid risks at work. (Section 3.3).

Finally, in the **United Kingdom** these information duties can be found in Regulation 15 (1), (2) and (3) of the Management of Health and Safety at Work Regulations 1999.

3.3.3 Training of temporary workers

Training is a basic element for any policy on health and safety at the workplace, and so European Law has used it as one of its basic instruments in order to achieve its objectives. The Framework Directive sets general rules on this issue in article 12 thereof, and article 4 of Directive 91/383/EEC adapts them for the specific needs of workers with fixed-term contracts and temporary employment relationships: *“Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience”*.

This obligation can be found in all national Labour Laws of the EU-15 Member States. Thus,

- **Austrian** Health and Safety Act (ASchG) provides that during the assigning period, the user is considered to be the employer (section 9, paragraph 2). The general obligation to provide workers with sufficient training (section 14) also applies for user companies as regards temporary agency workers. Training must be adapted to the conditions of the workplace and to the worker's experience.
- **Belgian** Royal decree of 19 February 1997 states that if the evaluation of the job indicates a specific risk for safety and health, the user takes the necessary measures to provide sufficient and adequate training (art 5, §3, 3°).
- In **Denmark** article 18 of the Work Environment Act WEA stipulates that the employer shall make sure that the employee has received the training and instructions necessary to perform the work free from danger, whereas article 18 of the executive order on the performance of work states that the training and instructions shall particularly be provided in connection with access to employment, transfer of employees or change of job contents, introduction of new equipment or change of equipment, and introduction of new technology.
- For **Finland**, Section 14 of the Occupational Safety and Health Act establishes the training and guidance to be provided for employees. Besides, the recipient of labour shall, according to section 3 of the Occupational Safety and Health Act, take special care of guiding employees with regard to work and the working conditions of the workplace, the occupational safety and health procedures and, when necessary, the arrangements for cooperation and information on occupational safety and health and for occupational health care. Section 4 in the Decision of the Council of State (782/1997) states that the recipient of labour shall, before starting work, ensure that

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the worker obtains adequate information on the hazards and risks at work and on necessary protection.

- In **France** article L231-3-1 of the Code de Travail provides that all employers must provide an adequate and sufficient training for all newly employed workers, for those workers who change their position within the firm and for those with fixed-term contracts. Both the Accord national interprofessionnel du 24 mars 1990 and the Accord du 26 septembre 2002 relatif à la santé et à la sécurité au travail, also deal with the workers' training, with special provisions for temporary workers.
- In **Germany** Section 12, paragraph 1 of the Health and Safety Act (ArbSchG) transposes Art. 12, paragraph 1 of the Framework Directive. Pursuant to this section, the employer must provide sufficient and appropriate training to all workers on occupational safety and health. In addition, section 12, paragraph 2 implements Art. 4 of Directive 91/383/EEC. The user must ensure that workers assigned to him receive appropriate training, account being taken of their occupational skills, knowledge and experience.
- In **Greece**, Presidential Decree 17/1996 does not contain specific provisions for workers with an employment relationship as referred to in Article 1 of the Directive. The general provisions regarding the training of workers that the Decree and the explanatory circular entail are valid for all workers, irrespective of the type of employment relationship.
- In **Ireland**, Section 10 of the Safety, Health and Welfare at Work Act 2005 considers the instruction, training and supervision of employees. Besides general obligations applying to all employers, it provides that every employer shall ensure that persons at work in the workplace concerned, who are employees of another employer, receive instructions relating to any risks to their safety, health and welfare in that place of work as necessary or appropriate (paragraph 5); and that every employer who uses the services of a fixed-term employee or a temporary employee shall ensure that the employee receives the training appropriate to the work which he or she is required to carry out having regard to his or her qualifications and experience (paragraph 6).
- **Italian** regulation on the training of these workers with regard to occupational health and safety can be found in article 3 paragraph 5 of Act n°196/97, as well as in Legislative Decree of DEGREE 19 march 1996, n. 242 modifying Legislative Decree n° 626/94. There are also some provisions on the successive national collective agreements for temporary workers.
- In **Luxemburg** article 5 3. c) de of loi du 17 juin 1994 concernant la sécurité et la santé des travailleurs stipulates that the employer, before assigning a given job to a worker employed through a fixed-term contract or placed at his disposal by a temporary work agency, must provide this worker an adequate and sufficient training, appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.
- In the **Netherlands** according to the Occupational Safety and Health Act, the hiring company has to provide sufficient and adequate health and safety related job instruction and training to all workers. Collective labour agreements for agency workers include a phased system: (1) the worker builds up a personal budget for

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training as of week 26 (2) after 2 years work for the TEA, the worker has the right to use the training budget.

- As for **Portugal** Art 8 - n° 3 of Act n° 146/99 stipulates that temporary work agencies must allocate, at least, 1% of business volume arising from T.W. to occupational training of workers. Likewise, article 278 of the Labour Code provides that workers must have adequate and permanent training on safety and health, related to the workplace and the exercise of high risk activities
- In **Spain** this obligation has been implemented in Spanish law both at a general level, for all workers (article 19 of Act no. 31/1995, on the Prevention of Occupational Hazards), and at a specific level, for those workers with fixed-term contracts and temporary employment relationships (article 28 of Act n° 31/1995 on the Prevention of Occupational Hazards and article 12 of Act n° 14/1994 on the Regulation of Temporary Work Agencies).
- In **Sweden** article 3.3 of the Work Environment Act stipulates that the employer shall make sure that the employee has received the necessary training and that the employee has the sufficient knowledge before starting to provide his services.
- In the **United Kingdom** Regulation 13 (2) of the Management of Health and Safety at Work Regulations 1999 imposes a similar obligation to employers of temporary workers or user of the services of temporary work agencies.

3.3.4 Use of workers' services and medical surveillance of workers

According to article 5.1 of Directive 91/383/EEC, “Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation”.

This is a crucial factor in the regulation of temporary work, affecting agency work particularly. It deals directly with the market size of these firms, as it can exclude them from potential clients. It has been common in Europe to exclude agency work from some activities or economic sectors –not so with fixed-term contracts-, for different reasons. The Directive uses this same technique, as a safety protection measure.

The use of this clause by Member States has been extensive, although its contents change from one legislation to another. Normally the central piece of legislation on these forms of work envisages the prohibition, the specific content of which is set by a lower level regulation. And it is common to impose prohibitions only on agency work, setting no limits on the use of fixed-term contracts on this ground.

In some countries this technique of exclusion for health and safety reasons has also been used to guarantee risk evaluation of those positions which are to be covered by agency work. Therefore the use of agency work is not admitted for those positions for which risk evaluation has not been completed.

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- **Belgian law** prohibits temporary workers for three types of work: demolition and removal of asbestos, gassing activities and removal of poisonous waste products (art. 11 Royal decree of 19 February 1997).
- In **France**, both article L122-3 (for fixed-term contracts) and article L124-2-3 (for agency work) envisages a prohibition of their use for some “particularly dangerous works”, to be identified by orders of the Ministry of Labour and of the Ministry of Agriculture
- In **Italy**, Law n° 196/96 envisages this prohibition, the content of which is set by the Decree of 31st May 1999.
- The **Portuguese law** provides in article 20 - n° 3 of Act 146/99 thereof that the use of temporary workers is forbidden in workplaces that are particularly dangerous for their safety and health
- According to article 8.1 of **Spanish Act** 14/1994, potential user firms cannot contract the services of temporary work agencies, among other cases, “*to carry out activities and jobs which shall be specified by regulation as being particularly dangerous to safety and health*”. Royal-Decree 216/1999 identifies those circumstances in which temporary work cannot be used on health and safety grounds. First of all, those positions in the user firm that have not undergone the appropriate process of risk evaluation were excluded; secondly, those activities included in a list set by article 8 Royal Decree 216/1999, among which are mining activities, the construction sector, jobs which imply the use of explosives, etc...
- Finally, Austria, Denmark, Finland, Greece, Germany, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom have not made use of the options provided by paragraphs 1 and 3 of article 5 of the Directive

3.3.5 Protection and prevention services

Article 6 of Directive 91/383/EEC also sets some special provisions applying to protection and prevention services, created by article 7 of Directive 89/391/EEC, the regulation of which, in national labour law, should be adapted to the special features and needs of these particular workers. According to this provision, Member States shall take the necessary measures to ensure that workers, services or persons designated to carry out activities related to protection and prevention of occupational risks are informed of the assignment of workers employed in one of those employment relationships affected by the 1991 Directive, to the extent necessary for the workers, services or persons designated, to be able to carry out protection and prevention activities adequately for all the workers in the undertaking and/or establishment.

From the information collected at national level and the analyses carried out, the conclusion that can be drawn is that all Member States have fulfilled this obligation in different ways. In some cases, no specific provisions have been laid for workers employed with fixed-term contracts or through temporary work agencies. In other cases special rules, framed for these groups of workers, apply.

4. Practical Implementation

In this section of the report we will deal with the practical implementation of the Directive. By this we mean, how the national implementation measures have worked in the Member States' labour markets. Now that the legal instruments implementing Directive provisions have been analysed, we will study how these national regulations have performed.

We will perform this study following the same index we used when analysing the legal aspects of this implementation

4.1 The principle of equal treatment

As we saw before, the practical implementation of this principle, a basic element of the Directive's regulation, has been somehow defective, particularly with regards to those workers employed by fixed-term contracts. For these, the most common action from Member States has been to include a general statement declaring an overall right to equal treatment, sometimes with a specific declaration of equality in health and safety rights, sometimes with rules applying to all aspects of their employment relationship. In a way, the States have misunderstood the general objective of the Directive, equal rights in this field, which has to be put into practice through a number of specific, instrumental rights,

The practical effect of this general principle has been, nonetheless, relatively small, as Member States tend to implement it through a general declaration, as the Directive does.

In analysing the practical implementation of this principle there are two aspects which have to be considered:

- on the one hand, to what degree do these workers enjoy the same rights as others in their respective labour markets;
- on the other hand, if there is real equality with regard to the incidence of accidents and diseases;

4.1.1 Equal rights in health and safety protection

In **Austria**, regarding fixed-duration employment relationships, none of stakeholders contacted report disadvantages for this group of workers. The situation for workers employed by temporary work agencies seems to be much worse.

The **Belgian** report states that the insufficient clear demarcation of responsibilities between temporary work agencies and user companies is a problem, which can have repercussions on the actual protection afforded to workers, for example with regard to PPE: in the case of ordinary employment relationships it is clear that the employer is subject to the duty to provide these equipments, whereas in the case of agency work it is not clear whether the agency or the user firm is responsible.

In **Denmark**, although social agents interviewed find it difficult to comment and reflect on the impacts and consequences of Directive 91/383/EEC before and after its implementation, they support the idea that permanent workers and workers with fixed-duration employment

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relationships or temporary employment relationships are given the same level of legal protection with regard to health and safety. Stakeholders interviewed stress that they see no trends in treating temporary workers and workers with fixed duration contracts differently from permanent workers regarding safety and health issues. When a company has standards on how to inform on health and safety issues this will also have an impact on temporary workers and workers with fixed duration contracts and vice versa.

In **Finland**, the Occupational Safety and Health Act contains no exception to the rule that the employer has to treat all employees equally, even if they are fixed-term or temporary employees. In the Employment Contracts Act (chapter 2, section 2) there is a specific provision that, without proper and justified cause, less favourable employment terms than those applicable to other employment relationships must not be applied to fixed-term and part-time employment relationships merely because of the duration of the employment contract or working hours. There have been some difficulties in applying this obligation in practice. Different treatment can be caused by the employment relationship as such, for instance, when there are no sensible possibilities to carry out occupational health care during the employment relationship.

In **France** temporary workers are entitled to the same level of protection as the rest of the workers; in practice, however, there are a number of factors producing a higher level of exposure to work-related risks: among others, their legal status, their personal profile and the economic sectors in which they work that.

The **Greek** report states that there is no discrimination at all between fixed-term or temporary employment and permanent employment workers. All workers are afforded the same level of protection and health and safety measures are applicable to all of them. Thus, the improvement that has been observed in the last 10 years with regard to the situation of occupational safety and health in Greece (compulsory safety engineer in every undertaking, establishment of the Labour Inspectorate), influences all types of workers. Nevertheless, limited employment time can cause discriminating situations such as fewer opportunities for training or bullying behaviour by permanent personnel.

In **Luxembourg** although in principle legislation implementing the Directive grants equal rights for fixed-term and agency workers, general consensus exists on the idea that the real chances of exercising these rights is strongly limited by the special features of their employment relationship.

In the **Netherlands**, according to a study amongst more than 900 undertakings, *measures to combat* bad working conditions cover, to a large extent, permanent and temporary workers equally, although they are also partly different. Measures against irregular or excessive working hours and psychological stress apply to agency workers to a lesser degree than to permanent workers. Measures against aspects such as noise, health and the risk of dangerous dust and materials are more or less equal for both groups of workers. In general terms equal treatment has been applied as a principle in Dutch legislation, notwithstanding the fact that according to the views and experience of experts, managers and workers in this study, some differences do exist in daily practice. Temporary agency workers are thought to run a greater risk of being deployed in negative working conditions and being treated in a more unequal way.

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In **Portugal** the legislation grants the same level of protection for fixed duration relationships and permanent workers. The contacted stakeholders reported no differences on this subject. The situation for temporary workers is, however, totally different, as, in practice, they have rather limited rights.

In **Spain**, as a general trend, a different situation is found in most cases for workers placed at the disposal of user firms and those hired directly through a fixed-term contract, the latter receiving a better treatment. In general the application of general rules on health and safety seems to be sufficient to grant them an adequate protection. The same cannot be said about agency workers, whose particular employment status makes it difficult to obtain the health and safety protection they need. Important differences are found, nevertheless, among different agencies and between big and small or medium-size enterprises.

In **Sweden** interviews with employees' organisations indicate that workers with fixed-duration employment relationships or temporary employment relationships are not given the same level of protection with regard to safety and health.

In the **United Kingdom** many respondents reported cases where temporary workers did not receive the same level of health and safety protection as other workers. These concerns were more frequently raised about temporary agency workers than about other forms of temporary employment. Best practices of employers, agencies and trade unions working together to protect temporary workers were also found.

4.1.2 Equal level of incidence of work-related accidents and diseases

The starting point for the European intervention in 1991 in this field was precisely the idea that these workers suffered a specially high level of risks at work: *'whereas research has shown that in general workers with a fixed-duration employment relationship or temporary employment relationship are, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers'*. And the objective was to avoid this phenomenon: *'the purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment'*.

Fifteen years after, with one Directive in force and fifteen national labour legislations to implement it, the situation is still the same, and no equal protection is available in practice. This is the general opinion stakeholders and experts express on this question, and it is also a general conclusion we draw from the analysis of the different national reports elaborated in the process of making of this Final Report. The problem is that this conclusion, although reasonable and generally shared, it is nonetheless difficult to define in numerical terms, due to the lack of consistent data. It is, at the same time, difficult to defend with statistical support. Therefore, national reports indicate this fact, the differences in health and safety levels for temporary workers, but they coincide in the weak statistical basis for this conclusion.

An additional problem this reporter faces is the different level of quality and quantity of the statistical information available from each individual Member State. National reporters have gathered all available information from their own country, but differences in the sources

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have produced profound differences in the data provided by each report; these differences explain the way this section has been drafted, with an analysis which is not uniform and coherent for all member States, but rather focuses particularly on those whose data are richer and more significant.

In **Austria** with regard to accident risk, the assessment differs, and the representatives on the employer's side stress that no empirical or statistical evidence that temporary work itself encounters a higher accident risk exists. Besides, temporary workers do not suffer recognised occupational diseases more frequently than other groups of employees. As a consequence there is no empirical evidence for temporary worker facing higher risks, although the stakeholders interviewed agreed that psychological stress for temporary workers is higher than for other employees. Integration into the new company, new working processes and new co-workers are a continuous challenge to them. empirical or statistical evidence that temporary work itself encounters a higher accident risk exists.

The real situation is that the analysis of accident at work data and data on occupational diseases encounters several problems, as occupational diseases for temporary workers are not gathered separately, and several methodological changes took place in the last years, what causes that longitudinal comparisons are very restricted. For this reasons, comparisons of accident at work rates can only be made since 2001. In addition, it should be borne in mind that the calculation on the basis of reported accidents at work depends on the quality of information given by the reporting enterprise (usually the TEA). At last, the data capture is probably not complete.

Although the number of accidents at work is increasing since 2001, the rate of accident at work is steadily decreasing since 2001. Reason is the increasing number of TEA-workers. The accident rate of temporary workers steadily decreased until 2003. Since then, the accident at work rate remains about on the same level.

Development of accident at works related to 1,000 workers as reported at target day

| | workers | accidents | Accidents at work per 1,000 temp. workers | Accidents at work per 1,000 workers in total |
|------|---------|-----------|-------------------------------------------|----------------------------------------------|
| 1998 | 20,772 | 3,126 | 150.5 | 41,3 |
| 1999 | 24,277 | 3,729 | 153.6 | 42,3 |
| 2000 | 30,120 | 4,834 | 160.5 | 41,2 |
| 2001 | 33,153 | 4,578 | 138.1 | 38,3 |
| 2002 | 31,207 | 3,870 | 124.0 | 36,9 |
| 2003 | 38,491 | 4,292 | 111.5 | n.a. |
| 2004 | 44,125 | 4,962 | 112.5 | n.a. |
| 2005 | 46,679 | 5,227 | 112.0 | n.a. |

Source: Own calculations on basis of data of AUVA and Federal Ministry of Economics and Labour. Data concerning accidents at work in total are provided by the Federal Ministry of Economics and Labour.

Summarising the analysis of accident data, there is no clear and final evidence that temporary work is more dangerous than other forms of employment.

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Regarding recognised occupational diseases, the number of them is very low. Together with the lack of detailed valid data only a descriptive analysis can cautiously be carried out. Following the data provided by official bodies, the rate of occupational diseases developed as depicted in the following table.

Development of rates of occupational diseases

| | Rate of recognized occupational diseases per 10,000 temporary workers | Rate of recognized occupational diseases per 10,000 workers in total |
|------|-----------------------------------------------------------------------|----------------------------------------------------------------------|
| 1998 | 3,37 | 4,43 |
| 1999 | 7,41 | 4,39 |
| 2000 | 4,65 | 4,24 |
| 2001 | 5,73 | 4,52 |
| 2002 | 5,77 | 4,76 |

Source: Federal Ministry of Economics and Labour, AUVA

The incidence rate for temporary workers seems to be higher than for other workers. But given consideration to the weak data basis, it is no empirical or statistical evidence of higher rates of recognised occupational diseases

In **Belgium** the question about the effect of the implementation is difficult to answer because there are no reliable benchmarks. There has been a general decrease in the number of accidents at work, affecting both temporary and permanent workers. Although the decrease can be linked to several factors it seems that legislation implementing Directive 91/383/EC has perhaps had some influence also. Some experts support the idea according to which there will always be a higher frequency rate of accidents at work among temporary workers than among permanent workers for a number of reasons: less seniority and experience in the job; higher presence of younger workers, who have an increased risk; and higher use of temporary workers in dangerous sectors where there are more work accidents. National report provides the following picture of work-related accidents for temporary workers.

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Accidents at work of temporary workers (source: PI, Federgon)

| Statistics | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---------------------------------------------------------------------------------------|---------|---------|---------|---------|---------|---------|---------|
| Number of temporary workers | 285.000 | 303.722 | 315.763 | 316.759 | 314.838 | 325.827 | 351.100 |
| Number of hours worked by temporary workers (in millions) | 121,90 | 137,50 | 130,60 | 129,14 | 128,93 | 146,23 | 151,08 |
| Number of accidents during working hours with time off | | | | 11.334 | 10.260 | 10.433 | 9.992 |
| Number of working days not worked due to accidents during working hours with time off | | | | 217.608 | 198.071 | 201.375 | 189.786 |
| Frequency rate* | 95,07 | 99,60 | 94,29 | 87,76 | 79,58 | 71,40 | 65,96 |
| Seriousness rate** | 1,78 | 1,81 | 1,85 | 1,68 | 1,54 | 1,38 | 1,25 |

* Frequency rate= (number of accidents during working hours with time off / total number of hours worked by temporary workers) *1.000.000

** Seriousness rate= (working days not worked due to accidents during working hours with time off / total number of hours worked by temporary workers)*1.000

There is a decrease in the incidence of accidents at work, which is explained at the result of an intensive prevention campaign in the sector that has especially caused an increased attention for safety at work among temporary employment agency consultants, user undertakings and temporary workers. There are no statistics on professional diseases of temporary workers.

In **Denmark**, the fieldwork in connection with this report indicates that national legislation implementing the Directive has had limited impact in practice. However, it is difficult to assess the actual situation in practice since there is an information gap due to lack of statistical data, and it is ambiguous to conclude that temporary workers and workers with fixed duration contracts are afforded, as regards to safety and health at work, the same level of protection as other workers in the user company. As very little statistical information is available on temporary workers the Danish National Institute of Occupational Health is preparing a survey that will include workers with fixed-term contracts and temporary workers.

In **Finland** the risks connected to safety at work seem to be higher among employees with a fixed-duration contract than among permanent employees. According to the research undertaken in the mid-90s, the ratio of accidents at work (occupational accidents per one million working hours) was about 10 per cent higher in industry among workers who had worked less than one month compared to the average of all workers. Among agency workers the incidence of work-related accidents is higher, these accidents being especially common in the companies that operate in different sectors of the economy.

In **France**, available statistics show that temporary workers suffer a considerably higher number of work-related accidents than permanent workers, and that accidents have more

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serious consequences. Although statistical data are less specific for health problems, the incidence of work-related diseases is also higher. All relevant studies show that «le contrat à durée déterminé et l'intérim s'accompagnent d'une plus grande vulnérabilité sur le plan physique et psychique ». In practice it seems there is a tendency of French firms to use temporary workers for more dangerous jobs. For a number of reasons, they face higher level of exposure to work-related risks.

The **German** report expresses this statistical difficulties as well. Due to the peculiarities of the German OSH-system, comprehensive data for the whole branch of “temporary work” is not available. Giving consideration to the number of temporary workers, calculations face some problems because the number of workers, average duration of employment contracts, etc. remain unknown.

An analysis of data of the German socio-economical panel survey shows that temporary workers report more frequently to be exposed to accident risks than comparable employees. Regarding the causes, the accidents at work of temporary workers show no conspicuousness and “typical” accident causes cannot be identified. The most frequent accident causes for temporary workers are falling (mostly from ladders), especially at construction sites or other non-stationary working places.

Summarising the analysis of available data and of third party studies, there is no clear statistical evidence and no concluding proof at all that temporary work is more dangerous than other work. All data and information hints at this but statistical proof in the narrow sense is missing. On the other hand there is absolutely no proof for the opposite, i.e. that temporary work is less dangerous than “normal” employment relationships.

Notwithstanding the lack of statistical evidence, most of interviewed persons said that the risk of suffering an accident at work for temporary workers is higher than for core-workers. In general terms the majority of interviewed persons judge that temporary work is more dangerous than other forms of employments.

The final assessment of data and information gathered faces several problems. Balancing all information and arguments, the final assessment is that temporary workers obviously face higher risks. Nevertheless, there is no clear statistical evidence and no concluding proof at all that temporary work is more dangerous than other work. Although all data and information hints at this, there is no statistical proof in the narrow. Notwithstanding the lack of statistical evidence, most of the persons interviewed stated that the risk of suffering an accident at work for temporary workers is higher than for core-workers. Regarding health, a number of studies suggest that they tend to enjoy worse health than permanent workers, including higher stress and more psychological problems.

According to the national report from **Greece**, there is no available study on the situation of safety and health of temporary workers in this country. From the field work undertaken in the framework of this project, no statistical association proved to exist among occupational accidents and temporary employment for the available data. In any case, it is not clear whether the results of this study show us the real picture of the situation, since some factors exist that affect the integrity of the data. Nevertheless, serious problems still occur in sectors with high percentage of fixed-term or temporary employment, such as construction and the seasonal undertakings of food manufacturing, and there are still many things to be done.

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In **Luxembourg** the work-related accidents rates are higher for temporary workers, and there are elements supporting the idea that their health is also affected.

The national report from **the Netherlands** states that there are some data about occupational accidents of temporary workers, as compared to workers with permanent contracts. Such information is available for the year 2002, when authorities assembled systematic monitoring data to get a better picture of work accidents and injuries due to accidents at work. To give an example, there were 176,000 agency workers in the year 2002; this was 2,5% of the total labour force. 10% of the fatal incidents incurred agency workers. By consequence, agency work shows a relatively high rate of fatal incidents. 82% of the total number of serious injuries due to accidents at work could be addressed to employees and 13% could be addressed to agency workers. Again, compared to their share in the total labour force, the percentage of agency workers with serious injuries to accidents at work is higher than that of employees with permanent contracts.

A different approach is by comparing the relative chance of getting involved in an accident at work irrespective whether the worker got injured or not. The overall share of flexible workers who got some kind of an accident (1,000 per 100,000 workers) is lower than that of permanent workers (1,200).

If we compare the percentages of employees with permanent and flexible contracts (79% respectively 9,6%) and the percentages of work accidents assigned to these groups (81% respectively 9%), we find that the accident rate and type of employment rate are almost the same. These data could indicate that employees with flexible contracts are not more often exposed to bad working conditions related to health and safety than permanent workers are.

Agency workers show a relatively high rate of fatal accidents and, similarly, a relatively high rate of serious injuries. On the other hand, when looking more generally at incidents irrespective of the nature of the incident consequences, employees with flexible contracts show similar accidents rates compared to permanent workers.

Data about *occupational diseases* of temporary workers were not found, as the annual reports of the Dutch Centre for Occupational Diseases do not present any data, broken down by type of contract.

In **Portugal** the national report states that “all interviewees agree that temporary workers do not have, as regards safety and health at work, the same level of protection as other workers in the user undertaking. The situation is considered to be different for workers with a fixed-duration contract, showing a higher level of protection in this field, as their contracts are also regulated by the Labour Code, in “identical circumstances than permanent workers”. Atypical form of work represents 17.4% of work accidents that caused worker’s death.

According to the **Spanish** report there are not specific studies neither statistics on the degree of execution of the principles contemplated by the Directive. Nevertheless, according the Fifth National Survey on Conditions of Work, the perception of the risk of an accident is higher in the workers with fixed-term contract than among the workers with permanent employment.

From an evolutionary perspective, if we analyze the number of accidents for each thousand employees, it can be observed that this ratio increased in a spectacular way in the period

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among the years 1994 at 2000. In this period the number of accidents for each thousand employees grew from 59 to 73. And this increment was produced specially for the employees with a temporary job. In this group, the ratio grew from 86,2 to 131,5. From 2000 to nowadays it observes an important reduction in this same ratio. This percentage has diminished 15 points until the actual 56,2 in 2005. And this reduction is especially sensitive in the group of employees with a fixed-term contract. In this group the ratio has diminished 43 points until 88 in 2005. This reduction is a highly relevant fact, as it shows the impact of Royal Decree 216/1999, the basic text on health and safety for agency workers, implementing Directive 91/383/EC. For the rest of temporary workers, in the last years a big effort has been made by unions in order to improve the situation for these workers. This reduction could mean the effectiveness both of European policy, embodied in the 1991 Directive, and of Spanish initiatives to deal with this problem. What is extremely important, if one bears in mind that Spain is the country with the highest presence of temporary work in its labour market; and with a chronic problem of incidence of work-related accidents and illnesses.

Rate of accidents and Employees according to the type of contract (1988-2005)

| | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|-------------------------------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| Accidents, Total Employees | 579032 | 646182 | 696703 | 688535 | 628640 | 534606 | 542818 | 599069 | 622095 | 677138 |
| Employees (000) | 8916,8 | 9366,8 | 9734 | 9735,8 | 9317,5 | 9034,3 | 9136,4 | 9412,5 | 9886,1 | 10404,1 |
| Rate | 64,9 | 69,0 | 71,6 | 70,7 | 67,5 | 59,2 | 59,4 | 63,6 | 62,9 | 65,1 |
| Accidents suffered by employees. with a permanent job | 256734 | 291479 | 296309 | 289966 | 272235 | 248912 | 242880 | 258761 | 267374 | 269116 |
| Employees with a permanent job | 6710,3 | 6733,5 | 6676,6 | 6504,6 | 6241,5 | 6086,9 | 5978,8 | 6152,8 | 6560,6 | 6950,7 |
| Rate | 38,3 | 43,3 | 44,4 | 44,6 | 43,6 | 40,9 | 40,6 | 42,1 | 40,8 | 38,7 |
| Accidents suffered by employees. with a fixed-term contract | 220243 | 304791 | 351861 | 357872 | 320623 | 256873 | 271733 | 311903 | 329021 | 383661 |
| Employees with a fixed-term contract | 2193,1 | 2616,8 | 3049,7 | 3220,8 | 3074,6 | 2944,4 | 3151,6 | 3252,8 | 3318,8 | 3438,6 |
| Rate | 100,4 | 116,5 | 115,4 | 111,1 | 104,3 | 87,2 | 86,2 | 95,9 | 99,1 | 111,6 |

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|----------------------------|---------|---------|---------|---------|---------|---------|---------|-----------|
| Accidents, Total Employees | 753396 | 869161 | 932932 | 946600 | 938188 | 874724 | 871724 | 890872 |
| Employees (000) | 10958,7 | 11860,2 | 12640,9 | 13148,0 | 13698,8 | 14374,6 | 15022,4 | 15.841,60 |

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| | | | | | | | | |
|------------------------------------------------------|--------|--------|--------|--------|--------|--------|---------|-----------|
| Rate | 68,7 | 73,3 | 73,8 | 72,0 | 68,5 | 60,9 | 58,0 | 56,2 |
| Accidents suffered by em. with a permanent job | 295324 | 339864 | 368412 | 393869 | 405593 | 387302 | 410489 | 418708 |
| Employees with a permanent job | 7384,9 | 7979,8 | 8589,2 | 8908,9 | 9361,1 | 9765,8 | 10073,7 | 10.491,30 |
| Rate | 40,0 | 42,6 | 42,9 | 44,2 | 43,3 | 39,7 | 40,7 | 39,9 |
| Accidents suffered by em. with a fixed-term contract | 432084 | 498224 | 532710 | 517395 | 492450 | 487422 | 459013 | 470792 |
| Employees with a fixed-term contract | 3560,7 | 3880,4 | 4051,7 | 4239,1 | 4337,7 | 4608,8 | 4948,7 | 5.350,40 |
| Rate | 121,3 | 128,4 | 131,5 | 122,1 | 113,5 | 105,8 | 92,8 | 88,0 |

Although these statistical data sustain the idea behind the Directive according to which atypical work increase risks at work, there are also some recent studies that offer a different view on this issue. In a recent interdisciplinary report on temporary work in Spainⁱⁱ, a statistical analysis was done using as a priority variable not the type of employment, but rather seniority. They found that in workers with less than three years of employment in the firm, the kind of contract of employment was irrelevant in their health and safety figures. For this group the incidence of work-related accidents depended on other elements, such as the sector or activity in which they were working.

These studies suggest that the problem for temporary workers is not the “integration” in the firm, as the 1991 Directive seems to maintain, but rather their seniority and experience in the workplace. And this problem exists for both temporary and permanent employees, as long as the latter group does not reach a given experience in the workplace.

Some studies also include a different, broader perspective in this debate, analysing the impact of temporary work on the general health condition of those persons employed by them. These studies conclude that the economic uncertainty and other negative aspects of temporary employment affect the health of workers, due to personal strain, stress and emotional recklessness. As a consequence, health improvement of these workers cannot focus on traditional preventive measures, but a broader treatment is needed, including other aspects such as economic stability, training, job’s content, promotion opportunities and the like.

ⁱⁱ L. TOHARIA et al., “*La temporalidad del empleo en España*”, Ministerio de Trabajo y Asuntos Sociales, 2005

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As a conclusion of this brief analysis of the situation in EU-15 member States, the situation is one of worse health and safety levels for temporary workers, both fixed-term and agency workers, but also that in most cases it would be difficult to find statistical evidence in the narrow sense to support this. The need for better, specific and harmonised statistics is clear, particularly if there is a real political consensus about the need to deal with the specific situation of these groups of workers. The common opinion among experts and actors of the labour market is that differences with comparison to ordinary fixed-term workers exist, although a lower degree of consensus exists regarding the causes explaining this reality.

One thing is saying that these workers are not enjoying similar levels of protection as permanent workers; another, that the Directive has been useless.

- In the **UK** “the general consensus from this research was that the law has given temporary workers more protection”;
- the Belgian report also indicates a positive effect of European legislation on the safety levels of these workers. In the case of agency work between 1999 and 2005 accident rates decreased 31% and the seriousness rate decreased 30% for temporary workers;
- for the Greek expert, “the opinion of most informants in our study, and social partners also, is that certain improvement has existed in health and safety issues and the protection levels for these groups of workers since legislation was implemented”;
- the national report from the Netherlands states that the position of agency workers seems to have improved as a result of legislation based on the Directive through increased attention to occupational safety and health in general. Besides, a general benefit of the Directive-based regulations is that they helped develop this sector into a well organised sector;
- in Spain the opinion also exists that these national legislative measures implementing the Directive have had a positive effect, and there is some statistical material to support this.
- In Austria the national report points out that the level of protection and prevention increased considerably since the Health and Safety at Work Act entered into force.

4.2 Information to temporary workers

Although national legislation guarantees the provision of information to temporary workers regarding the conditions and risks of their workplace in all Member States, this duty of the employers is hardly fulfilled in practice, at least to its full extent.

In **Austria** information given in advance to workers is not optimal and often not sufficient in the case of agency workers. In general, information and training of temporary workers seems brief and often deficient, especially with regard to the following two aspects: first, immigrant workers with a bad command of German language who often, in practice, do not receive sufficient in-advance information and training despite of several efforts to improve the situation by using native language leaflets or pictograms; second, information and training provided by small and medium sized enterprises as user companies is often insufficient. Fixed-term workers seem to receive an equal treatment as permanent workers.

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In **Belgium**, according to its national report, the level of fulfilment of the different information duties varies. In most cases the user informs the agency on the required occupational qualifications and the specific features of the job, and they appear in the contract of assignment. For jobs that require health surveillance this information must be provided by means of a workplace document, which in practice is not always filled in and often not filled in correctly or sufficiently. For other jobs (that require no health surveillance) no, or not enough, information is given in the contract of assignment, in general. In theory, users have already undertaken a risk analysis, but in practice many users don't have one or don't have one that is clear enough. According to some, temporary workers don't often get the necessary information from the agency about their future job. The fulfilment of this obligation depends largely on whether the agency has the information available, which depends on the information the user firm has provided, and the urgency of the assignment. Although in principle the user undertaking gives specific information to the agency workers regarding the workplace, there is no evidence this obligation is completely fulfilled. Workers with a fixed term contract enjoy the same level of information than permanent employees.

In **Denmark** it is in general accepted by the informants that the responsibility to inform about health and safety issues lies with the 'user company'. Fieldwork indicates that the temporary work agency has limited responsibility when it comes to providing information to its workers. It also indicates that no distinction is made between temporary work and other forms of work regarding the content and extent of information. The level of information is believed to be identical and independent of the type of employment contract, although difficulties exist to assess whether workers with fixed-duration employment relationships or temporary employment relationships are afforded the same level of information. Specific legislation exists in the construction sector to ensure that workers are informed about safety and health, which includes a meeting every other week. Although in practice not all workers attend these meetings they are believed to have a profound effect on the extent and dissemination of information. Danish legislation does not contain specific requirements or details regarding the contents of the information given to workers regarding safety and health, which means that, in practice, the user companies do not refer to a specific set of provisions regarding to the content of information. It seems that the content of information given may vary greatly from company to company and even within a company.

In **Finland** according to the general terms of contract the user company shall inform the employment agency of the training, occupational skills and experience required by the employees and of specific features of occupational safety, such as the health requirements of the employee. The user company is also in charge of initiating workers in their jobs, making sure they have got enough information regarding the work and the disadvantages and dangers of the work and also with regard to occupational safety. The employment agency's obligation is to select the worker in compliance with the information received. From the national report it can be concluded that workers with a fixed term contract enjoy the same level of information than permanent employees. Section 14 of the Occupational Safety and Health Act regulates the instruction and guidance to be provided to every employee, and it applies to fixed-term employees. It states that employers shall give their employees the necessary information on the hazards and risk factors of the workplace.

In **France**, although for fixed-term contracts the situation seems to be acceptable, receiving the same kind of information as permanent workers, for employees from temporary work agencies this obligation is fulfilled in a rather defective way. The National report points out

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that it is common for these workers not to receive the information envisaged by the legislation in force, and that user firms do not always provide this information to the agency; written contracts among them often lack this information. This is explained on the basis of competitive pressures on agencies, as well as on the speed and urgency of its operations.

In **Germany** the behaviour of agencies and user firms during the acquisition stage varies, although the tendency is towards better information on occupational risks. There is a form provided by the Verwaltungs-Berufsgenossenschaft for the written contract between the two firms which is largely used and contains the most relevant elements regarding health and safety. Although most of persons interviewed report that, nowadays, the majority of contracts contain an agreement on OSH, there are different opinions on the quality of these agreements. Once information is obtained, the temporary worker is informed. In-advance information is widespread and can be considered as a standard. Usually, agencies provide information to the temporary worker which is, in general, based on questionnaires. Sometimes, temporary workers are accompanied if a new working place is assigned for the first time. On-site information and induction at the new workplace lies under the responsibility of the user company and shows wide variance. Workers with a fixed term contract enjoy the same level of information than permanent employees.

In **Greece** no specific information procedures for fixed-term and agency workers has been found. Safety engineers and occupational physicians of the undertakings do not consider these workers as groups of workers with particular information and training requirements. On the one hand, fixed-term workers are in general afforded the same level of information about the risk of their jobs as permanent employees. This level is considered to be inadequate in general, although it depends on the size of the undertaking. On the other hand, agency workers are sent to the user undertakings without a prior knowledge of the specific qualifications required or the features of the job. This information is not even stipulated in the contract agreed between the Temporary Work Agency and the user undertaking (to which the workers have no access) and these workers often find themselves doing jobs different than their qualifications. Information about health and safety risks is given to them "on the job" and not prior to their employment, always depending on the safety culture and the size (available resources) of the user undertaking.

In **Luxemburg** available information suggests that fixed-term and agency workers are less informed than permanent employees about risks at the workplace. User firms do not always inform agencies about those risks affecting the positions to be filled. There is a lot of pressure on agencies to provide workers as fast as possible, so in practice contracts are substituted by contract-type or forms. It is rare for a temporary work agency to go to the user firm's premises to control in situ the characteristics and risks which would affect the worker placed at its disposal.

In **the Netherlands** enough attention has been given to the information process between user company, temporary work agency and agency worker. In addition, a covenant between social partners in the agency work sector pays substantial attention to the subject. Nevertheless, while temporary work agencies seem to inform the agency workers most of the time in an adequate way, user companies do not always give much attention to this subject. From the national report it can be concluded that workers with a fixed term contract enjoy the same level of information than permanent employees.

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In **Portugal**, with the exception of the larger user undertakings, there is no particular concern in the organisations to offer specific information regarding special occupational qualifications or skills, or special health surveillance required or increased specific risks. Even in the larger user undertakings, the information provided is only basic. This means that legislation is not having a large impact on this particular issue. In the case of workers with a fixed-term contract, on the other hand, there are no differences with permanent employees in this field.

In the **United Kingdom**, on the contrary, the overall impression is that the same health and safety information was given to temporary workers and permanent employees, as well as the identification of special skills when required, although in general the temporary workers were not told of the risks associated with the job before they were recruited. The national reporter for the United Kingdom found examples of best practices in the provision of information to temporary workers regarding risks at work. Positive examples included printed health and safety guides containing general safety information and site rules issued before work started. Information in this form was suitable for all types of temporary workers.

In **Spain**, as in other Member States, there is a clear distinction between those workers employed with a fixed-term contract and those employed by an agency. In the case of the former, the same level of information occurs; for the latter, it seems that in many cases, legal obligations are not duly fulfilled, although in practice the level of fulfilment will depend strongly on the kind of agency the worker is employed by: large firms in this sector tend to have a strong commitment towards health and safety issues in comparison to small ones.

According to the **Swedish** national report, the duty to inform workers of the special occupational qualifications or skills or special medical surveillance required seems to be complied with in practice, particularly in the case of fixed-term workers. Agencies inform the temporary agency workers explicitly or they ensure that their workers have the right qualifications, skills and that they undertake medical surveillance if it is required. To find out what qualifications are necessary for a specific job they try to meet with the client/user company prior to assigning someone to that specific job in order to discuss such matters. Training of temporary workers.

4.3 Training of temporary workers

In **Austria** a widespread variation exists with regard to this issue in practice. As a consequence, the opinions of supporters and opponents of temporary agency work differ enormously. The key element is a sufficient integration into the user firm as an unalterable prerequisite for measures such as attendance of training. All persons interviewed agreed that the willingness for integrating temporary workers has increased over the last years. This is true for core workers, managers and employers (user companies). Fixed-term workers receive an equal treatment as workers with unlimited contracts.

According to **Belgian** legislation, the user has to provide training if the job implies a specific risk. It seems that this obligation is not always fulfilled. The reason is that temporary workers often work only during a short period, so users do not have the time to provide training if they only employ temporary workers for a short time. Therefore, the training obligation is more likely to be fulfilled by the temporary work agency, and a number of initiatives have been put into practice to accomplish this. To stimulate the training of

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temporary workers the agencies' organisation has made the proposition to provide 1 million Euros for basic training concerning safety at work. Agencies have taken other initiatives regarding training, such as e-learning modules on cd-rom (regarding for example safety signalling), also available for free on the Internet. Alongside this, specific training for specific professions has also been undertaken in order to help the agencies train temporary workers that will have to exercise these professions. So, even if temporary workers still don't get enough training, there has been an improvement compared to before. The training given by the agency, however, takes place outside working hours, something which is considered to be discrimination between temporary workers who obtain training outside working time and permanent workers who obtain their training during their working time.

French law states that temporary workers must receive general training on health and safety issues, a training which is special in the case of workers hired to occupy a job that is considered to be of special risk at the enterprise. It seems that this training is not always enough, and that user firms do not always indicate the need for special training for the positions to be occupied.

With regards to training in **Germany** evidence suggests that fixed-duration employment relationships receive an equal treatment than workers with unlimited contracts. On the contrary, the situation with agency workers differs substantially, and depends on the degree of integration of temporary workers in the user firm's labour organisation, production process and internal communication. Employers, especially in small and medium enterprises, do not often recognise the need for training of temporary workers.

Regarding training in **Greece** there are no discriminative practices between workers with temporary, fixed-duration and permanent employment status, although the limited time of a fixed-duration employment contract can be in itself an obstacle for adequate training. The level of training is considered to be inadequate, depending again on the size of the undertaking.

With regard to training, the report from **the Netherlands** indicates that sufficient and adequate health and safety training is not being provided equally between permanent workers and temporary workers, both fixed-term and agency workers. As far as qualification and training is concerned, the duration of the employment period indeed affects the chance of training, and Agency workers can access training facilities at the agency employing them after a 26 weeks employment period.

For **Portugal**, the national report states that few agencies give sufficient training to temporary workers, and that no significant interest exists on behalf of the user companies to invest in training of temporary workers. Apart from the training provided by some agencies, only undertakings with a strong internal safety culture or a safety and health management system are concerned with training. As for workers with a fixed-duration contract the situation is different: very often employers afford the same level of training as that of other workers in the undertaking. In general, there is no considerable discrimination on this matter, even when the contract period is less than six months. However, the last public survey on working conditions reveals that more training is provided to permanent workers in comparison to fixed-form workers.

Under **Spanish** legislation temporary work agencies are subject to strong obligations in training, and national collective agreements in this sector have increased the amount of funds

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used for this training. Again, important differences can be found in the behaviour of the different agencies, and the fulfilment of this obligation depends strongly on its overall attitude towards health and safety issues. Fixed-term contracts seem to enjoy the same level of training as permanent workers in most cases.

According to the **Swedish** report, the user company is responsible for giving an introduction and on-the-job training where specific risks are involved such as operating a specific machine. The duration of introductions varies, depending on the type of job that the worker is assigned to perform and the length of the workers contract. For shorter contracts, a brief introduction, up to an hour in length, might be given but for longer contracts the user company sometimes gives one to two days training.

In the **United Kingdom**, in this as in other aspects of the Directive, the research carried out for the national report found examples of best practices regarding training. Although training is often regarded as the responsibility of employers, there are examples of agencies that provided workers with free training – for example in construction. Some employers used computer-assisted training packages which could be used by all workers, irrespective of their status. Nevertheless, some workers on fixed term contracts did not receive the same training as their permanent counterparts, for example for manual handling. The problem seems to be worse for agency workers.

4.4 Medical surveillance of workers

In **Austria**, in this as in other aspects, a different situation can be found among agency and fixed-term workers. Whereas workers employed with fixed-term contracts seem to be in a situation similar to that of permanent workers, temporary workers are quite often not informed about the necessity of medical check-ups. The difference between both groups of workers, however, is not significant. The key element is a sufficient integration into the user firm as an unalterable prerequisite for measures such as attendance of workers' services and medical check-ups.

In **Belgium** evidence suggests that medical examinations do not reach the number which should be carried out following the regulation. There are several elements to explain this: incomplete availability of external services, shortage of occupational doctors in external services; employment periods that are too short to grant access to health surveillance, etc. In general terms employers are not keen on organising health surveillance for short employments. In the case of agency work, the fact that according to Belgian legislation the organisation of health surveillance is the responsibility of the agency makes things more complicated, as the user has to specify if health surveillance is needed or not by means of the workplace document, something which is not always done; besides the agencies' occupational doctors do not know the workplaces, and the only information they have is the one mentioned in the workplace document. Part of the problem is workers themselves. Many temporary workers don't see the surplus value of a check on their urine, weight etc.; as a consequence, half of the temporary workers who are called for health surveillance, don't show up.

According to its national report, in **Denmark** medical surveillance at a company level are offered on a voluntary basis, since the national legislation does not in general regulate

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examinations and health surveillance. It is only in certain high risk areas that medical surveillance and examinations are compulsory. This applies to temporary workers as well.

According to **Finland's** national report, opposite to permanent workers, employees in temporary employment relationships are less frequently part of voluntary health care. In these employment relationships, health check-ups that have been set by law have not been adequate.

In **France**, as mentioned earlier, jobs needing special medical surveillance are set by law, although when this surveillance is needed is not clear in all cases. In practice, it seems this medical control is not as complete as it should, as there are different factors reducing its efficiency. Regulation of this medical surveillance has not been adapted adequately to the special features of these workers' employment. The effect is that a number of them lack an adequate medical control, particularly after they have left employment.

In **Germany** the situation is that whereas workers with fixed-term contracts seem to receive an equal treatment as permanent workers, the same cannot be said regarding agency workers. For these, the extent of workers' services and medical check-ups during the hiring-out period depends on the degree of integration of temporary workers into the user firm's labour organisation, and the better temporary workers are integrated the better their participation in services and medical surveillance. Employers are often not aware of the necessity of medical control for temporary workers, and in addition temporary work agencies do not always check the conduction of medical check-ups.

For **Greece** the national report states that special medical surveillance does not exist, apart from very few big companies. In any case and irrespective of the employment status, medical surveillance of workers in Greece is of a very low level except for a few big companies which can provide the resources for a proper medical surveillance scheme, without discrimination regarding the workers' employment status.

Regarding medical surveillance in **Italy**, legislation regarding agency workers currently in force identifies the medical services at the user firm as being responsible to control the health of agency workers. Nevertheless in many cases the short duration of the services rendered to the user firm makes it impossible to have effective controls, but rather a succession of surveillances with scarce clinical, epidemiological or preventive meaning.

In **Luxembourg** medical surveillance is the same for all workers, regardless their type of employment, but for agency worker this solution does not allow an effective control of their health.

In **the Netherlands** fixed-term workers receive, most times, similar protection and enjoy identical medical surveillance as permanent workers. However, statements from different sources suggest agency workers to have less access to medical support services. A lot of user companies leave the provision of medical services to the temporary work agency. Furthermore, confusion exists about the responsibility, as temporary work agencies and user firms are not always aware of what they have to provide.

In **Portugal** medical surveillance is provided to temporary workers through medical examination without discrimination, to ensure they are in physical and mental conditions to tackle task demands, as well as every two years or, occasionally, whenever there are changes

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in material working conditions with harmful influence in worker's health. Most part of the medical examination is executed irrespective of the particular working conditions of every workplace, and without discrimination of the risks connected to each activity. Medical analysis tends to be rather elementary, though. Workers with a fixed term contract seem to enjoy the same level of medical surveillance as permanent employees.

In **Spain** medical surveillance is the same for fixed-term and permanent workers, with no major differences being identified between the two groups, although in general terms this surveillance is put into practice in a defective way in most cases. The situation is worse for agency workers, and not all of them receive an adequate level of attention by medical services.

In **Sweden** the availability of medical controls depends on the nature of work that a worker performs, and is not linked as much to the type of employment relationship. On a general note, medical controls shall be offered if a risk assessment of the workplace shows that it is necessary or in any case if the work involves night time work, exposure to vibrations, certain substances, if the work is physically challenging etc. Fieldwork confirms that whether or not a medical control is offered by the temporary work agencies varies mainly due to the sectors that they operate within. However, it seems that on a general note temporary agency workers are offered two free medical check-ups per year (general check-ups) and healthcare is arranged in case of an accident. In the construction sector agencies also requires a medical check-up of all their workers prior to hiring them.

In the **United Kingdom** there was not much information, but the little data available shows that health assessments and monitoring are carried out in at least a small number of the workplaces.

4.5 Excluded activities

Belgian legislation forbids the employment of temporary workers for demolition and removal of asbestos, gassing activities and removal of poisonous waste products. According to the experts interviewed, the prohibition is complied with, although there seems to be some doubts on the compliance with the prohibition of the third type of work.

In **Finland** there are no excluded activities for fixed-term workers. A part of these is working on branches, which can consider as such dangerous, for example construction, agriculture and forestry. This depends however of common nature of work on these branches and there usually are no differences in the prohibition of hazards between fixed-term and permanent workers. Often also the fixed-term workers are very experienced on branch, even if their employer varies. There is a Government Decision (1176/2006) on health card of workers for monitoring the health of construction workers. For workers on other branches there is none such regulation.

Major part of fixed-term workers are working on branches, where the problem in health and safety lays not in the accident prevention, but in ergonomics and in work relative strain. These fixed-duration employments are on branches, where main part of workers is woman and the reason for fixed duration is the use of family leave. In these cases fixed-duration employments often are linked each other and the workers remain on the same workplace

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quite permanent. This means that they are in same position as permanent workers concerning health and safety matters.

Although **French** law has made use of the possibility, foreseen in the 1991 Directive, to ban temporary work from certain activities on the grounds of health and safety, it seems that this prohibition is not always respected. In some cases, such as the removal of asbestos and the nuclear industry, the use of subcontracting allows the presence of agency workers. The report stresses the fact that jobs with exposure to other toxic products is not forbidden to temporary workers.

German law did not make use of the possibilities foreseen in Article 5 of Directive 91/383/EEC. Consequently, no activities are banned for temporary workers for reasons of occupational safety and health. For workers with fixed-term contract as well as for temporary agency workers, the general regulations on social protection and occupational safety and health apply. Additionally, it may be interesting that there are only few restrictions concerning temporary agency employment in general. The most important limitation according to Labour Placement Act temporary agency employment is the prohibition of temporary agency work in the construction sector, except a generally binding collective agreement would rule conditions of employment. But such a collective treaty is not in sight. However, this restriction is not based on reasons of occupational safety and health.

There are no cases of exceptions from particularly dangerous jobs regarding workers with fixed-duration employment status or temporary employment agency workers in **Greece**. On the contrary, these groups of workers are widely used to perform the most dangerous jobs that their colleagues with permanent employment relationships prefer to avoid doing. This happens quite often in the case of temporary agency workers who are assigned duties and tasks other than those stipulated in their contract, of course lower than those that their professional qualifications would justify. This fact, taking in consideration their limited experience at the workplace and the inadequate information and training, constitutes a more dangerous working environment for them.

Italian law does not forbid use temporary workers and workers with fixed term contract. Only for fixed-term contracts the Legislative Decree 368/01 has confirmed the prohibitions of its use in some special cases (substitution of workers on strike) and has defined some exceptions to its liability and the possibility of employment only within a strict percentage calculated on the number of permanent employees.

In **Luxembourg**, there are no cases of exceptions from particularly dangerous jobs regarding workers with fixed-duration employment status or temporary employment agency workers.

In the **Netherlands** workers with fixed duration contracts and temporary agency workers are not excluded from any type of work. The kind of work they are allowed to do is determined by their qualifications, not by their contractual arrangements. If they have the qualifications required, they can be deployed in jobs with high risks. As jobs with high risks often require very specific qualifications, however, and most temporary workers do not have these specific qualifications, one can presume that high risk work is usually done by permanent employees. Experts subscribe to this view. But they also signal that it might occur that companies do not comply with the rules or, in case of subcontracting, are not aware of non-compliance with the rules of qualification by subcontractors.

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In **Portugal** with regard to fixed-term duration contracts, only workers with adequate training are allowed to access workplaces with severe risk (dangerous work). User undertakings do not see this kind of work as a problem for temporary workers, provided that they have adequate experience, skills and training. The same goes for agency workers, as agencies support the idea that with an adequate training, high risk activities are not a problem. However, everybody agrees that several companies use temporary workers for high risk activities without giving adequate training or information. Once again, workers with a fixed-term contract are more protected by the dispositions of the Labour Code, as they show good levels of protection when working in high risk activities.

In **Spain** the prohibition of temporary work for this reason is also present, and its scope is rather ample, covering a wide array of activities. In practice, this prohibition is respected, and no agency work is found in them. On the other hand, fixed-term contracts, which are not included in this prohibition, are widely used in all sectors and activities, regardless of the risk level they involve. In **Denmark** there is no indication in national legislation that any activities are excluded as well as in the **United Kingdom**. Temporary workers are not forbidden to perform certain tasks in **Sweden**.

In other Member States no use of the options provided by paragraphs 1 and 3 of article 5 of the Directive has been made.

4.6 Protection and prevention services

In **Austria**, according to its national report, prevention services of user companies must take into account the number of working hours of temporary workers. The degree of coverage by protection and prevention services varies strongly from case to case, depending mainly on the degree of integration of temporary workers. Although the persons interviewed report a widespread variation in the current situations, the availability of protection and prevention services for temporary workers in general seems sufficient. Meanwhile, the majority of works' councils seem to be frank and open-minded with regard to temporary workers' concerns. Disadvantages and unequal treatment by works' councils have decreased considerably over the past years and hardly ever occur nowadays.

In **Belgium** user firms who have a committee for prevention and protection at work and/or a works' council ("ondernemingsraad") have to ask these organs for permission to engage temporary workers (unless it's a replacement). The prevention services have to be informed of the presence of temporary workers. To what extent this really happens, is not known. When the risk analysis is discussed at the committees for prevention and protection at work, the jobs for which temporary workers are engaged are examined and the workplace documents are discussed. The user only exceptionally keeps a list of all the temporary workers in the user undertaking.

In **Danish** legislation the obligation to inform safety delegates of the assignments of a temporary worker has not been implemented, and there is no evidence that this information is given. Since the safety representatives in the temporary work agencies are mainly trained in health and safety issues regarding office and administration it is commonly accepted that the temporary agency workers refer to safety representatives at the user company. Often, it is not always clear to agency workers which safety representative (the user company's or the agency's safety representative) they should address in case of any issues.

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In **France** the national report stresses the different situation which has been found for fixed-term and agency workers. Whereas for the first group protection and prevention services seem to be adequately informed when they join the firm, for the second group this is not the case.

In **Germany** working hours of temporary workers must be taken into account by the prevention services of user companies. The degree of coverage by protection and prevention services depends on the degree of integration of temporary workers. Although the persons interviewed report a widespread variation in the current situations, the availability of protection and prevention services for temporary workers shows deficits especially when preventive services are carried out by external services.

In **Greece** the parties designated to carry out the prevention and protection services are, in general, the safety department or the safety engineer and the occupational physician (internal or external services). In a fairly organized company, the safety engineer and the occupational physician are informed upon the recruitment of a new employee in order to undertake the induction safety information and training. This practice is common only in the big and more organized undertakings; even in these, the safety engineer does not focus on the employment status of the newly hired employee when tackling the specific protection requirements that the employee may have.

In **Italy**, the responsibility of managing the activities of the Protection and prevention Services is in charge of the employer who is using temporary workers. Particularly, for temporary workers the user must respect all obligation for workers about health and safety at work(art. 23, par. 5 legislative decree 276/03) as the managing of the activities of the Protection and prevention Services.

In **Luxembourg**, under the terms of the article L131-12 of the Labour Code, the user is sole responsible for compliance with safety, hygiene and health conditions at work. The user is also responsible for implementing legal, statutory, administrative and contractual provisions regarding working conditions and the protection of employees in the course of their duties for the duration of the temporary workers' contract. The temporary work contractor is sole responsible for the salary payments to temporary employees as well as employer compulsory contributions. Registration for social security and accident insurance is carried out by the temporary work contractor.

In the **Dutch** cases, in principle, safety representatives and workers' representatives in companies are accessible for both permanent and temporary workers. Temporary workers often do benefit from these representatives' actions to improve conditions at work. Temporary workers seldom participate in safety committee's and works councils themselves, however. These councils usually focus upon the interests of permanent staff. Agency workers with long-term assignments usually rely upon the services of both the user company and the TWA. Short-term agency workers usually rely upon their own family doctor. They seldom consult protection and prevention services. They are usually not really informed about them'.

In **Portugal** there is no specific provision on temporary workers legislation. According to general legislation, the user has to inform worker's representative bodies within five days, of the recruitment of temporary workers. In general, the employer must consult the workers'

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representatives or, in their absence, all workers, at least twice a year, about prevention measures, training programs, organisation and designation of workers with safety and health functions. All interviews, from all sectors, agree that there is no kind of worker participation or consultation, nor any information of the services or persons designated in health and safety, with regard to the process of assignment of agency or fixed-term workers. This is considered a major difficulty, as these services can not carry out their activities adequately.

In **Spain** preventive and protection services seem to work reasonably well for fixed-term contracts, for which no discrimination exists when compared to permanent workers. For agency workers these services at the user firms are rather inefficient. Nevertheless, according to the law, preventive and protection services at the user firms are informed about the presence of agency workers. In general terms, the impression is that these services are not working well in general, for any worker.

In **Sweden** the safety representative in the user company is not responsible for representing temporary agency workers. This responsibility lies with the agency employing them. A general impression from the fieldwork of this report is that the agencies appear to have a very passive role with regards to ensuring a safe and healthy work environment at the user companies. Some do have safety representatives that their workers can turn to if they require assistance, but generally they do not visit the user companies. Field work suggests that the temporary agency worker can turn to safety representatives in the user undertaking, but this can, however, be difficult for the temporary agency worker.

Under **United Kingdom** law employers' are not required to have these protection and prevention services, although in practice many do have minimal provision. Therefore there is no stipulation under UK law for occupational health services to be informed that a temporary worker has been recruited. Nevertheless, including safety representatives under this heading, then UK union safety representatives are entitled to ask for information about temporary workers and to represent them – although not all temporary workers can become safety reps – they have to be an “employee” – not just a “worker”.

4.7 Responsibility in temporary employment relationships

In **Denmark** there are great uncertainties regarding whether there is a shared responsibility between temporary work agencies and the user company in practice. Much of the responsibility appears to lie within the user company and this seems to be commonly accepted. This constitutes a risk in particular for temporary agency workers since the agencies are not taking the responsibility that they must do according to national legislation.

The report for **Finland** states that a problem that has been encountered is an insufficiently clear demarcation of responsibilities between temporary employment agencies and user companies, which can have repercussions on the actual protection afforded to workers.

In **France**, the system of contributions to social security depending on the prior health and safety record does not work well enough to force both the user firm and the temporary work agency to fulfil all their obligations in this field. On the contrary, it seems that it allows the

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use of agency work as a way to reduce social costs for user firms, as they are shared between the two firms.

In **Germany**, responsibility for occupational safety and health is divided between temporary employment agency and user organisations. In practice the problems of interfaces are reduced by contractual responsibilities between the agency and the user company which, among others, requires a written contract. Forms provided e.g. by *Verwaltungs-Berufsgenossenschaft* contain regulations regarding the most important issues such as the provision of personal protective equipment. These forms are used widely. In practice, however, problems resulting from existing interfaces are reduced, but not completely removed. On the other hand, it was reported that a remarkable number of user companies, especially small and medium sized enterprises, is still not aware of their duties concerning occupational safety and health for temporary agency workers. The majority of these enterprises also neglect their liability to permanent workers, and therefore this problem seems to be mainly a part of the overall question how to improve OSH in SMEs.

In **Greece** the question regarding whether the direct or indirect employer is responsible for the health and safety conditions of the employees' work is not yet clear. Agency workers are informed about safety and health issues of the job they are about to perform not prior to their relocation to the indirect employer's workplace. The quality of the information provided depends mainly on the size and the safety organization of the indirect employer but in most cases it involves nothing more than informal "on the job" information.

In this aspect of the Directive, the national report from **the Netherlands** indicates that problems have been encountered. Although the division of responsibility between user firms and temporary work agencies seems well arranged by Dutch law, problems still exist. A lack of clarity in the provisions at company level is one of these. Attempts to shift responsibilities from companies to agencies is another. The problem is further enlarged due to the tendency among agencies to take over the responsibility for risks as they depend upon the good relationship with the user companies. In consequence, a TWA might bear the risk of bad working conditions (absenteeism, illness) while the user company should be primarily responsible for the working conditions. With regard to medical control, confusion exists with regard to the responsibility, as user firms and temporary work agencies are not always aware of what they have to provide.

In **Portugal** the national report states that there are no significant issues on this subject. During the assignment of the agency worker, the worker comes under the application of the labour regime of the user, in all safety and health issues. The user undertaking is considered to be responsible, for the duration of the assignment, for the conditions governing performance of work. No one questions this responsibility, and social partners know that to organise the prevention activities is one of the main obligations of the user undertaking. There are concerns about exactly how employers and agencies divide up their health and safety responsibilities. One particular area of concern in this respect is personal protection equipments, where there are pressures from both employers and agencies to get workers to supply their own or pay for it, which breaches the law.

In **Spain** the attribution of responsibilities to agencies and user firms is not a major problem, as legislation is clear in this issue. In some aspects of legislation doubts seem to exist, particularly regarding the health control of these workers.

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In **Sweden**, it seems to be a mixed picture in regards to whether a shared responsibility for temporary workers is practiced or not in particular when health and safety is concerned. It appears as if the TEAs rely on the user companies to take a great responsibility with regards to health and safety issues. The TEAs motivate this with that they user companies are better equipped and have better insight into their own work environment than the TEAs could possibly have.

United Kingdom shows a particular problem regarding the distribution of responsibilities in this field. The health and safety of some temporary agency workers is affected by their ambiguous employment status. Some agency workers are not employees of the client employer, or of the agency, nor are they self-employed. This has implications for their general employment rights and with regard to whether they can be safety representatives.

5. The role of public authorities

According to the Directive's wording, its mandates are addressed to the Member States. And in each one of its articles states that "*Member States shall take the necessary steps to ensure that...*", and so on. Therefore, States are supposed not only to adapt their national legislation in a given way, including the Directive's mandates, but also to make everything necessary to ensure that its partial and overall objectives are achieved. This includes a number of tasks, not mentioned at all by this European text, but absolutely necessary and compulsory for the States, according to the case law of the European Court of Justice

In all Member States, public authorities have taken on these tasks, and two are the main aspects in which they have been working: on the one hand, making the existence and content of this regulation known to all stakeholders in the labour market, what may be called "dissemination" of the Directive; on the other hand, setting the necessary instruments to guarantee the application in practice of the national regulations implementing the Directive, what may be called "control" of national legislation. Both aspects have been analysed in depth by national reports.

5.1 Information and dissemination of regulation

With regard to the dissemination of the provisions affecting safety and health of temporary workers, a number of initiatives have been carried out by Member States.

In **Austria** when the new legislation went into force in 1995, the government and central labour inspectorates published several brochures and folders to inform stakeholders and the public about the new regulations. Information activities concentrated on the transposition of the Framework Directive. Furthermore, no special activities from the government or the administration concerning Directive 91/383/EEC were taken for target groups. Information concerning fixed-duration employment was not considered necessary. In 2006, labour inspectorates have given more attention to this issue.

In **Belgium** there were several dissemination activities organised by different parties. Some consider these activities as positive; others say they have not been sufficient to inform the user undertakings about their responsibilities. There were no specific information activities towards SME's.

- Public authorities published the legislation currently in force on the administration website, accompanied by a subject explanation. The Health and Safety administration, in collaboration with the Belgian provincial committees for the promotion of labour, organised workshops and information sessions aimed at user undertakings, temporary work agencies, prevention advisors, committees for prevention and protection at work.
- The central prevention service for the agency work sector (PI) has been created to inform about the responsibilities stated in the regulation and to elaborate tools, with three target groups: agencies themselves, temporary workers and user firms. A number of initiatives have been put into practice such as training with regard to well-being at work, technical documentation to help the consultants of the agency to select and inform the agency workers; *circulaires* to inform the agency; a safety

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agenda for temporary workers; a specific website; and a free telephone number to answer questions concerning health and safety of temporary workers.

- The union made a brochure concerning agency work containing the contents of the regulation.
- The employers' association used its usual channels to disseminate information. It has informed its member federations by means of circulars and newsletters.

In **Germany** when the new Occupational Health and Safety Act went into force in August 1996, the government, labour inspectorates and Berufsgenossenschaften published several brochures and folders to inform stakeholders and the public on the new regulations. Information activities concentrated on transposition of the Framework Directive and other directives, but no special activities from the government or administration to inform stakeholders or the public with regard to Directive 91/383/EEC directly, have been mentioned. Social partners also developed some activities such as legal information sheets and brochures for their members. However, information activities of social partners etc. did not directly relate to temporary employment or fixed-duration employment relationships. Now, German authorities have circulated leaflets, checklists, questionnaires, brochures and CDs.

The national report in **Greece** did not come across any dissemination effort, information campaign or any other activity of the kind specifically aimed at the workers with temporary or fixed-duration employment relationships and catering for their potential specific health and safety needs. In general, all the seminars, circulars, informative material and communication efforts that were initiated by employers' associations or trade unions were of a general scope, both in the private and public sectors. Workers with fixed-duration employment relationships and temporary agency workers were not distinguished as groups of workers that are potentially more vulnerable and with particular needs in health and safety issues which require a more attentive and targeted treatment.

The **Italian** report suggests a good level of dissemination for the first legislative measures implementing Directive 91/383/EC in 1997; the same cannot be said for the reform of this legal framework, which took place in 2003, due to the fact that this new legislation was the object of a strong social conflict.

In the case of **The Netherlands** no specific arrangements with regard to dissemination regarding fixed-duration workers have been made by government agencies, social partners or other actors. On the contrary, special arrangements and activities regarding agency workers have been organised during the past decade, such as union information points and help desks for agency workers, new safety and health information and instruction tools for temporary work agencies; a standard for commercial contracts of temporary work agencies, including safety and health arrangements; and a number of activities to promote the use of these standards by agencies.

The national report from **Portugal** states that, in recent years, IDICT - Institute for Development and Inspection of Working Conditions, established a partnership with APETT - Portuguese Association of Temporary Work Agencies, with different objectives: informing human resources staff at agencies about the best way to implement Safety and Health legislation in the temporary assignment of workers, improving how agencies inform on

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occupational risks and control measures that must be accomplished, as well as the best way to communicate necessary information; also, the training of workers obliged to fulfil safety and health rules and procedures in the different undertakings. In order to reach these objectives, several materials have been prepared: Manual for Accident Prevention in TW; posters; booklet and stickers; seminars in Porto and Lisbon. More recently, in 2006, APESPE - Portuguese Association of Companies from the Private Employment Sector -, and ISHST - Institute for Safety, Hygiene and Health at Work -, launched a Campaign for Information and Dissemination of Best Practices in Agency Work. A check-list has been prepared, to be filled by user undertakings in the construction, distribution and industry sectors. On the other hand, there were no particular activities focussed on spreading information for workers with a fixed-term contract.

In **Spain** no dissemination initiatives by the labour Inspectorate or other public bodies have been documented. Spanish unions, on the contrary, have organised a number of campaigns for temporary workers to promote the exercise of their legal rights in this field.

In the **United Kingdom** the Health and Safety Executive (HSE) has disseminated Directive 91/383 through the promotion of the Management Regulations. This has been done through a variety of means, including the publication of the regulations with an approved code of practice and guidance, circulars to inspectors and other government organisations, the HSE website and Infoline. This Infoline is noteworthy, as it has been used extensively for this purpose; having been established in 1996, it has expanded capacity to include e-mail enquiries. The Infoline now has some capacity to receive enquiries in languages other than English. More recently, HSE has also developed more resources on temporary workers available for download on its website, including specific items in its FAQs. Besides, at present there is also some health and safety information on HSE's website available in Bengali, Chinese, Gujarati, Hindi, Punjabi, Urdu and Welsh. The HSE website also connects to Businesslink, a government website with information for small businesses. It contains a section *Agency Workers' Health and Safety* with more detailed information on the health and safety of temporary agency workers.

5.2 Implementation and control

In **Austria** as the Health and Safety at Work Act came into force in 1995, no specific measures to control or to adjust practical implementation of the regulations existed. Up to 2001, temporary employment was no main point of interest for labour inspection and administrative representatives. Then a project was launched in eastern Austria which aimed at improving working conditions for temporary workers, reduction of occupational risks and accidents. From 2006 onwards, labour inspectorates focus especially on temporary agency work.

In **Belgium**, the control of the implementation of the regulation is no priority for the labour inspection and so there is no systematic inspection to control the application of the regulation. Nevertheless, the inspection has created a work group to report on this issue, which has drafted a report that has been passed on to the Higher Council for prevention and protection at work. According to the report several inspectors are not familiar enough with the regulation and the principle of temporary agency work, especially with regard to the division of responsibilities between the agency and the user firm.

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In **Denmark** the Working Environment Authority is responsible for carrying out inspections and has the authority to penalise enterprises that do not comply with legislative demands. The different forms of sanctions include improvement notices, legal charges, administrative fines, and guidelines. There are no specific target groups and the workplaces are regarded as one unit. Although the Government has recently decided that the work environment in all workplaces has to be screened and monitored, none of the data indicate that actions are taken toward specific target groups such as temporary workers.

In **Germany**, when the new legislation entered into force labour inspectors received information on the new regulations according to custom (leaflets, further training); nonetheless, temporary work or fixed-duration employment were not a specific topic of information or training. Later, labour inspectorates of the Länder took several measures concerning working conditions in temporary work. Due to the split responsibilities within the German OSH-system these actions were not harmonised, and follow-ups were hardly coordinated. The Verwaltungs-Berufsgenossenschaft, as a nationwide player, was involved in some projects and was informed about project activities in which Verwaltungs-Berufsgenossenschaft did not participate directly. Additionally, the different labour inspectorates and other stakeholders have taken no closely co-ordinated or harmonised nationwide action.

In **Greece** the labour inspectorate, which is the monitoring body for the correct and adequate implementation of legislation, has not organized special treatment for these workers. The inspection planners do not take in consideration the difference in the employment status, so no specific actions exist with regard to the implementation of legislation on workers with temporary or fixed-duration employment status. Nevertheless, they consider the seasonal undertakings as potentially more susceptible to health and safety violations and set them as a priority in their inspection plans. The Labour Inspectorate usually takes action only in the event of an accident.

Regarding control activities in **Italy** a major relevant factor is that this competence belongs to the regions, three of which have elaborated guidelines for agency work, regarding agencies, user firms and workers' representation bodies.

In **the Netherlands**, no special actions regarding the control of implementation have been made by governmental agencies, social partners or other actors in the case of fixed-term contracts. The Labour Inspectorate has no specific policy for fixed-term workers and agency workers. They are not considered to be specific target groups. There have been special inspection projects of the Labour Inspectorate for agency workers only.

In **Portugal**, the Labour Inspection mainly visited user undertakings in some specific sectors, such as construction, retail trade and hotel industry; the construction sector showed more problems with regard to this issue. In Labour Inspection action plans, one of the priorities is to control minimum standards on safety and health with regard to equipments, workplaces and work environment. To this objective, the most vulnerable categories of workers, such as workers with temporary work contracts, have received special attention from labour authorities. The protection of workers with a fixed-duration contract has also been defined as a priority in 2006. Informing workers on the most important aspects of legislation is, also, a priority.

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In **Sweden** the Work Environment Authority is responsible for ensuring that legislation on safety and health is followed. Inspectors are instructed to be attentive to safety and health issues among vulnerable groups. Workers with fixed-duration employment relationships or temporary employment relationships are among those that they specifically pay extra attention to. In 2000, the Work Environment Authority carried out an inspection drive that targeted temporary work agencies after receiving indications that it was a growing sector with many problems. Since the inspection drive showed rather positive results in general, and since the sector has not grown as rapidly as previously expected, no further inspection drives have been undertaken since 2001-2002.

In the **United Kingdom** many stakeholders raised concerns about the extent of enforcement of safety and health regulations, including temporary workers. The relatively small number of inspectors and the limited number of prosecutions for safety and health offences were highlighted as particular concerns.

PART TWO: CONCLUSIONS AND RECOMMENDATIONS

6. General conclusions

In this section a list of general conclusions is presented, the result both of the analysis of national reports and of the author's views on this issue. Some of the conclusions were already presented at the interim report, as they deal with national transposition measures.

1. First of all it must be noted that the final outcome of this research is a rather clear and complete picture of the situation in all EU-15 Member States. Through the different methods and instruments used by national reports the way the directive has been implemented can be seen, as well as the way this implementation has worked in these countries so far. This view is, at least in this reporter's opinion, better, more complete and accurate than the one produced by traditional information processes by Member States' authorities. Except for the problems detected in statistical sources in most Member States, there are no objective reasons that make it impossible to identify and evaluate the Directive's implementation and performance. Therefore, Member States are to blame for the defective information provided to the European Commission regarding this piece of European legislation; their duties in this field, provided in paragraph 2 and 3 of article 10 thereof, have not been properly enforced.
2. In general terms, the research being carried out so far shows that a big effort has been made by all Member States to duly implement Directive 91/383/EEC. In all of them, specific legislation on this issue post- 1991 can be found, meaning that they have all reformed their national legislation in order to fulfil the obligations imposed upon them by this EU Directive, although partial and punctual deficiencies can be found in some cases, as well as some delays. The quality level of this task differs broadly from one Member State to another although, generally speaking, most of the Directive's provisions have been implemented in practice in all their respective legislations. From a strictly technical and formal point of view, we must consider the situation, in general terms, as positive, as most of the reports which have been analysed conclude with a positive conclusion about the situation of their respective national Labour Law regarding Directive 91/383/EEC. This is something which cannot be said, probably, about the rest of specific health and safety directives, of which a high number of defective cases with regard to implementation –if not plainly a lack of it - have been identified by the European Commission and declared by the European Court of Justice.
3. Although the Directive appears as a legal text dealing with two particular forms of employment, both of them falling under the general category of "temporary", in practice its implementation has produced different effects on each one. In practice, a much greater attention has been paid to workers employed by temporary work agencies than to those with fixed-term employment contracts. There are a number of reasons explaining this, but it is clear that, generally speaking, agency workers have received more legal protection, which does not necessarily mean that they enjoy a higher level of safety at the workplace. Taking into account their small numbers throughout Europe, this effect must be emphasized, as the Directive's general objective, "*to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment*", has been dealt with asymmetrically. The statistically bigger group has received relatively small legislative attention, whereas a small minority of temporary workers obtained almost all the attention.

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4. In fact, it is common to find little legislative attention to the specific situation of workers employed with fixed-term contracts. In most cases the response of national legislation is the mere application of general rules on health and safety, either by not making explicit mention to these workers, or by openly stating that the same regulations will apply to these workers. National experts present it in a very clear way: there are no different provisions for these workers, so general rules apply. National legislation on safety and health does not distinguish between workers according to their employment status. So the question becomes the analysis of general legislation on occupational safety and health, in order to evaluate whether it fulfils the Directive's requirements.

Even though in some cases the application of general legislation on this issue may appear to be sufficient, this is not, at least in this expert's view, an appropriate response to the Directive's requirements.

Seen from a theoretical point of view, it seems as if these national labour laws are still at the level of formal equality between temporary and permanent workers, for which a general statement of equal rights is enough. The directive, on the contrary, operates at a different level, that of substantial or real equality, looking at the real level of protection these workers enjoy. The Directive does not seek the application of equal rules for temporary and permanent employees; this is a minimum, or an instrument; what it intends is to ensure an equal level of protection. What European law defends is just the opposite, the need of a different treatment. Its very name expresses this point of view: "*Council Directive 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*". According to its preliminary statements, "*the specific situation of workers with a fixed-duration employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors calls for special additional rules*". What the Directive does is to set these additional rules; and they demand additional regulations at a national level as well. Its mere existence demands special rules in the Member States' legal orders.

It seems that some Member States have given more attention to article 2.2, "*the existence of an employment relationship as referred to in Article 1 shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved*"; than to article 2.1 thereof, the real regulatory core of the Directive, "*the purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment*".

Many of the problems in the practical implementation of the directive seem to be a consequence of this position some Member States have taken. When talking about potential reforms to improve the Directive's efficiency this is an element to be taken into account.

5. Generally speaking, collective bargaining has played a relatively small role in the implementation of this Directive. Almost all national implementation measures are State-law, statutory or administrative, being the product of public legislative or administrative procedures.

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There are some exceptions to this general rule. In France statutory law, present within the Code du Travail, is completed by the National Interprofessional Agreement of 24th March 1990, which applies to all forms of temporary work, and by a number of agreements on individual protection, health and safety and labour medicine. In Belgium there is a collective labour agreement of 9 March 1998 regarding working and protective clothes of Temporary workers, and a collective labour agreement of 10 December 2001 regarding the reception and the adaptation of the temporary worker to the undertaking. There have been at least two national agreements for agency workers in Italy (C.C.N.L. of the temporary workers of 28th May 1998 and 1st September 2002), with some contents on particular aspects of this issue, such as training and medical surveillance. In the United Kingdom there are some collective agreements on temporary workers, but few refer specifically to health and safety. However some trade unions in the UK have developed a direct relationship with some large agencies, and have achieved some kind of recognition agreement with agencies that regularly supply temporary workers to user-enterprises with high levels of trade union membership. In Spain, national collective bargaining for temporary work agencies has also dealt with similar issues. The Netherlands provides also a case of the important role of collective bargaining in the TWA sector. Since the middle of the nineties there are specific collective labour agreements for agency workers. Since the end of the nineties there is a specific occupational safety and health covenant between the government and the social partners in the TWA sector, aiming at an improvement of OSH policy at company and agency level.

Some reasons can be suggested to explain this. It is still uncommon for collective bargaining to play a major role in the development of occupational health and safety, a field in which the leading role of the State produces a clear preference for statutory law. Besides, collective bargaining has always encountered difficulties for these atypical workers although, at the moment, most of them are covered in Europe by collective agreements, either common agreements –which apply to all workers within the enterprise or economic sector, regardless of their kind of contract- or special agreements –in the case of agency work-.

In any case this fact is relevant, at least in this expert's opinion, as some of the measures, the implementation of which is proposed in this report, are a classic issue for collective bargaining. In fact, some of the most suggestive solutions found in Member States have originated in different kinds of agreements, either collective agreements or other collective instruments. Consequently, this fact should be taken into account if some new developments in this field are foreseen at a European level.

It must be noted that this fact can also be a consequence of the Directive itself, which does not leave a big space for collective-originated regulations in Member States. The Directive was enacted in 1991, at a moment in which the European Community did not yet consider collective bargaining as a useful instrument either for producing or for implementing European law. It is noteworthy that Directive 91/383/EEC is also outdated in the role that national collective bargaining is to play in its implementation, more recent directives being more sensitive to this legislative instrument.

This fact should be taken into account if a revision of Directive 91/383/EEC is foreseen, to put its content in line with other, more recent European legislation.

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6. Directive 91/383/EEC has been rather successful in its general objective, the harmonisation of national labour law in the fifteen EU Member States. Safety and health is the only field in the regulation of fixed-term contracts and agency work in which common rules and solutions can be found throughout Europe. European legislation on atypical work is, under this perspective, clearly asymmetrical, with an important production in the field of safety and health, containing important and far-reaching regulations, and scarce, if any, rules on other aspects of its legal framework. This fact is not a consequence of an EU decision, but rather the result of a series of factors, such as the different legal basis for European legislation on health and safety, and the reluctance of Member States to reach further levels of harmonisation. Whatever the reason, the consequence is a situation in which the regulation of fixed-term employment contracts and temporary agency work is rather unsatisfactory.

Despite the fact that Directive 91/383/ECC is technically a safety and health regulation, in most Member States it has also affected general legislation on these forms of work. As stated earlier, it is common to find a double regulation of health and safety issues for these workers, both in the general texts on health and safety and in specific texts on these particular forms of employment. This has also increased the harmonisation impact of this European piece of legislation.

A conclusion that can be drawn, then, is the positive effect of European harmonisation in this field, and the convenience of further interventions in this direction, via Directive or European level collective bargaining.

7. In general terms the Directive has failed in reaching its ultimate goal, equal exposure to work-related risks for temporary workers. Even though implementation has been, at least from a technical point of view, complete and adequate in almost all Member States, national legislation has been unable to guarantee this effect. The real situation in Europe is still the same as expressed in the preliminary remarks of Directive 91/383/EEC: *“in general workers with a fixed-duration employment relationship or temporary employment relationship are, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers”*. The levels and nature of this different exposure may have changed over the years, mostly as a consequence of the Directive itself; but *“the same level of protection as that of other workers in the user undertaking and/or establishment”* –the Directive’s objective- has not been reached so far.

It is difficult to assess why this phenomenon still occurs, particularly when one of the conclusions of this study is that Member States have, in general terms, done a good job of implementing the European rules. There are two possible explanations: either Member States have performed their obligations in a defective way, and then the problem is at a national level; or it is the Directive which is causing the problem, as the rules it contains are insufficient for the purposes it tries to reach.

From national reports the impression obtained is that Member States are to blame for most of the responsibility of this relative failure, not so much due to a defective implementation into national labour law but rather to a weak application of it. But besides these problems at a national level, it is also clear that there have been some

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important limitations in the Directive itself. We have already pointed out some of these in this report.

The existence of a differential in the level of protection these workers enjoy does not mean, and this must be strongly stressed, that Directive 91/383/EC has been useless. On the contrary, the general impression obtained is that it has improved these workers' situation. Although statistical evidence is incomplete and not always conclusive, most national reports support this conclusion.

8. The solutions contained in the Directive have not been able to eliminate the causes of this higher level of exposure to work-related risks. At least, the causes the Council identified in 1991: as it read in its preliminary remarks, "*these additional risks in certain sectors are in part linked to certain particular modes of integrating new workers into the undertaking*". In fact, all the individual measures that the Directive contained were aimed to combat this different integration of fixed term and agency workers: "*these risks can be reduced through adequate provision of information and training from the beginning of employment*", was stated in the preliminary remarks thereof.

Using the Directive's own terminology, the "equal integration" of temporary workers in the firms in which they perform their services has not been reached.

Once again, in many cases the limited effect of the Directive's measures can be blamed not as much on the European legislation itself but on its implementation and application by Member States.

Probably the real reason for this defective integration could be found in European employers' strategies regarding the use of temporary work. These forms of work are used as a way to ensure flexibility in the margins of the workforce, combined with a stable group of permanent workers who get a better treatment and more investment in training. As stated in the Bid for this project, European experience shows that firms use temporary workers to adjust to cyclical fluctuations of economy in general; they use fixed-duration contracts to face the proportion of demand that is unstable, whilst they keep a proportion of their staff with open-ended contracts. In many cases temporary workers are used as a way to reduce costs of dismissals, or even to save wage costs through lower salaries and seniority payments; in others, as a kind of probationary period before accessing permanent employment.

Thus, in theoretical terminology, a dual labour market is formed, where the primary segment is formed by workers with open-ended contracts whilst the remaining workers belong to the secondary segment. The primary segment is made up of the best work posts, with better wages and, in general, working conditions and, furthermore, with costs associated to rotation or dismissal that are greater than those in the secondary segment. In practice, the use of fixed-term contracts and of agency work still produces a segmentation effect on European labour markets, and those employed in the secondary market face a lower level of attention by their employers, which means less training and involvement in preventive activities. In most cases, these contracts mean low-quality employment, and this lack of quality has a direct impact on health and safety levels.

Labour legislation can face this phenomenon, and it tries to reduce this worse situation with a number of initiatives aimed to guarantee equal access to information, training,

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control and care. But the real solution, the real integration of these workers in the general health and safety policy of the firm which would guarantee equal levels of work-related risks, depends mostly on the strategic use of temporary work by user firms. Strategies based on segmentation, on the core-periphery model, on low quality employment, on systematic reduction of labour costs, on scarce investment in human capital and the like are not the ideal basis on which to build an adequate health and safety policy for these groups of workers.

9. The 1991 Directive failed to identify other causes producing a higher level of work-related illnesses and accidents rates for these workers. Many national reports identify other factors affecting temporary workers especially, which are not identified as such by Directive 91/383/EEC but with relevant effects on health and safety levels for these workers. In order to reach the level of equal protection this European piece of legislation considers that these factors should be taken into account.

The Directive states that fixed-term and agency workers suffer from higher levels of work-related risks due to the fact that they lack seniority, and that they have “*particular modes of integration into the undertaking*”. But the experience in Europe shows other factors affecting their situation. First of all, the weak economic situation in which they usually are. Many reports point out that stakeholders consider that workers employed through these temporary contracts usually are less likely to resist the imposition of worse working conditions or the breach of legal or contractual obligations. Atypical employment produces this effect of weakening the workers’ situation, as they are deprived of economic security, and their professional situation may depend on the employers’ willingness to maintain their employment. As a consequence, atypical workers tend to accept their situation, to offer no resistance to their employers’ breaches of legal and contractual obligations, and to ignore the legal instruments at their disposition to defend their rights. In the case of health and safety regulations, this acceptance can have fatal consequences.

In the case of agency work, national experts suggest another factor, the pressure on agencies to provide services as fast as possible, as user firms call them in many cases to solve urgent needs of manpower. The special protection system set up by the Directive involves a given number of activities –exchange of information between client and provider, information to the worker, prior training-, which need some time to be put into practice adequately. In these cases, experts and stakeholders indicate that this system does not work properly, as the pressure on the agency to send workers immediately can be very strong. According to one of the national reports, “the flexibility of temporary agency work makes it difficult to inform every temporary worker before getting to work. If the worker has to start immediately, he does not always have the time to pass by the agency”.

Another factor can be identified with regard to agency work: the high level of competition which can be found in this economic sector. High competitive pressures forces agencies to respond to their clients’ demands on faster response and lower costs, and this can reduce national legislation’s effectiveness to ensure safe working conditions for their employees. According to the French national report, “Temporary employment agencies and the firms which hire temporary workers usually maintain commercial relations in a competing way. This situation has consequences for the implementation of

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regulations and the consideration of provisions on the occupational safety and health of temporary workers.”

Once again in the specific case of agency work, some national reports suggest that the polyvalency of workers, who can perform their services in different sectors, activities and jobs, can reduce their possibility of obtaining adequate training and experience for each and every case. Following the reporter from Luxembourg, “The part-time worker is not always hired for a job which matches his occupational qualifications and is often obliged to exert more than one job, in particular when he is engaged as an “aide-manoeuvre”. This versatility implies a high capacity to adapt to the job and to the place of work. These changes in activity during a short time period may have impact on occupational health and safety.”

10. One of the aspects in which the Directive has been less successful is that of health surveillance. Almost all national reporters report that there are serious shortcomings in the effective implementation of this right for fixed-term and agency workers. In many cases, what comes out from the reports is that medical controls are not working well for any worker in the national labour market. Anyway, the situation for temporary workers seems to be worse than the average.

There are a number of reasons to explain this, all of them dealing with the special nature of their employment relationships. Effective medical control demands a long and stable link with the employer, as surveillance operates in the medium and long run and many diseases need a long period before they appear. This stability and continuity is by definition impossible for these groups of workers, and the measures put into practice to implement the Directive in this aspect have not been completely successful.

In some Member States more difficulties arise from the fact that health surveillance, even though it is the responsibility of the employer, is carried out by external firms, through different systems of collaboration. In these cases, things get even more complicated as a consequence of the multiplication of responsible subjects.

Another problem is that in many cases health surveillance is regulated in a single way for all workers and sectors of activities. In some cases this surveillance can be not sufficient, if risks are high; in others, with low risks and accidents rates, it can be considered too expensive and troublesome, especially for workers with short-term employment; as a consequence, employers do not respect their duties.

11. From a majority of reports this reporter has perceived a fact that is, in his opinion, extremely relevant: temporary employment does have important consequences on the health condition of those workers affected by them. It is not only a question of having higher accidents rates or work-related diseases. According to the French report, “Uncertainty and precariousness may cause a kind of discomfort which leads to pathology”. The lack of stability produces economical and professional uncertainty and this insecurity affects the general conditions of the worker. Psychological stress, but also harassment, dissatisfaction, anguish, and the like have been reported, and they are all a direct consequence of their employment status. None of these aspects has been dealt with by Directive 91/383/EC.

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12. In contemporary European labour markets there are other social or legal aspects affecting health and safety to be taken into consideration, other than the kind of employment contract linking the worker with his employer.

Directive 91/383/EEC was in a way revolutionary as it departed from what the practice of health and safety had been doing in previous years. Instead of dealing with traditional risk factors, such as the working environment or technology, it paid attention to a completely different risk: employment conditions; assuming that this aspect could affect, as it does, the actual rates of work related accidents and diseases, it set a number of measures to avoid this effect. The Directive's logic of identifying new risk factors can be very useful under the new circumstances of European labour markets, and many of the national reports have pointed out these elements that have an effect on health and safety.

The condition of being a migrant worker seems to be decisive in the level of work-related risks that a worker suffers. Most national reports stress this fact, and some state that in practice it is as relevant, if not more, as the kind of contract of employment he is part of. There are many reasons to explain this effect: lack of knowledge of the working environment, low knowledge of the local language, less working experience, lack of adequate training, concentration of migrant work in activities with high level of accidents (such as construction), a larger presence of illegal work, an even larger presence of temporary employment. It seems that safety and health State policies have an effect on this phenomenon, as they do not pay enough attention to this migrant population. For instance, there are few States in which information and training materials are available in their native tongues. And, also, few are the States with specific training programs for these workers.

There is also a raising concern about the consequences in the field of health and safety of subcontracting and outsourcing, particularly in certain critical sectors, such as construction. In many cases temporary employment combines with subcontracting, and this combination can be dangerous for the workers involved. In fact, the situation of a worker employed by a contractor and performing his services at a client firm's premises is very close, from the perspective of occupational safety, to that of a worker put at its disposal by a temporary work agency. The risk factors are the same: lower knowledge of the working environment and conditions, lower investment in training, exclusion from the firm's protection policy, etc. Therefore, that subcontracting should be considered formally as a risk factor has been proposed and, therefore, that specific measures to reduce its effects on health and safety should be drafted.

Many national reports stress the fact that the size of the firm where the temporary worker is employed or renders his services is as relevant as any other factor. Those employed by bigger firms enjoy a better protection, whereas those working for smaller ones are usually in a much worse situation. This is coherent with the fact that big firms tend to have more developed safety policies, devoting more resources and paying in general more attention to this issue.

Some reports point out another fact: the differences found among temporary work agencies themselves, particularly between big and small firms. Big companies seem to have a stronger prevention policy fulfilling their obligations in a better way.

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These are but some examples of how social and organizational factors can act as risk factors in contemporary labour markets. With regard to the object of analysis of this project, safety and health of temporary workers, it must be pointed out that these factors can combine with atypical employment patterns, thus increasing the levels of occupational risk.

13. Finally, it is extremely important to underline the fact that, notwithstanding all these problems, some remarkable solutions can be found in some Member States, either by the Government's intervention or by agreements between relevant social actors. National reports are a source of valuable information about how to design and to put into practice measures to reach the general objectives of the Directive, that is, equal rights and protection for these workers. Although the situation varies broadly from one Member State to another, the fact is that the Directive seems to have produced a degree of awareness regarding the specific situation of fixed-term workers in most, if not all, of them, together with specific lines of action to respond to their problems.

The problem is, according to this reporter's view, that most of these solutions are ill-suited to be used as a model of best practices, because they depend strongly on the national situation and in national models to deal with health and safety protection. Safety and Health is a field in which past experiences have developed national systems which differ substantially from each other, each one working in its own way regardless of the fact that an important harmonisation has taken place thanks to the European Union. In any case, these good national solutions can serve as ideas to guide the improvement of the situation in other countries. As a conclusion, there is a need to disseminate instruments in the field of application of this Directive, guided towards the stimulation of the circulation of ideas, examples and best practices throughout the European Union.

7. Proposals

From the analysis of the national situation of the Member States, as derived from the different final national reports, a number of specific proposals can be drawn, both at a national and at European level. The presence of both sets of proposals is coherent with the general idea, suggested through this report, that improvements are needed also for the Directive itself. National reports do express their proposals for an improvement in their own Member States' legislation and practice. In this final part of the report we will focus on possible actions to be taken at a European level.

I) Directive 91/383/EC should be revised. It has fulfilled a function in the past, but it is outdated now and does not fit the current labour market situation anymore. Temporary work is different nowadays compared with fifteen years ago. And many of the solutions foreseen in the Directive have not been completely effective as to ensure a full accomplishment of its objectives.

II) The Directive should pay more attention to some particular aspects of its regulation, which appear to have been insufficient or ineffective. Thus, many national reports indicate these possible reforms:

- The Directive must eliminate the lack of clarity concerning the division of responsibilities between the TEA and the user undertaking.
- The Directive should design new instruments to improve health surveillance for temporary workers, particularly in the case of agency work. A good idea could be working at the level of the labour market, creating a national system to control and protect workers with short employment relationships, independent of employers.
- Directive 91/383/EEC should adopt a wider scope including all forms of dependent employment with fixed-duration employment relationships such as certain cases of self-employees whose work is performed under the explicit terms and conditions of a third party, or workers employed by subcontractors and temporary working at the client firm's premises.

III) The Directive should change its overall strategy regarding the forms of employment to which it applies. It sets some general rules for both of them, fixed-term and agency workers, and then it complements them with some specific provisions for agency work. The effect has been that Member States have paid greater attention to the latter than to the former. In many cases only general declarations of equal rights for fixed-term workers can be found; in others, Member States consider that the application of general health and safety legislation is enough. The effect is the same than what the Directive tried to avoid, the lack of special rules for a group of workers that, from this perspective, are special. As stated earlier, the need to move from a formal equality for fixed-term workers to a real equality still exists, in which this equality is not in the rights formally recognized by legislation but in an equal level of accidents rates and health problems.

The comparison with agency workers backs up this affirmation. As a consequence of the Directive having specific rules for this group, special regulations can be found in all Member States, the result of which is, if not always a better level of protection, at least awareness and attention to their situation.

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The problem probably lies within the practical application of national legislation. In theory, this common legislation should be enough to guarantee this group of workers an adequate level of protection against work-related risks. But those factors already identified by the Directive, as well as some others pointed out by national reports, are still operating and avoiding the fulfilment of its objectives.

There is also a problem of legislative technique at national level, contributing to this different treatment among the two forms of atypical employment. Whereas fixed-term contracts are usually regulated by common labour law, with a small number of special provisions on duration, form and termination of the contract, agency work is normally the object of special legislation, which sets a complete legal status for workers employed by these agencies; such a legislation is the opportunity to include a complete treatment of health and safety measures, something which cannot be carried out as easily for workers with fixed-term contracts.

In any case, and regardless of the reasons, it seems necessary to have clearer and more specific rules for fixed-term workers, in order to avoid implementation of the Directive by mere general declarations.

IV) When Directive 91/383/EEC was drafted it was the first piece of European legislation regarding atypical work. Today this is no longer the case, as two other directives in this field have been passed in the meantime; therefore, it is only one among a group of regulations trying to offer a complete treatment of those forms of employment different from the traditional model. This fact is relevant, because the attitude of European institutions towards temporary work has changed dramatically. By the early 1990s, when this directive was drafted, flexibility in the labour market was still under suspicion, and the objective of any European intervention was to reduce or control the presence of atypical forms of employment in Europe. Today this is no longer the case, and EU institutions have changed their attitude towards it. The paradigm of “Flexicurity”, strongly supported by the European Employment Strategy, involves a new way of understanding flexibility, much more positive and proactive than before; the same happens with the European concept of quality in employment, which does not focus only in the traditional elements linked to quality from the point of view of workers, such as stability in employment and working conditions, but it also includes others that are traditionally related to the flexible use of workforce. Both constructions are good examples of how the European Union is working with new paradigms, which differ from the concepts upon which this directive was designed. The recent Green Paper on the modernizing of labour law to face the challenges of the 21st Century is also pointing in this direction.

Directive 91/383/EEC is no longer the “island” it used to be, as the only regulation existing on temporary work at a European level, expressing the sole policy implemented in this field. In the new scenario, with a more developed action on temporary work both at the European social and employment policies, and with new paradigms and attitudes toward flexible workforces, its links and coherence with the rest of European law and policies must be stressed and revised. Otherwise, the case may very well be that it becomes an island from a chronological point of view, a remnant of the past, expressing past views and constructions.

V) According to article 2.1 thereof, the purpose of Directive 91/383/EEC is to ensure that temporary workers are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment. The

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Directive focuses on the rules protecting temporary workers, and the special rights they enjoy. However, this objective does not focus on the outcomes of these measures, the level of health and safety they enjoy. The assumption is that if these workers enjoy the same protective measures as the rest of the workforce, supplemented by a given number of special provisions set by the Directive, they will show the same levels of health and safety as other workers do. This mechanism has not worked that well. And not only because of the reasons already pointed out through this report, such as the directive's limitation and the ill-enforcement of national implementation measures. The fact of being employed with a temporary contract affects the worker's health in other ways, besides higher exposure to work-related risks. Academic research is producing an increasing number of studies showing in a rather consistent way that temporary work is associated to emerging risks, like stress, angst, burn-out syndrome, and many others; and the Directive should also pay attention to this effect. The idea is, then, that if real equality in health levels is sought for these workers European intervention cannot focus exclusively on safety issues, but should affect other elements of their working conditions and legal status. A deeper involvement in the regulation of temporary work is needed, in order to face all of these problems directly and effectively. The idea of harmonising not only health and safety issues but also the general regulatory framework of these workers seems plausible.

VI) The European Union is using the technique of identifying some relevant aspects which can influence health and safety protection –such as youth and temporary employment- and then drafting specific measures for those workers affected by them; as the European Union is playing a leading role in the development of health and safety legislation and policies in Europe, the conclusion is that the Union itself should draft new specific directives to deal with these risks.

In the case of migrant work, such a measure would fit in well with other Union policies, such as the free movement of workers, which includes a general principle of equal rights and non-discrimination; and the policy of non discrimination on the basis of national origin. Subcontracting has an effect on the freedom to provide services, so the connection with European law is also clear.

So far, a limited number of European Member States have a developed special legislation on health and safety in the case of subcontracting. Others have special programs for foreign workers already in practice. But in general terms, the case could very well be that European intervention is needed, in order to grant the presence of adequate measures in all Member States. We cannot forget the quantitative importance of these groups of workers at the present moment; an improvement in their health and safety treatment would mean a significant improvement of the general situation in Europe.

Furthermore, the development and practical testing of handy and tailor-made solutions for small and medium-size enterprises could be supported at a European level. Support through structural funds (ESF, EFRE) would emphasise that safety and health objectives are also part of European goals and need financial support. Besides, the attention of stakeholders and project organisers may be improved. More European-co-financed projects in this field would also support the Lisbon process.

VII) A critical factor affecting health and safety levels for these workers, which was not considered by the Directive, was the economic and contractual weakness of workers employed through a fixed term contract or by an agency. This weakness produces a lower

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ability to resist bad and unsafe working conditions, and a greater willingness to ignore breaches of the law. Therefore, and regardless of the quality of national legislation protecting their safety at work, their situation would be always worse than that of permanent workers, to which employment security allows resistance and lodging complaints.

In many Member States labour law uses the “conversion” technique, transforming employment contracts into new open-ended contracts when the employer breaches the legal framework for temporary work; in the case of agency work, conversion usually includes the possibility of being employed directly by the user firm instead of by the agency. Thus, workers do have an incentive to denounce these breaches. However, in most cases, this conversion rather than permanent employment ends up providing a larger lump-sum payment after the termination of the contract, as employers dismiss these employees anyway. Such techniques go far beyond safety and health issues, closer to the core of the regulation for the employment contract. From the point of view of European law, the treatment of these issues would most likely need a new Directive, drafted under a different article of the EC Treaty.

In this expert’s opinion the most effective way to deal with this bargaining weakness is to organize systems of control to support temporary workers, both inside and outside the firm. The role of the workers’ representative bodies and the unions is crucial, as they can control and denounce the way regulations are enforced, without the pressure of future retaliation. The same can be said about the labour inspectorate and other administrative bodies. It seems difficult to change patterns of behaviour of both workers and employers; but these external actors are most likely to control the fulfilment of labour legislation effectively.

VIII) Temporary work agencies do not have free access to the services market; on the contrary, in most countries they are under a licensing system, according to which they need to have a licence and to register before they can start their operations. This system is a core element of the European model of temporary work, and is coherent with international law in this field, particularly with I.L.O. Convention 181, of 1997; it has been present in all proposals of European directives on temporary work. This licence fulfils a number of functions in the temporary work services market, particularly one of controlling that all agencies operating in it are regular and honour labour legislation.

Nonetheless, although licensing is a core element in all European legislation on temporary work, Directive 91/383/EC ignores it, not using it as an instrument to help the fulfilment of its objectives. The reason for this was that Directive 91/383 was originally designed to be part of a package of three directives on temporary work, and that licences were regulated in the other two, one dealing with working conditions and the other dealing with competition in the market of services. As only one was finally drafted, licences to operate as temporary work agencies remained outside the scope of European harmonisation, and thus an important instrument for State intervention remained outside European law.

The proposal is to include in the Directive a regulation on public licences to operate as a temporary work agency. The fulfilment of all health and safety obligations must be a critical element to allow agencies to operate in a national market and compete with each other. The use of traditional State control instruments for this market, such as the legal authorisation to operate and registration in a public register, can help public authorities to control the presence of irregular agencies, expelling them from the market; and would mean a strong incentive for agencies to improve their preventive strategies.

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This use of the license as an instrument to improve the fulfilment of the agencies' duties in the field of health and safety would imply of course a certain degree of harmonisation of this aspect of the regulation of agency work. In this expert's opinion this could be easily done: the legal basis for such harmonisation would be the same used for Directive 91/383/EC as a whole, as the requirements to be imposed would be referred exclusively to the performance in workers' protection; and legal regulation of this license is already very similar in most Member States

IX) Some national reports express a concern regarding the situation of fixed-term and agency workers in the case of being posted to another Member State in the framework of transnational services. In these circumstances it is difficult to guarantee the application of the legal working and economic conditions; particularly those affecting health and safety issues. The combination of temporary employment relationships and working in a country other than that of the employer and the worker increases the chances of less protection and makes it more difficult to exercise legal rights. This phenomenon is becoming increasingly frequent, and with the Union's enlargement the differences in employment conditions between Member States have grown enormously once again. Although some provisions already exist to govern this situation, forcing the application of the core rules of national labour legislation to workers temporarily performing their work in a Member State's territory, it seems that in practice this application is not working as well as expected. We must remember that these transnational services are, by definition, temporary, and this means that the expatriate employee is placed under the surveillance of national labour authorities for a short period of time. Most of the duties imposed on employers by the Directive and its national implementation measures operate in the middle and the long-run: training, medical control and the like. No system of collaboration among different labour authorities has been put into practice so far for this purpose; in the case of transnational services, as a consequence, some of the temporary workers' rights can be easily lost. We must bear in mind that one of the situations for which the Directive regarding posted workers applies is precisely that of workers placed at the disposal of a user firm across national borders; and that in the rest of situations foreseen by the Directive it is common to have non-permanent employees being transferred temporarily to other Member States.

One cannot forget that the Directive regarding posted workers was passed some years after the one we are studying herein, and that no coordination exists between both texts. The former foresees the application of core provisions on safety and health to posted workers, but does not foresee a special treatment for temporary workers. As a consequence, another suggestion of this report is that more attention should be paid to the exercise of the rights to safety and health protection of temporary workers in the case of transnational provision of services.

X) The need for improved statistics in order to get a better understanding of the situation concerning safety and health in the workplace of workers with fixed-duration employment relationships or temporary employment relationships is a common recommendation, which is present in basically all national reports. Although the situation differs from one Member State to another, in general terms it can be considered unsatisfactory almost everywhere. As a consequence, changes should be made to allow a better evaluation of the labour market in each Member State from this particular perspective. In general terms, a better correlation between risks factors and statistics is absolutely necessary. Safety and Health policy is based on the identification of risk factors, those elements, related either to the work environment or

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to the workers themselves, affecting the level of exposure to work-related risks. Specific measures are drafted and put into practice to face them; in order to control the efficiency of such measures, relevant data needs to be gathered in order to assess the real situation of workers belonging to one of these specific groups or exposed to a given risky environment. The problem seems to be that the elements being used by public authorities to organise their information systems regarding the labour market do not coincide with those identified as risk factors by European and national authorities.

XI) The European Union should support research activities concerning the direct effects of psychological stress on the health of workers in atypical employment relationships in general, and in fixed-term contracts and agency work in particular, if the general objective of equal health and safety protection is to be achieved.