

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 533 final - SYN 280 and 281

Brussels, 31 October 1990

Amendment to the proposal for a

SYN 280

COUNCIL DIRECTIVE

on certain employment relationships with regard to
distortions of competition

Amendment to the proposal for a

SYN 281

COUNCIL DIRECTIVE

supplementing the measures to encourage improvements in
the safety and health at work of temporary workers

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

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EXPLANATORY MEMORANDUM

SUBJECT: proposal for a Council Directive on certain employment relationships with regard to distortions of competition and proposal for a Council Directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers.

Following the opinion of Parliament in first reading on 24 October 1990 the Commission submits, in regard to Article 149, paragraph 3 of the EEC-Treaty, modified proposals to the Council.

In its modified proposal on certain employment relationships with regard to distortions of competition the Commission has taken into account in a recital the wish of Parliament to render it possible to take across-the-board measures under their social policies to improve the protection of workers. In addition Articles 1.3. and 4 are put in more precise terms. On the contrary, the Commission did more in particular neither follow the wish of Parliament to extend the scope of the Directive to "atypical" workers (defined according to certain criteria) nor to allow for a threshold of 13 hours (instead of 8 hours), below which workers are not covered by unemployment insurance and for pensions.

A certain number of amendments was not accepted by the Commission, because it takes the view that they concern provisions which are contained in the proposal for a Directive based on Article 100.

With regard to the proposal for a Council Directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers the Commission more in particular accepted amendments underlining the non-justification of different treatment between temporary workers and others in the area of health and safety and a new Article 6 concerning training. On the contrary, the Commission did neither retain the extension of the scope of the Directive to all "atypical" workers nor the deletion of that part of the previous Article 6 which refers to the prohibition (except exceptional cases) of the use of temporary workers for work requiring special medical supervision over a long period.

For the two proposals for a Directive the Commission accepted amendments concerning the regular submission of reports on the implementation of the Directives.

Amendment to the proposal for a

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SYN 280

COUNCIL DIRECTIVE
**ON CERTAIN EMPLOYMENT RELATIONSHIPS
WITH REGARD TO
DISTORTIONS OF COMPETITION (1)**

Presented by the Commission in regard to Article 149, paragraph 3
of the EEC Treaty
(1) OJ nr. C 224 of 8.9.1990, p.6

Commission Text

Proposal for a Council Directive on certain
employment relationships with regard to
distortions of competition

Whereas it is necessary to adopt the measures
intended to establish the internal market
progressively during a period expiring on 31
December 1992; whereas completion of the internal
market requires, inter alia, the elimination of
distortions of competition and at the same time
promotion of economic and social cohesion in the
Community;

Modified Proposal

New Title

Proposal for a Council directive relating to
certain employment contracts and employment
relationships involving distortions of
competition.

Recital 1

Whereas, pursuant to Article 8A of the Treaty, it
is necessary to adopt the measures intended to
establish the internal market progressively
during a period expiring on 31 December 1992;
whereas completion of the internal market
requires, inter alia, the elimination of
distortions of competition and at the same time
promotion of economic and social cohesion in the
Community;

New Recital 2

Whereas the same article lays down the objectives
of establishing a market without frontiers in
which the free movement of goods, persons,
services and capital is ensured;

Recital 2 becomes Recital 3New Recital 4

Whereas Article 8B of the Treaty enables the
Commission to make proposals determining the
guidelines and conditions necessary for
establishing the internal market and ensuring
balanced progress in all the sectors concerned;

New Recital 5

Whereas, in addition, Article 100A allows the
Council, acting by a qualified majority, to adopt
the measures for the approximation of the
provisions laid down by law, regulation or
administrative action which have as their object
the establishment and functioning of the internal
market;

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Commission Text

Modified Proposal

Whereas this situation increases the dangers of distortions of competition resulting from certain differences in treatment between undertakings of the Member States;

Whereas the freedom of movement of workers may be affected thereby;

Whereas the member States are responsible for determining pay; whereas the bargaining autonomy of the two sides of industry should be respected;

Recital 3 becomes Recital 6
Unchanged

Recital 4 becomes Recital 7

Whereas this situation increases the distortions of competition resulting from certain differences in treatment between undertakings of the Member States;

Recital 5 becomes Recital 8

Recital 6 becomes new Recital 9

Whereas the freedom of movement of workers is affected thereby;

New Recital 10

Whereas the Member States must involve the two sides of industry in achieving the objectives set out in this directive;

Recital 7 becomes Recital 11
Unchanged

Recital 8 becomes new Recital 12

Whereas subject to legal provisions or collective wage agreements the level of pay shall be determined by agreements between the contracting parties

New Recital 13

Whereas the growth in unprotected work is a major feature of the past decade;

Recital 9 becomes Recital 14
Unchanged

Recital 10 becomes Recital 15
Unchanged

New Recital 16

Whereas there are major differences between the regulations of the different countries and these differences, which can have a direct impact on the functioning of the market, should be reduced;

Recital 11 becomes Recital 17
Unchanged

Recital 12 becomes Recital 18
Unchanged

Commission TextModified Proposal

New Recital 19

Whereas this Directive based on Article 100A aims to reduce distortions of competition between undertakings if they make use to a greater or lesser extent of certain forms of employment which are regulated in different ways in the different Member States; whereas it is therefore without prejudice to the right of the Member States to take across-the-board measures under their social policies to improve the protection of workers;

Article 1

New Paragraph 3

3. This Directive shall not apply to employees whose average weekly working time is less than 8 hours.

3. This Directive shall not apply to employees whose average weekly working time is less than eight hours. This working time shall be calculated on the basis of the probable duration of the employment or, a posteriori, taking into account all periods worked during the previous 6 months.

Article 4

With regard to temporary employment Member States shall take the necessary measures to ensure that:

- a) national laws provide for a limit on the renewal of temporary employment relationships of a duration of 12 months or less for a given job so that the total period of employment does not exceed 36 months;
- b) provision is made for a form of an equitable allowance, in the event of an unjustified break in the employment relationship before the term fixed.

Article 2 remains unchanged.

Article 3 remains unchanged.

Article 4

New Paragraph 4a

With regard to temporary employment Member States shall take the necessary measures to ensure that:

(Introduction of a new paragraph a):

- a) the constitution of a temporary employment relationship shall not be allowed to replace any existing permanent job;

the initial paragraphs a) and b) become paragraphs b) and c) and remain unchanged.

Article 5 remains unchanged

Article 6 remains unchanged

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Commission Text

Modified Proposal

New Article 7

The Member States shall, within a period of two years from the expiry of the period laid down in Article 6, forward to the Commission all the information it requires to draw up a report, to be submitted to the Council and the European Parliament, on the implementation of this directive.

New Article 8

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this directive, having regard to Articles 6 and 7.

Article 7 becomes Article 9
Unchanged

Amendment to the proposal for a

SYN 281

COUNCIL DIRECTIVE**SUPPLEMENTING THE MEASURES TO ENCOURAGE
IMPROVEMENTS IN THE SAFETY AND HEALTH AT WORK
OF THE TEMPORARY WORKERS (1)**

Presented by the Commission, in regard to article 149, paragraph 3
of the EEC Treaty
(1) OJ nr. C 224 of 8.9.90, p.6

Commission TextModified Proposal

Whereas recourse to forms of employments such as temporary employment has increased considerably;

Whereas recourse to temporary employment has increased considerably in recent years and will increase still further;

Whereas special attention should be paid to ensure that such employees receive appropriate training as regards the occupational risks peculiar to the undertaking concerned;

Insert as penultimate recital

Whereas research results show that in general temporary workers are more exposed to the risk of accidents at work and occupational diseases than other workers;

Whereas, nevertheless, temporary workers are subject to greater risks than other workers, as shown by the statistics on accidents at work and occupational diseases;

New Recital 6

Whereas these extra risks are largely related to the temporary nature of the employment relationship and the particular arrangements which therefore apply within the undertaking;

New Recital 9

Whereas the special nature of these risks therefore requires the introduction of special regulations;

(Previous Recital 4)

New Recital 11

Whereas special attention should be paid to ensure that such employees receive appropriate training as regards the occupational risks peculiar to the undertaking concerned;

Last Recital is unchanged

Article 1 is unchanged

Commission TextModified Proposal

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Article 2

1st Paragraph is unchanged

New Paragraph 2

The existence of a temporary employment contract or terms of employment shall not justify different treatment with respect to working conditions as regards the content or difficulty of the work, the safety of the work and health protection, access to personal safety equipment, the working environment and pattern, including the arrangements for fixing working hours.

Paragraph 3 is unchanged

Article 3 is unchanged

Article 4 is unchanged

Article 5

Member States shall ensure that, before an temporary worker takes up any activity requiring special occupational qualifications or skills or special medical supervision, he is informed by the user employer of the risks he faces and, if necessary, receives appropriate training.

Article 5

Member States shall ensure that, before an temporary worker takes up any activity requiring special occupational qualifications or skills or special medical supervision, he is informed by the user employer of the risks he faces.

New Article 6

In cases referred to under the foregoing article, the worker must undergo training appropriate to his or her needs, taking into account his or her qualifications and experience. If the job is dangerous, either in the short or long term, training shall be compulsory.

Previous Article 6 becomes Article 7
Unchanged

Article 7

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

The provisions adopted pursuant to paragraph 1 shall refer explicitly to this Directive.

2. Member States shall forward to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

Previous Article 7 become New Article 10

Commission TextModified Proposal

New Article 8

The body or person within or outside an undertaking responsible for checking adherence to health and safety regulations shall be informed of the assignment of atypical workers to jobs which may involve risk.

New Article 9

Final Provisions

This directive shall not affect Member States' ability to apply or introduce laws, regulations or administrative provisions more favourable to employed persons.

Article 7 becomes New Article 10

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

The provisions adopted pursuant the preceeding subparagraph shall refer explicitly to this Directive.

2. Member States shall forward to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

New Article 11

The Member States shall, within a period of two years from the expiry of the period laid down in Article 10(1), forward to the Commission all the information it requires to draw up a report, to be submitted to the Council and the European Parliament, on the implementation of this directive.

New Article 12

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this directive, having regard to Articles 10 and 11.

Article 8 becomes Article 13

This directive is addressed to the Member States.

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