

COUNCIL DIRECTIVE 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Following the entry into force of the Treaty of Amsterdam the provisions of the Agreement on social policy annexed to the Protocol on social policy, annexed to the Treaty establishing the European Community have been incorporated into Articles 136 to 139 of the Treaty establishing the European Community;

(2) Management and labour (the social partners) may, in accordance with Article 139(2) of the Treaty, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;

(3) Point 7 of the Community Charter of the Fundamental Social Rights of Workers provides, inter alia, that "the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work";

(4) The Council has been unable to reach a decision on the proposal for a Directive on certain employment relationships with regard to distortions of competition⁽¹⁾, nor on the proposal for a Directive on certain employment relationships with regard to working conditions⁽²⁾;

(5) The conclusions of the Essen European Council stressed the need to take measures with a view to "increasing the employment-intensiveness of growth, in particular by a more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition";

(6) The Council Resolution of 9 February 1999 on the 1999 Employment Guidelines invites the social partners at all appropriate levels to negotiate agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security;

(7) The Commission, in accordance with Article 3(2) of the Agreement on social policy, has consulted management and labour on the possible direction of Community action with regard to flexible working time and job security;

(8) The Commission, considering after such consultation that Community action was desirable, once again consulted management and labour on the substance of the envisaged proposal in accordance with Article 3(3) of the said Agreement;

(9) The general cross-industry organisations, namely the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC), informed the Commission in a joint letter dated 23 March 1998 of their desire to initiate the procedure provided for in Article 4 of the said Agreement; they asked the Commission, in a joint letter, for a further period of three months; the Commission complied with this request extending the negotiation period to 30 March 1999;

(10) The said cross-industry organisations on 18 March 1999 concluded a framework agreement on fixed-term work; they forwarded to the Commission their joint request to implement the framework agreement by a Council Decision on a proposal from the Commission, in accordance with Article 4(2) of the Agreement on social policy;

(11) The Council, in its Resolution of 6 December 1994 on "certain aspects for a European Union social policy: a contribution to economic and social convergence in the Union"(3), asked management and labour to make use of the opportunities for concluding agreements, since they are as a rule closer to social reality and to social problems;

(12) The signatory parties, in the preamble to the framework agreement on part-time work concluded on 6 June 1997, announced their intention to consider the need for similar agreements relating to other forms of flexible work;

(13) Management and labour wished to give particular attention to fixed-term work, while at the same time indicating that it was their intention to consider the need for a similar agreement relating to temporary agency work;

(14) The signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships;

(15) The proper instrument for implementing the framework agreement is a directive within the meaning of Article 249 of the Treaty; it therefore binds the Member States as to the result to be achieved, whilst leaving them the choice of form and methods;

(16) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the

Member States and can therefore be better achieved by the Community; this Directive limits itself to the minimum required for the attainment of those objectives and does not go beyond what is necessary for that purpose;

(17) As regards terms used in the framework agreement but not specifically defined therein, this Directive allows Member States to define such terms in conformity with national law or practice as is the case for other Directives on social matters using similar terms, provided that the definitions in question respect the content of the framework agreement;

(18) The Commission has drafted its proposal for a Directive, in accordance with its Communication of 14 December 1993 concerning the application of the agreement on social policy and its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the contracting parties, their mandate and the legality of each clause of the framework agreement; the contracting parties together have a sufficiently representative status;

(19) The Commission informed the European Parliament and the Economic and Social Committee by sending them the text of the agreement, accompanied by its proposal for a Directive and the explanatory memorandum, in accordance with its communication concerning the implementation of the Protocol on social policy;

(20) On 6 May 1999 the European Parliament adopted a Resolution on the framework agreement between the social partners;

(21) The implementation of the framework agreement contributes to achieving the objectives in Article 136 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of the Directive is to put into effect the framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 1999, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

Member States may have a maximum of one more year, if necessary, and following consultation with management and labour, to take account of special difficulties or

implementation by a collective agreement. They shall inform the Commission forthwith in such circumstances.

When Member States adopt the provisions referred to in the first paragraph, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

Article 3

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 1999.

For the Council

The President

M. NAUMANN

(1) OJ C 224, 8.9.1990, p. 6. and OJ C 305, 5.12.1990, p. 8.

(2) OJ C 224, 8.9.1990, p. 4.

(3) OJ C 368, 23.12.1994, p. 6.

ANNEX

ETUC-UNICE-CEEP

framework agreement on fixed-term work

Preamble

This framework agreement illustrates the role that the social partners can play in the European employment strategy agreed at the 1997 Luxembourg extra-ordinary summit and, following the framework agreement on part-time work, represents a further contribution towards achieving a better balance between "flexibility in working time and security for workers".

The parties to this agreement recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and

workers. They also recognise that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers.

This agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. It illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers.

This agreement applies to fixed-term workers with the exception of those placed by a temporary work agency at the disposition of a user enterprise. It is the intention of the parties to consider the need for a similar agreement relating to temporary agency work.

This agreement relates to the employment conditions of fixed-term workers, recognising that matters relating to statutory social security are for decision by the Member States. In this respect the Social Partners note the Employment Declaration of the Dublin European Council in 1996 which emphasised inter alia, the need to develop more employment-friendly social security systems by "developing social protection systems capable of adapting to new patterns of work and providing appropriate protection to those engaged in such work". The parties to this agreement reiterate the view expressed in the 1997 part-time agreement that Member States should give effect to this Declaration without delay.

In addition, it is also recognised that innovations in occupational social protection systems are necessary in order to adapt them to current conditions, and in particular to provide for the transferability of rights.

The ETUC, UNICE and CEEP request the Commission to submit this framework agreement to the Council for a decision making these requirements binding in the Member States which are party to the Agreement on social policy annexed to the Protocol (No 14) on social policy annexed to the Treaty establishing the European Community.

The parties to this agreement ask the Commission, in its proposal to implement the agreement, to request Member States to adopt the laws, regulations and administrative provisions necessary to comply with the Council Decision within two years from its adoption or ensure⁽¹⁾ that the social partners establish the necessary measures by way of agreement by the end of this period. Member States may, if necessary and following consultation with the social partners, and in order to take account of particular difficulties or implementation by collective agreement have up to a maximum of one additional year to comply with this provision.

The parties to this agreement request that the social partners are consulted prior to any legislative, regulatory or administrative initiative taken by a Member State to conform to the present agreement.

Without prejudice to the role of national courts and the Court of Justice, the parties to this agreement request that any matter relating to the interpretation of this agreement at

European level should in the first instance be referred by the Commission to them for an opinion.

General considerations

1. Having regard to the Agreement on social policy annexed to the Protocol (No 14) on social policy annexed to the Treaty establishing the European Community, and in particular Article 3.4 and 4.2 thereof;
2. Whereas Article 4.2 of the Agreement on social policy provides that agreements concluded at Community level may be implemented, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission;
3. Whereas, in its second consultation document on flexibility in working time and security for workers, the Commission announced its intention to propose a legally-binding Community measure;
4. Whereas in its opinion on the proposal for a Directive on part-time work, the European Parliament invited the Commission to submit immediately proposals for directives on other forms of flexible work, such as fixed-term work and temporary agency work;
5. Whereas in the conclusions of the extraordinary summit on employment adopted in Luxembourg, the European Council invited the social partners to negotiate agreements to "modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security";
6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance;
7. Whereas the use of fixed-term employment contracts based on objective reasons is a way to prevent abuse;
8. Whereas fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers;
9. Whereas more than half of fixed-term workers in the European Union are women and this agreement can therefore contribute to improving equality of opportunities between women and men;
10. Whereas this agreement refers back to Member States and social partners for the arrangements for the application of its general principles, minimum requirements and provisions, in order to take account of the situation in each Member State and the circumstances of particular sectors and occupations, including the activities of a seasonal nature;

11. Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community economy and to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;

12. Whereas the social partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore be given a special role in the implementation and application of this agreement.

THE SIGNATORY PARTIES HAVE AGREED THE FOLLOWING

Purpose (clause 1)

The purpose of this framework agreement is to:

- (a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;
- (b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

Scope (clause 2)

1. This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.

2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

- (a) initial vocational training relationships and apprenticeship schemes;
- (b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.

Definitions (clause 3)

1. For the purpose of this agreement the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same

establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.

Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

Principle of non-discrimination (clause 4)

1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of pro rata temporis shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

4. Period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds.

Measures to prevent abuse (clause 5)

1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term employment contracts or relationships;

(c) the number of renewals of such contracts or relationships.

2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

(a) shall be regarded as "successive"

(b) shall be deemed to be contracts or relationships of indefinite duration.

Information and employment opportunities (clause 6)

1. Employers shall inform fixed-term workers about vacancies which become available in the undertaking or establishment to ensure that they have the same opportunity to secure permanent positions as other workers. Such information may be provided by way of a general announcement at a suitable place in the undertaking or establishment.
2. As far as possible, employers should facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility.

Information and consultation (clause 7)

1. Fixed-term workers shall be taken into consideration in calculating the threshold above which workers' representative bodies provided for in national and Community law may be constituted in the undertaking as required by national provisions.
2. The arrangements for the application of clause 7.1 shall be defined by Member States after consultation with the social partners and/or the social partners in accordance with national law, collective agreements or practice and having regard to clause 4.1.
3. As far as possible, employers should give consideration to the provision of appropriate information to existing workers' representative bodies about fixed-term work in the undertaking.

Provisions on implementation (clause 8)

1. Member States and/or the social partners can maintain or introduce more favourable provisions for workers than set out in this agreement.
2. This agreement shall be without prejudice to any more specific Community provisions, and in particular Community provisions concerning equal treatment or opportunities for men and women.
3. Implementation of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field of the agreement.
4. The present agreement does not prejudice the right of the social partners to conclude at the appropriate level, including European level, agreements adapting and/or complementing the provisions of this agreement in a manner which will take note of the specific needs of the social partners concerned.
5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and practice.
6. The signatory parties shall review the application of this agreement five years after the date of the Council decision if requested by one of the parties to this agreement.

(1) Within the meaning of Article 2.4 of the Agreement on social policy annexed to the Protocol (No 14) on social policy annexed to the Treaty establishing the European Community.