



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.04.1999
COM(1999) 203 final

Proposal for a

COUNCIL DIRECTIVE

**concerning the Framework Agreement on Fixed-term Work concluded by
UNICE, CEEP and the ETUC**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

1. Fixed-term work has increased substantially over recent years, and the trend continues on national employment markets.
2. On 29 June 1990, the Commission submitted three proposals for Council Directives on certain employment relationships (e.g. part-time, fixed-term and temporary work)¹.
3. The Economic and Social Committee gave its opinion on 20.9.1990², while the European Parliament gave its opinion on 24.10.1990³. In accordance with Article 149 of the Treaty⁴, the Commission submitted an amended proposal⁵ to the Council on 7.11.1990, incorporating certain of the amendments suggested by Parliament.
4. These proposals were subsequently discussed within the Council on various occasions between 1990 and 1994. Of the three proposals, only Council Directive 91/383/EEC “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”⁶ was adopted.
5. In July 1994, the Commission published its White Paper on the future of European social policy, in which the Commission reaffirms its determination to make progress in the social policy field and indicates, in Chapter III, that the highest priority must be to ensure that the proposals on atypical work are adopted by the Council.
6. The conclusions of the Essen European Council emphasised the need to take steps to improve the employment situation, and called for measures aimed at “increasing the employment-intensiveness of growth, in particular by more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition”.
7. As no progress had been made in the Council, the Commission decided to initiate the procedure under Article 3 of the Agreement on social policy annexed to the Protocol (No 14) on social policy annexed to the Treaty establishing the European Community. On 27 September 1995, it therefore gave its approval for consultation of the social partners under Article 3(2) of the said Agreement.

¹ COM(90) 228 final, 29.6.1990; OJ C 224, 8.9.1990, p. 8.

² OJ C 332, 31.12.1990, p. 167.

³ OJ C 295, 26.11.1990, p. 112.

⁴ All references to the Treaty prior to the entry into force of the Treaty of Amsterdam refer to the Treaty in force at the time of the action concerned.

⁵ COM(90) 533 final; OJ C 305, 5.12.1990, p. 12.

⁶ OJ L 206, 29.7.1991, p. 19.

8. The replies from the social partners showed that there was a broad measure of support for the fundamental guiding principle of non-discrimination of workers affected by the new, flexible forms of work, guaranteeing them the same treatment as for full-time workers with open-ended contracts. Although the respondents' views differed considerably as to the form and appropriate level of action to be taken in this area, most of the social partners said they were prepared to play an active part in defining the principles and putting them into effect, more especially by way of collective bargaining at the appropriate level.
9. After analysing the reactions, the Commission considered Community action advisable and decided, on 17 April 1996, to initiate the second round of consultation of the social partners provided for in Article 3(3) of the Agreement on social policy. On 19 June 1996, three organisations (UNICE, CEEP and the ETUC) announced their intention to begin negotiations. On 6 June 1997, these three organisations concluded the "European Framework Agreement on Part-Time Work" which, following the procedure under Article 4 of the Agreement on Social Policy, was subsequently implemented on a proposal from the Commission in accordance with Article 4(2) of the Agreement on social policy by Council Directive 97/81/EC of 15 December 1997. The Directive was further extended to the United Kingdom by Council Directive 98/23/EC of 7 April 1998. In the Preamble to the "European Framework Agreement on Part-Time Work" the contracting parties announced their intention to consider the need for similar agreements relating to other forms of flexible work.
10. On 23 March 1998, the three parties (UNICE, CEEP and the ETUC) announced their intention of starting negotiations on fixed-term work. At the end of the nine-month period, they asked the Commission for a further three months by virtue of Article 3(4) of the Agreement on Social Policy. The Commission extended the negotiation period to 30 March 1999. The three organisations concluded a framework Agreement on 18 March 1999. They forwarded the agreement to the Commission, asking for it to be implemented by a Council decision on a proposal from the Commission in accordance with Article 4(2) of the Agreement on social policy.
11. The social partners requested the Commission:
 - to submit the framework agreement to the Council for a decision to make the provisions of the agreement 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;
 - to request Member States, in its proposal to implement the agreement, to adopt laws, regulations and administrative provisions necessary to comply with the Council decision within two years from its adoption or ensure that the social partners establish the necessary measures by way of agreement by the end of this period; and,

- to make provision for Member States to have, if necessary and following consultation with the social partners and in order to take account of particular difficulties or implementation by collective agreement, up to a maximum of one additional year to comply with the decision.
12. As the first paragraph of the Preamble to the framework agreement illustrates, the agreement also intends to make an immediate contribution to the European Employment Strategy.

Examination of the Agreement

13. In its Communication concerning "adapting and promoting the social dialogue at Community level"⁷, the Commission stressed that "before any legislative proposal implementing an agreement is presented to the Council, the Commission carries out an assessment involving consideration of the representative status of the contracting parties, their mandate and the legality of each clause in the agreement in relation to Community law, and the provisions regarding small and medium sized enterprises".

Representativeness of the contracting parties and their respective mandates

14. The organisations which are signatory to the agreement are UNICE, CEEP and the ETUC. These three organisations have, since 1985, been engaged in an autonomous and voluntary process known as the "Val Duchesse" social dialogue. This has resulted in a total of 13 joint opinions, 2 recommendations, 4 agreements and 5 declarations. In particular, they came up with a significant agreement in October 1991 with a view to defining the role and place of the social dialogue within the new Community framework. Articles 3 and 4 of the Agreement on social policy drew very largely on this agreement.
15. The three organisations all meet the following criteria, as laid down in the Commission's Communication concerning the application of the Protocol on Social Policy (point 24)⁸:
- they are cross-industry and are organised at European level;
 - they consist of organisations which are themselves an integral and recognised part of Member State social partner structures, have the capacity to negotiate agreements and are representative of all Member States;
 - they have appropriate structures to ensure their effective participation in implementing the Agreement on social policy.
16. These three organisations are the only three general cross-industry organisations within the meaning of Annex 2 to the Commission's

⁷ COM(98) 322 final, 20.05.1998; see also COM(93) 600, 14.12.1993.
⁸ COM(93) 600, 14.12.1993.

Communication. The annex is updated on a regular basis following an ongoing study on representativeness.

17. The European Court of First Instance pronounced itself on the question of representativity in its judgement of 17 June 1998 in case T-135/96 (the European union of the craft industry and of the small and medium-sized enterprises (UEAPME) against the Council) where UEAPME had challenged the legality of Directive 96/34/EC concerning the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. In its judgement the Court of First Instance investigated the procedural steps leading up to the adoption of the Directive and, secondly, made an assessment of the factual representativity of the signatory parties based upon the figures submitted to it. After having found the legislative procedure correct and the signatory parties sufficiently representative in relation to the material scope of the agreement, the CFI declared the UEAPME challenge non-admissible. UEAPME appealed this judgement but withdrew later its appeal after having concluded a cooperation agreement with UNICE on 4 December 1998.

Employers' organisations

18. The employers' federation which is most representative of all industrial sectors and categories of enterprises is UNICE. At national level, the organisations affiliated to the UNICE are by far the most representative cross-industry employers' federations. The affiliated organisations at national level are directly or indirectly involved in collective bargaining and participate in the International Labour Conference. CEEP provides significant representation of public enterprises or enterprises with public participation in the Member States.

Trade union organisations

19. By far the most representative cross-industry trade union confederation is the ETUC. Its affiliated organisations are the most representative cross-industry trade union confederations in all the Member States. All its affiliated organisations at national level are directly or indirectly involved in collective bargaining and participate in the International Labour Conference.

Conclusion

20. The Commission notes that the members of these three organisations at national level have given the three a specific mandate for negotiations on fixed-term work and have ratified the framework agreement. The three organisations have concluded the framework agreement on behalf of their national members.
21. The Commission concludes that these three organisations fulfil the condition of representativeness, which it had undertaken to verify before forwarding its proposal.

“Legitimacy” of the clauses concerning the role of the non-signatory social partners and their members

22. A number of other social partners who were consulted by the Commission expressed a desire to take part in the negotiations. The Commission has been informed of the exchange of letters and discussions between the signatory social partners and these others.
23. The Commission has forwarded the framework agreement to all the organisations which it had previously consulted or informed, and has organised a meeting with them.
24. Several organisations have underlined the flexible character of the provisions of the agreement that will allow account to be taken, when transposing it into national law, of the specific needs of certain sectors or sub-sectors.
25. Having verified the relevant clauses, the Commission feels that the framework agreement makes reference on a number of occasions to the "social partners" and to "national law, collective agreements or practice", and thus very largely preserves the role of the non-signatory social partners and their members at national level.

Provisions regarding small and medium-sized enterprises

26. Article 137(2) of the Treaty provides that legislation on social policy shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings (or enterprises).
27. The specific situation of SMEs was given special attention when the text of the framework agreement was drawn up. Specific reference is made to SMEs, as follows:
 - General consideration 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".
28. Clearly, the agreement does not provide for any explicit exception to be made to the basic principle of non-discrimination in favour of SMEs. However, Clause 5, which sets out the steps to be taken to prevent abuse from the use of successive fixed-term contracts, stipulates that these measures shall be introduced "in a manner which takes account of the needs of specific sectors and or categories of workers". Furthermore, Clause 5.1 provides for the introduction of "one or more" of three regulatory steps. This flexibility regarding the implementation of the measures to prevent abuse could obviously be used in a way which takes into account of the special needs of employers and workers in SMEs. This point is further underlined in General consideration 10 that states; "Whereas the 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".

29. Furthermore, clauses (2(1), 2(2), 3(2), 4(3), 5(2), 7(2)) refer to national laws, collective agreements or practice and/or to the social partners regarding the arrangements for their application. Despite not explicitly mentioning SMEs, these provisions do enable national provisions to be adopted if necessary to take account of their special needs.
30. These provisions show that the social partners have intended to leave room for manoeuvre in the implementation of the rights and obligation under the agreement which should allow for the specific needs of both workers and enterprises in specific sectors and categories of workers and enterprises to be taken into account, not least SMEs (see also General considerations 5, 8 and 12).
31. The Commission therefore concludes that the framework agreement complies with the provisions concerning small and medium-sized enterprises.

“Legality” of the clauses of the agreement

32. The Commission has carefully examined each of the clauses of the framework agreement and does not find any provisions contrary to Community law. The fact that the agreement provides for obligations on the Member States does not undermine its legality. On the contrary, it follows from the second declaration annexed to the Agreement on social policy⁹ that the arrangements for applying agreements between management and labour at Community level is likely to create obligations for the Member States. The obligations imposed on Member States do not derive directly from the agreement between the social partners but from the arrangement for applying the agreement. Paragraphs 33 to 37 contain the Commission’s assessment of the content of the agreement.

Assessment of the agreement

33. In the light of the conclusions of the Essen European Council and of subsequent European Councils, the Commission considers Community level provisions on fixed-term work to be an important factor in seeking to strike the right balance between flexibility and security. The social partners’ contribution is positive in itself in that it guarantees that consideration is given both to business competitiveness and to the interests of workers.

⁹ “The eleven High Contracting Parties declare that the first of the arrangements for application of the agreements between management and labour at Community level - referred to in Article 4(2) - will consist in developing, by collective bargaining according to the rules of each Member State, the content of the agreements, and that consequently this arrangement implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, nor any obligation to amend national legislation in force to facilitate their implementation.”

34. The Commission wholeheartedly endorses the aims of the social partners' framework agreement and sees it as an important step in three respects.
35. Firstly, minimum standards with regard to fixed-term work are a big step forward in creating a minimum set of fundamental rights of workers as laid down in the Community Charter of the Fundamental Social Rights of Workers (see in particular paragraph 7 of the Charter).
36. Secondly, the agreement also contributes to implementing the conclusions of the Essen European Council in terms of the introduction of new, flexible ways of organising work. Such flexibility must meet the needs of enterprises and help them to become more competitive to cope with international competition. It must also take account of the interests of workers by preventing abuse arising from the use of successive fixed-term employment contracts or relationships. An agreement between the social partners on this matter as a result of negotiations between employers and workers is the right vehicle for reconciling the interests of the two parties.
37. Thirdly, the agreement illustrates the role that the social partners can play in the European employment strategy agreed at the 1997 Luxembourg extraordinary summit and the subsequent Council Resolutions, in particular Council Resolution on the 1999 Employment Guidelines.¹⁰
38. The Commission considers that all the conditions are fulfilled for forwarding a proposal designed to implement the framework agreement between the social partners by way of a Council decision.

The Commission's proposal

39. In its Communication of 14 December 1993, the Commission stated that "implementing an agreement concluded at Community level by means of a Council decision on a proposal from the Commission at the joint request of the social partners would give the Council no opportunity to amend the agreement. For this reason, the Commission will merely propose, following examination of the agreement between the social partners, the adoption of a decision on the agreement as concluded". In the present case, the proposed instrument is a Directive. It therefore contains the standard clauses relating to the implementation of the Directive at national level.
40. The Commission also took the view that "the Council decision must be limited to making binding provisions of the agreement concluded between the social partners, so the text of the agreement would not form part of the decision but would be annexed thereto".
41. Finally, the Commission announced that "if the Council decides, in accordance with the procedure set out in the last subparagraph of Article 4(2), not to implement the agreement as concluded by the social partners, the Commission will withdraw its proposal for a decision and will examine, in

¹⁰ Council Resolution of 9 February 1999 on the 1999 employment guidelines.

the light of the work done, whether a legislation instrument in the area in question would be appropriate”.

42. Hence, the Commission has not incorporated the text of the agreement in its proposal but simply annexed it thereto. Moreover, it reiterates that, if the Council amends the agreement concluded between the social partners, it will withdraw its proposal.

Legal basis

43. Following the entry into force of the Treaty of Amsterdam, the provisions of the Agreement on Social Policy have been incorporated into Articles 136 - 139 of the Treaty.
44. Article 139(2) of the Treaty provides that “agreements concluded at Community level shall be implemented, in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission”. The agreement on fixed-term work relates to working conditions, which come under Article 137(1) of the Treaty. This is one of the areas where the Council may act by a qualified majority. As a result, Article 139(2) is the proper legal basis for the Commission’s proposal.
45. That Article does not provide for consultation of the European Parliament on requests addressed to the Commission by the social partners. However, in accordance with the undertaking in its Communication, the Commission has kept Parliament informed about the various phases of consultation of the social partners. It is also forwarding this proposal to Parliament so that it can deliver its opinion to the Commission and the Council if it so wishes. The same applies to the Economic and Social Committee.

The form the instrument is to take

46. The term “decision” within the meaning of Article 139(2) of the Treaty refers to one of the binding legislative instruments under Article 249 of the Treaty. It is up to the Commission to propose to the Council the most appropriate of the three binding instruments under the said Article (regulation, directive or decision). In this case, given the nature (framework agreement) and the content of the social partners’ document, it is clear that the framework agreement is intended to be applied indirectly by means of provisions to be transposed into national law by the Member States and/or the social partners. Hence, in that case, the most suitable instrument for its application is a Council Directive. Moreover, in accordance with the undertakings it has given, the Commission considers that the text of the agreement should not be part of the directive but should be annexed thereto.
47. The Commission’s comments on the Articles in its proposal are given below.
- Article 1

- This article confines itself to making the framework agreement between the social partners obligatory in order to enable it to be implemented by a Council decision under Article 139(2) of the Treaty.
- Articles 2 - 5
- These Articles contain the usual provisions for transposition into the national law of the Member States.
- More particularly, Article 2(1) says that the provisions of the Directive prescribe only minimum requirements, giving Member States the chance to adopt stricter measures in the relevant field.
- Article 2(2) is a “non-regression” standard clause that affects Member States which have, at the time of adoption of the Directive, a higher level of protection than that guaranteed by the framework agreement. What this clause means is that there should be no lowering of the general level of protection for workers when the Community Directive is adopted. However, it offers Member States the possibility of adopting different measures as required by their economic and social policies, subject to observance of the minimum requirements prescribed by the framework agreement. It is at any rate clear that the Member States’ room for manoeuvre covers only a level of protection exceeding that guaranteed by the Directive.
- Article 3 obliges Member States to provide penalties which are effective, commensurate with the infringement and constitute a sufficient deterrent. In applying Community law, it is necessary, as in every legal system, on the one hand that those bearing obligations resulting from this law are dissuaded from infringing it and, on the other, that those who do not respect Community law are duly penalised.
- Articles 4 and 5 contain the provisions for transposition into the national law of the Member States.

Justification for the Directive in respect of subsidiarity

48. The proposal for a Council Directive concerning the framework agreement on fixed-term contracts concluded by UNICE, CEEP and the ETUC complies with the principle of subsidiarity and proportionality, as laid down in Article 5 of the Treaty.
49. As regards the principle of subsidiarity, the need to undertake Community action, is justified by the fact that the social partners, under the procedure provided for in Article 3 of the Agreement on Social Policy (Article 138 of the Treaty as amended by the Treaty of Amsterdam), have agreed that it is necessary to undertake action at Community level and have requested the implementation of their Community-level agreement through a Council decision based on a proposal from the Commission, pursuant to Article 4(2) of the Agreement on social policy (Article 139(2) of the Treaty as amended by the Treaty of Amsterdam). Moreover, this initiative is in keeping with the

conclusions of the Essen European Council of December 1994 and its follow-up and, in particular, with the Council Resolutions on the Employment Guidelines of 1998 and 1999.¹¹

50. The Council Directive corresponds to the requirement of proportionality in so far as it only defines the major objectives to be attained by Member States, while allowing the social partners and not the Community to decide on the content.

Conclusion

51. The Council is requested to adopt the proposal for a Directive concerning the framework agreement on fixed-term work concluded by UNICE, CEEP and the ETUC.

¹¹ Council Resolution of 15 December 1997 on the 1998 employment guidelines and Council Resolution of 9 February 1999 on the 1999 employment guidelines.

Proposal for a

COUNCIL DIRECTIVE

concerning the Framework Agreement on Fixed-term Work concluded by UNICE, CEEP and the ETUC

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 Commission¹²;

- (1) Whereas following the entry into force of the Treaty of Amsterdam the provisions of the Agreement on social policy annexed to the Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community as amended by the Treaty of Maastricht have been incorporated into Articles 136 to 139 of the Treaty establishing the European Community;
- (2) Whereas 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) Whereas 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) Whereas the Council has been unable to reach a decision on the proposal for a Directive on certain employment relationships with regard to distortions of competition¹³, as amended¹⁴, nor on the proposal for a Directive on certain employment relationships with regard to working conditions¹⁵;
- (5) Whereas the conclusions of the Essen European Council stressed the need to take measures with a view to “increasing the employment-intensiveness of

¹² OJ C ...

¹³ OJ C 224, 8.9.1990, p. 6.

¹⁴ COM(90) 533 final; OJ C 305, 5.12.1990, p. 8.

¹⁵ OJ C 224, 8.9.1990, p. 4.

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) Whereas the Council Resolution of 9 February 1999 on the 1999 Employment Guidelines invite 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) Whereas 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) Whereas 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) Whereas the general cross-industry organisations 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 on 23 March 1998 of their desire to initiate the procedure provided for in Article 4 of the said Agreement; whereas they asked the Commission, in a joint letter for a further three months; whereas the Commission complied with this request extending the negotiation period to March 30 1999;
- (10) Whereas the said cross-industry organisations concluded, on 18 March 1999, a framework agreement on fixed-term work; whereas 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 said Agreement;
- (11) Whereas the Council, in its Resolution of 6 December 1994 on “prospects for a European Union social policy: a contribution to economic and social convergence in the Union”¹⁶, 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) Whereas the contracting 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;

¹⁶

OJ C 368, 23.12.1994, p. 6.

- (13) Whereas the social partners 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) Whereas the contracting 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; whereas 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) Whereas the proper instrument for implementing the framework agreement is a directive within the meaning of Article 249 of the Treaty; whereas it therefore binds the Member States as to the result to be achieved, whilst leaving them the choice of form and methods;
- (16) Whereas, 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; Whereas 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) Whereas the Commission has drafted its proposal for a Directive, in accordance with its Communication of 14 December 1993¹⁷ 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 level¹⁸, taking into account the representative status of the contracting parties, their mandate and the legality of each clause of the framework agreement;
- (18) Whereas the Commission has drafted its proposal for a Directive taking into account compliance with Article 137(2) of the Treaty which provides that directives in the social policy domain “shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings”;
- (19) Whereas the Commission, in accordance with its Communication concerning the application of the Agreement on social policy, informed the European Parliament by sending it the text of the agreement, accompanied by its proposal for a Directive and the explanatory memorandum;
- (20) Whereas the Commission also informed the Economic and Social Committee by sending it the text of the agreement, accompanied by its proposal for a Directive and the explanatory memorandum;

¹⁷ COM(93) 600, 14.12.1993.

¹⁸ COM(98) 322 final, 20.5.1998.

- (21) Whereas the provisions of this Directive lay down minimum requirements, thus giving the Member States and/or the social partners the option of introducing more favourable provisions;
- (22) Whereas the implementation of this Directive should not serve to justify any regression in relation to the situation which already exists in each Member State;
- (23) Whereas the Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;
- (24) Whereas the implementation of the framework agreement contributes to achieving the objectives under Article 136 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

Article 2

1. Member States may introduce more favourable provisions than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of adoption of this Directive, provided always that the minimum requirements laid down in this Directive are adhered to.

Article 3

Member States shall determine the range of penalties applicable for infringements of national provisions made in implementation of this Directive and shall take all necessary steps to ensure that they are enforced. The penalties must be effective, commensurate with the infringement, and must constitute a sufficient deterrent.

Member States shall notify these provisions to the Commission by the date mentioned in Article 4 at the latest, and any subsequent amendment thereto in good time.

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its adoption, 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 the social partners, 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 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

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 ensure¹⁹ 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 extra-ordinary 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”;

¹⁹ 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.

6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to 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 conferred 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:

- (1) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;
- (2) 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 an 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 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, 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 an 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 account 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.

FRITZ VERZETNITSCH

President of the ETUC

GEORGES JACOBS

President of UNICE

ANTONIO CASTELLANO AUYANET

President of CEEP

EMILIO GABAGLIO

General Secretary
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Secretary General
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JYTTE FREDENSBORG

Secretary General
of CEEP

March 18, 1999

ANNEX

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS

with special reference to small and medium-sized enterprises (SMEs)

Title of proposal:

Proposal for a Council Directive concerning the framework agreement on fixed-term work concluded by UNICE, CEEP and the ETUC.

Document reference number: 99005

The proposal:

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

The aim of this Directive is to implement the framework agreement on fixed-term work under Article 139(2) of the Treaty. This Article provides for implementing agreements concluded by the social partners by way of a Council decision on a proposal from the Commission. The signatories have jointly asked the Commission to present a proposal to the Council. The Commission, in accordance with its Communication²⁰ on the application of the Agreement on social policy, undertook a threefold analysis of the agreement. The Commission considers that all the conditions have been met (representative status of the signatories, legality of the clauses of the agreement and compliance with special provisions on SMEs) and that its proposal for a Council Directive should be adopted.

The impact on business:

2. Who will be affected by the proposal?

All enterprises and all workers may be affected by the framework agreement, irrespective of the sector or size of the enterprise concerned.

3. What will business have to do to comply with the proposal?

As indicated in clause 1 of the framework agreement, enterprises will have to ensure that any discrimination vis-à-vis workers with a fixed-term employment contract or employment relationship is done away with.

While the framework agreement will allow employers full recourse to fixed-term contracts in a manner which takes into account specific national and sectoral

²⁰

COM(93) 600 final.

requirements (see clause 5 of the agreement), it aims at preventing the abuse of fixed-term contracts and relationships.

A number of clauses refer to legislation, collective agreements or national practices, and/or to the social partners at the appropriate level, leaving plenty of room for manoeuvre for individual enterprises. Therefore, the exact requirements placed on businesses will to a large extent be determined at national, sectoral or company level.

4. What economic effects is the proposal likely to have?

Implementation of the framework agreement on fixed-term work will contribute to the second priority laid down by the Essen European Council, viz. the introduction of new, flexible forms of work organisation. In the conclusions of the extra-ordinary 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”. An agreement between the social partners on this point is the outcome of negotiations between the two sides and would seem to be the most appropriate instrument for reconciling the two sides’ interests.

As this is a framework agreement, providing for considerable variation in its application, the precise economic effects can not be determined at EU-level or in advance of its implementation. These economic effects will depend on how the directive is implemented and applied at national, sectoral and company level taking into account particularly the flexibility provided under clause 5 of the agreement.

However, from the statistical point of view it can be mentioned that the proportion of employees in temporary jobs or working under a fixed-term contract in the EU was 11 % for men and 13 % for women in 1997. As the agreement does not cover workers placed by a temporary work agency at the disposition of a user enterprise, the proportion of workers who work under a fixed-term employment contract or employment relationship is under 10 % of the total EU labour force although the proportion has been increasing steadily.²¹ The agreement provides a balanced and flexible framework for the growing tendency to use fixed-term contracts while preventing the abuse of such contracts.

In this context it should also be mentioned that in the second paragraph of the Preamble to the agreement, the two sides of industry recognise that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers.

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements, etc.)?

The specific situation of SMEs was given special attention when the text of the framework agreement was drawn up. Specific reference is made to SMEs, as follows:

²¹ Employment in Europe 1998 –report.

- General consideration 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”.

Clearly, the agreement does not provide for any explicit exception to be made to the basic principle of non-discrimination in favour of SMEs. However, Clause 5, which sets out the steps to be taken to prevent abuse from the use of successive fixed-term contracts, stipulates that these measures shall be introduced "in a manner which takes account of the needs of specific sectors and or categories of workers". Furthermore, Clause 5.1 provides for the introduction of "one or more" of three regulatory steps. This flexibility regarding the implementation of the measures to prevent abuse could obviously be used in a way which takes into account of the special needs of employers and workers in SMEs. This point is further underlined in General consideration 10 that states; "Whereas the 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".

Furthermore, clauses (2(1), 2(2), 3(2), 4(3), 5(2), 7(2)) refer to national laws, collective agreements or practice and/or to the social partners regarding the arrangements for their application. Despite not explicitly mentioning SMEs, these provisions do enable national provisions to be adopted if necessary to take account of their special needs.

These provisions show that the social partners have intended to leave room for manoeuvre in the implementation of the rights and obligation under the agreement which should allow for the specific needs of both workers and enterprises in specific sectors and categories of workers and enterprises to be taken into account, not least SMEs (see also General considerations 5, 8 and 12).

Consultation

6. List the organisations which have been consulted about the proposal and outline their main views.

All the representative organisations²² were given an opportunity to air their views during the first phase of consultation. They were also invited by the Commission to a consultation meeting on the framework agreement. As regards their positions, see paragraphs 22 to 25 of the explanatory memorandum.

²² In conformity with the Communication concerning the application of the Agreement on social policy: COM(93) 600, 14.12.1993.