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PROPOSAL FOR A COUNCIL DIRECTIVE
on
voluntary part-time work

(submitted to the Council by the Commission)

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EXPLANATORY MEMORANDUM

INTRODUCTION

General remarks

1. The attraction of part-time work has been demonstrated in recent decades by its expansion as a percentage of total employment in practically all Member States. In some the demand for part-time work exceeds the supply of vacancies by a markedly larger proportion than the excess demand for jobs in the labour market as a whole. Part-time work represents approximately 9 % of the Community labour force, although the proportion varies from 2-3 % in some countries to 15-20 % in others. In most Member States, approximately 90 % of part-timers are women.
2. Part-time work has attractions for both employers and workers. The flexibility offered by part-time work can help firms to utilise capacity and skills more efficiently. The fact that the employment of part-timers may entail additional staff and organizational cost does not appear to be a disincentive to the recourse to part-time work, especially in certain industries and in the service sector. This pattern of work also meets the needs and wishes of many workers.
3. While its advantages, therefore, are not in question, the growth of part-time work has nevertheless raised certain problems. In particular, part-time workers are often the subject of discriminatory treatment by comparison with full-time workers in relation to their legal status and their employment and working conditions and are also at a disadvantage in terms of attitudes to their place in the labour market. This in turn has consequences for labour market policies, since it has led to a form of segmentation within the labour market which runs contrary to the policy objective in all Member States to develop an integrated and transparent market with the aim of overcoming mismatches and other imbalances.
4. The problems arising from part-time work have been underlined by the European Parliament in its Resolution of 17 September 1981 (1) and by the Economic and Social Committee in its Opinion of 1 June 1978 (2). They are highlighted in more detail in a recent study carried out by the Centre de Recherche "Travail et Société", Université Paris IX-Dauphine (3).
5. There are firstly the problems arising from the kind of jobs in which part-time work tends to be available. Part-time work is preponderantly unskilled. In some Member States there is a tendency for part-time work to be associated with insecure forms of employment such as temporary contracts with private employment agencies or short fixed term contracts, particularly in the case of people taking up employment for the first time or after a long break. It is also noticeable that state subsidized job creation measures result frequently in part-time jobs.

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(1) OJ C 260 of 12.10.1981, p. 154 and seq.

(2) CES 684/78

(3) Study No. 80/26 Programme of Research and Action on the Development of the Labour market.

6. The second set of problems concern working conditions and social security provisions. There is evidence of inadequate cover against unemployment, excessively restricted access to pension schemes and substantial inequalities, even between part-timers, depending on the particular pattern of work organisation. There are, in addition, poor prospects for promotion and training. Discrimination is also evident in remuneration (1) and in the payment of fringe benefits and premiums.

Community action

7. The appropriateness of Community action on part-time working has been under discussion for some years, most recently in the context of the debate on the reorganisation of working time. In its Resolution of 18 December 1979 (2) on the adaptation of working time, the Council recognised that part-time working had become a real factor in the labour market but that it was necessary to clarify the conditions under which it was practised. The Council Resolution laid down principles concerning the improvement of the status and practice of part-time work on which the Community's approach should be based. Since that time the Commission has conducted extensive consultations with the social partners and national experts.

8. The European Parliament, in its Resolution of 11 February 1981 (3) expressed the view that part-time work should not be seen as a form of work intended primarily for women but for all workers - both men and women - who have particular requirements (students, people nearing retirement and the disabled). The Parliament considered that part-time workers should benefit from the same rights as other workers, and called on the Commission to present suitable proposals in the form of a Directive within a year.

9. The Commission shares the view that legislation in the form of a Directive is required. Its purpose will be to guarantee part-timers the same rights as full-time workers with due regard to the special nature of part-time employment. This is consistent with and takes account of recent moves for legislative reform in a number of Member States. No attempt is made in the proposed Directive to resolve all the issues concerned with part-time work; the aim is rather to remove major abuses and discriminatory practices. The proposed Directive seeks to achieve this by requiring the extension to part-time workers of the rules and provisions for full-time workers rather than by creating special rules for part-time work.

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(1) See in this connection case 96/80, Mrs. J.P. Jenkins v. Kingsgate (Clothing Productions) Ltd. (1981) ECR...; OJ No. C 106, 29.4.1980; OJ No. C 94, 24.4.1981, Judgment of the Court of 31.3.1981.

(2) OJ No. C 2, 4.1.1980

(3) Resolution on the position of women in the European Community OJ No. C 50, 9.3.1981, p. 40.

10. The Commission expects that the implementation of legislation on these lines would have the effect of enhancing the status of part-time work and making it a more viable and attractive choice for many workers whose own needs it would meet. In this way, legislation in this field can contribute to wider aims, such as the reorganisation of working time as set out in the Council's Resolution of 18 December 1979.

Without calling into question the basic principle that part-time work should be voluntary, a greater recourse to this type of employment could lead to a wider range of job opportunities, especially for instance among workers nearing retirement. (The Commission is making a separate communication on flexible retirement). Furthermore, the proposed Directive will complement the three Directives already adopted on equal treatment of men and women. Its contribution, in the context of equal treatment, should be to promote in the longer term movement away from the present situation where, for reasons with which everyone is familiar, part-time work is primarily the preserve of women.

11. The proposed Directive does not seek to realise all the aims set out in the Council Resolution of 18 December 1979, but will establish a sound basis for future policy development. Its implementation will help create a more balanced choice, for both employers and workers, between work of full-time duration and work of less than full-time duration. The proposed Directive will need to be supported by further positive action to ensure the greater availability of the part-time work option in all types of employment within an organisation.

Contents

12. In order to develop the Community approach, the proposed Directive therefore sets out a series of articles designed to ensure :

- the implementation of the principle of non-discrimination between part-time and full-time workers ;
- proportional rights with regard to remuneration, holiday payments, redundancy and retirement payments ;
- the provision of a written agreement between employer and worker ;
- priority for workers in an establishment who wish to transfer from part-time to full-time or vice-versa ;
- that part-timers are taken into account in the total count of employees in an undertaking ;
- the application of procedures for informing and consulting of workers' representatives regarding the introduction of part-time work.

LEGAL BASIS

13. As in the case of other Directives adopted recently in the social field, Article 100, in conjunction with Article 117, of the Treaty is the obvious legal basis for this proposal. The differences between the Member States in terms of the protection afforded to part-time workers by national law have a direct effect on the establishment of a common market extending to both the economic and social spheres. There is thus a need for the approximation of laws on this matter, as provided for in Article 100, in order to meet the requirement of Article 117 that living and working conditions be improved so as to permit their harmonization while maintaining progress.

COMMENTS ON THE ARTICLES

Article 1 - Definition

The definition of part-time employment is based on certain national laws and on the principles adopted by the International Labour Organization (ILO). Part-time work is work entered into voluntarily (the parties "agree" on the terms) and performed "on a regular basis", that is to say, usually and not sometimes or occasionally, for a smaller number of hours than those worked by full-time workers. These reduced hours apply both to new employees and to those simply wishing to reduce the amount of work they do.

"Normal hours of work" does not refer to the hours of work actually or usually worked by a full-time worker, neither does it refer to any overtime worked. These "hours of work" may be fixed by law (statutory hours of work) but also in collective agreements as is the custom in some Member States. They may also be fixed by agreements concluded between employers and employees at the level of the establishment or undertaking.

This Directive does not affect provisions as regard seasonal work, occasional work, short-time working and temporary lay-offs in force in the Member States.

Article 2

It is not the aim of this Directive to harmonize all the national provisions on part-time work; it is an "outline directive" which sets out in this Article the areas in which part-time workers should be entitled to the same rights as their full-time counterparts. The Council has already approved outline provisions of this kind in Directive 76/207/EEC of 9 February 1976 (1) on equal treatment for men and women. The phrase "entitlement to participate actively or passively in bodies representing employees" encompasses union rights, where at present, the representation of part-time workers tends to be limited. In keeping with the Council Directives on "collective redundancies" and "safeguarding of employees rights", this Directive does not affect Member States' ability to determine for themselves which bodies shall represent employees in accordance with their national legislation or practices.

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(1) OJ No L 39, 14.2.1976.

Article 3

The social security schemes currently in force in the Member States are not entirely neutral as regards part-time work. Problems arise in connection with both statutory and occupational schemes. These problems concern rules on the payment of contributions, the relationship between contributions and benefits and the determination of minimum conditions relating to hours of work and level of earnings required to benefit from statutory or complementary social security schemes. Such thresholds (e.g. 15 hours a week in the Federal Republic of Germany and minimum earnings of UKL 23 a week in the United Kingdom) may have both advantages and drawbacks. If the thresholds are very low, certain categories of persons may abuse the social protection system by working only a notional number of hours, thus acquiring unjustified benefits.

If, on the other hand, the thresholds are too high, persons needing social protection will not be able to benefit from the schemes and, as a consequence, will be denied any benefits that might have accrued to them.

Some Member States, on the contrary, tend to include part-time workers in the social security scheme, no matter how few hours they work, thus affording them a measure of social protection. Member States are thus faced with the problem of financing such a scheme. In view of these difficulties, the Commission has refrained in this proposed directive from fixing a threshold at Community level, preferring to leave the choice of arrangements for membership of social security schemes to the Member States. The Commission hopes it will be possible to approximate the thresholds at Community level in the future, especially with a view to bringing down the higher thresholds at present prevailing in certain Member States.

Article 4

Whereas some rights are 'indivisible', others should be taken into consideration where hours worked are less than normal hours of work. Par. 1 of this Article deals with a number of areas in which the application of the principle of proportional entitlement should be obligatory.

Application of this principle should be obligatory in the following areas :

- the remuneration of part-time workers : the basis for calculating their pay should be the same as that applying to workers doing equivalent full-time job ;
- holiday payments : it should be recalled here that the number of days of annual holiday granted should be based on the principle of non-discrimination whilst the principle of proportional entitlement should apply only to the annual holiday payments ;

- redundancy payments or retirement benefits : it is particularly important that the principle of proportional entitlement should be guaranteed in respect of payments so that part-time workers are afforded fair protection.

As regards par. 2 of the Article, a similar provision has already been adopted by the Council for the Directives relating to labour law (1). The purpose of harmonization is to improve the position of part-time workers and not to prevent the Member States, if they so wish, from taking more favourable measures to benefit this category of workers.

Article 5

Working conditions, notably the nature of the job, hours of work and arrangements for the distribution of these hours should be put down in writing in order to ensure that they are established with the utmost clarity. As not all Member States have made provision in their laws for a requirement to conclude a written contract of employment even in the case of full-time workers, it was not considered appropriate in the context of this Directive to prescribe a written contract of employment for part-time workers. On the other hand, the working conditions of part-time workers should be put down in writing in view of the spread of new forms of work such as variable working hours and the 'Kapovaz system', where workers are called in as and when needed. Moreover, where working conditions exist in writing the work actually performed can be more easily monitored and it also enables part-time workers to plan their working and leisure time more efficiently. Unexpected changes to working hours can have a disruptive effect on the family and social life of part-time workers and this should be avoided if at all possible.

Article 6

The aim of this Article is to underline the voluntary nature of part-time work, which should be voluntary not only as regards access to a job but also make it easier for part-timers to enter or return to full-time employment. It should be recognized that skills and occupational experience acquired by part-timers in the establishment or undertaking justify granting them priority over candidates from outside the undertaking when a vacancy occurs in a full-time post corresponding to their skills or occupational experience.

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(1) Directive 75/129/EEC, Article 5; OJ No L 48, 22.5.1975
Directive 77/187/EEC, Article 7; OJ No L 61, 5.3.1977

This Article does not however seek to give part-time workers an automatic right of access to full-time work. Priority in the allocations of such jobs is confined to cases where full-time posts are vacant or made available by the undertaking.

Similarly, the Article affords workers who so wish greater opportunities for transferring from part-time to full-time work and vice-versa once existing discrimination vis-à-vis part-time work has been abolished. It is designed to underscore the principle of non-discrimination contained in this Directive and to stress that no special rules exist for part-time work.

Article 7

This Article confines itself to establishing the principle that part-time workers should be 'taken into account' in the total sum of employees in an undertaking, particularly for the purposes of determining the social obligations of the undertaking which are linked to the number of workers employed, but leaves the choice of arrangements for this calculation to the Member States. Part-time workers shall be taken into account at least in the same proportion as the ratio between their working hours and those of the full-time workforce.

Article 8

This Article refers to the already established information and consultation procedures in the Member States and does not lay down special rules. Its aim is to place any recourse to part-time work for whatever reason (recruitment, organizational changes or the introduction of new working practices, etc..) on the list of items that should be the subject of information and/or consultation procedures involving the employees of the undertaking in question where such a procedure is provided for full-time workers by existing laws. Some Member countries already have such procedures where an employer takes individual measures affecting his employees such as recruitment, transfers on mergers. In such cases, recourse to part-time work should also be notified to the employees of the undertaking in question. It is of course desirable for this practice to be adopted in all Member States in the form of arrangements adapted to suit national circumstances.

Article 9

A similar provision was adopted by the Council in the Directive on equal treatment for men and women (1). Similar principles have been adopted in this Directive, which bestows equal rights on full-time and part-time workers.

(1) Council Directive 76/207/EEC - Articles 3, 4 and 5

Final provisions

These provisions are in line with those adopted by the Council in recent Directives drawn up in the social field.

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PROPOSAL FOR A DIRECTIVE

ON

VOLUNTARY PART-TIME WORK

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 100,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Council, in its resolution adopted on 18 December 1979 (1) on the adaptation of working time, stated in relation to part-time working that it 'must be voluntary, open to both men and women and must not be imposed on persons who wish to work full time' ;

Whereas the Parliament, in its resolution adopted on 17 September 1981 (2) on employment and the adaptation of working time stated in relation to part-time working that 'this form of work must be the result of a voluntary choice' and 'steps must be taken to prevent discrimination' ;

Whereas although part-time work has become a feature of the labour market, measures have yet to be taken to guarantee part-time workers the same rights as full-time employees while taking into account the special features of part-time work ;

Whereas this measure is designed to complement in the field of part-time work existing legislation on the realisation of equal treatment for men and women ;

Whereas there are still significant differences between the Member States concerning the implementation of the principle of non-discrimination between part-time and full-time workers, and these differences can distort competition between undertakings and affect the functioning of the common market ;

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(1) OJ No C 2 of 4.1.1980

(2) OJ No C 260 of 12.10.1980.

Whereas it is therefore necessary to remedy this situation by approximating the laws of the Member States while maintaining the improvement referred to in Article 117 of the Treaty,

HAS ADOPTED THIS DIRECTIVE :

Article 1

This Directive covers part-time work.

For the purpose of this Directive, the following definitions shall apply :

- normal hours of work : the normal working hours for any particular category of worker established by legislation, by collective agreement or by agreement concluded at the level of the individual establishment or undertaking ;
- full-time work : work performed on a regular basis for the normal hours of work ;
- part-time work : work performed on a regular basis in respect of which an employer and a worker agree to shorter working hours than the normal hours of work ;
- full-time (part-time) worker : a worker who agrees with his or her employer to carry out full-time (part-time) work.

Article 2

Part-time workers shall not be discriminated against as compared with full-time workers in respect of working conditions, rules governing dismissal, entitlement to participate actively or passively in bodies representing employees and access to vocational training, promotion, social facilities and medical care. This is hereinafter referred to as the 'principle of non-discrimination'.

Article 3

1. Part-time workers shall not be excluded from statutory or occupational social security schemes. Their contributions to and benefits from such schemes shall be made on the same basis as for full-time workers, taking account of the hours worked by the part-time workers and/or the remuneration received.
2. Member States shall be exempt from applying the provisions of paragraph 1 to part-time workers whose working hours and/or remuneration are below the threshold of eligibility for statutory or occupational social security schemes.

Article 4

1. The remuneration, holiday pay, redundancy pay and retirement benefits of part-time workers shall, taking account of the hours of work, be in proportion to those of full-time workers doing an equivalent job.
2. Paragraph 1 shall be without prejudice to the ability of the Member States to allow more favourable treatment to be given to part-time workers by means of laws, regulations and administrative provisions, collective agreements or other agreements.

Article 5

The nature of the part-time work, the hours of work and the arrangements for the distribution of these hours shall be specified in a written agreement between the employer and the worker.

Article 6

Part-time workers wishing to occupy or return to a full-time job or full-time workers wishing to occupy or return to a part-time job in the same establishment or undertaking shall have priority over candidates outside the undertaking where a vacancy occurs in a situation corresponding to their skills or occupational experience.

Article 7

Part-time workers shall be taken into account, at least in proportion to their working hours, in the total count of employees in an establishment or undertaking, particularly for the purposes of determining the social obligations which are linked to the number of workers employed.

Article 8

Recourse to part-time work shall come within the scope of the procedures for the information and consultation of workers' representatives as are in force for full-time workers in the Member States.

Article 9

1. Any laws, regulations and administrative provisions in breach of the preceding Articles shall be abolished.
2. Any provisions in breach of the preceding Articles which are included in collective agreements or individual contracts of employment shall be, or may be declared, null and void.

Article 10

1. Member States shall implement the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1st January 1984 and shall notify them to the Commission without delay.
2. Member States shall communicate to the Commission the texts of the laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 11

Within two years of the expiry of the period referred to in Article 10, Member States shall forward to the Commission all necessary information to enable it to draw up a report on the application of this Directive for submission to the Council.

Article 12

This Directive is addressed to the Member States.
