

EUROPEAN PARLIAMENT

Working Documents

1982-1983

4 March 1983

DOCUMENT 1-1314/82

Report

drawn up on behalf of the Committee on Social Affairs
and Employment

on the proposal from the Commission of the European
Communities to the Council (Doc. 1-292/82 - COM(82)
155 final) for a directive concerning temporary work

Rapporteur: Mr B. PATTERSON

PE 80.338/fin.



By letter of 25 May 1982, the President of the Council of the European Communities requested the European Parliament to deliver an opinion, pursuant to Article 100 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a directive concerning temporary work.

On 3 June 1982, the President of the European Parliament referred this proposal to the Committee on Social Affairs and Employment as the committee responsible and to the Committee on Economic and Monetary Affairs, the Legal Affairs Committee and the Committee of Inquiry into the Situation of Women in Europe for their opinions.

At its meeting of 24 June 1982 the Committee on Social Affairs and Employment appointed Mr Patterson rapporteur.

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The committee considered the Commission's proposal at its meetings of 13 July 1982, 23 September 1982, 19 October 1982, 4/5 November 1982 and 1 December 1982.

At the last meeting, the committee decided by 15 votes to 1 and 1 abstention to recommend to Parliament that it approve the Commission's proposal subject to the amendments contained in this report.

The following took part in the vote: Mr Papaefstratiou, chairman; Mr Peters, first vice-chairman; Mr Patterson, rapporteur; Mr Barbagli, Mr Boyes, Mr Calvez, Mr Ceravolo, Mr Chanterie, Ms Clwyd, Mrs Duport, Mr Eisma, Mr Ghergo, Mrs Kellett-Bowman, Mrs Maij-Weggen, Mrs Salisch, Mrs Squarcialupi and Mr Tuckman.

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At its meetings of 17 January 1983 and 16 February 1983 the committee then considered the motion for a resolution as a whole and adopted it at the last meeting by 12 votes to 3, with 4 abstentions.

Present: Mr Papaefstratiou, chairman; Mr Peters, first vice-chairman; Mr Pattison and Mr Frischmann, vice-chairmen; Mr Patterson, rapporteur; Mr Barbagli, Mr Boyes, Mr Brok, Mr Calvez, Mrs Cassanmagnago Cerretti, Mr Ceravolo, Ms Clwyd, Miss de Valera, Mrs Maij-Weggen, Mr van Minnen, Mr Prag (deputizing for Sir David Nicholson), Mrs Salisch, Mrs Squarcialupi (deputizing for Mr Damette), Mr Tuckman and Mr Vernimmen (deputizing for Mrs Charzat).

The opinions of the Committee on Economic and Monetary Affairs, the Legal Affairs Committee and the Committee of Inquiry into the Situation of Women in Europe are attached.

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The Committee on Social Affairs and Employment hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement:

- I. Proposal for a Council directive concerning temporary work
(COM(82) 155 final)

Amendments tabled by the Committee on
Social Affairs and Employment

Text proposed by the Commission
of the European Communities

Recitals

Recitals

The Council of the European
Communities,

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

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,

Amendments tabled by the Committee on
Social Affairs and Employment

Text proposed by the Commission
of the European Communities

Whereas the Council adopted on 18 December 1979 a Resolution on the adaptation of working time¹ which states with regard to temporary work that 'Community measures in support of action by Member States should be undertaken to ensure that temporary work is supervised and that temporary workers receive social protection';

Whereas the European Parliament adopted on 17 September 1981 a Resolution² which states that temporary work 'is assuming disquieting proportions' and that the Commission should therefore 'propose to the Council a clear definition of temporary work and guidelines for ensuring that it is not abused';

Whereas permanent employment must remain the rule;

Whereas in all cases where temporary workers do not enjoy the same protection as permanent workers recourse to temporary labour should therefore be confined to situations where it is economically justified and restricted in terms of duration of contract;

¹ OJ No C 2, 4.1.1980

² OJ No C 260, 12.10.1981

Amendments tabled by the Committee on
Social Affairs and Employment

Text proposed by the Commission
of the European Communities

Whereas action should be taken to eliminate abuses with regard to the two main forms of temporary employment, namely the supply of workers by temporary employment businesses and the direct recruitment of workers on fixed duration contracts, and temporary labour subcontracting with delegation of authority should be treated as the supply of workers by temporary employment businesses;

Whereas permanent workers must be protected against the misuse of labour supplied by temporary employment businesses or engaged on the basis of fixed-duration contracts;

Amendments tabled by the Committee on
Social Affairs and Employment
Am./Sixth recital/58

'Whereas employers' operational flexibility must be maintained, with due allowance for the rights of their employees, in particular ... (rest unchanged)'

Text proposed by the Commission
of the European Communities

Whereas employers' operational flexibility must be maintained, in particular where they are subject to short-term fluctuations in staff numbers or economic activity;

Whereas national arrangements for the supervision of the activities of temporary employment businesses vary greatly from one Member State to another and are, indeed, non-existent in certain of them; whereas these disparities distort the conditions of competition between undertakings from different Member States, hindering the operation of the common market, and a solution should therefore be found, notably by means of appropriate arrangements for the authorization and supervision of temporary employment businesses;

Am./Eighth recital/59

'Whereas steps should be taken to ensure that certain temporary employment businesses do not become concentrated in those Member States....(rest unchanged)'

Whereas steps should be taken to ensure that temporary employment businesses do not become concentrated in those Member States where the laws are least strict and workers are least well protected; whereas

Amendments tabled by the Committee on
Social Affairs and Employment

Text proposed by the Commission
of the European Communities

these problems cannot be solved at national level alone and should therefore be remedied by approximating the relevant laws while maintaining progress as required under Article 117 of the Treaty;

Whereas the activities of temporary employment businesses are taking on an increasingly international character, with businesses established in one Member State operating in others either by recruiting or supplying labour there or by setting up subsidiaries, agencies or branches there; whereas the disparity of the rules from country to country creates problems at Community level which cannot be solved at national level alone;

Whereas temporary employment businesses should be prevented from exploiting the rules on freedom to provide services and freedom of movement for workers in such a way as to avoid the rules applicable in other Member States,

HAS ADOPTED THIS DIRECTIVE:

SECTION I - DEFINITIONS

Article 1

Article 1

This Directive relates to temporary work as opposed to permanent work.

For the purposes of this Directive the following definitions shall apply:

- (a) Permanent work : regular employment undertaken pursuant to a contract of employment or employment relationship of indefinite duration.
- (b) Supply of temporary workers :
The activity engaged in by any natural or legal person regularly entering into contracts of employment or employment relationships with workers in search of jobs for the purpose of placing these workers temporarily at the disposal of another business for the performance of an assignment.

The term 'supply of temporary workers' shall also be deemed to cover activities engaged in pursuant to contracts which, whilst ostensibly relating to temporary labour subcontracting, in reality involve the delegation of authority to the user undertaking.

Amendments tabled by the Committee on
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Text proposed by the Commission
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- (c) Temporary worker: Any worker who enters into a contract of employment or an employment relationship with a temporary employment business for the purpose of carrying out an assignment with a user undertaking.
- (d) Permanent worker: Any worker who enters into a contract of employment of indefinite duration with an employer.
- (e) Temporary employment business: Any natural or legal person entering into temporary employment contracts or temporary employment relationships in the capacity of employer.

Am./Art. 1/2

'(f) Temporary employment contract:
A contract or employment relationship entered into between a temporary employment business and a worker under which the worker agrees to be placed at the disposal of a user undertaking under a labour supply contract.

- (f) Temporary employment contract:
The contract or employment relationship entered into by the temporary employment business and the temporary worker.

Amendments tabled by the
Committee on Social Affairs
and Employment

Text proposed by the Commission
of the European Communities

g) User undertaking: Any natural or legal person to whom workers are supplied within the meaning of point (b).

h) Labour supply contract: The contract between the temporary employment business and the user undertaking by virtue of which a temporary worker is placed at the disposal of the user undertaking for the performance of an assignment.

i) Assignment: A temporary job of work performed by a temporary worker for a user undertaking.

j) Fixed-duration contract of employment: Any contract of employment or employment relationship establishing a direct legal relationship between a worker and an employer, whose termination of which is determined by objective conditions such as a specified date of expiry, completion of a specified task or the occurrence of a specified event.

SECTION II - SUPPLY OF TEMPORARY WORKERS

Article 2

Am./Art. 2/17 and 75

(1) 'The Member States shall ensure that temporary

Article 2

(1) Member States shall ensure that no temporary employment

Amendments tabled by the
Committee on Social Affairs
and Employment

Text proposed by the Commission
of the European Communities

Am./Art. 2/17 and 75 (cont.)

employment businesses' entitle-
ment to pursue their activities
shall be subject to authorization
from the competent authorities.
The Member States shall moreover
ensure that the activities of
businesses so authorized are
adequately supervised and shall
provide for appropriate action
in case of failure to fulfil
the fundamental obligations
laid down in this Article'.

business may pursue its activities
without obtaining authorization from
the competent authorities. They shall
moreover ensure that the activities
of businesses so authorized are
adequately supervised'.

Am./Art. 2/23

- (1a) 'Within a period of two years
following the adoption of this
Directive, the Council shall
adopt, on a proposal from the
Commission and having received
the opinions of the European
Parliament and the Economic and
Social Committee, legal instruments
for the conditions to which
authorization shall be subject.
Member States shall then adapt
their conditions for authori-
zation in accordance with these
legal instruments within a period of
three years. Thereafter, a
temporary employment business
authorized in one Member State

Amendments tabled by the
Committee on Social Affairs
and Employment

Text proposed by the Commission
of the European Communities

Am./Art. 2/23 (cont.)

shall be entitled to pursue
its activities in another
Member State without further
authorization'.

Am./Art. 2/24

1b) 'All temporary employment
businesses having obtained such
authorization shall print their
national authorization number on
all official stationery'.

Am./Art.2/25

(2) 'Until paragraph 1a of this
Article has been implemented in full
by all Member States, any Member State
(host country) ... (rest unchanged)'

(2) Any Member State (host country) may prohibit the pursuit of activities within its territory by a temporary employment business authorized in another Member State (country of origin) if the business concerned does not fulfil the specific conditions which the host country imposes on its own nationals in the general interest.

Am. Art.2/26,76 and 77.

(3) 'It shall be unlawful to engage in the supply of temporary workers without the authorization referred to in this Article. Where temporary workers have been

(3) It shall be unlawful to engage in the supply of temporary workers without the authorization referred to in this Article. Where temporary workers have been supplied

Amendments tabled by the
Committee on Social Affairs
and Employment

Text proposed by the Commission
of the European Communities

Am./Art.2/26, 76 and 77 (cont.)

supplied by an unauthorized
employment business, the user
undertaking shall bear joint and
several liability, in the event of
default by the temporary employ-
ment business, for the social
security contributions, rem-
uneration, benefits and other
allowances due to the
temporary workers concerned
including, where appropriate,
the cost of repatriation'.

unlawfully, the user undertaking
shall bear a secondary liability,
in the event of default by the
temporary employment business, for
the social security contributions,
remuneration and other benefits
due to the temporary workers
concerned including, where approp-
riate, the cost of repatriation.

Am./Art. 2/78

To be inserted at the end of
the paragraph:

'The temporary worker and the
temporary employment business are
bound by a contract of unlimited
duration'.

Article 3

Am./Art. 3/27

(1) 'Member States shall ensure
that, by virtue of labour law,
collective agreements or customary
industrial practice, social benefits
shall be enjoyed by temporary workers
employed under labour supply contracts
on the same terms as other workers
occupying equivalent posts'.

Article 3

(1) Labour supply contracts may be
concluded only in the following
circumstances:

- a) a temporary reduction in the
workforce, or
- b) a temporary or exceptional
increase in activity.

Amendments tabled by the
Committee on Social Affairs
and Employment

(2) 'For a period not exceeding five years after the adoption of this Directive, Member States may prohibit the conclusion of labour supply contracts of employment except where it is reasonable to predict that the posts concerned will only be temporarily available'.

Article 4

Text proposed by the Commission
of the European Communities

(2) In cases covered by paragraph 1(b), the maximum duration of each assignment shall be three months, renewable once. An extension beyond six months may, however, be authorized by the competent authorities where it can be shown that this is justified by exceptional circumstances.

(3) No post shall be occupied by successive temporary workers after expiry of the periods fixed in paragraph 2.

(4) Member States may derogate from the provisions of paragraph 1 where the social benefits accorded by virtue of labour law, collective agreements or customary industrial practice in the undertaking are enjoyed by temporary workers on the same terms as permanent workers.

Article 4

Temporary workers may not be excluded from social security schemes and their contributions and benefits shall be calculated on the same basis as for permanent workers, subject where applicable to special provisions taking into account the duration of employment and/or the remuneration received.

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 5

Am./Art. 5/79

(1) 'Where a temporary employment contract is not of indefinite duration the duration of employment shall be clearly defined in writing between the temporary employee and the temporary employment business in terms either of a specified date of expiry or of completion of a specified task or of the occurrence of a specified event'.

Am./Art. 5/72

(2) 'In addition, the nature of the work to be performed, the place of work and working hours, the agreed remuneration and the allowances to which the temporary worker is entitled must be defined in writing as between the temporary employment business and the worker'.

Am./Art. 5/73

To be inserted:

(3) 'Sanctions must be applied by Member States against undertakings employing temporary workers with no written contract'.

Text proposed by the Commission
of the European Communities

Article 5

(1) Where a temporary employment contract is not of indefinite duration the duration of employment shall be clearly defined in writing in terms either of a specified date of expiry or of completion of a specified task or of the occurrence of a specified event.

(2) In addition, the nature of the work to be performed, the place of work and working hours, the agreed remuneration and the allowances to which the temporary worker is entitled shall be defined in writing as between the temporary employment business and the worker.

(3) In the event of the contract not being duly evidenced in writing, it shall be subject to the rules governing contracts of employment of indefinite duration .

Amendments tabled by the
Committee on Social Affairs
and Employment

Text proposed by the Commission
of the European Communities

(4) Clauses prohibiting the conclusion of a contract of employment between the user undertaking and the temporary worker after the completion of the latter's assignment shall be null and void or capable of being declared so.

Clauses compelling the user undertaking to pay compensation to the temporary employment business in the event of the conclusion of such a contract of employment shall likewise be null and void or capable of being declared so.

Article 6

Article 6

Am./Art. 6/61, 80 and 74

'Unless laid down within the framework of collective agreements concluded within the temporary employment business or for the temporary employment sector, the remuneration received by a temporary worker shall be at least equal to that received by workers with equivalent professional skills, experience and duties in the user undertaking or that provided for in the collective agreement for the sector concerned'.

Unless laid down within the framework of collective agreements concluded within the temporary employment business or for the temporary employment sector, the remuneration received by a temporary worker shall be comparable to that received by workers occupying equivalent posts in the user undertaking or that provided for in the collective agreement for the sector concerned.

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 7

Am./Art. 7/65, 66 and 67

1. In the event of a temporary employment contract being terminated unilaterally by the(rest unchanged)

(2) 'In the event of a fixed-duration contract being terminated unilaterally by the employee before the expiry date specified, before completion of the assignment specified or before the occurrence of the event specified, the employer shall have the right to deduct any damages incurred before the last payment of remuneration'.

(3) 'The provisions of paragraphs 1 and 2 shall be without prejudice to the application of national law concerning 'force majeure' or serious misconduct on the part of the worker and/or the employer'.

Text proposed by the Commission
of the European Communities

Article 7

(1) In the event of a temporary employment contract being terminated by the temporary employment business before the date of expiry specified, before completion of the task specified or before occurrence of the event specified, the temporary worker shall be entitled to compensation equal to the remuneration which he would have received had the contract not been terminated early.

(2) The provisions of paragraph 1 shall be without prejudice to the application of national law concerning "force majeure" or serious misconduct on the part of the worker.

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 8

Am./Art. 8/38 and 20

Procedures for informing workers

(1) The user undertaking shall be required to inform the representatives of its employees where it has recourse to temporary workers on the basis of Article 3.

To this end, the user undertaking shall be required to communicate either orally or in writing to the representatives of the employees all pertinent information with regard to:

- the reasons for having regard to temporary workers, except in the case of the application of Article 3(2);
- the duration of the assignments involved;
- the number of temporary workers involved;
- the occupational qualifications required;
- the intended level of remuneration (information to be provided to the

Text proposed by the Commission
of the European Communities

Article 8

Procedures for informing workers

(1) The user undertaking shall be required to inform the representatives of its employees before having recourse to temporary workers on the basis of Article 3(1) (b) or (4).

To this end, the user undertaking shall be required to communicate in writing to the representatives of its employees all pertinent information with regard in particular to:

- the reasons for having recourse to temporary workers, except in the case of the application of Art. 3(4);
- the duration of the assignments involved;
- the number of temporary workers involved;
- the occupational qualifications required;
- the intended level of remuneration (information to be provided to the user undertaking by the temporary employment business, if necessary);

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 8

.Am./Art. 8/38 and 20 (cont)

- user undertaking by the temporary employment business, if necessary);
- the amount to be paid by the user undertaking to the temporary employment business;
 - the place and hours of work and the particular nature of the jobs to be performed.

(2) This information shall be made available periodically and on a global basis by the user undertaking to the representatives of its employees'.

Article 9

Text proposed by the Commission
of the European Communities

Article 8

- the amount to be paid by the user undertaking to the temporary employment business;
- the place and hours of work and the particular nature of the jobs to be performed.

Article 9

(1) Temporary workers shall, for the duration of their assignment, be subject to the laws, regulations, and administrative and collectively agreed provisions, and the customary practice in force in the user undertaking as regards working conditions.

(2) Working conditions shall include all matters relating to working hours, night work, weekly rest periods,

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 10

Am./Art. 10/42

'Temporary workers supplied on the basis of Article 3 shall be deemed to form part of the user undertaking's workforce calculated as an annual average for the purposes of ... etc.'
(rest unchanged)

Article 11

Am./Art. 11/82, 44, and 81

'Temporary workers shall not be recruited or used in the event of a strike or lock-out at the user undertaking.'

Text proposed by the Commission
of the European Communities

public holidays, safety and health, and special medical surveillance to the extent that the rules in force require this for the work in question.

(3) Temporary workers shall have access to any communal social facilities provided in the user undertaking.

Article 10

Temporary workers supplied on the basis of Article 3(1) (b) or (4) shall be deemed to form part of the user undertaking's workforce for the purposes of determining such of that undertaking's social obligations under law, collective agreements or customary industrial practice in the undertaking as are linked to the number of workers employed.

Article 11

Temporary workers shall not be recruited or used to perform the duties of employees who are on strike.

New Article 11a

This Directive shall not apply to
sea transport where equivalent collective
agreements exist between shipping
companies and seafarers' unions
for employment provided through
the intermediary of a centralised
supply office'.

SECTION III - SPECIAL PROVISIONS

THE CROSS-FRONTIER SUPPLY OF TEMPORARY WORKERS

Article 12

Article 12

(1) Member States shall exchange all information on the supply of temporary workers by employment businesses.

To this end, they shall designate liaison offices, either assigning this task to an existing body or creating a new body for the purpose. The relevant details shall be communicated to the other Member States and the Commission.

(2) The liaison offices shall exchange information relating to:

- laws, regulations and administrative provisions in force with regard to

Amendments tabled by the
Committee on Social Affairs
and Employment

Am./Art. 12/83

(3) 'Each liaison office shall inform the liaison offices in the other Member States as quickly as possible of decisions concerning the granting, refusal, suspension or withdrawal of authorization. (Rest unchanged)'

Article 13

Text proposed by the Commission
of the European Communities

the supply of temporary workers;

- any amendments thereto.

(3) Each liaison office shall inform the liaison offices in the other Member States as quickly as possible of decisions concerning the refusal, suspension or withdrawal of authorization. The liaison offices shall further inform each other of any abuses arising in connection with the application of laws, regulations and administrative provisions on the supply of temporary workers.

(4) The information referred to in Paragraph (3) shall also be communicated for information purposes, to the European Coordination Office and the Technical Committee on the Free Movement of Workers established by Council Regulation (EEC) No 1612/68(1).

Article 13

(1) Member States shall, with a view more particularly to ensuring effective mutual assistance in administrative matters, take the necessary steps to establish genuine coordination and cooperation between the authorities responsible for matters concerned with the supply of temporary workers.

(2) The assistance referred to in Paragraph (1) shall consist in particular in replying directly and without undue delay to any reasoned request for information concerning problems with regard to the supply of temporary workers, apparent abuses and possible cases of unlawful cross-frontier activities within the meaning of this Directive. Mutual administrative assistance shall be provided free of charge.

(3) The authorities of the Member States shall assist each other in connection with:

- the consideration of applications for authorization to engage in the supply of temporary workers;
- the supervision of authorized temporary employment businesses;
- the prosecution of unauthorized temporary employment businesses;
- the detection and prosecution of businesses engaged in the supply of temporary workers under cover of temporary labour subcontracting;
- the payment of the unsatisfied claims of temporary workers carrying out assignments in one Member State other than that in which the temporary

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Text proposed by the Commission
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employment business has been
declared insolvent in accordance
with Council Directive 80/987/EEC¹.

Am./Art. 13/45

New Article 13a

'Member States shall make such
legal provisions as are
necessary to ensure that the
provisions of Article 2(3)
can be enforced
in all cases of cross-frontier
supply of temporary workers'.

Article 14

Article 14

The Advisory Committee on the Free
Movement of Workers created by
Regulation (EEC) No 1612/68 shall
be responsible for reviewing the
results of the exchanges of information,
collaboration and mutual assistance
between Member States provided for
in this Directive.

(1) OJ No. L 283, 28.10.1980, page 23

SECTION IV - FIXED-DURATION CONTRACTS

Article 15

Am./Art. 15/46a and 47

(1) Fixed-duration contracts of employment may, as a rule, be concluded only where it is reasonable to predict that the posts will only be temporarily available.

(2) Member States may exclude contracts - or employment relationships - from the application of this paragraph by reason of their special nature, the special nature of the work

Article 15

(1) An employer may conclude a fixed-duration contract of employment only in the following circumstances:

- (a) to cope with a temporary reduction in the workforce;
- (b) to cope with a temporary or exceptional increase in activity or seasonal activities;
- (c) for the execution of a clearly defined occasional task of a transient nature;
- (d) where the special nature of the work is such as to justify the conclusion of fixed-duration contracts and contracts of employment of indefinite duration are not customary;
- (e) in connection with the launching of a new activity of uncertain duration.

(2) Member States may exclude certain contracts of employment - or employment relationships - from the application of this Section by reason of their special nature or of the special needs of certain sectors

Amendments tabled by the
Committee on Social Affairs
and Employment

Am./Art. 15/46a and 47 (cont.)

involved, customary practice or
special business reasons such
as the launching of a new activity
of uncertain duration.

Article 16

Am./Art. 16/ 63 and 64

(1) 'The duration of the
contract shall be ...'
(rest unchanged)

(2) 'In addition, the nature of
the work to be performed, the place
of work and working hours, the

Text proposed by the Commission
of the European Communities

of activity. Such contracts are
listed in an annex to this
Directive.

(3) In the event of a breach of
the above provisions, the contract of
employment shall be deemed to be of
indefinite duration.

(4) Member States may derogate from
the provisions of paragraphs (1) and
(3) where workers engaged on fixed-
duration contract enjoy the social
benefits accorded to permanent workers
by virtue of labour law, collective
agreements or the customary industrial
practice of the undertaking.

Article 16

(1) The duration of employment shall
be clearly defined in writing in
terms either of a specified date of
expiry or of completion of a specified
task or of the occurrence of a
specified event.

(2) In addition, the nature of the
work to be performed, the place of
work and working hours, the agreed

Amendments tabled by the
Committee on Social Affairs
and Employment

Am./Art. 16/ 63 and 64 (cont.)

agreed remuneration, the worker's entitlements with regard to annual holiday payments and the conditions governing early termination shall be defined in writing as between the employer and the worker; (rest unchanged)'

Article 17

Amendments Nos. 80, 61 and 74/
Art. 17 (c.f. Article 6)

'Unless laid down within the framework of collective agreements, concluded within the undertaking or at sectoral level, the remuneration received by a worker on fixed-duration contract shall be at least equal to that received by permanent workers with equivalent professional skills,

Text proposed by the Commission
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remuneration and the worker's entitlements with regard to annual holiday payments shall be defined in writing as between the employer and the worker; the document setting out this information shall also specify the duration of any probationary period'.

(3) In the event of the contract not being duly evidenced in writing, it shall be subject to the rules governing contracts of employment of indefinite duration, except where the terms and conditions of employment of a specified category of workers are defined by a collective agreement.

Article 17

Unless laid down within the framework of collective agreements concluded within the undertaking or at sectoral level, the remuneration of a worker on fixed-duration contract shall not be less than that received by permanent workers occupying equivalent posts.

Amendments tabled by the
Committee on Social Affairs
and Employment

Text proposed by the Commission
of the European Communities

Am./Art. 17/80, 61 and 74 (see Art. 6)

(cont.)

experience and duties in the user
undertaking or that provided for
in the collective agreement for
the sector concerned'.

Article 18

Article 18

Am./Art. 18/ 65, 66 and 67 (see Art. 7)

(1) 'In the event of a fixed-
duration contract being terminated
unilaterally by the employer before
the date of expiry ... (etc.)'
(rest unchanged)

(1) In the event of a fixed-
duration contract being terminated
by the employer before the date
of expiry specified, before completion
of the task specified or before the
occurrence of the event specified,
the worker shall be entitled to
compensation equal to the
remuneration which he would have
received had the contract not been
terminated early.

(1a) 'In the event of a fixed-
duration contract being terminated
unilaterally by the employee before
the expiry date specified, before
completion of the task specified or
before the occurrence of the event
specified, the employer shall have
the right to deduct any damages
incurred before the last payment
of remuneration'.

Amendments tabled by the
Committee on Social Affairs
and Employment

Am./Art. 18/ 65,66, and,67 (cont.)

(2) 'The provisions of paragraph (1) shall be without prejudice to the application of national law concerning 'force majeure' or serious misconduct on the part of the worker and/or the employer'.

Article 19

Article 20

Am./Art. 20/55 and 84

'Workers on fixed-duration contract shall be deemed to form part of the workforce calculated as an annual average for the purposes of ...'
(rest unchanged)

Text proposed by the Commission
of the European Communities

(2) The provisions of paragraph (1) shall be without prejudice to the application of national law concerning 'force majeure' or serious misconduct on the part of the worker.

Article 19

The employer shall be required to inform the representatives of his employees when he recruits workers on fixed-duration contract.

Article 20

Workers on fixed-duration contract shall be deemed to form part of the workforce for the purposes of determining such of the undertaking's social obligations under law, collective agreements or customary industrial practice in the undertaking as are linked to the number of workers employed.

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 21

Amendment No. 85/Art. 21

'Workers employed on limited-duration contract shall not be recruited or used in the event of a strike or lock-out within the user undertaking'.

Text proposed by the Commission
of the European Communities

Article 21

Workers employed on limited-duration contract shall not be recruited or used to perform the duties of employees who are on strike.

SECTION V - FINAL PROVISIONS

Article 22

Article 23

Article 22

(1) Member States shall bring into force the necessary laws, regulations and administrative provisions to comply with this Directive not later than 1 January 1984 and shall forthwith inform the Commission thereof.

(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 23

Within two years following expiry of the period laid down in Article 22, Member States shall transmit all relevant information to the Commission in order to enable it to draw up a

Amendments tabled by the
Committee on Social Affairs
and Employment

Article 24

Text proposed by the Commission
of the European Communities

report on the application of this
Directive for submission to the
Council.

Article 24

This Directive is addressed to the
Member States.

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive concerning temporary work

The European Parliament

- having regard to the proposal from the Commission of the European Communities to the Council (COM(82) 155 final)¹,
 - having been consulted by the Council (Doc. 1-292/82),
 - having regard to the European Parliament's resolution of 11 February 1981 on the position of women in the European Community²,
 - having regard to the motion for a resolution tabled by Mr Seefeld and others pursuant to Rule 47 of the Rules of Procedure (Doc. 1-683/81),
 - having regard to the report of the Committee on Social Affairs and Employment and to the annexed opinions of the Committee on Economic and Monetary Affairs, the Legal Affairs Committee and the Committee of Inquiry into the Situation of Women in Europe (Doc. 1-1314/82),
 - having regard to the result of the vote on the proposal from the Commission,
1. Is concerned at the inadequacy of the statistics contained in the Commission's explanatory memorandum, while recognizing that this is mainly due to the failure of Member States to provide them, and, in particular, observe that the figures given relate to a period before the onset of the current recession, since when, the volume of temporary work available has declined sharply;
 2. Welcomes the fact that the Commission text covers arrangements for two forms of temporary employment:
 - (a) the supply of temporary workers to a user undertaking by a temporary employment business ('triangular relationship'),
 - (b) fixed-duration contracts between an employee and an employer ('bilateral

¹ OJ No. C 128, 19.5.1982, p. 2

² OJ No. C 50, 9.3.1981

relationship'),

and notes that there is a need for a Community legal instrument in this field;

3. Draws attention to the fact that temporary work provided both through employment businesses and through fixed term contracts fulfils a valuable economic function by providing a degree of flexibility whilst at the same time constituting a threat to permanent employment, which must be protected;
4. Believes, therefore, that the availability of temporary employment is to be welcomed, always provided that the workers concerned are genuinely seeking employment of this kind;
5. Is of the opinion that this voluntary character should be stressed by making it easier for temporary workers to take on permanent employment;
6. Is aware that temporary work continues to be a field in which mainly women are employed and demands that all direct or indirect discrimination between female and male temporary workers be prohibited in all fields covered by the directive;
7. Is aware, however, that the existence of temporary employment has given rise to abuses, in which workers seeking permanent employment have been obliged to accept insecurity, low pay and inadequate social protection in bogus 'temporary' posts;
8. Believes that in order to avoid such abuses, the representatives of the workers in the undertaking should have the right to monitor the recruitment of temporary workers;
9. Considers that such abuses are particularly serious where more than one Member State is involved since incompatibility of national laws can mean that those involved have no adequate legal remedy;
10. Agrees with the Commission, therefore, that Community legislation in this field is required;
11. Supports the Commission in its determination to ensure that all employment businesses should be subject to authorization, but regrets that the Commission has made no proposals to ensure that the conditions for authorization shall be comparable in all Member States;

12. Calls on the Commission, therefore, to amend its proposal to ensure both common standards of authorization and freedom of establishment within a period of three years following the adoption of the directive;
13. Believes that there is a need for a policy which would make public bodies responsible for supplying temporary workers and which would provide for very close monitoring of temporary employment businesses during the transitional period;
14. Considers that the Commission is entirely correct in providing that, where a user undertaking employs labour through an unauthorized employment business, that undertaking should bear a liability for all social security contributions, benefits, repatriation costs, etc. of the employee concerned;
15. Is nevertheless concerned that the draft directive may not provide adequately for the enforcement of such liability where workers have been illegally recruited in one Member State for employment in another, and calls on the Commission to strengthen its proposals accordingly;
16. Is furthermore concerned that the liability of a user undertaking will be even less enforceable in the case of third countries, and therefore calls upon the Commission to ensure that contracts involving the supply of temporary workers from a Member State to a third country contain obligatory provisions for the payment of social security contributions, etc. and also a clause guaranteeing, if necessary, costs of repatriation;
17. (a) Considers that the proper protection of temporary workers will be better secured by ensuring that they are entitled to social benefits and other rights on the same basis as other workers;

(b) Is of the opinion that temporary employment provides few possibilities of long-term integration into the labour market and hence in no way makes for equal opportunities for women in particular as regards access to employment and professional advancement; thus recognizes the danger that more intensive expansion of the temporary work sector could exacerbate the division within the labour market and jeopardize the objective of creating permanent posts;

18. Agrees that provision should be made for additional circumstances in which the conclusion of a contract for fixed term rather than permanent employment is in the interests of both employer and employee; would, however like to see the list of exceptions provided for under Article 15 with the assistance of Parliament adopted as part of the directive;
19. Agrees with the Commission that all temporary workers and workers on fixed term contracts should be entitled to a written agreement outlining clearly the terms of their employment;
20. Believes that temporary workers and workers on fixed term contracts should receive remuneration which is at least comparable to that received by permanent workers, taking into account relevant specialist knowledge, training, qualifications or experience, and allowing for special payments for special tasks performed;
21. Draws attention to the special circumstances pertaining in the field of sea transport and believes that there should be a general derogation from the Directive where collective agreements exist between shipping companies and seafarers' unions giving equivalent benefit and protection;
22. Instructs its President to forward to the Commission and Council the proposals from the Commission as voted by Parliament and the corresponding resolution as Parliament's opinion.

I. BACKGROUND

The Commission's proposals in the field of temporary work have behind them a considerable body of detailed research over an extensive period of time: notably, the two volume comparative study on "Temporary Work in Modern Society", published in 1978 by the International Institute for Temporary Work. Indeed, the essential elements of the proposed Directive are to be found in Professor R. Blanpain's 'Concluding Remarks' to Volume 1.

The Commission produced its own Communication on 27th June 1980 suggesting 'Guidelines for Community Action in the Field of Temporary Work (Agency Work and Contracts for a Limited Period)' (COM(80) 351 fin). On 5th June 1981, two annexes to this document were published: Annex A reviewed the conclusions of the Standing Committee on Employment regarding the temporary work proposals; Annex B was a Commission working document giving Guidelines for Community Action, adapted for discussion by Government experts and both sides of industry.

This research made it clear that the regulation of temporary work has long been a matter of debate in countries both within and outside the Community; that different countries have arrived at widely differing conclusions; and that this variety has had a "disintegrating impact" on the labour market at international level.

More recently, as the Commission points out in its explanatory text to the proposed Directive, the economic crisis has directed even greater attention to the issues raised by temporary working. The attitudes of management and labour have polarised: management seeking greater flexibility and lower costs; labour seeking greater job security and social protection.

II. WHAT IS TEMPORARY WORK? (Article 1)

The title to the proposed Directive states that it is concerned with "temporary work". In the explanatory text, the Commission defines this "simply as the opposite of permanent work".

The proposal, in fact, covers two distinct forms of employment:

- (1) The supply of workers to a user undertaking for a limited period by a temporary employment business or agency.
- (2) The direct employment of workers for a limited period or to carry out a specified, limited task.

The terminology used has given rise to some confusion. The supply of temporary workers by an agency to a user undertaking is most satisfactorily covered by the French term "interiminaire"; but the Commission has chosen to translate this into, for example, English by the word "temporary" itself. The phrase "contract of fixed duration" has been used to cover the second, direct employment form of temporary work. The relationships involved in the two forms of employment are, moreover, different.

In the first case, the relationship is "triangular" - three parties are involved: the employment business or agency; the user undertaking; and the employee. There are also two potential contractual relationships: that between the agency and the user undertaking; and that between the agency and the employee.

To make things additionally complex, the contract between the agency and the "temporary" employee (as in Germany) may be of unlimited duration, i.e. permanent.

The relationship between employer and employee in the case of contracts of fixed duration is, by contrast, relatively straightforward.

Article 1 of the draft Directive consists of an extensive attempt by the Commission to provide definitions of temporary work and the relationships involved. Much of the evidence received by the rapporteur found them unsatisfactory.

Despite extensive discussion, however, the Social Affairs Committee was unable to agree on other than marginal improvements. The only fundamental change was suggested by the Legal Affairs Committee (but

rejected in Social Affairs): that the two forms of "temporary" work should be dealt with in separate legal instruments, rather than covered in a single Directive.

III. HOW MUCH TEMPORARY WORK?

The Commission quotes, in its preamble to the proposals, the European Parliament resolution of 17th September 1981 which states that "temporary work is assuming disquieting proportions" in Member States. In its explanatory memorandum, however, the Commission admits that precise statistics on numbers of temporary workers and temporary employment agencies in the Member States are very difficult to obtain. It would appear that the Commission bases its assumption that temporary work is on the rapid increase throughout the EEC on figures taken from the mid-1970's, when there was a widespread expansion in industry and commerce generally.

For example, the explanatory statement mentions an increase in temporary work of 9 % in the Netherlands between 1977 and 1979. According to the Dutch Federation of Temporary Work Organisations (Algemeen Bond Uitzendbureaus/ABU), the volume of temporary work has decreased by 40 % - 50 % since 1980. In fact, the volume of temporary work in 1982 in the Netherlands was below the level of 1970 - 1971.

At the request of the rapporteur, the Commission sent a telex questionnaire asking for statistical data on temporary workers in the 10 Member States to each relevant authority in June 1982. By September 1982, only 3 out of the 10 countries had replied with any figures at all: France, Belgium and West Germany.

The Confédération Internationale des Entreprises de Travail Temporaire was, however, able to supply fuller and more up-to-date figures for the numbers of temporary workers employed in France, Germany, Great Britain, Ireland, Belgium and Denmark (see Table 1).

TABLE 1:	STATISTICAL DATA	NUMBER OF TEMPORARY WORKERS		
		30.09.80	30.09.81	30.09.82
BELGIUM	No. of temp. agencies	44*	40*	46*
	No. of temp. workers	6 430*	4 662*	not av.
	Unemployed as % total	8.5 %	9.8 %	11.2 %
	Temp. workers' hours	9 075,117	7 865,687	7 320,130*
DENMARK	Unemployed	161,500	211,100	237,000
	Temp. workers	640	647	593
FRANCE	Unemployed	1 459,000	1 786,000	2 042,000
	Temp. workers	225,000 (195,793**)	205,000	156,000
GERMANY	Unemployed	822,000	1 256,000	1 820,000
	Temp. workers	40,124	34,597	not yet av.
GREAT BRITAIN	Unemployed	1 700,000	2 733,000	3 293,000
	Temp. workers	109,000	75,000	40,000
IRELAND	Unemployed	92,093	125,060	141,000
	Temp. workers	7,530	7,603	8,517

NETHERLANDS No actual figures available. Percentage increases yearly only: 1980 over 1982: 40 % - 50 % decrease in numbers of temporary workers employed on a daily basis.

N.B. No figures available for Luxembourg. Italy and Greece do not recognise the status of temporary workers.

* Figures obtained from European Commission questionnaire to national authorities

** Calculated at annual rate on first half 1982 figures

The overall picture presented by the French and Belgian authorities in response to the Commission's questionnaire and by the CIETT figures is identical: in all Community countries except Ireland, the amount of temporary work has declined. Moreover, it has declined roughly at the same rate as employment as a whole.

Temporary work, then, is not booming at the expense of permanent employment. Indeed, there does not seem to be any real evidence for the claim that temporary employment constitutes a threat to permanent jobs.

In consequence, it is very much open to doubt whether stricter controls on the volume of temporary work would produce any benefits in terms of increased permanent employment. Rather, it might actually reduce the total amount of employment available.

IV. BASIS FOR COMMUNITY LEGISLATION

However, the draft Directive is not - or should not be - primarily about the protection of permanent work. The case for Community legislation rests on:

- (1) The need to prevent distortions of competition within the Community - that is, Article 100 of the EEC Treaty.
- (2) The protection of the working conditions of temporary workers themselves - Article 117 of the Treaty.
- (3) The promotion of an open labour market and the free movement of labour - Article 49 of the Treaty.

All three of these legal bases point to an especial Community responsibility in the field of the cross-frontier supply of temporary workers. In addition, there have been a number of well-publicised cases of abuse in recent years, which indicate that Community action is required (for example, British temporary workers were recruited by an agency based in the Netherlands for work in Germany; it was subsequently

discovered that they had no social security or tax cover).

The draft Directive does, in fact, contain provisions which would meet this responsibility, though they require strengthening. They involve:

- (a) the compulsory registration of temporary employment businesses on a common basis;
- (b) the introduction of sanctions against illegal supply of temporary workers, including liability on the user undertaking enforceable in all Member States;
- (c) procedures for co-ordinating the policies of Member States.

These provisions, which form the core of the Directive, should be implemented even if the other provisions without a cross-frontier aspect have to be modified or dropped.

V. ATTITUDES TO TEMPORARY WORK

Official attitudes to temporary work vary considerably from country to country, in particular to temporary employment businesses. ILO Convention 96, which prohibits placements against payment, is interpreted extremely strictly in some Member States: in Italy, for example, "temporary work" in this sense is banned altogether. In other Member States, it is considered an entirely legitimate form of employment. The findings of the International Institute for Temporary Work tend to support the second view, (subject to adequate safeguards). There is at the same time an "obvious demand", i.e. vacancies that need to be filled only temporarily; and an "obvious supply", i.e. labour that is only temporarily available.

The findings also warn of the effects of very stringent prohibitions: a "black market, informal and illegal, with exploited workers who do not enjoy the protection of labour and social security laws".

The rapporteur has received many comments on the proposals from a number of organisations (listed in Annex A). Letters have also been

received from temporary workers themselves. One lady (aged 58) pointed out that, at her stage of life, if she were unable to continue working as a temporary, she would have to stop work altogether.

The CIETT argues that temporary work should be seen as auxiliary not alternative to permanent labour - a view supported by all employer bodies which submitted evidence.

VI. THE AUTHORISATION OF TEMPORARY EMPLOYMENT BUSINESSES (Article 2)

The draft Directive begins by making a number of proposals "designed to ensure that only sound, reputable businesses can engage in the supply of temporary workers".

Provisions of this kind should be of value both to temporary workers themselves and to employees. In the case of employees, there will be less danger of exploitation by unscrupulous agencies. In the case of legitimate businesses, the threat of unfair competition from "fly-by-night" agencies will be eliminated. And in the case of user undertakings, there will be a clear system indicating which agencies are legitimate, and which not.

Article 2 (1) of the draft Directive establishes that no temporary employment business may operate "without obtaining authorisation from the competent authorities".

As the explanatory notes point out, however, no attempt is made to establish common criteria for authorisation: these are left "entirely to the individual Member States".

There are two consequences.

First, it is possible that the definition of "sound" and "reputable" will vary widely from one country to another.

Secondly, the authorisation of a business in one Member State will not mean that it can then operate in another Member State without further authorisation. This is explicitly confirmed in paragraph 2 of Article 2,

and effectively leaves the law exactly as it is.

This situation is difficult to justify, given that Article 100 is the legal base for the proposal. The Commission should make some provision for a common basis of authorisation and supervision, both on the grounds of removing distortions in competition between Member States and of promoting freedom of establishment.

On the other hand, it is clear that Member States would find difficulty in aligning their legal provisions in this field over a short period. This would affect both those countries setting up stricter regulations, and those who would have to open up their economies to temporary employment businesses.

A compromise would be to accept the situation envisaged by the Commission for a limited period, but to provide in the Directive for the eventual adoption of common criteria for authorisation and supervision. This is what the Social Affairs and Employment Committee of Parliament proposes.

VII. SANCTIONS (Articles 2(3) and 13)

Clearly, a system of authorisation implies a system of control. In particular, it poses the question: what is to be the sanction against those who evade the authorisation procedure?

As far as the agency is concerned, the Directive declares that such evasion will be "unlawful". It will be up to Member States to provide appropriate penalties (though the draft Directive does not say so).

This does not give in itself, however, much protection for the employee who finds him- or herself supplied to a user undertaking by such an agency - particularly if no trace of that agency can be found when legal action is taken!

The liability of the user undertaking for the social security contributions, remuneration and possible repatriation costs of a temporary worker in the event of default by an unauthorised supplying agency is therefore the key element of the draft Directive.

The Commission's proposals in this regard nevertheless require some clarification:

- (1) It needs to be stated explicitly in the text of Article 2 (though the Commission has said that this is the intention) that such liability only applies where an unauthorised agency is involved.
- (2) The concept of "secondary liability" has given rise to a great deal of legal dispute. The desired situation is clear enough - if employees find themselves without pay or the fare home because their agency has defaulted, the bill should be met by the user undertaking. Stated like this, however, is there not an open incitement to such agencies to default?

Both the Social Affairs Committee and the Legal Affairs Committee concluded that the correct solution was that provided by the German legal term "gesamtschuldig", translated into English as "joint and several liability".

- (3) Vigorous opposition to the idea of "secondary" or "joint and several liability" has come both from temporary agencies and from organisations representing potential users.

It is difficult to see why.

As far as the agencies themselves are concerned, the provision would seem to be an added protection for legitimate agencies against illegal competition.

As far as the user undertakings are concerned, it would seem to constitute a perfectly legitimate example of "caveat emptor". The submission, for example, of the British CBI that "a user undertaking cannot be expected to check whether a temporary employment business has a valid licence" would (if true) betray an appallingly slap-dash attitude towards the hiring of labour.

Nevertheless, "caveat emptor" does not mean that the law should not protect the consumer. In this case, it would be sensible

to provide that the authorised employment business should give clear evidence of such authorisation - for example, by printing the authorisation number on their stationery; and the Social Affairs Committee so proposes.

- (4) There may also be some doubt as to whether "secondary" or "joint and several" liability can always be enforced across national frontiers, given that (as the Commission states) "Member States ... remain free to apply their existing systems ..."

This matter is more specifically dealt with in Article 13 of the proposal whereby the authorities of Member States are required to "assist each other" in "the payment of the unsatisfied claims of temporary workers" in the event of a supplying business being declared insolvent in another Member State.

Insolvency, however, is not quite the same thing as illegality; and although Article 13 also provides for the prosecution of unauthorised temporary employment businesses, it says nothing about the enforcement of "secondary" or "joint and several liability".

Professor Blanpain draws attention to the fact that in such cases, "normal recourse to the general rules of international private law becomes impossible"; and adds that "a harmonisation of national legal and administrative rules is absolutely necessary".

The Social Affairs Committee accordingly proposes that Member States should make specific legal provision to ensure that Article 2, paragraph 3 is enforceable in all cases of the cross-frontier supply of temporary workers.

- (5) Finally, there is the question of whether any further sanctions are required. Article 2 provides that authorised agencies shall be "adequately supervised". "Secondary" or "joint and several liability" might be further strengthened

by providing that, where temporary employees are taken on via an unauthorised agency, they shall be deemed to have been employed in the normal way as permanent workers. The Social Affairs Committee proposes this - though recognising the danger that this might put such employees at an unfair advantage compared to those legitimately recruited.

VIII. THE THIRD COUNTRY PROBLEM

There will remain the considerable problem of providing similar protection for temporary employees where the user undertaking is located outside the Community's juridical area. Clearly, it will be possible to enforce neither "secondary" nor "joint and several liability", nor a contract of unlimited duration. Nor will it be possible to deal with this matter through the authorisation procedure or other provisions concerning temporary employment contracts - by definition, the problem arises in connection with unauthorised agencies and illegal supply.

The Social Affairs Committee proposes no solution, but calls upon the Commission to examine what can be done.

IX. TWO SYSTEMS? (Articles 3 and 15)

Perhaps the most controversial aspects of the Commission's proposal are contained in Articles 3 and 15.

The first would limit the circumstances in which labour supply contracts could be concluded; the second, the circumstances in which an employer could conclude a fixed duration contract of employment.

In both cases, however, Member States are permitted derogations from these provisions "where the social benefits accorded by virtue of labour law, collective agreements or customary industrial practice in the undertaking are enjoyed by temporary workers".

The Commission explains that this situation arises because there are "two systems currently in use in the Member States for the purpose of regulating the activities of temporary employment businesses":

- (1) A system of "severely restricting" both the grounds for recourse to temporary work and the duration of the assignment;
- (2) A system "aimed at protecting workers".

One might well ask whether the two systems are in fact alternatives. The Commission makes it clear that the primary objective in the first system is not so much a protection of temporary workers as "safeguarding the volume of permanent employment". In this case, it is inferred, temporary workers need not enjoy the same social rights as permanent workers.

a. Temporary workers

In the opinion of the Social Affairs Committee, these proposals (concerning temporary workers recruited through agencies) are not adequate. Whatever controls are applied to the volume of temporary work, it should be a general rule that temporary workers enjoy social benefits on the same terms as permanent workers.

This should apply not merely to the social security schemes provided for in Article 4, but also to such matters as entitlement to notice, protection from unfair dismissal, redundancy payments, sickness pay, maternity leave, etc. etc.

All these benefits will in principle be subject to service qualifications (e.g. in the UK, notice rights apply after 4 weeks' employment). However, the temporary worker's primary employment relationship will be with the temporary employment agency and not with user undertakings. Social benefits will, therefore, be related to the total period of work for the agency and not to any one assignment.

The Social Affairs Committee also concludes that, once temporary workers are protected in this way - i.e. placed upon exactly the same footing as permanent workers - the case for controlling the volume of temporary work is very much weaker.

However, since several Member States in fact do control the volume of temporary work, it is unreasonable to provide for the elimination of such controls immediately. Accordingly, the Committee proposes that

there should be a transitional period of five years during which Member States could prohibit the conclusion of supply contracts of certain circumstances (see below).

b. Fixed duration contracts

In the case of fixed duration contracts, however, the situation is different in one important respect: there is no continuing employment relationship with an agency; only direct contracts of - by definition - limited duration with an employer.

Hence, the existence of service qualifications reduces the value of social benefits on the same terms as permanent workers.

In addition, problems arise when an employee concludes a series of fixed-term contracts with the same employer. In principle, (as in the UK, for example), employment should be deemed to be continuous for the purpose of legal rights and social benefits, even if the contracts are discontinuous.

What happens, however, if there are intervals between the contracts? And what is to prevent a series of fixed-term contracts being used to disguise a continuing permanent employment?

These considerations have led the Social Affairs Committee to accept, in the case of fixed-duration contracts, the broad structure of the Commission's proposals.

X. LISTS OR A GENERAL FORMULA? (Articles 3 and 15)

Whether the Commission's original proposal for Article 3 or the alternative proposed by the Social Affairs Committee is eventually adopted, there remains the question: in what circumstances may the conclusion of labour supply or fixed-duration contracts reasonably be prohibited?

The Commission, in both cases, has attempted to draw up lists defining the circumstances in which such contracts should be permitted. There is evidence - particularly in the case of Article 15 - that this has not proved a particularly easy task.

The Social Affairs Committee questions whether such an exercise is, indeed, really worth the effort in the context of a Directive, which should "leave to the national authorities the choice of form and methods".

Both temporary work and fixed-term contracts provide valuable flexibility in the labour market, not only for employers, but also for employees - provided, of course, that the latter are genuinely seeking such employment.

Any restriction should, therefore, relate to a general criterion of this kind: i.e. whether the posts involved are really "temporary".

There are, however, circumstances in which it will not be possible to predict with certainty whether the post will not eventually become permanent (a circumstance for which the Commission has partly provided in Article 15 (1c): "the launching of a new activity of uncertain duration").

The Social Affairs Committee therefore proposes that the criterion be based on reasonable expectation: that is, contracts may be prohibited "except where it is reasonable to predict that the posts concerned will only be temporarily available".

XI. WRITTEN CONTRACTS AND AGREEMENTS (Articles 5 and 16)

Article 5 of the Commission's proposal is designed to ensure that temporary workers are in possession of certain basic information regarding the tasks they have to perform.

In such circumstances, it should be noted, three parties are involved: the employment business, the user undertaking and the employee. It is important to be clear precisely who is under the obligation to supply the information. In certain circumstances and in certain countries (for example, Germany), the contracts between the agency and the temporary worker are deemed to be of indefinite duration. Where this is not the case, it must be absolutely clear that the agency (and not the user undertaking) has an obligation to provide written information on the duration of employment. Likewise, employees must be entitled to

information on the other conditions of work, as provided for in Article 5 (2).

An important question arises, however, as to whether a written contract is necessary. The Commission, in Article 5 (3), envisages a situation in which no written contract exists; in which case, a contract is deemed to exist (of unlimited duration).

The Social Affairs Committee believes this to be both confusing and unsatisfactory. Instead, it advocates that a written contract should always be provided to a temporary employee by the agency; and provides for legal action against agencies which fail to do so.

XII. POACHING (Article 5 (4))

Very considerable opposition has been expressed by temporary employment agencies to the Commission's proposals:

- (a) banning the inclusion in a contract between an agency and a user undertaking of a clause whereby the user undertakes not to recruit directly a temporary worker supplied by the agency;
- (b) outlawing the payment of a "recruitment fee" to the agency if such recruitment takes place.

The agencies have argued that this would remove their protection against "poaching": user undertakings effectively turning the agencies in fact into unpaid "talent spotters". Many agencies in fact operate both as suppliers of temporary workers and as recruitment agencies, making it difficult to distinguish between the two activities.

The Commission, and the Social Affairs Committee, have argued that allowing such "poaching" would be in the interest of temporary workers. This may well be true.

However, the rapporteur is bound to note the opinion of the Legal Affairs Committee that it would not be in the interest of permanent

workers, ("because in this way the temporary employee, while working on a temporary basis, lays claim to a post intended for permanent employees").

XIII. THE PAY OF TEMPORARY WORKERS (Articles 6 and 17)

There are examples of temporary workers and those on fixed-duration contracts receiving both substantially higher remuneration than permanent workers in similar jobs; and also substantially less.

The Commission points to dangers in both situations.

As far as those receiving less are concerned, the Commission is right in drawing particular attention to the "flagrant injustices" that can be caused in the case of the cross-frontier supply of temporary workers. The case for Community legislation in such circumstances is strong; as in the general circumstance of bogus "temporary" employment being used as a means of paying lower wages and hence of undercutting competitors.

In the case of those receiving higher remuneration, however, there can be special circumstances. Many temporary employees - particularly in professional fields like research, teaching, specialised office work, etc. - receive higher remuneration as a result of special skills, knowledge or experience. In addition, there are strong arguments for the principle, applied in France, of "précarité". Since the special quality provided by temporary workers in the labour market is flexibility, which they provide at the cost to themselves of insecurity (an insecurity which can take concrete form in exclusion from various social benefits), it is logical that their pay should include a certain compensating premium. The whole issue has been excellently analysed by French Député and European Parliamentarian M. Cousté in a report on temporary work in France,⁽¹⁾ "Dans une société où la rigidité est le lot commun et la mobilité l'exception, accepter d'être mobile pour un salarié est une qualification en soi ... Son travail doit être rémunéré au juste prix".

(1) 'Le Travail Temporaire', rapport de M. P. B. Cousté, juin 1979, p. 29

In its original proposal, the Commission required remuneration of temporary workers to be "comparable" to that of equivalent permanent workers. The Social Affairs Committee has amended the text to propose that remuneration should be "at least comparable" for temporary workers, who have "equivalent qualifications and skills" as permanent workers. This allows a flexibility of remuneration for the temporary worker from equal to that of equivalent permanent workers upwards, i.e. to higher pay, but does not allow temporary workers to be paid substantially less than their permanent counterparts.

XIV. STRIKES (Articles 11 and 21)

Not the most important, but perhaps one of the more emotive issues raised by the Commission proposal is whether temporary workers may be recruited (either directly or through a temporary employment business) to take the place of workers who are on strike.

The Commission seeks to make this illegal. In the explanatory text, the Commission argues that using the phrase "to perform the duties of employees who are on strike" allows employers to use temporary workers "for other purposes during a strike - e.g. to ensure safety". It is not clear, however, how this would work out in practice. For example, where temporary workers are used to move refuse during a dustmen's strike for health reasons: certainly, they would be performing duties identical to those of the employees on strike.

The Commission points out that the laws of all Member States already contain provisions to cover these eventualities. It is, therefore, not entirely clear why the draft Directive needs to make further provisions.

However, the Social Affairs Committee is in agreement with the principle involved; and would wish to extend it to cover lock-outs, when unscrupulous employers might be tempted to replace the permanent workforce with temporary employees.

XV. SHIPPING

Although sea transport would in principle fall within the scope of the draft Directive, there are a number of reasons for explicitly providing for a general derogation.

Historically, seafarers in certain countries (for example, the UK) have been supplied to ships through the intermediary of a centralised supply office, operating on the basis of a collective agreement between shipping companies and seafarers' unions. Seafarers supplied in this way are employed for a particular voyage or series of voyages on the basis of a crew agreement.

Application of either the draft provisions for temporary work, or of the provisions for fixed-term contracts, would create serious difficulties.

There are already precedents for excluding shipping from the provisions of a Community Directive of this kind: notably, the 1975 Directive of collective redundancies.

The Social Affairs Committee, therefore, proposes that a similar exclusion should operate in the present case.

XVI. SUMMARY AND CONCLUSIONS

The Commission's draft Directive on 'Temporary Work' in fact covers two forms of employment:

- (a) the supply of workers by a temporary employment agency to a user undertaking;
- (b) the direct employment of workers for a limited period or to carry out a specific task.

Opinions are divided as to whether these should not be covered in separate legal instruments.

During the 1970's, temporary work of the first kind increased rapidly; but since then, it has declined roughly in step with employment as a whole.

Articles 100, 117 and 49 of the Treaty provide the legal bases for the draft Directive. The Community has an especial responsibility to

act in the field of the cross-frontier supply of temporary workers.

Temporary work provides valuable flexibility in the labour market both for employers and employees. However, there have been abuses necessitating the general introduction of certain controls. The most essential are:

- (i) the compulsory registration of temporary employment businesses on a common basis throughout the Community;
- (ii) the introduction of sanctions against illegal supply of temporary workers, including liability on the user undertaking enforceable in all Member States.

Two different systems of regulating temporary and fixed-duration employment exist in Community countries:

- (a) restrictions on recourse to temporary work;
- (b) ensuring that temporary workers are employed on the same basis as permanent workers.

They are not necessarily alternatives. In the case of temporary work, where there is sometimes a permanent contract between the employee and the employment business, the second alternative should be the norm.

Where it is necessary to control the volume of temporary work or fixed duration contracts, the criterion should be the general one of whether "it is reasonable to predict that the posts concerned will only be temporarily available".

All temporary and fixed duration employees should be entitled to a written contract outlining the terms of their employment. Their pay should be at least comparable to that of permanent workers, but flexible in an upward direction.

ANNEX A

List of organisations which submitted evidence to the rapporteur on the
Commission proposal on temporary work

1. Algemene Bond Uitzendbureaus/ABU
2. Bundesverband Zeitarbeit/BZA
3. Comité des Associations d'Armateurs des Communautés Européennes/CAACE
4. Comité de Liaison d'Employeurs/CLE
5. Confederation of British Industry
6. Confédération Européenne du Commerce de Détail/CECD
7. Confédération Internationale des Entreprises de Travail Temporaire/CIETT
8. The Federation of Personnel Services of Great Britain Ltd.
9. General Council of British Shipping
10. Irish Federation of Personnel Services
11. National Federation of Self-Employed and Small Businesses Ltd. (UK)
12. The Retail Consortium
13. Sicom International S.A.

1. AGENCY WORK IN THE COMMUNITY (cont'd)
(excepting Italy, where it is prohibited)

ASPECT	BELGIUM	DENMARK	FRG	FRANCE	IRELAND	LUXEMBOURG	NETHERLANDS	U.K.
III OBLIGATIONS OF USER UNDERTAKING								
(a) Does the contract with temporary employment agency have to contain certain prescribed clauses ?	yes	no	no	yes	no	no	no	no
(b) Is the user undertaking jointly liable for the obligations of the agency ?	yes (5)	no	yes (6)	yes (5)	no	no	yes (6)	no
(c) Is the user undertaking required to justify his use of agency labour ?	yes	no	no	yes	no	no	no	no
(d) Is the user undertaking required to inform the representatives of his employees ?	yes (7)	no	yes	?	no	?	yes (7)	no
(e) Is the user undertaking permitted to use agency labour in the event of a strike affecting it ?	no	yes	no	no	yes (no, in practice)	yes	no	no
(f) Is the user undertaking required to count agency staff in determining his labour law responsibilities (e.g. number of staff representatives)?	yes	no	no	yes	no	no	no	no
IV PROTECTION OF AGENCY WORKERS								
(a) Nature of contract concluded with agency - for an indefinite period - for a limited period - for a specific assignment	no mandatory rules	no mandatory rules	yes yes no	no mandatory rules yes	no mandatory rules no	no mandatory rules no	no mandatory rules yes (6)	no mandatory rules no
(b) Are agency workers protected in the event of bankruptcy of the agency ?	yes	yes	no	no	no	no	yes (8)	no
(c) Are agency workers' wages aligned on those of full-time employees ?	yes	yes	no	no	no	no	no	?
(d) Do agency workers receive compensatory (temporary status) allowance	?	?	NO	yes	no	?		
(5) Wages and social insurance charges.								
(6) Social insurance charges only.								
(7) Only in certain cases.								
(8) Agency workers' wages may not be higher.								

ANNEX B

AGENCY WORK IN THE COMMUNITY
(excepting Italy, where it is prohibited)

ASPECT	BELGIUM	DENMARK	FRG	FRANCE	IRELAND	LUXEMBOURG	NETHERLANDS	U.K.
I. ROLE OF PUBLIC AUTHORITIES								
(a) Are there statutory regulations on agency work ?	yes (1976)	yes (1976)	yes (1972)	yes (1972)	yes (1971)	no	yes (1965)	yes (1973)
(b) Is there an Inspectorate ?	yes	yes	yes	yes	?	no	yes	yes
(c) Is there a public temporary employment agency	yes, as from 1980	no	no	no	yes, as from 1980	no	no (1)	no
(d) Do the public employment services have a special department for temporary placements ?	no	no	yes (J.O.B.S. and S.E.R.V.I.S.)	no	no	no	no	yes (T.E.M.P.S.)
II. OBLIGATIONS OF TEMPORARY EMPLOYMENT AGENCIES								
(a) Prior licensing necessary ?	yes	yes	yes	no	yes	no	yes	yes
(b) Must they supply regular information to the Inspectorate ?	yes	no	yes	yes	no	no	yes	no
(c) May temporary employment agencies carry on other activities ?	no	no	yes	no	yes (fee-charging placement service)	yes	yes	yes (fee-charging placement service)
(d) Is agency work restricted to certain sectors ?	yes	yes	no (2)	no	no (3)	no	yes	no (3)
(e) Do restrictions exist on the duration of agency work ?	yes (3 months)	yes (3 months)	yes (3 months)	yes (3 months)	no	no	yes (3 months) (4)	no
(f) Are agencies required to provide a guarantee fund ?	yes	yes	no	yes	no	no	no	no

(1) But since 1978 a private non-profit making agency, S.T.A.R.T., has existed.
 (2) Except where prohibited under agreements.
 (3) Except where a closed-shop agreement with the unions is in force.
 (4) Extendable once only.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Draftsman: Mrs M.-J. DESOUCHES

The Committee on Economic and Monetary Affairs appointed Mrs M. -J. Desouches draftsman of the opinion on 22 September 1982.

It considered the draft opinion at its meeting of 3/4 November 1982 and adopted it with 3 votes against.

The following took part in the vote: Mr J. Moreau, chairman; Mr Macario, vice-chairman; Mrs Desouches, draftsman; Mr Abens (deputizing for Mr van Mihr), Mr Bonaccini, Miss Brookes (deputizing for Mr de Ferranti), Mrs Forster, Mr Herman, Mr Marck (deputizing for Mr Collomb), Mr Papantoniou, Mr Vernimmen (deputizing for Mr Schinzel) and Mr Welsh.

The Committee on Economic and Monetary Affairs :

1. Emphasizes the need to harmonize legal provisions on temporary work with a view to, on the one hand, ensuring the control of temporary work and, on the other, providing social safeguards for workers. This need is moreover recognized in the Council resolution of 22 November 1979; the committee consequently welcomes the proposal for a Directive;
2. Acknowledges the existence and usefulness of temporary work which gives undertakings the opportunity to call in additional workers for a limited period in the event of changes in the volume of their activities or in their staff complement;
3. Stresses that the provisions on temporary work should be sufficiently flexible for undertakings to take on temporary staff without having to resort to overtime to meet their requirements; this flexibility must not, however, be allowed to undermine social safeguards or the principle of equal pay for temporary work and the equivalent permanent work;
4. Believes that the Directive will make a positive contribution to fair competition among the undertakings in the Community which employ temporary staff;
5. Stresses, however that the directive provides for cooperation and exchanges of information between the Member States on the activities of temporary employment businesses but leaves the individual countries free to define the conditions for granting authorization to suppliers of temporary staff; consequently believes that not all of the distortions to competition will be eliminated; nor will freedom of establishment for temporary employment businesses be guaranteed; considers that these objectives can be achieved only by defining common criteria for granting authorization to temporary employment businesses;
6. Calls on the Commission to study on the basis of the information supplied by the Member States pursuant to Article 22 of the Directive, the conditions for the establishment and operation of temporary employment businesses and to draw up a proposal for harmonization on the basis of the results of this study;
7. Takes the view that all temporary employment contracts must be set out in writing in order to facilitate checks and prevent abuses.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr Poniridis

In 22 September 1982, the Legal Affairs Committee appointed Mr Poniridis draftsman of the opinion.

The Committee considered the draft opinion at its meetings of 2/3 December 1982 and 27/28 January 1983. It adopted the draft opinion at the latter meeting by 6 votes to 2 with 1 abstention.

The following took part in the vote: Mr Luster, vice-chairman and acting chairman; Mrs Cinciari Rodano, Mr Geurtsen, Mr Janssen van Raay, Mrs Tove Nielsen, Mr Prout, Mr Sieglerschmidt and Mr Tyrrell.

INTRODUCTION

1. In your draftsman's opinion, the volume of temporary work, with all its associated problems, has increased because of the recent economic crisis which has compelled undertakings to change their policy towards the labour factor of production. Basically, they are endeavouring to reduce labour costs.
2. This means that the introduction of temporary working has been resorted to by undertakings whose principal objective is their own benefit. It should thus be regarded as a special measure, an exception to the rule, which is work on a permanent basis - one of the fundamental human rights.
3. The Community's concern in the matter of temporary work may be traced as far back as the Council's resolution of 21 January 1974 on a social action programme. The Council then expressed the political will to adopt measures 'to protect workers hired through temporary employment agencies and to regulate the activities of such firms with a view to eliminating abuses therein' (OJ No. C 13/1, 12.2.74). More recently, in its resolution of 18 December 1979 on the adaptation of working time, the Council considered that 'Community measures in support of action by Member States should be undertaken to ensure that temporary work is supervised and that temporary workers receive social protection'.
4. For its part the European Parliament has called upon the Commission to propose to the Council 'a clear definition of temporary work and guidelines for ensuring that it is not so abused' in a resolution on employment and the adaptation of working time adopted on 17 September 1981 on the basis of the report by Mr CERAVOLO (Doc. 1-425/81) ; Minutes of the European Parliament, 17 September 1981, OJ No. C 260/54).
5. The Commission has responded to these calls for action on the part of the Parliament and the Council by proposing a directive which seeks to harmonise the laws of the Member States in respect of two major forms of temporary work, i.e. the supply of temporary workers by temporary employment agencies and contracts of a fixed duration; a number of provisions relating to the cross-frontier supply of temporary workers by agencies have also been included in the proposed directive.
6. A comparative survey of the current situation in the various Member States reveals that, in one of them at least (Italy), temporary employment agencies are prohibited. Temporary work in general is prohibited in Italy in the private sector. Only the State, through its Employment Service, can operate in this area and the openings for temporary work are strictly limited.

In Denmark, moreover, the proportion of temporary employment is very low, as it is in Greece, Luxembourg and Ireland. But even in Britain it is limited in proportion to total employment in the country. The highest figures recorded are (in order) in France, Germany and Holland, where it creates serious problems. For Belgium, although no exact figures are available, it would seem to represent a considerable proportion, yet the trend is a falling one.

II. THE PROPOSED DIRECTIVE

7. The present proposed directive is quite limited in scope, in so far as it provides only for a minimum standard of protection for temporary workers, without according to the Commission in any way undermining higher standards of protection which already exist in certain Member States, or imposing detailed rules on, for example, the conditions under which employment agencies may exercise their activities. Thus, the restrictions which the directive would place on recourse to labour supply contracts (Article 3) and fixed duration contracts (Article 15) are limited to situations where the temporary worker in question does not enjoy the social benefits accorded by virtue of labour law, collective agreements or customary industrial practice in the undertaking on the same terms as permanent workers; where such benefits are enjoyed by temporary and permanent workers alike, these restrictions do not apply. This contrasts with the situation in certain Member States where similar restrictions apply regardless of the position of temporary workers concerning social benefits.

8. The Commission's opinion regarding temporary work is that strict legal regulation usually results in the emergence of illicit forms of work which escape the control of the public authorities; states do exist, however, where strict legal regulation does operate without friction. At all events, this is a matter of the Member States' social policy and the relevant decision lies with the committee responsible. It is worth noting here, however, that cooperation and agreement between the member States with a view to signing a specific convention on this subject would afford the most effective solution.

III. LEGAL BASIS

Article 100 of the EEC Treaty is proposed as the legal basis for this measure. It is not seriously open to doubt that the existing provisions in force in the Member States do 'directly affect the establishment or functioning of the Common Market', and to this extent Article 100 is a sound legal basis.

However, the free movement of workers is also directly affected by these provisions in the Member States and therefore the proposed directive - inasmuch as it relates to the free movement of workers - is also based on Article 49 of the EEC Treaty. More specifically, section III of the proposed directive, which provides for mutual assistance and exchange of information between the national authorities in cases of cross-frontier supply of temporary workers, appears to derive a specific legal basis from Article 49(a). Mention is also rightly made of Article 117 EEC in connection with the social policy aspect of the proposed directive, with its reference to the Member States' agreement 'on the need to promote improved working conditions and an improved standard of living for workers'. And, finally, mention should be made of the Community's duty to promote 'a harmonious development of economic activities and an accelerated rising of the standard of living' (Article 2 EEC). The allusion to and invocation of the latter two provisions, however, compels the proposed directive to adopt greater stringency in its handling of the subject, since as stated in the foregoing sections, only judicious and responsibly controlled use of temporary work will contribute to the protection of the labour force as a whole and, by extension, to the harmonious development of economic activity and the raising of the standard of living.

IV. GENERAL REMARKS

10. The proposed directive may be considered as a compromise between the frequently but not necessarily conflicting interests of the various parties affected by the relevant provisions and, in particular, the following :

(a) Temporary workers

A number of provisions of the proposed directive are designed to safeguard the rights of the temporary worker. Thus, temporary employment agencies must be authorized by the competent authorities of the Member States before they can lawfully operate (Article 2(1)). The proposal recognises that temporary workers are particularly vulnerable where a financially unsound agency defaults, and Article 2(3) imposes a secondary liability for social security contributions, remuneration and other benefits, in such cases, on the user undertakings. Other provisions guarantee social security rights for temporary workers (Article 4).

For workers on fixed-duration contracts, endeavours are also made to guarantee them greater certainty as to contractual terms (Article 16), parity of remuneration (Article 17) and compensation on premature termination of contract (Article 18).

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(b) Workers in permanent employment

The preamble to the directive states in the clearest of terms that 'permanent employment must remain the rule'. This principle is reflected in various provisions : In order to stem possible abuses in the utilization of temporary manpower for permanent jobs, the proposed directive contains a number of provisions designed to restrict the grounds on which employers may have recourse to temporary employees from agencies (Article 3). However, this article, in paragraph 4, allows for one dangerous exception, which is also repeated in Articles 15(4) and 8 (2) (i)). Under these articles, undertakings may have unlimited recourse to temporary work whenever they wish provided they grant the temporary employees the same social benefits as permanent workers. This, however, results in violation and abuse of the provisions since, owing to the distinction made between them, it is taken for granted that the temporary employees do not enjoy the same benefits as the permanent employees, whereas the aim is to put them on an equal footing. Moreover, under Article 15, they may also have recourse to workers on fixed-duration contracts. Employers are obliged to inform the permanent workforce prior to hiring temporary workers (Article 8) and during the period workers are being supplied on fixed-duration contracts (Article 19). They are also obliged to include the temporary workers in their workforce for the purpose of determining their social obligations where these are linked to the number of employees (Article 20). Finally, under Article 21, temporary workers are not allowed to be used for strike-breaking.

(c) Employers

Statutory secondary liability on the part of the user undertaking in the event of default by an agency and the requirement of authorization by the competent authorities will ensure that only economically sound undertakings will pursue their business with temporary employees and, therefore, the likelihood of their behaving irresponsibly will be minimal. Furthermore, the provision (Article 5 (4)) whereby any contractual term which would prevent the user undertaking hiring the temporary worker on a permanent basis upon termination of his employment is declared void, is advantageous both to the user undertaking and to the temporary worker insofar as it will be able to recruit those temporary workers who have proved their worth in a particular job.

This provision is not deemed favourable to those seeking permanent employment, however, because in this way the temporary employee, while working on a temporary basis, lays claim to a post intended for permanent employees.

Meanwhile, a person seeking permanent employment is not at liberty to opt for the same solution since, from the outset, such is not in his interest nor does he want to jeopardise his situation by going after temporary employment which does not offer him any security.

(d) The public authorities

As has been mentioned above, the powers enjoyed by the Member States and, more particularly, by the authorities responsible for ensuring stability on the labour market, are left largely untouched. The provisions of section III facilitate their monitoring of the influx of temporary workers from other Member States and this is certainly absolutely imperative on such a serious issue where the consequences are unemployment and social problems. Moreover, the provisions of sections II and IV help to prevent imbalance in the temporary employment market at Community level, which could otherwise result from one Member State having less strict legislation than another Member State.

11. As a final remark on the legal basis of the text, it should be noted that a fixed-duration contract differs from the normal temporary employment contract seeing that, in the former, there is a legal bond between the worker and the user undertaking. This means that it is not altogether appropriate to incorporate employment contracts of fixed duration into the present directive. (See paragraph (a) of conclusions, below)

V. REMARKS ON PARTICULAR ARTICLES

(a) Enforcement Procedures

The public authorities in a number of Member States are currently concerned about the enforcement of their existing laws prohibiting abusive recourse to temporary work. Earlier this year, two French Government ordinances amended the laws on the supply of temporary workers by agencies and on contracts of a fixed duration respectively with a view, inter alia, to tightening up the provisions in force. A recent report in West Germany on the working of the 1972 Manpower Provision Act (Arbeitnehmerüberlassungsgesetz) concluded that a large volume of temporary work was being engaged in illicitly; the authorities have not yet decided what action to take in response to this report, and it would be sensible to await the outcome of discussions on the present proposal for a directive before acting.

(b) In Article 5(4) of the Greek text a correction needs to be made to the wording in the interest of legal precision.

(c) Informing the temporary worker of his rights

The Council directive might also oblige Member States to inform workers of their rights under this directive in an attempt to ensure uniform enforcement of the national provisions adopted under this directive; a similar provision appears in an earlier directive on equal pay for men and women (Article 7 Directive No. 75/117/EEC, OJ No. L 45, 19.2.1975, p. 19).

The following amendments are therefore suggested :

Complete Article 8 (and Article 16)¹ by the addition of the following new paragraph :

" The Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of employers and employees by all appropriate means, for example at their place of employment."

(d) Provision of coordinated statistics on temporary work

The explanatory memorandum which the Commission submitted on this directive quotes a number of statistics on the volume of temporary work in the various Member States of the European Community. It is, however, obvious that no comparable statistics on this matter exist and that in order to effectively supervise the cross frontier supply of temporary workers such statistics should be made available to the liaison offices mentioned in Article 12 (1) of the proposed directive. This could be achieved by adding to Article 12(2) a number of lines requiring the exchange of information relating to, for example, the annual volume of temporary work in terms of the number of temporary workers supplied daily, average duration of contracts etc. Such an amendment would be in accordance with the European Parliament's resolution on a Community labour market policy, adopted on 17 September 1981, where the Parliament considered it

'necessary to improve information on the operation of the labour market (statistics and studies on the duration of work and the various forms of employment)'

(See amendment proposed to article 12(2), paragraph (h) of conclusions)

¹ Applies where, contrary to the view taken by the Legal Affairs Committee, Articles 15 to 21 are retained in the text of the proposed directive.

(e) Report to the European Parliament

Article 23 of the present proposal would oblige the Member States to transmit information to the Commission on the implementation of this directive within two years of its notification to enable the Commission then to report to the Council. The European Parliament's role in pressing for such a directive has already recognised in the second recital of the preamble, and therefore it would be appropriate for the Commission to submit such a report to the Parliament, if only for information. Article 23 could thus be amended by adding the words 'the European Parliament and' before 'the Council'. (See paragraph (h) of conclusions, below).

VI. CONCLUSIONS

(a) Community action in this field is welcome in principle, especially as legislation in the Member States was framed at a time when the major concern of the legislator was the stability of the labour market under conditions of more or less full employment rather than protection of temporary workers or supervision of the agencies. The European Parliament did in fact request that a proposal be tabled to this effect in its resolution of 17 September 1981.

The proposed directive deals with both temporary work and contracts of fixed duration. The Legal Affairs Committee considers that the topics, while related, are subject to different legal and practical considerations and should form the subject of separate directives.

(b) The Legal Affairs Committee is able to approve the Commission's initiative in proposing a directive on temporary work.

(c) The definitions adopted by the Commission are confusing in the context of the differing legal systems of the Member States. The Legal Affairs Committee recommends that the definitions be reviewed in order to achieve some improvement.

(d) Articles 3 (and 15)¹ should restrict or forbid temporary work only in cases of abuse or should permit Member States to do so.

(e) The Greek translation of Article 5(4) should be improved.

(f) Articles 11 (and 21)¹ should be deleted. The laws of Member States differ widely in their provisions concerning strikes (public sector employees are an obvious example). Without harmonisation of those laws the provisions of Articles 11 (and 21)¹ are inappropriate and would operate disproportionately in the various Member States.

(g) The provisions relating to fixed term contracts Articles 15 to 21, would constitute a major interference in the freedom of contract in certain Member States. In circumstances where such fixed term employees are treated, in respect of their social rights and obligations, as permanent workers, the Legal Affairs Committee considers that the proposals are not proportionate. Further, the proposals ignore the advantages to the employee of a fixed term contract, particularly of a term of years, in times of uncertainty in the labour market.

(h) The Legal Affairs Committee is of the opinion that the objective of a directive of this type will be best achieved by taking account of its recommendations and adopting the following amendments:

- Reword Article 2(3) as follows:

"It shall be unlawful to engage in the supply of temporary workers without the authorisation referred to in this Article. Where temporary workers have been supplied by an unauthorised employment business, the user undertaking shall bear joint and several liability with the temporary employment business for the social security contributions, remuneration, benefits and other allowances due to the temporary workers concerned including, where appropriate, the cost of repatriation."

¹ Applies where, contrary to the view taken by the Legal Affairs Committee, Articles 15 to 21 are retained in the proposed directive.

- Reword Article 6 as follows:
"Collective agreements concluded within the temporary employment business or for the temporary employment sector shall determine the remuneration of temporary workers. Where such collective agreements do not exist and if the remuneration of temporary workers would as a result be lower than the remuneration received by workers occupying equivalent posts in the user undertaking or that provided for in the collective agreement for the sector concerned, then the remuneration of temporary workers shall be calculated on the basis of the latter."

- Add the following new paragraph to Article 8
"The Member States shall take care that the provisions adopted pursuant to this directive, together with the relevant provisions already in force, are brought to the attention of employers and employees by all appropriate means, for example at their place of employment."

- Delete Article 11 (see paragraph (f), above)
- Complete Article 12(2) by adding the following indents:
 - "- annual volume of temporary work, in particular
 - the number of temporary workers employed in the course of a year broken down by month and
 - the average period of employment."

- Delete Articles 15 to 21 (see paragraph(g) above)

- Reword Article 23 as follows:
"Within two years following expiry of the period laid down in Article 22, Member States shall transmit all relevant information to the Commission in order to enable it to draw up a report on the application of this Directive for submission to the European Parliament and the Council."

OPINION OF THE COMMITTEE OF INQUIRY INTO THE SITUATION OF WOMEN IN EUROPE

Draftsman: Mrs H. WIECZOREK-ZEUL

At its meeting of 23 November 1981 the Committee of Inquiry into the Situation of Women in Europe decided to draw up reports on seventeen different topics, one of which was the adaptation of working time. Mrs WIECZOREK-ZEUL was appointed rapporteur for this subject at the meeting of 30 November 1981.

The Commission has since submitted to the Council a proposal for a directive concerning temporary work (Doc. 1-292/82) (COM(82) 155 final).

On 25 May 1982 the Council asked Parliament to deliver an opinion on the proposal for a directive.

On 14 June 1982, the President of the European Parliament referred this proposal to the Committee on Social Affairs and Employment as the committee responsible.

Since this subject is directly related to Mrs WIECZOREK-ZEUL's report, at its meeting of 21 and 22 January 1983 the committee instructed the rapporteur to draw up a draft opinion on the proposal for a Council Directive concerning temporary work.

On 12 January 1983 the President of the European Parliament formally authorized the Committee of Inquiry to deliver an opinion for the Committee on Social Affairs and Employment.

The Committee of Inquiry considered the proposal for a directive at its meetings of 20-21 January and 22-23 February 1982 and adopted the opinion containing amendments to the proposal for a directive by 7 votes to none with one abstention on 23 February 1983.

The following took part in the vote: Mrs Cinciari-Rodano, chairman; Dame Shelagh Roberts and Mrs von Alemann, vice-chairmen; Mrs Wieczorek-Zeul, draftsman; Mrs Leroux, Mr Del Duca (deputizing for Mrs Lenz), Mr Key (deputizing for Mrs Vayssade) and Mrs Spaak.

PE 80.338/fin.

A. OPINION IN THE FORM OF AMENDMENTS

As part of its opinion, the Committee of Inquiry into the Situation of Women in Europe hereby submits to the Committee on Social Affairs and Employment the following amendments which it would like to see incorporated into the proposal for a Council Directive.

Amendment No. 1

Amend Article 3(4) to read:

'Member States are to ensure that temporary workers engaged on temporary employment contract receive those social benefits accorded by virtue of labour law, collective agreements or customary industrial practice in the undertaking under the same conditions as permanent employees doing equivalent work.'

Amendment No. 2

Amend the first sentence of Article 4 to read:

'temporary workers shall be included in social security schemes' (remainder unchanged).

Amendment No. 3

The first indent of Article 8

The rest of this indent following the words 'the reasons for having recourse to temporary workers' is to be deleted, by analogy with Amendment No. 1.

Amendment No. 4

Insert the following in Article 15(2):

'This annex shall form part of this Directive after the European Parliament has been consulted'.

Amendment No. 5

Amend Article 15(4) to read:

'Member States shall ensure that workers engaged on fixed duration contract receive the same social benefits as those accorded to permanent workers by virtue of labour law, collective agreements or the customary industrial practice of the undertaking'.

Amendment No. 6

Insert the following sentence in Article 23:

'In particular the Member States shall provide statistical information on the nature and volume of temporary work, as well as details of the temporary workers, classified according to sex, qualification and fields of employment'.

Amendment No. 7

Also to be inserted in Article 23:

'The Member States shall further state how many inspections they have carried out, and with what result, in undertakings subject to inspection by the Member States pursuant to Article 2'.

B. EXPLANATORY STATEMENT

1.1. This Directive is concerned with irregular rather than permanent employment in its various forms such as temporary contracts, contracts for the performance of an agreed task within a certain time (assignments), replacing a permanent employee who is ill, extra staff for peak periods, and contracted labour. The term temporary work, therefore, covers a wide range of occupations, which, however, all have certain features in common: they are limited in time, and indefinite and irregular by nature.

1.2. Temporary work covers for example the following types of employment:

- temporary work, for instance helping out in department stores, or in hotels or restaurants;
- temporary work on a permanent basis, such as secretarial work for the European Parliament in Strasbourg;
- temporary work for a fixed period, for example to replace a permanent employee for a specific period;
- assignments for specific tasks, which may range from the contracts awarded for research to commissions given to freelance journalists which fluctuate daily;
- seasonal work, such as in agriculture and hotels and catering;
- home-based work without any contract as is traditional in certain branches of industry (textiles, jewelry) but also as a result of new technologies as, for example, producing composition patterns on a piece-rate basis;
- temporary employment contracts as an alternative to recruiting a permanent employee, such as teaching contracts at schools for a given academic year, semester or term;
- contract labour, provided by temporary employment businesses either to provide specialist services or cover short-term peak periods.

1.3. Temporary work is not only a problem for the actual workers involved but also represents a threat to full-time employees: the use of temporary workers may keep down the number of permanent employees in the undertaking and prevent new recruitment.

The Directive must therefore exclude all provisions which favour temporary work at the expense of permanent employment.

1.4. Temporary work is a typically obscure aspect of the labour market where often no contracts exist, there is no provision for social insurance and statistical information is generally lacking. Given the segregation of the labour market, temporary work mainly makes use of the largest reserve of labour, namely women. Temporary work is virtually non-existent in traditional male occupations. An example of this is the building industry, where practically no women are employed.

In the case of the building industry, the Member States have taken steps either by legislation or collective bargaining to ensure that fluctuations in the amount of manpower required as a result of the climate are compensated for and do not automatically lead to continual dismissal and re-recruitment of workers.

1.5. In addition, temporary work is a form of employment which offers few possibilities for full integration into the labour market in its broadest sense. This means that employment and vocational training opportunities for women are limited. However, in its resolution, the European Parliament's report on women called for measures for the 'improvement of the participation of women in political, social and economic life and in production activities', and expressed the hope that those forms of employment mainly open to women (would) 'not be used as an instrument to increase the flexibility of the labour market, to pursue conjunctural policies' (Resolution paragraphs 12 and 15).

The Committee of Inquiry believes that it is on these criteria that the present Directive must be judged.

1.6. The Commission was unable to analyse the varying extent of temporary work in the individual Member States. In particular, no recent figures (after 1977) are available, nor are there separate figures for men and women. The report of April 1980 on temporary work in the EEC countries (drawn up by Prof. Blanpain for the Commission of the European Communities) only gives figures for temporary labour, and these too are rarely broken down to show the relative proportions of men and women. More thorough study would presumably reveal a high level of insecure employment, employment without contracts and discrimination against women. Estimates based on the figures

for insecure employment assume that approximately two-thirds of all temporary workers are women.

The scope of the Directive does not of course extend to all forms of insecure employment: the European Parliament's report on women (Maij-Weggen report), for example, refers to estimates which put the number of outworkers in Italy alone at 2 million, of which 80 - 90% are women. This category of workers is not covered in the Directive.

1.7. Over half of the women temporary workers are employed in service industries, followed by agriculture, while manufacturing only accounts for some 14% of temporary women workers.

1.8. As regards its scale, employment in the form of temporary workers supplied on a commercial basis is only a small aspect of the overall problem of temporary work. Although the statistics on the supply of temporary workers too are inadequate, the proportion of the total number of women employed who are temporary workers is higher than for men, except in the Federal Republic of Germany, where supplying temporary workers on a commercial basis is restricted to specialist services in industry and practically does not exist yet in the services sector.

2.1. The Committee on Inquiry therefore welcomes in the light of this report on women and Parliament's resolution, the present Directive which provides strict criteria to safeguard permanent employment and the social security of temporary workers. In particular the Committee of Inquiry would emphasize the provisions which guarantee the temporary worker equal status with other employees and information, albeit not co-determination, for trade unions on the use of temporary workers.

2.2. The Committee of Inquiry emphasizes that the provisions relating to temporary work as set out in the Directive, must lead to a situation which makes it more easy for temporary workers to gain full employment. It therefore particularly welcomes the requirement that employment contracts should be in writing as this will enable women to demonstrate occasional

periods of employment; the inclusion in the social security system which will enable women to acquire an entitlement to social security benefits even from periods of occasional and temporary work and the facilitation of the transition from a contract with a temporary employment business to an employment contract on an unlimited basis with the user undertaking.

2.3. The Committee of Inquiry is in favour of incorporating provisions into the Directive which will prohibit direct or indirect discrimination between male and female temporary workers.

2.4. The Committee of Inquiry believes that the spread of temporary work will exacerbate the problems caused by the fragmentation of the labour market - at the expense of women and permanent jobs. It therefore takes the view that the Directive should clearly define the circumstances under which temporary labour may be engaged, in order to prevent the uncontrolled growth of temporary work.

2.5. The Committee of Inquiry believes that it is necessary to correct ambiguous provisions in the Directive. This applies particularly to Article 3 and similar provisions, in which it is not clear whether temporary workers should in fact receive the same social benefits as permanent employees.

The Committee favours a wording which will make it clear that these same conditions are in effect to be granted to all temporary workers. The same applies to the terms of employment set down in fixed-duration contracts (Article 15).

2.6. The Committee of Inquiry is against a revision and division of the Directive into its two basic elements (fixed-duration contracts and temporary work) on the grounds that this would be impracticable, time-consuming and unnecessary.

3.1. The Committee of Inquiry would draw attention to the enormous differences between the Member States as regards the authorization and supervision of temporary employment businesses. The aim of the Directive to counter distortions of competition between Member States will surely not be served by the fact that the draft directive contains no uniform criteria for

the authorization of temporary employment businesses and that the procedure and criteria for authorizing temporary employment businesses are either left to the Member States or covered by legally imprecise provisions.

3.2. In the interests of 'improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained' (Article 117 of the EEC Treaty), it would be more sensible to adopt a policy of restricting the provision of temporary workers to publicly-controlled bodies, with close monitoring of temporary employment businesses for a transitional period. The Committee of Inquiry notes in this connection that the user undertakings had objected to this Directive on the ground that the user undertaking could not be expected 'to investigate every aspect of temporary employment businesses' (comments by the Confédération Européenne du Commerce de Détail). The Committee of Inquiry believes that if the user undertakings themselves, particularly in relation to the supply of temporary workers across frontiers, are expressing such misgivings as regards the temporary employment businesses, then there is much to be said for their being subjected to public control.

3.3 The Committee takes the view that, given the present lack of scope for monitoring temporary employment businesses, the legal position of temporary workers must be improved and that the Directive would therefore be an important achievement as it specifies to whom the employee can turn if the supplying undertaking fails to meet its commitments.

MOTION FOR A RESOLUTION (DOCUMENT 1-683/81)
 tabled by Mr SEEFELD, Mrs SALISCH and Mr GLINNE
 on behalf of the Socialist Group
 pursuant to Rule 47 of the Rules of Procedure
 on the practice of 'leasing' workers for commercial gain

The European Parliament

- concerned at the way in which, against a background of rising unemployment, the desperate situation of large numbers of job-seekers is in many cases being unscrupulously exploited by undertakings illegally 'leasing' workers for commercial gain,
 - having regard to the spread of illegal cross-frontier 'leasing' of workers from the Member States and from third countries which is encouraged by differences between the national laws on the practice of 'leasing' workers for commercial gain,
 - shocked by the disgraceful practices in certain trades, in particular the building trade, where illegally 'leased' workers enjoy no protection whatsoever,
 - having regard to the communication from the Commission to the Council on work-sharing (COM (79) 188 final),
 - having regard to the Council resolution of 18.12.1979 on the adaptation of working time (OJ No. C2, 4.1.1980), envisaging Community support for measures taken by the Member States with a view to monitoring working time and providing social protection for temporary workers,
 - having regard to the report by Mr Ceravolo (Doc. 1-425/81) on employment and the adaptation of working time (paragraph 18(b)),
 - having regard to the Commission's guidelines for Community action in the field of temporary work (COM (80) 351 final),
 - referring to the obligation laid on the European Community by Article 117 EEC Treaty to harmonize social systems and to approximate provisions laid down by law, regulation or administrative action with a view to improving the working conditions and standard of living of workers,
1. Calls upon the Commission to implement the Council's decision on 'Community action in the field of temporary work' through a directive and not merely in the form of voluntary guidelines,

2. Urges the implementation, as part of the 'Community action in the field of temporary work', of the following points:
 - (a) an obligation to obtain authorisation for both the activity of undertakings 'leasing' workers for commercial gain and also for cross-frontier 'leasing' of workers,
 - (b) a guarantee that 'lease' workers will receive the same pay as employees of the 'lessee' undertaking,
 - (c) a ban on the use of 'lease' workers as strike-breakers,
 - (d) contracts of employment of unlimited duration between 'lessor' undertakings and 'lease' workers containing all the elements of social security enjoyed by permanent employees,
 - (e) use of 'lease' workers to be subject to the consent of the employee representatives of the 'lessee' undertaking,
 - (f) employee representatives of the 'lessee' undertaking to be given a right of supervision in respect of the contractual terms agreed by the 'lessor' undertaking with the 'lease' worker on the one hand and with the 'lessee' undertaking on the other,
 - (g) permanent monitoring by state employment departments of the business practices of 'lessor' undertakings,
 - (h) a three month time-limit on worker 'leases',
 - (i) substantial fines on 'lessee' and 'lessor' undertakings in the event of illegal 'leasing' of workers,
 - (k) penalties for recruiting employees in another Member State or in a third country where followed by subsequent illegal employment,
 - (l) a ban on the declaration of 'lease' employees for tax purposes as 'expenditure on materials',
3. Calls further upon the governments of the Member States to discontinue the use of 'lease' workers in public utility undertakings and to create instead more permanent jobs,
4. Calls upon the governments of the Member States with a view to imposing a total ban on the practice of 'leasing' workers for commercial gain to strengthen the activities of their public employment offices so that they are enabled to cover the full range of temporary work (fixed term employment contracts and 'leases' of workers),
5. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States.

