

**Edito** For the third time, the inter-professional social partners have concluded an agreement in the framework of European social dialogue. This agreement illustrates the role the social partners can play in Europe's employment strategy adopted at the special Luxembourg summit in 1997. It represents a further contribution by the social partners to inter-professional cooperation in order to achieve a better balance between "flexible working time and job security".

While accepting that employer-employee employment relations should generally be governed by a permanent employment contract, in their agreement the social partners accept that in certain circumstances fixed-term employment contracts meet the needs of employers and workers alike.

The balance between flexibility and job security is expressed in this agreement by the desire of the social partners to establish a general framework ensuring equal treatment for workers on fixed-term contracts by protecting them against discrimination and for these contracts to be used on a basis which is acceptable to employers and workers.

This agreement could not have come at a better time as it highlights the social partners' ability to act and the pertinence of the new provisions of the Treaty of Amsterdam which has just entered into force. This confirmation of their commitment on the European stage and of their ability to contribute to the establishment of social rights and employment strategy is a message of capital importance which must be warmly welcomed.

Odile Quintin  
Acting Deputy Director General DGV

## The main story

### An agreement on fixed-term work

*The framework agreement between the ETUC-UNICE and the CEEP on fixed-term employment contracts was signed on 18 March 1999. We present the full version of the official text.*

#### Preamble

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

The parties to this agreement recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers. They also recognise that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers.

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

This agreement applies to fixed-term workers with the exception of those placed by a temporary work agency at the disposition of a user enterprise. It is the intention of the par-

ties to consider the need for a similar agreement relating to temporary agency work.

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

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

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

The parties to this agreement ask the Commission, in its proposal to implement

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

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

Without prejudice to the role of national courts and the Court of Justice, the parties to this agreement request that any matter relating to the interpretation of this agreement at European level, should in the first instance, be referred by the Commission to them for an opinion.

## General considerations

1. Having regard to the Agreement on social policy annexed to the Protocol (No14) on social policy annexed to the Treaty establishing the European Community, and in particular Article 3.4 and 4.2 thereof;

2. Whereas Article 4.2 of the Agreement on social policy provides that agreements concluded at Community level may be implemented, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission;
3. Whereas, in its second consultation document on flexibility in working time and security for workers, the Commission announced its intention to propose a legally-binding Community measure;
4. Whereas in its opinion on the proposal for a directive on part-time work, the European Parliament invited the Commission to submit immediately proposals for directives on other forms of flexible work, such as fixed-term work and temporary agency work;
5. Whereas in the conclusions of the extraordinary summit on employment adopted in Luxembourg, the European Council invited the social partners to negotiate agreements to "modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security";
6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to quality of life of the workers concerned and improve performance;

7. Whereas the use of fixed-term employment contracts based on objective reasons is a way to prevent abuse;
8. Whereas fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers;
9. Whereas more than half of fixed-term workers in the European Union are women and this agreement can therefore contribute to improving equality of opportunities between women and men;
10. Whereas this agreement refers back to Member States and social partners for the arrangements for the application of its general principles, minimum requirements and provisions, in order to take account of the situation in each Member State, and the circumstances of particular sectors and occupations, including the activities of a seasonal nature;
11. Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community economy and to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings;
12. Whereas the social partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore be conferred a special role in the implementation and application of this agreement.

# The signatory parties have agreed the following

## Purpose (clause 1)

The purpose of this framework agreement is to:

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

## Scope (clause 2)

1. This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.
2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:
  - a) initial vocational training relationships and apprenticeship schemes;
  - b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.

## Definitions (clause 3)

1. For the purpose of this agreement the term "fixed-term worker" means a person having an employment contract or relationship

entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of an indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.

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

## Principle of non-discrimination (clause 4)

1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless justified on objective grounds.
2. Where appropriate, the principle of *pro rata temporis* shall apply.

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

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

## Measures to prevent abuse (clause 5)

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

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

- c) the number of renewals of such contracts or relationships.
2. Member States after consultation with the social partners and/or the social partners, shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:
- shall be regarded as "successive";
  - shall be deemed to be contracts or relationships of an indefinite duration.

### Information and employment opportunities (clause 6)

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

### Information and consultation (clause 7)

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

### Provisions on implementation (clause 8)

- Member States and/or the social partners can maintain or introduce more favourable provisions for workers than set out in this agreement.

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

## Open Forum

**Jan Cremers**  
*General secretary of  
 the European Federation  
 of Building and Wood-  
 workers*



*A member of the European Trade Union Confederation, the EFBWW has 51 member organisations in 18 countries and represents 3 million workers in Europe. It actively cooperates with trade union organisations in the central and eastern European countries.*

## Beyond the legislative aspect

For decades now, the EFBWW's member organisations have been convinced of the need to further develop and widen social dialogue in our sectors. The 1991 and 1995 congress resolutions confirmed the importance of European social dialogue for the work of the national trade unions. This is why we engaged in a number of difficult – but necessary – debates on procedures and mandates as well as the potential consequences of the social partners assuming increasing responsibilities in European negotiations.

At the EFBWW's last congress it became clear that there must be more to European social dialogue than joint efforts to draw up European social legislation. As this legislation progressively takes shape, so its implementation at national level will have an increasing impact on industrial relations inside the Member States. If the partners to collective negotiations want to continue to use the instrument of collective bargaining, they need to be able to better anticipate this legislation and to try to reach joint agreements before it enters into force.

The process of internationalisation will also erode the influence of the trade unions in one of their principal missions – collective bargaining – if they continue to operate at a purely national level. They would then lose much of their legitimacy.

Over recent years the social partners in the construction sector, that is the EFBWW and the European organisation of construction industry employers (ECIF), have worked closely together in order to influence European policy and institutions regarding the status and employment conditions of workers in Europe. Joint positions have been formulated and these have had a direct impact on national collective agreements.

Among other things, this has produced a series of bilateral agreements between the social partners in

several countries; agreements governing the application of employment conditions to the seconded workers concerned. The German contractual partners have been particularly active in this field and have sought to maintain permanent contacts with other countries. There have also been more specific talks on subjects such as vocational training and health and safety at work. One can rightly ask whether or not these developments will extend to other areas of policy.

But social dialogue can only move beyond the framework of legislative debates if the partners have sufficient reason to do so. To a large extent this was the case for the EFBWW and the ECIF in the construction sector. On both sides the delegations consisted principally of "heavyweights" from national collective bargaining. Nevertheless, this dialogue created a structural weakness for a number of reasons:

- In the European context, attention is focused on inter-professional social dialogue. This means that the political support of the European Commission is not yet sufficient. In addition, the other Commission departments do not feel concerned by social dialogue. It is not easy to gain access to the Industry or Internal Market departments, for example;

- The decline in the sectoral approach at national level, or rather the process of decentralisation of dialogue on employment conditions in the direction of the individual company on the one hand, and the centralisation and trans-sectoralisation of social dialogue at European level on the other, is not favourable to a climate of productive dialogue.

The challenge is to provide tangible proof demonstrating the specific merits of sectoral social dialogue at European (and national) level.

## The Warsaw conference: an important step towards enlargement

*Held on 18 and 19 March, the conference was attended by representatives of the social partners from the EU and applicant countries. The aim? To generate a wide-ranging debate on the role of the social partners in the enlargement process.*

Ninety-three representatives of the social partners from the European Union and 80 from the applicant countries attended the Warsaw conference. This was the first time social partners from the EU and applicant countries had come together for an event on this scale. The conference also came at a crucial moment for the Community's social policy, with the entry into force of the Treaty of Amsterdam which includes the social chapter granting increased powers and responsibilities to the social partners. This introduces a framework for consultation and negotiation which allows the social partners to play a key role in the development of a European social model. Moreover, the Treaty's "Employment" chapter and European strategy in this area open up new fields of action for the social partners.

Immediately before the conference, the social partners had signed the new framework agreement on fixed-term contracts. The fact that this was signed in Warsaw sent a very important political signal.

Commissioner Flynn stressed the essential need for the trade unions and employers federations in applicant countries to organise into independent and representative bodies if accession negotiations are to succeed and enlargement is to work. He called on the social partners on both sides to work together in developing an independent social dialogue and to contribute to the full implementation of Community social legislation.

The conference ended with the adoption of a joint declaration inviting the EU and applicant country governments to include the social partners in the enlargement process.

Contact: Michèle Thozet (DGV 299 22 79)

## A new dynamic for dialogue

■ On 9 March 1999, the Council adopted the decision on the reform of the Standing Committee on Employment, a tripartite forum of the social partners, the Council and the Commission.

The principal elements in this decision are:

- a wider mandate to conduct the kind of in-depth debates required in order to obtain significant results;
- a representation of the European social partners from the key economic sectors, while also reducing the number seats (a maximum of 10 for each party) in the interests of efficiency;
- increased flexibility for the committee, allowing it to meet as a select committee depending on the subject of discussion.

Contact: Stefan Olsson (DGV 295 35 69)

## Multisectoral

### The ageing workforce

■ The Confederation of Swedish employers (SAF) is holding a conference, in September 1999, on Europe's ageing workforce. A subject which is going to have a major impact on human resources management.

The conference will be the occasion for informal contacts between human resources managers and the Commission on questions such as the consequences of early retirement, recruit-

ment, training, bonus systems, flexible working time and ways to overcome problems linked to age and conflicts of culture. This will permit the dissemination of positive experiences and new ideas.

Contact: Christian Ardhe (DGV 296 14 80)

## Sectoral

### Agriculture

■ At its meeting on 3 March, the new "agriculture" sectoral dialogue committee (consisting of the EFA and GEOPA/COPA) decided to prepare a White Paper on vocational training.

For this purpose, the social partners launched the ARE (Agriculture-Region-Employment) project. Six regional seminars will be looking at vocational training systems in terms of their effectiveness in promoting employment, with a view to identifying good practices.

Contact: Joachim Ott (DGV 296 14 71)

### Banks

■ On 8 February 1999 the sector's social partners started to discuss competition from non-banking institutions. The final report will be presented at a conference to be held in the near future.

Contact: Carlos Lopes (DGV 295 21 71)

## Footwear

■ Participation in the Bangemann process and the development of an action plan were the main focus of attention at the meeting of the new "footwear" sectoral dialogue committee held on 16 March 1999.

Contact: Joachim Ott (DGV 296 14 71)

## Public sector

■ On International Women's Day (8.3.99), the CEMR-employers and the European Public Service Union (EPSU) held a joint conference on equal opportunities.

The conference ended with a joint declaration stressing the need to encourage flexible training initiatives, to combat sexual harassment, to apply the principle of "equal pay for equal work" and to place equal opportunities at the centre of measures taken in the process of modernising the public service.

Contact: Stefan Olsson (DGV 295 35 69)

## Textiles/Clothing

■ The social partners have decided (29.3.99) that their work programme for 1999 will be devoted to monitoring the Bangemann process.

A work programme has been drawn up (actions, actors, timetable) and two studies have been proposed by Euratex and ETUF-TCL. One on the impact of the Asian and Russian economic crises on these two sectors, the other on the effect on the employment market of the alternative financing of social charges for unskilled workers.

Contact: Joachim Ott (DGV 296 14 71)

European Social Dialogue can now be consulted on the Internet, in German, English or French, at the following addresses:

- [http://europa.eu.int/comm/dg05/soc-dial/social/index\\_de.htm](http://europa.eu.int/comm/dg05/soc-dial/social/index_de.htm)
- [http://europa.eu.int/comm/dg05/soc-dial/social/index\\_en.htm](http://europa.eu.int/comm/dg05/soc-dial/social/index_en.htm)
- [http://europa.eu.int/comm/dg05/soc-dial/social/index\\_fr.htm](http://europa.eu.int/comm/dg05/soc-dial/social/index_fr.htm)

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