

# **Parliamentary Brief**

## **Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers**

(COM(2002) 149 - C5-0140/2002 - 2002/0072(COD))

**European Parliament – May 2002**

### **Overall position**

The CBI fully supports the principle of protecting agency workers from discrimination and was disappointed that no agreement could be reached between the social partners during last year's negotiations. Agency work makes a valuable contribution to Europe's economy, helping employers to deal with changes in demand and to fill temporary skills gaps and staff vacancies, while helping a considerable number of individuals into employment. The CBI believes that any Directive on agency work should provide a framework for national legislation that ensures an acceptable level of protection for agency workers, but does not hamper companies' ability either to operate effectively or to offer new employment opportunities.

However, the CBI is deeply disappointed by the Commission's proposals for a draft Directive on agency work, which will lead to less job opportunities and inhibit employers' ability to operate effectively. The Commission's proposals – particularly in its provisions for equal treatment – fail to take into account the diversity of national practice surrounding the use of agency work in the EU and will lead to unintended consequences in some Member States. We would urge that the Commission's proposal is amended so that:

- Member States are provided greater discretion to implement equal treatment in line with the complex variety of existing national regulations – in particular:
  - Member States should be able to choose between “agency” or “user” comparisons; or
  - Article 5(4) should be amended so that if user-comparisons are required when measuring equal treatment, Member States may choose not to apply user-comparability for up to 18 months.
- the Directive does not go beyond the EU's competency and include “remuneration” as a comparable employment condition
- agency temps' access to training and permanent employment is relevant to the position to which they have been assigned.



## **Agency work is a valuable part of the EU's economy**

Temporary agency workers are a valuable part of the UK's and EU's labour market, helping employers to fill temporary vacancies, or meet temporary upturns in demand as well as being a significant route into employment for many labour market "outsiders", particularly the long-term unemployed, graduates and young workers, as well as new mothers returning from maternity leave. For example:

- 40% of first time agency workers are 'outsiders' of the labour market;
- 40% of agency workers are in longer-term employment within one year of starting their first agency assignment.

The CBI therefore believes that the Directive should provide greater discretion for Member States to implement new legislation in a way that balances protection for agency workers with flexibility for employers.

## **Article 4 – The principle of non-discrimination is supported but the Commission has ignored the variety of approaches**

The CBI accepts the principle of non-discrimination, but believes that equal treatment should be delivered in a way that balances employee protection with flexibility for employers. Given that there are many possibilities for the way in which equal treatment can be applied within the complex tri-partite relationship between agency worker, agency and user-company, the CBI believes that the current proposal for user-comparisons is too prescriptive. In particular:

- in the UK and other Member States, agency workers' primary relationship is with the agency. User-companies do not get involved in the details of an agency worker's terms and conditions, and a requirement to compare conditions between permanent and agency staff would require complex and time-consuming calculations before an assignment could begin;
- many user companies will be unwilling to share confidential information about contractual employment conditions with third parties including temporary agencies and temporary agency workers;
- there is considerable concern that a requirement to introduce user-comparisons would introduce an unprecedented requirement for equal treatment between staff working for different employers. CBI members believe that equal treatment should be provided between relevant employees working for the same employer.

In many cases these new requirements will remove the incentive for companies to contract with temporary agencies for work and therefore remove vital employment opportunities and restrict labour market flexibility.

## **Member States should be able to choose between "agency" or "user" comparisons...**

The CBI has always believed that Member States should remain free to determine whether it is more appropriate for agency workers to compare their terms and conditions with other agency temps or with permanent staff in the company to which they are assigned. This would enable the Directive to be transposed in line with the complex variety of existing national regulations. For example:

- **“User-comparisons” exist in some Member States, but do not provide “equal treatment”** – some Member States use the relevant sector collective agreements for the user-company to determine the “comparable” employment conditions. However, rather than receiving exactly the same terms and conditions as comparable permanent staff, the temporary agency worker will typically receive the minimum specified in the collective agreement, or the “trainee rate”, rather than the rate received by the comparable worker in the user-company.
- **Other Member States, including the UK, allow agencies to determine an agency temps’ employment conditions** – most UK workers are not covered by collective agreements. The UK, and other Member States, leave this issue to the agency to determine and the agency worker can receive a higher level of benefits to a comparable worker in the user-company.

**...or the current text should provide greater flexibility by allowing Member States not to apply user-comparisons for up to 18 months**

The Commission’s current proposal suggests that equal treatment should be based on user-comparisons. While the CBI does not agree with this position conceptually, we could accept this position if there was sufficient flexibility to ensure that new legislation does not undermine the use of agency work.

As very few agency workers are covered either by contracts that guarantee pay between assignments, or by collective agreements, the only flexibility available to the UK is the 6-week time limited derogation. The CBI could support the time-limited derogation proposed in the current text, but the proposed 6-week time period fails to provide sufficient flexibility. Over 50% of temporary assignments in the UK last for longer than 3 months, with 60% of these assignments lasting anything up to a year and almost 40% of these assignments lasting between one and two years or more.

We therefore believe that the current time period in Article 5(4) should be extended to at least 18 months. This would ensure that user-comparisons were made available to agency temps who have established a much more long-term relationship with the user-company, a relationship which is more comparable to the employment relationship between the user and their permanent staff. In the UK agency temps on more short-term assignments would still be protected by minimum employment standards, on issues such as working time, paid holiday, minimum wage and health and safety measures.

### **Basic working and employment conditions (Article 3(d)(ii))**

The CBI sees no justification for a specific reference to “pay” in the Commission’s proposal and we believe that this reference should be removed from the scope of the Directive. While Member States may choose to include pay as a comparable employment condition when implementing this Directive, it is the CBI’s view that under the European Treaty, Directives brought under Article 137(6) cannot legislate on issues relating to “pay”. The Treaty states,

*“The provisions of [Article 137] shall not apply to pay, the right to association, the right to strike or the right to impose lock-outs.”*

During last year’s social dialogue negotiations on agency work we were given to understand that the Commission’s legal services also believed that a Directive on agency work could not cover pay. We therefore see no justification for “pay” being referred to as a comparable employment condition within the scope of the Directive.

## **Access to permanent quality employment (Article 6)**

The draft Directive also proposes a number of new requirements aimed at improving access to “permanent quality employment”. The CBI agrees that agency work is a significant route into permanent employment, but members believe that agency temps’ access to quality permanent employment should be relevant to the position to which they have been assigned. In particular:

- **the use of “temp-to-perm” fees should not be prohibited (Article 6(2))** – we are not aware of any abuse of agencies preventing temps entering temporary employment as a result of “temp-to-perm” fees. The effect of Article 6(2) could be to prohibit “temp-to-perm” fees outright, for which we see no justification.

The UK has recently reviewed this issue in consultation with employers, employees and agencies and has proposed revised UK-level regulations so that, provided a user is always given the alternative option of extending an assignment for an agreed period, a “temp-to-perm” fee can be charged up to 8 weeks from the last day of hire or up to 14 weeks from the day the worker first started work. This reaches a sensible balance between ensuring that there are no disproportionate barriers to permanent employment for agency temps, and that agencies are compensated for their investment in the temporary agency worker.

- **agency temps should have access to training that is relevant to the type of job to which they are assigned (Article 6(5))** – the CBI supports agency temps receiving training during and between assignments that is relevant to the job to which they have been, or are likely to be, assigned. However, training should be the responsibility of the agency – not the user-company.

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