

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 228 final - SYN 280 and SYN 281

Brussels, 13 August 1990

Proposal for a  
COUNCIL DIRECTIVE

on certain employment relationships with regard  
to working conditions

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Proposal for a  
COUNCIL DIRECTIVE

SYN 280

on certain employment relationships with regard to  
distortions of competition

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Proposal for a  
COUNCIL DIRECTIVE

SYN 281

supplementing the measures to encourage improvements in  
the safety and health at work of temporary workers

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(presented by the Commission)

EXPLANATORY MEMORANDUM ON THE PROPOSALS FOR DIRECTIVES CONCERNING  
CERTAIN EMPLOYMENT RELATIONSHIPS

TABLE OF CONTENTS

- I. GENERAL INTRODUCTION
- II. THE EMPLOYMENT RELATIONSHIPS CONCERNED BY THE THREE PROPOSALS FOR DIRECTIVES
- III. THE SIGNIFICANCE OF EMPLOYMENT RELATIONSHIPS OTHER THAN FULL-TIME OPEN-ENDED EMPLOYMENT RELATIONSHIPS
- IV. PART-TIME EMPLOYMENT AND TEMPORARY EMPLOYMENT WITH REGARD TO DISTORTIONS OF COMPETITION
  - IV A: PART-TIME EMPLOYMENT WITH REGARD TO DISTORTIONS OF COMPETITION
    - IV A 1: Description
    - IV A 2: Conclusion
  - IV B: TEMPORARY EMPLOYMENT WITH REGARD TO DISTORTIONS OF COMPETITION
    - IV B 1: Fixed-duration employment: description
    - IV B 2: Employment through temporary employment businesses: description
    - IV B 3: Conclusion
- V. PART-TIME EMPLOYMENT AND TEMPORARY EMPLOYMENT WITH REGARD TO THE IMPROVEMENT OF WORKERS' WORKING CONDITIONS
- VI. TEMPORARY EMPLOYMENT WITH REGARD TO THE PROTECTION OF WORKERS' HEALTH AND SAFETY
- VII. OVERALL CONCLUSIONS

EXPLANATORY MEMORANDUM ON THE PROPOSALS FOR DIRECTIVES CONCERNING CERTAIN EMPLOYMENT RELATIONSHIPS

1. GENERAL INTRODUCTION

1. The European Councils of Hanover, Rhodes and Madrid considered that, in the context of the establishment of the single European market, the same importance should be attached to the social aspects and to the economic aspects and that they should therefore be developed in a balanced manner. For their part and taking the same view, the Parliament (in numerous own-initiative resolutions) and the Economic and Social Committee (in its opinion of February 1989) also recognized the importance of that approach.

Title 1, point 7 of the Community Charter of the Fundamental Social Rights of Workers lays down that "the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions, as regards in particular forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work."

With that in mind, the Commission stated in its action programme relating to the implementation of the Charter that "faced with the considerable development of very varied forms of employment contracts other than those of an open-ended type, there should be a Community framework ensuring a minimum of consistency between these various forms of contract in order to avoid the danger of distortions of competition and increase the transparency of the labour market at Community level."

2. Accordingly, pursuant to the Charter and as announced in its action programme, the Commission intends to propose a groundwork of fundamental provisions in the specific area of certain employment relationships. As it is taking a broad approach it is putting forward at the same time three instruments which meet a threefold requirement :

- Improved operation of the internal market and greater transparency of the labour market, in the framework of economic and social cohesion;
- Improved living and working conditions for workers;
- protecting the health and safety of workers at the workplace.

The Commission intends in this way to help remove distortions of competition and eliminate abuses which can be caused by differences in national situations, while recognizing that major differences connected with aspects such as, for example, wage levels are fully warranted.

That is why the Commission considers it appropriate to present three proposals for Directives, each one based on a different article of the Treaty (Articles 100, 100a and 118a), instead of a single proposal as announced in its action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers. Careful analysis of the problems raised by these non-standard employment relationships shows that they cannot be appreciated properly from just one angle and that it is necessary to take a differentiated approach involving a number of facets, each one corresponding to a specific provision of the Treaty.

3. In recent years employment relationships have changed substantially and diversified considerably in the Member States under the joint influence of greater international competitiveness, increasingly rapid technological innovation and radical changes in the organization of production, often accompanied by changes in workers' aspirations and individual needs. This trend has taken shape in particular through the rapid increase in certain employment relationships distinguished by their fixed duration or by part-time work.

This development and this diversification have helped to create jobs which, as pointed out in the Charter and the action programme, is a priority for the internal market.

The growing importance of these particular forms of employment is explained by the fact that they meet real needs of firms, which require greater flexibility in the organization and operation of their productive equipment and also in the utilization of their manpower in order to be more adaptable, respond more efficiently to fiercer international competition and diversify more successfully their responses to cope with the development of market demand. Furthermore, these different forms of employment relationships seem to satisfy better the aspirations and individual and family needs of a number of workers. In other words these employment relationships constitute a means for utilizing production capacities to the full, while in many cases they can provide an alternative to unemployment for workers and also an appropriate response to different family situations.

4. In the Commission's view, in no circumstances can the need for these specific forms of employment relationship be called into question; they are indispensable given the issues raised by the development of a coherent strategy for growth and employment. What is required is to define a number of basic rules which, having regard on the one hand to firms' needs for flexibility and on the other, the aspirations of a number of workers, aim - while taking into account the diverse situations in the Member States and the autonomy of management and labour - to :

- (i) prevent any spread in the increasing prevalence of insecurity and segmentation on the labour market and promote an improvement in workers' living and working conditions, notably by ensuring that the employees

concerned by such relationships enjoy treatment comparable to that enjoyed by employees working full time for an indefinite duration, for example as regards access to training and social services;

- (ii) eliminate the distortions of competition which could be caused by differences in the social costs resulting in particular from differences in the national rules governing these employment relationships, notably in relation to social security schemes and the costs connected with seniority and dismissals;
- (iii) Improve the minimum levels of protection of health and safety at work (supplementing the rules laid down in the framework Directive 89/391/EEC) by ensuring, in particular, that the employees covered by these particular employment relationships enjoy the same conditions in this regard as other employees.

To rule out any disproportionate administrative costs which could run counter to the objectives sought, the Commission proposes that the two Directives based on Articles 100 and 100a of the Treaty should not apply to wage and salary earners whose average weekly working hours are less than 8.

Under this approach two specific points should also be taken into account :

- (i) One of the Community's fundamental objectives is to promote freedom of movement for workers, yet the single market will not eliminate all the differences in working conditions in the Member States. The practices and legislation in force in one Member State can lead to distortions of competition or have an adverse effect on working conditions in other Member States. This problem is particularly serious in frontier areas.
- (ii) Moreover in view of the fact that female workers account for a very high proportion of the jobs covered by this type of employment relationship (above all in the services sector), an improvement in living and working conditions under such relationships would obviously have a favourable effect on equal treatment.

5. In the context of social policies, it must be emphasized that, given the differences arising from national practices, the subject of working conditions in general falls to varying degrees under the autonomy of both sides of industry, who often act in the public authorities' stead and/or complement their action. To take account of these different situations and in accordance with the principle of subsidiarity, the Commission takes the view that negotiation between the two sides of industry should play its full part within the framework of the proposed measures, provided that it is able to guarantee adherence to the principles set out in the Commission's

proposals as adopted by the Council<sup>(1)</sup>. In other words, it is important in this field to take into consideration the fact that such agreements concluded by management and labour can in principle make a contribution to the application of Community directives, without, however releasing the Member States concerned from the responsibility for attaining the objectives sought via these Instruments.

6. The proposals put forward by the Commission do not cover all the factors having a bearing on working conditions in the context of completion of the internal market. In addition to wage and productivity levels, other factors must be borne in mind, notably in the light of the movement of workers on a European scale, for example the working conditions applicable to employees from another Member State performing subcontracting work in the host country. In that connection, as mentioned in the Commission's action programme relating to the implementation of the Community Charter of the Fundamental Social Rights of Workers (COM(89)568), the Commission has undertaken to prepare a proposal for a Community instrument in this area before the end of the year, which will be based in particular on the principle that the rules and agreements of the host country should apply, save in the case of duly motivated exceptions. Steps should also be taken to open up as rapidly as possible to the whole Community the market in the services of temporary employment businesses (interim services) and to examine together with the parties concerned the measures to be taken for the satisfactory operation of the internal market.
7. In order to ensure a consistent approach in its proposals the Commission should withdraw its former proposals concerning voluntary part-time work (presented in 1982 and amended in 1983) and concerning the supply of workers by temporary employment businesses and fixed-duration contracts (presented in 1982 and amended in 1984).
8. In presenting these proposals to the Council, the Commission would underline the importance it attaches, having regard to the principle of subsidiarity, to the consistency of a Community approach which links the completion of the single market and social development.

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(1) This approach is consistent with the judgment given by the Court of Justice on 10 July 1986 in Case 235/84 in which it stated - recalling its judgment of 30 January 1985 in Case 143/83 - that "it is true that the Member States may leave the implementation of the social policy objectives ... in the first instance to management and labour. ... That does not, however, discharge them from the obligation of ensuring that all workers in the Community are afforded the full protection provided for in the Directive. The State guarantee must cover all cases where effective protection is not ensured by other means."

11. THE EMPLOYMENT RELATIONSHIPS CONCERNED BY THE THREE PROPOSALS FOR DIRECTIVES

9. These forms of employment, other than full-time open-ended employment, can be summarized as follows:

part-time employment, temporary employment, seasonal work, on-call employment, homeworking and teleworking.

10. However, having regard to the purpose of these Directives, which aim to cover the principal, most widespread forms of employment on the labour market in non-standard employment relationships, it is not necessary to draw up an exhaustive list of all the new kinds of employment relationships, particularly since some of them are little used or restricted to certain branches of industry or services or particular localities in some Community regions or can in fact be brought under the heading of part-time/temporary employment.

By way of example, mention may be made of homeworking, practised in a few areas and by a number of specific industries, such as clothing, but which is also spreading to other sectors. According to circumstances homeworkers may be self-employed or employees; reliable data for making the distinction is not always available.

Other types of work, such as on-call employment, are not widespread and may also be classified as part-time and/or temporary work. Finally, teleworking is on the increase as the use of information technologies expands. However, it is not yet practised to any great extent. In this context mention should be made of atypical hours, which in different forms are becoming frequent in many service activities and may be classified as part-time/temporary employment.

Furthermore, the research carried out has revealed that the information, notably statistics, available in the Member States cover in the main part-time employment and temporary employment in all their different forms.

11. In the light of those circumstances, the substantive scope of the Directives has been focused on the following employment relationships:

- part-time employment: this notion covers all the different forms of employment whose main feature is working hours shorter than the normal working hours applied in the firm or branch concerned (for example, fewer hours per day, per week, per month or per year). It may take the form of half-time employment, but may also vary in duration as in the case of three-quarter time, four-fifths time, or working weeks of less than twenty or ten hours. It may be governed by a contract of definite or indefinite duration;
- temporary employment: may be defined in contrast to employment of indefinite duration and take the following forms:

- (a) employment governed by a fixed-duration contract entered into directly by the employer and the employee, where the term of the contract is defined by objective conditions such as: reaching a specific date, the completion of a certain task, the occurrence of a specific event, the period of seasonal work (agriculture, tourism) which is characterized by the regular cycle of the seasons and repeated every year; the fixed duration may also cover the period required to replace an employee who is absent in the short term. Lastly, the fixed-duration contract may be used to recruit workers for a new activity not certain to last;
- (b) temporary employment covering any relationship between the temporary employment business (employer), the temporary employee and the user undertaking. This form of temporary employment is based on a contract whereby a natural or legal person recruits employees and then places them at the disposal of an undertaking for the purpose of performing a task.

As far as this last form of employment relationship is concerned, it should be noted that the activity of temporary employment businesses is not permitted by law in Greece, Spain and Italy. The Commission's proposals are not intended to infringe on the right of the Member States to prohibit that activity wholly or in part. The Commission takes the view, however, taking into account the dynamics of the labour market and the high degree of substitutability between the different forms of temporary and fixed-duration employment relationships that this issue should be tackled in a systematic way bearing in mind the fact that recourse to these different forms of temporary and fixed-duration employment is often motivated by similar grounds.

- 12. Although the substantive scope of the Directives is restricted to part-time and temporary employment, the Commission has not lost sight of the fact that illegal and undeclared work disturbs, sometimes to a significant extent, the normal functioning of the labour market. This problem will be tackled in due course, notably when the Commission presents proposals for the introduction of a form to serve as proof of an employment contract or relationship.

### III. THE SIGNIFICANCE OF EMPLOYMENT RELATIONSHIPS OTHER THAN FULL-TIME OPEN-ENDED EMPLOYMENT RELATIONSHIPS

- 13. Firms have a genuine need of these non-standard employment relationships which meet their requirements for flexibility in the organization of their work in order to adapt more easily to the developments of the Large Market and face up to international competition against a radically and constantly changing economic background.



Part-time and temporary employment contracts are in that context an important tool for firms, which can thus organize their human resources better and integrate new technologies as efficiently as possible and also improve their response to the movements and changes in demand coming from the market. Furthermore it should be stressed that temporary and part-time work is particularly important to small and medium-sized businesses, notably those in the services sector such as retailing and tourism; using these forms of employment enables them to cope at peak times and to cope with special operations during certain peak periods.

Such types of employment have increased substantially throughout the Community and, as shown in tables 1 and 2 below, although they account for a small share of total employment they are applied in most cases to new recruits.

There are also major differences between Member States.

14. Tables 1 & 2 (page 10)

15. It is clear from table 1 that in 1988 part-time employment ranged between nearly 30 % of total salaried employment in the Netherlands (Denmark and the United Kingdom being the other Member States where part-time employment amounted to more than 20 %), whereas the lowest percentages (5 % and less) were found in Portugal, Spain, Italy and Greece. The Community average is 13.6%, that is more than 14 million part-time employees.

It should be underlined that, as shown in table 2, in most Member States part-time employment increased far more than full-time employment over the period 1983-88. In the Netherlands, Ireland, France and Belgium the movement was particularly marked; in Italy there was a sharp rise starting out from a comparatively low absolute level. For EUR10 the increase in part-time employment amounted to nearly 28 %, whereas full-time employment increased only by 2.4 % over the same period.

16. With regard to temporary employment, the data available (which cover employment relationships through temporary employment businesses, fixed-duration relationships, apprenticeship contracts and certain forms of casual work) show that in 1988 there were nearly 10 million temporary employees, i.e. 9.6 % of total salaried employment. These shares reached more than 15 % in Portugal, Greece and Spain, whereas the lowest shares were in the United Kingdom, Belgium, Ireland and Luxembourg. Growth was strong (1988/83) in particular in France, the Netherlands and Ireland.

A recent survey carried out by Commission departments in 1989 showed that 9 % of all employees had a temporary employment relationship, 45 % of which with a duration of up to six months and 68 % with a duration of up to one year. While in Spain 30 % of the employment relationships were limited in time, this percentage was around 10 % in Greece, Ireland, Italy and Portugal and below 10 % in all other Member States.

Table 1

Share (in %) of respectively part-time employees and temporary employees in relation to all employees  
(1988 compared with 1983)

Member State	Part-time		Temporary	
	1988	(1983)	1988	(1983)
Federal Republic of Germany	12.7	12.0	11.2	11.1 (84)
France	12.0	8.9	7.8	3.2
Italy	5.0	3.5	5.8	4.9
Netherlands	29.4	20.9	8.7	3.8
Belgium	11.0	8.3	5.4	4.1
Luxembourg	6.7	6.2	3.7	1.8
United Kingdom	22.8	19.4	5.9	3.1
Ireland	8.2	5.8	9.1	3.5
Denmark	25.5	25.6	11.1	12.7 (85)
Greece	4.0	4.9	17.6	
Portugal	4.5		18.5	
Spain	4.7		22.3	
Community	13.6		9.6	

Source : Labour Force Sample Survey

TABLE 2

Percentage change in full-time and part-time salaried employment 1988/83

Member State	Full-time	Part-time
Federal Republic of Germany	+4.6%	+11.4%
France	-1.6%	+36.6%
Italy	+0.2%	+45.5%
Netherlands	+6.5%	+58.4%
Belgium	-0.5%	+36.1%
Luxembourg	+7.6%	+ 9.2%
United Kingdom	+3.8%	+26.1%
Ireland	-4.8%	+39.2%
Denmark	+14.8%	+12.8%
Greece	+9.7%	-10.7%
EUR10	+2.4%	+27.7%

17. According to a recent study for the Commission relating to the situation of organized temporary work in the Community (excluding Ireland, Luxembourg and Portugal) about 5 million persons are involved in temporary work organized through employment businesses in the Community. The highest percentages are found in the Netherlands, the United Kingdom and France, whereas Belgium occupies an intermediate position. It should, however, be noted that growth rates have been fairly large in recent years in Belgium and the Federal Republic of Germany.

A small proportion of these temporary workers perform their activity in a country different from that of the temporary business, but it is thought that this type of transborder agency work will increase in the future.

Some data for fixed-duration employment relationships in the strict sense of the word suggest that a number of Member States are having increasing recourse to this form of recruitment. In France, about 70% of new recruitment in 1988 consisted of fixed-duration relationships; in the Federal Republic of Germany, about one third of new recruitment in the private sector is limited in time. In Spain, in the first half of 1989, about 80 to 90% of all recruitment from the register of the unemployed was for a fixed duration.

18. It should also be stressed that the completion of the single market together with the abolition of frontiers will affect the exercise of freedom of movement for workers and freedom of establishment, particularly in frontier regions. At present movements of labour are still restricted essentially to frontier workers and take place mainly in areas limited to fairly short distances on either side of the border. However, according to the estimates available such movements already involve close on 150 000 Intra-Community workers and more than double that figure in all. As we achieve the frontier-free area, the movements will increase and cover more ground; they will be facilitated by the current development of rapid means of communication. This view is endorsed by the economic and social groups in the regions concerned.
19. If the employment relationships concerned by these proposals are handled very differently on the different sides of a frontier it might give rise to unrestricted use of special forms of employment on one side of a frontier, compared with a more restricted situation (for example in terms of ceiling and rules on the use of temporary employment) in a frontier region in another Member State.
20. And this is not a simple hypothesis or projection. There are already examples of distortions of competition caused by differences in the treatment of temporary workers and part-time workers in some manufacturing and service industries which are highly labour-intensive and use above all low-skilled manpower: mass retailing, building, food and textile industries, and so on ... What is more, many of these frontier regions, which are often dominated formerly by a single industry and are undergoing a restructuring process, are areas of high unemployment.

21. Finally, consideration must be given to the more specific case of the working conditions applicable to workers from another Member State doing subcontracting work in the host country and, within that context, the specific problem of the transnational operations of temporary employment businesses: they could recruit a temporary employee on one side of a frontier for the purpose of providing his services to a user undertaking in a neighbouring country, but not comply with the rules in force in that country. These specific problems will have to be dealt with in the context of the completion of the internal market. They will form the subject of the proposal for a Community instrument, which the Commission undertook in its action programme to present in 1990.
22. It has been established, therefore, that the workers concerned by this Directive account for some 20 % of total employment, bearing in mind that 15 % of part-time employees have temporary jobs.

It must be pointed out in particular that the trend of these employment relationships has gained strength in recent years (see table 2); in five years part-time employment has increased on average by 27.7 % in the Community with peaks of 45 % in Italy (whereas overall it is less extensive than in the Community as a whole) and 68.4 % in the Netherlands.

Around 20 % of total employment in the Community is therefore covered by employment relationships other than full-time open-ended relationships and trends in the past few years show that these employment relationships are tending to increase substantially and becoming, if not routine, at all events frequent.

#### IV. PART-TIME EMPLOYMENT AND TEMPORARY EMPLOYMENT WITH REGARD TO DISTORTIONS OF COMPETITION

23. Wage levels, non-wage labour costs and rules on working conditions vary considerably between Member States. Broadly speaking, however, these differences do not hamper the operation of healthy competition in the Community. The differences in productivity levels attenuate these differences in product unit costs to a considerable degree. Moreover, other production cost components tend to be higher in the less-developed Member States where nominal wage levels are lowest.
24. On the other hand, the differences in average nominal costs may also reflect the mismatch in the supply and demand of the different factors of production, including the structure of the labour force by skill levels, which vary considerably from one Member State to another.

We must take account of these relationships between cost levels and the relative weight carried by the different factors of production if we are to ensure healthy and sustained growth in all the Community regions. Further differences may reflect the consequences of conduct by the two sides of industry which, within the framework of their autonomy, can also vary quite markedly. This is true in particular of wage-setting which is mainly the responsibility of management and labour and also of the Member States in accordance with national practices. At all events, the

economic and social reinforcement of the Community and the catching-up process for the least developed regions will surely reduce these differences.

25. Other cost differences are not offset by factors such as differences in productivity and do not help to improve the Community's economic and social cohesion. This is so in particular as regards the relative cost differences resulting from different kinds of rules on different types of employment relationships, which may provide comparative advantages which constitute veritable distortions of competition.

Clearly, if a Member State can produce with lower labour costs than the other Member States - yet that difference does not result from factors such as those examined above, but is due to segmented labour markets having different costs for the same type of work, attributable solely to the different rules applicable to the different types of employment relationships - it will have a comparative advantage which cannot be considered permanent and runs counter to common interests.

26. Such distortions of competition resulting from statutory measures in some Member States also arise within certain Member States in respect of firms which use to varying extents the least costly contract procedures. In that respect, however, firms do have a choice as to the workers they use and hence different costs for the same work; firms in another Member state where the rules lay down more uniform conditions for the different types of contracts do not have this choice.

At Community level distortions of this nature may have particularly adverse consequences in the frontier regions which will tend to expand with the strengthening of the internal market. Action at Community level is therefore justified given that the rules governing the different types of employment contracts give rise to relative cost differences for firms located in different Member States.

27. In assessing the significance of these relative cost differences and their effects on competition, we must bear in mind that they hinge on two groups of factors: on the one hand, the difference between the working conditions relating to the various types of contract and on the other, the prevalence of the contracts which, for the same type of work, cost least. We must therefore examine first of all the differences resulting from the different rules governing the various types of employment relationships. Account must also be taken of the data analysed above on the prevalence of contracts other than full-time open-ended contract and the increase in their use.

28. The main rules governing the employment relationships concerned and the extent to which the way they are handled in one or more Member States may cause distortions of competition vis-à-vis other Member States can be broken down into three categories :

- direct costs of remuneration
- costs resulting from social protection
- indirect wage costs connected with the features of the employment relationship.

All these factors must however be seen in a wider context which includes general economic policies, tax systems, demographic trends, etc.

29. The issue of remuneration and more generally of labour costs is not dealt with as such in the Commission proposals. Although it is true that wage differences at macroeconomic level are substantial between different countries, we cannot overlook the fact that differences in average labour productivity usually follow the same pattern and as a result, unit labour costs vary far less than wages do.

It has been noted, however, that in respect of the very wage costs relating to the employment relationships covered by the Commission proposals there are factors which in many cases play a role of some importance and have nothing to do with productivity; they result from certain laws and/or collectively agreed rules which give rise to cost differences including the indirect costs connected with the operating conditions of temporary employment businesses.

These cost differences which are not justified by the workers' performance per time unit can be identified mainly in the following areas:

costs resulting from social protection

indirect costs connected with the duration of the contract, notably rules connected with seniority, annual holidays and allowances for dismissal and broken contracts.

30. Since the Commission takes the view that wage determination is essentially a matter for collective negotiation and national legislation it does not intend to intervene in this process. It does believe, however, that the abovementioned factors often constitute a fair percentage of wage costs.

These rules will be examined separately, having regard to part-time employment and then temporary employment.

#### IV.A. PART-TIME EMPLOYMENT WITH REGARD TO DISTORTIONS OF COMPETITION

##### IV.A.1 Description

31. Where part-time employment is concerned, the two tables below describe the situation in the Member States: table 3 is concerned with social protection and table 4 with the principal laws and rules.

In this context attention should be drawn to limited statistical information, in particular with regard to the number of persons to whom the differences in treatment apply. The following figures are therefore based on estimates derived from various sources.

TABLE 3:

SOCIAL SECURITY CONTRIBUTIONS AND HOURLY LABOUR COSTS OF PART-TIME WORKERS

	Germany	United Kingdom	Netherlands	Ireland	Denmark	Belgium	Spain, France, Greece, Italy, Portugal, Luxembourg
Share of part-time employees in the total of part-time employees in Europe (EUR12): in %	21.2	36.4	10.7	0.4	4.4	2.3	24.7
Share of part-time employees in the total of employees within the countries: in %	12.2	22.7	28.1	7.4	25.4	11.0	between 4.0 (Greece) and 11.5 (Fr.)
Possible economies in terms of social contributions: in % of the gross wage	36(a) 4.3(unempl.)	variable(b) 10 & 19.45	neg.(c)	15.95(d)	2.5(e)	neg.(f)	neg.(g)
Estimation of the number of persons concerned: in thousands	450(h)	2400(i)	neg.	24	130	neg.	neg.
in % of the total of part-time employees:	16 2	48 11	--	40 3	22 6	--	--
in % of all employees:	neg.: negligible						

Sources: EUROSTAT, Labour force Survey (1987 results), for the estimation of the number of part-time employees; information from national sources on the legislation and contribution rates.

- Notes:
- (a) No contributions if monthly income remains below DM 470 and fewer than 15 hours work per week; less restrictive regulations for students and pensioners. No contributions to unemployment insurance for employees working less than 19 hours per week, without earnings limit.
  - (b) No contributions for earnings below £43 per week, then progressive rates ranging from 10 to 19.45 % (employer and employee rates taken together).
  - (c) Contributions are compulsory for all wages. Some exceptions for domestic staff. Minimum wage does not apply to many part-time jobs.
  - (d) Employment for less than 18 hours per week exempted from the main social insurance contributions.
  - (e) Estimate. No contributions to complementary pension schemes for employments of less than 10 hours per week. Savings of DKR 194.04 per month. A job training contribution of 106.44 per month is also not payable.
  - (f) Contributions are compulsory for all wages. Some very limited exceptions for domestic staff, seasonal and occasional jobs.
  - (g) Apparently no reduction of the hourly labour costs through part-time employment as compared with full time employment.
  - (h) Estimation probably far too conservative: The vice president of the Federal Employment Office, Ms Engelen-Kefer, estimated that more than 1 million women have jobs for which no social contributions have to be paid (DANGVers 1988, p.282-3).
  - (i) Estimation taken from a parliamentary question (Hansard, 7 April 1989, col. 299). As a result of the progressive contribution rates any part-time employment (some 5 million employees) gives rise to lower social insurance contributions than for full time employment. Savings decrease as the number of hours worked per week rises.

TABLE IV

Statutory labour law provisions concerning part-time employment relationships and their possible impact  
on the labour costs of these relationships

	B	DK	D	G	E	F	IRL	I	L	NL	P	UK
Level of regulation	specific law minimal duration 3 hours a day and 12/13 hours a week	no statutory provisions	Employment Promotion Act	no specific legal provisions	specific legal provision defining part-time as less than 2/3 of normal hours	specific law defining part-time as less than 4/5 of normal hours	no specific law	no specific legal provisions	no specific legal provisions	no specific legal provisions	no specific legal provisions	no specific legal provisions
Form of contract	written	no specific form	no specific form	no specific form	written	written	written evidence	no specific form	no specific form	no specific form	no specific form	written evidence
Pay and Conditions	same as full-time employees	same as full-time employees	blue collar employees working less than 10 hours do not receive continuation of pay in case of sickness	same as full-time employees	same as full-time employees	same as full-time employees	at least 120 hours a month to qualify for full annual paid leave; more than 13 hours a week for minimum notice period, redundancy pay and protection against unfair dismissal	same as full-time employees	same as full-time employees	legal minimum wage not obligatory for those who work less than 1/3 of normal hours	same as full-time employees	at least 8 hours a week (16 h for less than 5 years service) for minimum notice period, redundancy pay and protection against unfair dismissal
Included or not for company size thresholds for worker representation	included; those working less than 75% of normal hours counted as half	included fully	included fully	included fully	included pro rata (legally not clear)	included pro rata	not included	not laid down	included fully when working at least 24 hours; otherwise not included	included only those fully working more than 1/3 of normal hours in establishments up to 100 employees	no threshold fixed	included fully



32. Table 3 shows that in some Member States costs resulting from statutory social protection schemes expressed as a percentage of gross wages vary according to whether certain part-time employment arrangements or a full-time employment relationship is considered.

- In the Federal Republic of Germany contributions amounting to 36 % of gross wages are not paid if income is below DM 470 per month and unemployment contributions are waived for less than 19 hours per week; sickness insurance and pension contributions are waived for less than 15 hours per week. It can be estimated that social security contributions are not paid in respect of 450 000 part-time contracts.
- In Denmark (where social protection is mainly financed through taxes or contributions at progressive, non-proportional rates), contributions are not paid to the complementary pension scheme in respect of less than 10 hours per week, which amounts to about 2.5 % of gross wages.
- In Ireland the main social security contributions are waived in respect of employment for less than 18 hours per week, 15.95 % of the gross wages of the workers concerned.
- In the United Kingdom contributions for part-time employment are lower on account of the progressive contribution rates; the resulting difference ranges between 10 % and 19.45 % of the gross wages concerned. In addition, there is a lower income limit (UKL 46 per week) below which no contributions are required. On the basis of the previous threshold of UKL 43 it is estimated that no contributions are paid in respect of some 2 400 000 part-time jobs, as the income concerned falls below the limit.
- In the other Member States, however, there is practically no such difference between part-time employment and full-time employment.

33. Taking as a basis, by way of example, an employee in the Federal Republic who works less than 15 hours per week and does not pay social security contributions, an illustration can be given of a form of distortion of competition caused by the German social security rules and the statutory situation in the Netherlands, as follows :

Since in 1984 the average hourly labour cost was around ECU 14.24 in Germany and ECU 13.68 in the Netherlands, use of a part-time worker not requiring employers' and workers' contributions would cost 36 % less for one and the same job of work in Germany, presuming that the wages excluding contributions were paid at the same hourly rate. In this particular case (disregarding the negligible effect of including such workers in calculating average hourly labour costs) and taking into account the fact that in contrast to Germany there is no lower limit in the Netherlands, the hourly wage cost falls in Germany to about ECU 10.50, while in the Netherlands each hour worked costs ECU 13.68. In highly labour-intensive branches using a large proportion of part-time workers not covered by social security in a given country, competitive relationships in neighbouring regions may be affected.

34. Furthermore, bearing all such possibilities in mind, the above example shows that the dispersion of hourly wages can be intensified considerably by such special forms of employment, which usually makes the labour market concerned highly flexible in various sectors.
35. Lastly, in the case in point, competitiveness as regards all the economies concerned is not called into question, as illustrated by the average per capita wage relationships, while the distortion of competition would be restricted to a few specific sectors in adjacent regions.
36. Turning to the other indirect wage costs connected in particular with the duration of the employment relationship, notably rules on seniority and dismissal, the review of the situation in the different countries has produced the following results:

In Belgium, Denmark, Greece, Spain, France, Italy, Luxembourg, Portugal, the Netherlands and the Federal Republic of Germany, the same treatment applies to both part-time and full-time employees.

In contrast, in Ireland only part-time employees working at least 120 hours per month receive full annual holiday pay; only employees working at least 18 hours per week are entitled to a minimum period of notice and redundancy pay in the event of dismissal.

In the United Kingdom, only employees working at least 8 hours per week for more than five years (at least 16 hours per week if they have less than five years seniority) are entitled to a minimum period of notice and redundancy pay in the event of dismissal.

#### IV.A.2 Conclusion

37. On the basis of the above review of part-time employment, the following conclusions may be drawn:

As regards wages, the evidence available does not reveal any concrete, generalized problem of wage discrimination in respect of part-time employment. However, nor does the evidence enable us to rule out the possibility that problems of this kind do arise in certain cases. In this context it should be pointed out that the statutory minimum wage in the Netherlands is not compulsory in respect of employees working less than one third of normal working hours.

38. As regards the costs resulting from cover under statutory social protection schemes, comparing social cover costs for full-time employees and for an important number of part-time employees reveals significant and sometimes substantial variations between the Member States, for the differences noted range from 2% to 36% of gross wages. In some Member States many employees are concerned by such contracts. In the Federal Republic of Germany, more than 3 million part-time contracts account for 12% of all employees.

Social security contributions are not paid under at least 450 000 of these contracts (some sources put the figure at 1 million, see table 3), that is 16% or 34% of part-time employees and 2% or 4.4% of all employees.

In Ireland, the main social security contributions are waived in respect of 40% of part-time contracts, roughly 16% of gross pay.

Contributions are lower in the United Kingdom for part-time contracts (some 5 million) than for full-time employment, because of the sliding scale for contribution rates: 2 400 000 of such jobs are exempt from contributions. These figures account for 23% and 11% of all employees respectively.

Comparing these situations with those in countries where social contributions for part-time employees are proportionately the same as that for full-time employees, we note that the differences are very marked and concern a great number of workers (in particular, a substantial proportion of new recruits are engaged under this type of contract). This may cause a distortion of competition in certain cases between Member States; convergence of the coverage of the various schemes applied throughout the Community is therefore warranted, while taking into account the exception made for employment relationships which do not exceed a certain lower limit with regard to working hours.

39. Where additional indirect wage costs are concerned, the fact that only part-time employees working at least 18 hours per week in Ireland and at least 8 hours per week for more than five years (or at least 16 hours per week if less than five years) in the United Kingdom are entitled to a redundancy payment in the event of dismissal also gives rise to significant distortions vis-à-vis Member States where part-time employees are afforded proportionately the same cover as full-time employees.

In Ireland, moreover, further distortions result from the rule that only part-time employees working at least 120 hours per month are entitled to full annual holiday pay.

40. Lastly, we must consider the special problem caused from now on as pointed out above by the increasing mobility of workers in the "Euregios". The comments set out there concern several countries whose frontiers are located in a number of the Community's Euregios. The distortions of competition caused by the different schemes covering part-time employment will be felt above all in these areas, particularly affected by the problem of business location in the context of the industrial restructuring proceeding from attainment of the large market and the resulting free movement of workers.

In all these cases it must be borne in mind that the Commission proposes to introduce as a minimum threshold an average of 8 hours per week. This will contribute to a balanced approach to the problem while taking into account firms' economic needs.

41. Specific problems of part-time working in some industrial and service sectors

In Annex 1, three tables set out some fundamental data on part-time working by major sectors in certain services and certain industries.

These tables highlight the numerous differences in the situations of different branches; at the same time, however, it should be noted that:

- there is some competition in retailing, particularly mass retailing in frontier regions;
- in industry, some sectors relatively open to competition at Community level (see table 3 of Annex) are major employers of part-timers.

The vast majority of these sectors are labour intensive and their workforce is low-skilled (for example, food, textiles, leather, clothing and footwear).

This situation, peculiar to certain industries, throws new light on the problem of distortions of competition, more particularly in highly competitive industries.

IV B. TEMPORARY EMPLOYMENT WITH REGARD TO DISTORTIONS OF COMPETITION

42. The situation in the Member States as regards temporary employment is set out in three tables: one on the main statutory provisions and rules concerning fixed-duration employment relationships (table 5), one on the main statutory provisions and rules governing temporary (labour supply) employment (table 6) and one on the differences between temporary employment and open-ended employment in respect of certain benefits falling within the overall framework of terms and conditions of employment and working conditions (table 7).

IV B 1 Fixed-duration employment: description

43. Statistics are not available to compare wage levels for the fixed-duration employment relationship with wages for open-ended contracts. It will be noted, however, that the indirect costs under statutory social protection schemes sometimes reflect differences in social cover for temporary employment and that for open-ended employment (see table 7). In some countries no cover is provided under social security schemes for very short-term employment relationships, so no contributions are due in such cases (for example, in Germany for less than two months employment per year and in the United Kingdom whenever weekly pay is below UKL 43).

TABLE V

STATUTORY LABOUR LAW PROVISIONS COVERING FIXED-TERM EMPLOYMENT RELATIONSHIPS  
WHICH MAY HAVE A DIRECT OR INDIRECT IMPACT ON LABOUR COSTS OF THESE RELATIONSHIPS

	B	DK	D	G	E	F	IRL	I	L	NL	P	UK
Level of regulation	Specific law	No legal provisions	Law/case-law	General law	Specific law	specific law	Partly by law	Specific law	Specific law (bill)	General law	Specific law	Partly by law
Justification for use	no particular justification	no particular justification	objective grounds except from the employment promotion act	has to be justified	no particular justification for employment promotion otherwise to be justified	wide on definitive (draft law sends to limit recourse)	no restriction	has to be justified	certain restrictions	no restrictions	wide definition	no restrictions
Maximum duration	2 years	no limit	no limit but 18 months if based on employment promotion act	no limit renewable twice	3 years	2 years including renewals (draft law proposes 1 yr in France)	no limit	3 to 6 months renewable once (24 months for training work contracts)	normally 2 years including renewals	no limit in practice no longer than 5 years	no limit but 2 renewals no longer than 3 years	no limit
Form of contract	written	no specific form	no specific form	no specific form	written	written	written evidence	written	written	no specific form	written	written evidence
Period of service and seniority		normally taken into account			normally taken into account	depends on collective employment		taken into account		taken into account		
Allowance at the end of the contract					bonus payable 12 days pay per yr worked	bonus payable (3% of pay)						
In case of overrunning predetermined date contract becomes	open-ended	open-ended	open-ended	open-ended	open-ended	open-ended	not automatically open-ended	open-ended	renewed for the same period	renewed for the same period (up to one year)	open-ended	not automatically open-ended
Dismissal before expiry on "objective" grounds	normally compensation of wages lost	no specific provision	general minimum notice periods	compensation in case of dismissal for "serious reasons"	general notice periods	normal procedures	> 1 year and 2 year resp. protected against unfair dismissal	normal procedures	normal procedures	normal procedures if clause in the contract	employee may appeal on of unfair dismissal	> 2 years protected against unfair dismissal
Included or not for company thresholds for workers representation	Included	Included	normally not included	Included	In principle included	Included pro rata	the same as open-ended contracts	Included in practice	Included	Included	not included	the same as open-ended contracts

TABLE VI

STATUTORY LABOUR LAW PROVISIONS CONCERNING EMPLOYMENT RELATIONSHIPS THROUGH TEMPORARY (INTERIM) EMPLOYMENT BUSINESSES  
AND THEIR POSSIBLE IMPACT ON THE LABOUR COSTS OF THESE RELATIONSHIPS

	B	DK	D	G	E	F	IRL	I	L	NL	P	UK
Level of regulation	Specific law	Legal authorisation of agency required	Specific law	Not permitted by law	Not permitted by law	Specific law	Regulation of agencies	Not permitted by law	Specific law (bill)	Specific law	Specific law	Regulation of agencies
Justification for use	particular circumstances	no particular restrictions but agencies only allowed for office and shop employees	no particular circumstances but forbidden for blue collar workers in construction industry			Wide definition for use (draft law tends to limit recourse)	no restrictions		wide definition	no restriction but forbidden in building & metal industry & in Rotterdam harbour	particular circumstances	no restrictions
Maximum duration	1 or 3 months renewable once	3 months renewable after break	3 months (6 months according to employment promotion act) renewable after break			24 months renews included (draft law limits assignments to 12 months in France)	no limit		24 months renews included	6 months	no limit	no limit
Form of contract	written contracts between employee and agency and user company	written contract between employee and agency	written contract between agency and user company between employee and agency indefinite contract			written contracts between employee and agency and user company	no specific form		written contract between employee and agency and user company	written contract between employee and agency (not always clear whether employment contract)	written contract between employee and agency and user company	no specific form (not always clear whether employment contract)
Pay and conditions	similar to comparable employees in user company	comparable with similar employees of agency	comparable with similar employees of agency			similar to employees of user company insecurity bonus on termination of each assignment	no specific provisions		similar to comparable employees of agency	similar to comparable employees of user company	similar to comparable employees of user company	no specific provisions
Included or not for company size thresholds for workers representation	user company (by collective agreement)	agency	agency			user company pro rata	no specific provisions		agency (draft law)	normally agency user company possible	user company	no specific provisions
Information and Consultation rights	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company	Generally not in user company

Table 7 : Protection of temporary workers - Differences with permanent workers

	Germany	Belgium	Denmark	Spain	France	United Kingdom	Greece	Ireland	Italy	Luxembourg	The Netherlands	Portugal	
Dismissal	- 0	0	0	0	0	-	0	- 0	0	0	No information		
Sick benefits	- contract < 4 weeks CT <sup>1</sup>	+	+	+	+ <sup>2</sup>	- contract < 3 months	+	+	- TC	+			+
Unemployment	+	+	+	+	+ <sup>3</sup>		+	+	+	+			+
Pensions	- CT <sup>1</sup>	-	+	+	+	+	+	+	+	+			+
Maternity	- TC	+	+	+	+	+	+	+	+	+			+
Health care	+	+	+	+	+	+	+	+	+	+			IND
Child benefit	IND	+	IND	+	+	+	+	IND	+	IND			+
Holidays	+	+	+	+	- < 1 month		+	+	+	+			
Parental leave	- TC	+	+	Excl.	+		+	+	+	+			
Disability benefit		+	+	+	+		+	+	+	+			

TC : till the term of the contract.

0 : no compensation at the end of the contract.

- : difference with permanent workers.

+ : no difference with permanent workers.

<sup>1</sup>CT : short term employees excluded.

<sup>2</sup> : indemnity at the end of the contract.

<sup>3</sup> : Except for seasonal workers.

Excl. : excluded.

IND : independent of professional activity.

source: Women in atypical employment  
study for the Commission, 1989

According to a survey carried out by the Dublin Foundation on whether employees having a fixed-duration contract are considered to cost less than employees having an open-ended employment relationship, the view of management in Spain was that for 34% of their staff contributions were lower; the figures for other Member States were: 11% in the United Kingdom, 6% in Italy and 3% in Belgium and Germany. The very high figure for Spain is probably explained by the fact that under certain conditions, the payment of contributions to statutory social security schemes may be waived in respect of new recruits.

Clearly, therefore, as in the case of part-time employment relationships, distortions of competition may be caused by the varying practices in the different Member States.

As regards the other indirect wage costs connected in particular with the duration of the employment relationship, it will be noted that only Denmark, Spain, Italy, the Netherlands and, in some cases, France take seniority into account: an allowance is paid on termination of the relationship only in Spain (12 days' wages x years worked) and France (5% of wages), while compensation for dismissal is paid where the employment relationship is terminated before expiry in Belgium and Greece.

#### IV B 2 Employment through temporary employment businesses: description

44. As regards temporary work through labour-only supply businesses, it should be noted first of all that this three-sided employment relationship is prohibited in Greece, Spain and Italy. In addition to the differences in treatment as regards social matters, as already pointed out above with respect to temporary employment, attention must be drawn to the following:
- \* In Belgium, France, the Netherlands and Portugal, the terms and conditions of employment and pay for such temporary workers are similar to those afforded employees at a comparable level in the user undertaking;
  - \* In Denmark, Germany and Luxembourg (bill), however, the comparability is established in relation to employees at a similar level in the same temporary employment business;
  - \* there are no rules on the matter in Ireland and the United Kingdom, nor is any specific type of contract specified. In contrast, in the other Member States where temporary employment businesses are authorized (DK, L, B, F, NL and P) the contract must be drawn up in writing.



#### IV B 3 Conclusion

45. In the light of the foregoing the following conclusions may be drawn as regards distortions of competition.

Where fixed-duration employment relationships are concerned, taking seniority into account for the purpose of calculating pay in countries such as Denmark, Spain, Italy and the Netherlands, gives rise, in comparison to countries whose laws and agreements do not do so, to a significant increase in indirect wage costs in connection in particular with the duration of the work performed. Even greater difficulties are caused in countries like France and Spain where an allowance is paid on termination of the contract, or Belgium and Greece where compensation for dismissal is paid where the employment relationship is terminated before expiry.

The above considerations show that differences in treatment cause distortions of competition, given the number of workers in temporary employment (9.6% of all employees).

But there is clearly an even greater need for some harmonization of the schemes in force in the Member States with a view to healthy competition, if we bear in mind that no maximum duration is applicable to this type of employment in the Federal Republic of Germany, Ireland, Luxembourg (bill), Portugal and the United Kingdom, while in other Member States, such as Belgium, a fixed-duration contract may apply for no more than two years. Furthermore, in many cases no maximum duration is laid down for this employment relationship. Finally, the grounds for recourse to this type of employment are also couched in very general terms, or, as in Ireland and the United Kingdom, grounds are not required.

46. Where temporary employment through temporary employment businesses is concerned, there are major differences between the Member States (at least in those where labour supply through temporary employment businesses is authorized) in the bases used to calculate pay.

While Member States such as Belgium, France, the Netherlands and Portugal afford temporary employees working conditions and pay comparable to those in the user undertaking, other Member States, such as Denmark, the Federal Republic of Germany and Luxembourg, simply provide for comparable conditions within the same temporary employment business.

There are no rules in this area in Ireland and the United Kingdom.

It must be pointed out that these pay systems are operated in those very countries whose territories fall within the Euresys in which neighbouring countries' practices differ.

In the context of the large market and the generalized mobility of labour which will gain ground from 1992, steps should be taken towards a degree of approximation: otherwise, problems of healthy competition will arise.

Moreover, as in the case of the fixed-duration employment relationship, the duration and the procedures for the renewal of temporary (labour-supply) employment contracts vary considerably from one country to another. In some cases, national rules provide for the drawing up of temporary contracts which may be identical in duration to the fixed-duration contracts referred to above. Differences concerning the conditions of recognition of temporary employment businesses have also to be considered. It would no doubt be useful to attain a degree of harmonization to prevent practices developing on either side of the frontiers of neighbouring countries which, in the context of mobility for persons, would enable interested parties in one country to benefit from the services of temporary employment businesses in a neighbouring country to the detriment of those in their own country on account of the different rules applicable.

47. The Commission considers therefore that, given the numbers of workers concerned, it would be advisable, in order to identify and preclude the risks of distortions of competition resulting from the mobility of persons which will increase after 1992, to provide for harmonization of the rules governing the different types of employment relationships in the Community, in the following areas:

- the very different practices noted as regards social protection and other social benefits, particularly in relation to part-time employment;
- the limits imposed on the duration and renewal of contracts and the establishment of an allowance in the event of an unjustified break in the temporary employment relationship.
- the conditions under which licences are granted to temporary employment businesses, where they are lawful.

Since these factors affect to some extent the direct and indirect costs relating to the workers concerned and it is necessary to ensure that pay systems assure adequate proportionality with pay for full-time, open-ended employment, the Commission believes that the primary responsibility for the determination of pay levels and structures falls to the two sides of industry in their collective bargaining processes, a principle laid also down by ILO Conventions 98 and 154.

To follow these developments more closely and determine whether any distortion of competition results from the failure to observe the principle of proportionality, the Commission intends to collect appropriate statistics and draw up a report in three years' time on developments in pay for full-time open-ended employment compared to that for other forms of employment.

The Commission considers that no further or more specific steps should be taken in the areas concerned. It takes the view that the proposed approach, concerning limited but fundamental areas, deals with the crux of the problems arising with respect to competition in the different kinds of employment relationships other than full-time open-ended employment relationships.

V. PART-TIME EMPLOYMENT AND TEMPORARY EMPLOYMENT WITH A REGARD TO THE IMPROVEMENT OF WORKERS' WORKING CONDITIONS

48. The proposed measures concerning employment relationships other than full-time open-ended relationships must also deal with matters relating to the organization of work, terms of employment and working conditions. Where working conditions are concerned, workers covered by such types of employment must be regarded as workers to all effects and purposes, taking into account the minimum limit of working hours to be established.

Bearing that in mind, the Commission takes the view, therefore, that it is advisable to tackle a number of problems in respect of which discrimination could arise between workers according to the nature of the employment relationship concerned. Distinctions must also be made between employees working part-time, for a fixed duration or on a temporary basis. Eight main issues call for attention in particular:

- access to training;
  - taking into account such employees in calculating numbers of persons employed with a view to the setting-up of representative bodies for workers;
  - information for workers' representative bodies in the event of recourse to the workers covered by this Directive;
  - grounds for recourse to temporary employment;
  - information for the temporary workers employed where the employer intends to recruit full-time employees for an indefinite period;
  - rules concerning access to social assistance;
  - access to the social services of undertakings;
  - the specific situation of workers employed through temporary employment businesses.
49. In the case of employment relationships other than full-time relationships for an indefinite duration, access to vocational training must take into account the duration of the employment relationship and its nature, whether it is part-time employment or temporary employment. The part-time employee working for a limited period must have access - within the undertaking - to vocational training under conditions equivalent to those enjoyed by full-time employees. The situation is different in the case of temporary workers performing their work under a contract for the supply of specific services concluded between the employer, supplier of services and the employer, user of services. Such employees have an employment relationship with the employer (temporary employment business), while they have no employment relationship with the employer/user for whom they perform their task and who is primarily responsible for health, safety and hygiene at the workplace.

50. Similarly, as regards calculating the number of employees to be taken into account in an undertaking to establish the threshold requiring, for example, the setting-up of a health and safety committee, the Commission considers that all employees covered by a part-time fixed-duration employment contract must be taken into account in proportion to the number of hours worked in the undertaking.

51. In a number of Member States having workers' representative bodies in the undertakings/establishments, such bodies are informed and consulted when employees covered by this Directive are recruited. In order to ensure in all such cases that the workers' representative bodies are aware of the qualitative and quantitative dimension of the use of non-standard employment relationships, the Commission considers that such a right to information should be applicable in all cases where such bodies exist. This would improve the transparency of the firms' employment policies and give the workers' representative bodies certain opportunities for involvement in the employer's recourse to part-time/temporary employees .

To protect stable employment and limit the employer's exclusive freedom the Commission considers that recourse to temporary employment in the two forms covered by these Directives should be motivated in the contract of employment.

52. In addition, the rules concerning procedures for access to and grant of

- social assistance and social welfare,
- non-contributory social security benefits,

must be applied without discrimination to all employed persons whatever the employment relationship applicable to them.

Under most national schemes, social protection entails social benefits or assistance intended for persons who, for whatever reason, have not acquired sufficient rights to enable them to qualify for the contributory benefits normally reserved for workers and their beneficiaries. Such benefits may, above all under systems based on standard, blanket guarantees, take the form of basic, non-contributory benefits granted, possibly subject to means, to the entire population.

53. In this context sight should not be lost, in respect of working conditions, of the situation of seasonal workers, notably in farming and tourism. Such workers have fixed-duration contracts, each year covering a fairly specific period corresponding to the agricultural or tourist season. In many cases they are covered by the same employment relationship each year and sometimes within the same undertakings. However, because of the features peculiar to their employment, always less than one year, they cannot be treated in exactly the same way as workers in the undertaking under a fixed-duration contract, normally for one year.

54. It is important to ensure that, for example, as regards working conditions and access to social services or statutory and occupational social security schemes, such workers are afforded treatment comparable to that afforded other workers.

To encourage stable employment, it would appear that a worker employed in an undertaking under an employment relationship other than a full-time or open-ended employment relationship should be informed in good time by his employer where the employer concerned decides to take on new recruits.

55. Finally, the position of employees assigned by temporary employment businesses to user undertakings should be strengthened, in particular in a twofold fashion :

1. according to the Commission's information in certain situations, such employees may not enter into a contractual employment relationship with the user undertaking after their assignment is completed. Such a prohibition should not be allowed, since it tends to limit unduly the employee's opportunities to exercise his/her right to free choice of employment.

2. In order to assure the employee of all entitlements resulting from the contract of employment the Commission considers that the employees concerned here should always be protected against the possibility of the temporary employment business not fulfilling the obligations under the employment contract, in particular with respect to the payment of wages and social security contributions, and that the Member States should therefore establish appropriate machinery to guarantee the employees' contractual rights resulting from the employment relationship.

#### VI TEMPORARY EMPLOYMENT WITH REGARD TO THE PROTECTION OF WORKERS' HEALTH AND SAFETY

56. Although the data available in this area is not extensive, in several Member States attention has been drawn to the relatively large number of accidents occurring among workers employed under temporary employment relationships.

57. By way of example, studies have shown that in 1986 in France the rate of accidents at work entailing absences was 12.1% for temporary employees as against 5.2% for employees as a whole. In 1984 the rate of serious accidents entailing permanent incapacity was 11.5 per 1 000 for temporary workers and 5.9 per 1 000 for other employees.

Similarly, studies have shown that in Belgium the rate of accidents at work for all employees (blue and white collar) was 44% calculated according to the following formula: number of accidents

per million divided by the number of hours during which workers were exposed to risks. This gives an accident rate, however, of 112% for temporary workers (the basis used to work out this figure was some 30% of all temporary workers in Belgium).

Finally estimates in the Federal Republic of Germany show that the frequency of accidents at work is 1.5 to 4 times higher for workers supplied by temporary employment businesses than for permanent workers in the enterprise concerned.

58. The framework Directive 89/391/EEC and the individual directives pursuant to Article 16(1) of that Directive do set out provisions intended to improve the health and safety of workers in general. However, to deal more specifically with the risks run by temporary workers, it is necessary to lay down certain provisions to take into account of the specific nature of their employment relationships and thus supplement the existing general provisions.

This is all the more necessary since the conclusions to be drawn in this respect from the different research work highlights certain risks with regard to safety and health at work which affect in particular temporary workers. On the basis of the high number of accidents at work among temporary workers in certain countries it appears that numerous factors contribute thereto ranging from a certain ignorance of the tasks and the job, to inexperience and lack of familiarity. Generally speaking this can often be explained by a failure to integrate temporary workers into the general policy of the undertaking in matters of safety, a situation which seems to be aggravated by the fact that the legal employer and the user company are not the same entities in the case of temporary employment.

59. It would thus be appropriate to ensure, in general terms, that the contract linking the user with the temporary employment business clearly indicates the qualifications required, the place of work, the working hours, the specific features of the job and, if necessary, details of major risks as defined in national legislation. The worker would thus be accurately informed of the objective features of the work for which he has been engaged and fully aware of whether he is fit to perform it.

This information must be brought to the knowledge of the employees concerned in accordance with procedures that the Member States will be responsible for adopting.

60. Furthermore, where temporary (labour supply) employment is concerned, the responsibility assumed by the temporary employment business vis-à-vis the employee with whom it concludes a contract, must in no circumstances allow the user undertaking to evade its responsibilities as regards the conditions relating to safety, health and hygiene at work during the temporary employee's period of assignment.

61. Similarly, the user undertaking must inform every temporary employee of the particular occupational qualifications or skills needed to carry out the task for which he has been engaged. The temporary employee is not necessarily aware, on the basis of an offer of employment sometime couched in general terms, of the risks he might run owing to inadequate qualifications.
62. The same applies, of course, to work requiring special medical supervision from the health angle. Moreover, use of temporary employment must be ruled out for work requiring prolonged medical supervision of workers - in accordance with national rules - to be continued for several months or several years after such work has come to an end. In exceptional cases it should be possible to use temporary workers, but only on condition that steps are taken to ensure that they are afforded medical supervision beyond the term of their contract.

#### VII OVERALL CONCLUSIONS

63. It emerges from the analysis of the problems raised by employment relationships other than full-time open-ended relationships with respect to distortions of competition and the development of the internal market and also working conditions and the protection of workers' health and safety, that a full, effective, flexible response at Community level demands a varied approach as regards the legal bases to be used.
64. The responses to the problems raised by the improvement of working conditions, distortions of competition and the proper functioning of the internal market and also the issue of workers' health and safety at work do not fall within the same legal approach.
65. For that reason the Commission takes the view that the following three proposals, each based on a specific Article, i.e. Articles 100, 100a and 118a, should be prepared in order to cover the different aspects of these employment relationships other than full-time open-ended relationships:
  - (a) proposal for a Council Directive on the approximation of the laws of the Member States relating to certain employment relationships with regard to working conditions (Article 100);
  - (b) proposal for a Council Directive on the approximation of the laws of the Member States relating to certain employment relationships with regard to distortions of competition (Article 100a).
  - (c) proposal for a Council Directive supplementing the introduction of measures to encourage improvements in the safety and health at work of temporary workers (Article 118a).

ANNEX I

STATISTICAL ANNEX  
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Table 1 : SHARE OF PART TIME EMPLOYMENT BY MAJOR SECTORS (%)

Country	Agriculture	Industry	Services	TOTAL
B	8.6	3.3	15.1	11.0
DK	18.5	11.2	30.5	24.9
FRG	8.9	6.1	17.9	12.7
GR	12.2	2.5	4.7	4.0
SP	2.4	1.7	7.1	4.7
F	12.8	3.8	15.9	11.9
IR	4.9	3.4	10.9	8.2
IT	22.9	3.0	4.7	5.0
L	7.0	3.1	7.9	6.5
NL	28.3	13.2	36.1	29.4
P	10.8	1.7	6.2	4.5
UK	20.9	7.7	30.4	22.8
Eur	14.8	5.3	18.6	13.6

source : Labour force survey, 1988.

Table 2 : SHARE OF PART TIME EMPLOYMENT IN CERTAIN SERVICES (%)

Country	Retail Distribution	Hotels & Catering	Inland <sup>1</sup> transport	Travel Agencies	Banking & Insurance
B	27.4	33.0	5.2	13.7	10.0
DK	47.7	59.4	18.8	20.8	19.2
FRG	26.8	15.5	7.8	6.8	15.0
F	17.9	20.8	5.8	7.3	10.5
IR	17.0	21.1	7.6	6.1	5.3
IT		5.7		1.3	3.4
L	10.2	8.5	4.1	12.5	3.7
NL	49.1	55.1	15.9	10.5	22.7
P	3.3	3.3	1.0	-	3.7
UK	44.9	56.1	7.9	13.7	14.7
GR	2.7	2.5	2.4	4.7	4.9
SP	3.9	5.5	0.9	1.9	3.2
EUR 12	30.1	31.6	7.0	8.9	12.3

source : Labour force survey, 1988.

<sup>1</sup> Excluding railways



Table 3 : SHARE OF PART TIME EMPLOYMENT IN CERTAIN INDUSTRIES (%)

Country	Food, drink & Tobacco	Textiles	Leather	Footware & Clothing	Paper & Publsh.	Other <sup>2</sup> Manuf.
B	4.9	5.1	7.4	3.1	5.5	5.9
DK	21.8	26.4	13.1	21.4	26.5	14.1
FRG	9.8	14.5	22.8	16.9	13.4	14.6
F	7.1	6.2	1.2	6.7	6.4	6.5
IR	3.3	4.9	—	5.2	4.9	4.7
IT	--	--	--	--	--	--
L	10.5	—	—	15.0	7.4	—
NL	17.6	19.2	36.5	36.4	35.9	11.9
P	1.9	4.8	—	1.1	1.5	1.8
UK	13.5	12.1	6.6	16.2	11.4	18.0
GR	1.3	0.8	5.0	1.7	1.8	1.9
SP	1.6	2.5	5.0	7.3	2.9	5.6
EUR12	9.0	8.5	11.0	10.7	12.3	11.1

source : Labour force survey, 1988.

2 Not included in others "NACE" figure 2.

Proposal for a  
COUNCIL DIRECTIVE

on certain employment relationships with regard  
to working conditions

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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,

Whereas recent recruitment patterns show a marked increase in part-time and/or temporary employment relationships; whereas this is a favourable development in so far as it meets the need for flexibility in the economy, notably among firms, in the context of job creation which is a priority in completing the internal market, and meets the aspirations of certain workers; whereas the need for these particular forms of employment cannot, therefore, be called into question;

Whereas the provisions, laws, regulations, administrative measures and collective bargaining arrangements governing such employment relationships vary considerably from one Member State to another;

Whereas part-time and/or temporary workers do not always enjoy within the undertaking treatment equal to that of other employees in respect of employment and working conditions;

Whereas fixed-duration and part-time workers should have access to training under conditions comparable to those enjoyed by workers employed full-time for an indefinite duration;

Whereas within the undertaking part-time, fixed-duration and temporary employees should be taken into account when calculating the minimum threshold for setting up workers' representative bodies in accordance with the rules applicable in each Member State;

Whereas the employer should inform in good time the workers' representative bodies which exist within the undertaking of his intention to use part-time and/or temporary workers;

Whereas, in order to ensure that stable employment is adequately protected, reasons must be given whenever recourse is had to temporary work;

Whereas the employees covered by this Directive should be informed in good time by the undertakings concerned whenever they recruit employees for full-time work of indefinite duration;

Whereas employees of temporary employment businesses should not be precluded from recruitment by the undertaking making use of their services;

Whereas adequate national measures should be laid down in order to ensure that the contractual obligations of temporary employment businesses towards temporary employees are always fulfilled, even where the temporary employment business is unable to do so;

Whereas seasonal workers should be ensured treatment equal to that of the other employees, account being taken of the specific nature of their work;

Whereas the abovementioned principles are very difficult to apply in practice to employment relationships whose weekly duration is considerably shorter than the average statutory, collectively agreed or usual working hours;

Whereas Title 1, point 7 of the Community Charter of the Fundamental Social Rights of Workers lays down that "the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions, as regards in particular forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work";

Whereas under Article 117 of the EEC Treaty the Member States agree upon the need to promote improved living and working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

1. This Directive concerns the following employment relationships :
  - a) part-time employment relationships involving shorter working hours than statutory, collectively agreed or usual working hours;
  - b) temporary employment relationships in the form of :
    - employment governed by a fixed-duration contract - including seasonal work - concluded directly between the employer and the employee, where the end of the contract is established by objective conditions such as : reaching a specific date, completing a specific task or the occurrence of a specific event;

- temporary employment covering any relationship between the temporary employment business which is the employer and its employee, where the latter has no contract with the undertaking where he performs his activities.

2. This Directive shall apply to employed persons working in public and private undertakings.
3. This Directive shall not apply to employed persons whose average weekly working time is less than 8 hours.

#### Article 2

1. Employees covered by an employment relationship for part-time work and/or for a fixed duration shall enjoy access to vocational training initiated by the undertaking under conditions comparable to those enjoyed by workers employed in full-time employment of an indefinite duration, account being taken of the duration of work and the nature of the tasks to be carried out.
2. Employees covered by this Directive shall be taken into account, on the same footing as the other employees (and in proportion to the duration of their work), for the calculation of the threshold at which, within the undertaking, national provisions require the setting up of workers' representative bodies within the undertaking.
3. Where the employer intends to have recourse to employees covered by this Directive he shall inform in good time the workers' representative bodies existing within the undertaking.

In undertakings with more than 1000 employees a regular report shall be drawn up on this type of employment with regard to the development of the workforce as a whole.

4. The employer shall state in the contract of temporary employment the grounds for recourse to this type of employment relationship.

Article 3

Employees covered by this Directive shall be entitled to enjoy the same treatment as workers employed in full-time employment of an indefinite duration as regards benefits in cash and in kind granted under social assistance schemes or under non-contributory social security schemes.

Article 4

Employees covered by this Directive shall have access within the undertaking to the social services normally made available to the other employees.

Article 5

Where the undertakings concerned recruit workers for full-time employment of an indefinite duration, they shall inform in good time the employees covered by this Directive so that consideration can be given to any applications they make.

Article 6

Member States shall take the appropriate measures to ensure that clauses prohibiting or preventing the conclusion of a contract of employment between the user undertaking and the employee of a temporary employment business are null and void or capable of being declared so.

Article 7

Member States shall take appropriate measures to ensure that the contractual obligations of the temporary employment business towards its temporary employee are fulfilled, notably with respect to the payment of remuneration and social security contributions, where that business cannot do so.

Article 8

This Directive shall apply to seasonal workers in so far as the special features of this form of work allow.

Article 9

This Directive shall not affect the right of the Member States to apply or introduce laws, regulations or administrative provisions more favourable to employees.

Article 10

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

The provisions adopted pursuant to the preceding paragraph shall make express reference to this Directive.

Article 11

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

Proposal for a  
COUNCIL DIRECTIVE

SYN 280

on certain employment relationships with regard to  
distortions of competition

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas it is necessary to adopt the measures intended to establish the  
internal market progressively during a period expiring on 31 December 1992;  
whereas completion of the internal market requires, inter alia, the  
elimination of distortions of competition and at the same time promotion of  
economic and social cohesion in the Community;

Whereas recent recruitment patterns show a marked increase in part-time  
and/or temporary employment relationships; whereas this is a favourable  
development in so far as it meets the need for flexibility in the economy,  
notably among firms, in the context of job creation which is a priority in  
completing the internal market, and meets the aspirations of certain  
workers; whereas the need for these particular forms of employment cannot,  
therefore, be called into question;

Whereas the provisions, laws, administrative measures and collective  
bargaining arrangements governing such employment relationships vary  
considerably from one Member State to another;



Whereas this situation increases the dangers of distortion of competition resulting from certain differences in treatment between the undertakings of the Member States;

Whereas these dangers of distortion of competition are particularly great in frontier areas;

Whereas the freedom of movement for workers may be affected thereby;

Whereas the Member States may leave it in the first instance to the two sides of industry to achieve the objectives set out in this Directive; whereas it is in that case for them to implement the necessary provisions to ensure its general application;

Whereas the Member States are responsible for determining pay; whereas the bargaining autonomy of the two sides of industry should be respected;

Whereas the differences in treatment concern mainly areas such as indirect costs resulting from social protection, indirect costs for benefits granted to workers in cash or in kind, indirect wage costs connected with contract duration and, in particular, rules on seniority such as entitlement to annual holidays, and entitlement to seniority and dismissal allowances;

Whereas, on account of the differences noted, it is necessary to approximate the relevant national rules in order to eliminate the disparities which give rise to distortions of competition;

Whereas, however, the approximation of national provisions is not appropriate for employment relationships whose weekly duration is considerably shorter than the average statutory, collectively agreed or usual working hours;

Whereas, as regards the renewal of temporary employment contracts for a given job and the total period covered by successive employment contracts, there are differences in the laws of the Member States which provide, according to circumstances, for contracts to be renewed for up to 12 months, 24 months or 36 months, or indefinitely, or set the duration of contracts concluded by temporary employment businesses at 3 months, 24 months, with possible renewal or for an indefinite period,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns the following employment relationships:
  - a) part-time employment relationships involving shorter working hours than statutory, collectively agreed or usual hours;
  - b) temporary employment relationships in the form of:
    - employment governed by a fixed-duration contract - including seasonal work - concluded directly between the employer and the employee, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a specific event;

- temporary employment covering any relationship between the temporary employment business which is the employer and its employee, where latter has no contract with the undertaking where he performs his activities.
2. This Directive shall apply to employed persons working in public and private undertakings.
  3. This Directive shall not apply to employees whose average weekly working time is less than 8 hours.

#### Article 2

Member States shall take the necessary measures to ensure that employees covered by this Directive are afforded, vis-à-vis employees employed full-time for an indefinite duration, social protection under statutory and occupational social security schemes rooted in the same foundations and the same criteria, account being taken of the duration of work and/or pay.

#### Article 3

Member States shall take the necessary measures to ensure that part-time workers are afforded the same entitlements to annual holidays, dismissal allowances and seniority allowances as full-time employees, in proportion to the total hours worked.

#### Article 4

With regard to temporary employment Member States shall take the necessary measures to ensure that :

- a) national laws provide for a limit on the renewal of temporary employment relationships of a duration of 12 months or less for a given job so that the total period of employment does not exceed 36 months;
- b) provision is made for some form of equitable allowance, in the event of an unjustified break in the employment relationship before the term fixed.

Article 5

This Directive shall apply to seasonal workers in so far as the special features of this form of work allow.

Article 6

Member States shall comply with this Directive by 31 December 1992 at the latest, by bringing into force the laws, regulations or administrative provisions necessary or by ensuring that the two sides of industry establish the necessary provisions through agreement, without prejudice to the obligation of the Member States to achieve the results to be obtained by this Directive. They shall forthwith inform the Commission of all the measures taken thereunder.

The provisions adopted pursuant to the preceding paragraph shall make express reference to this Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

Proposal for a  
COUNCIL DIRECTIVE

SYN 281

supplementing the measures to encourage improvements  
in the safety and health at work of temporary workers  
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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 118a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas Article 118a of the EEC Treaty provides that the Council shall  
adopt, by means of Directives, minimum requirements for encouraging  
improvements, especially in the working environment, to guarantee a better  
level of protection of the safety and health of workers;

Whereas, pursuant to Article 118a of the Treaty, such Directives must avoid  
imposing administrative, financial and legal constraints which would hold  
back the creation and development of small and medium-sized undertakings;

Whereas recourse to forms of employment such as temporary employment has  
increased considerably;

Whereas special attention should be paid to ensure that such employees  
receive appropriate training as regards the occupational risks peculiar  
to the undertaking concerned;

Whereas research results show that in general temporary workers are more exposed to the risk of accidents at work and occupational diseases than other workers;

Whereas the Directives on health and safety, notably Council Directive 89/391/EEC<sup>(1)</sup>, contain provisions intended to improve the health and safety of workers in general; whereas further provisions are necessary to cover the specific situation of temporary workers;

Whereas certain work requires special medical supervision over a long period; whereas it should therefore be prohibited for temporary workers, save in exceptional circumstances, the workers concerned being afforded in that case medical supervision beyond the term of their contracts;

Whereas, in order to ensure a better level of protection, information and training must enable the temporary workers (and also the workers' representatives within the undertaking) to know and appreciate the risks for health and safety to which they are exposed at work and the measures required to reduce or eliminate those risks;

Whereas, whatever the temporary worker's employment relationship, it is the employer making use of his services who must be responsible for applying the rules on safety and health;

Whereas this Directive constitutes a practical step within the framework of the attainment of the social dimension of the internal market,

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(1) OJ No L 183, 29.6.1989, p. 1.

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive concerns temporary employment relationships in the form of:

- a) employment governed by a fixed-duration contract - including seasonal work - concluded directly between the employer and the employee, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a specific event;
- b) temporary employment covering any relationship between the temporary employment business which is the employer and its employee, where the latter has no contract with the undertaking where he performs his activities.

Article 2

The purpose of this Directive is to ensure that, for the duration of the work performed in an undertaking and/or establishment making use of the services of the temporary worker, such worker is afforded, as regards health and safety at work, the same conditions as those of other workers in that undertaking and/or establishment, account being taken of particular situations.

Directive 89/391/EEC and the individual Directives within the meaning of Article 16(1) thereof shall apply in full to the entire field referred to in the preceding paragraph, without prejudice to more binding and/or more specific provisions set out in this Directive.

Article 3

Member States shall ensure that the assignment contract linking the user to the temporary employment business specifies the occupational qualification required, the place of work, the hours of work, the specific features of the job to be filled and, in particular, whether the job falls within the category of major risks as defined in national legislation.

All these facts shall be brought to the knowledge of the workers concerned.

Article 4

Member States shall ensure, without prejudice to the liability of the temporary employment business, that the undertaking and/or establishment making use of the services of a temporary worker is responsible for the duration of the assignment for the conditions governing performance of the work which are applicable thereto.

For the application of the preceding paragraph, the conditions governing the performance of the work shall be limited to those connected with safety, health and hygiene at work.

Article 5

Member States shall ensure that, before a temporary worker takes up any activity requiring special occupational qualifications or skills or special medical supervision, he is informed by the employer making use of his services of the risks he faces and, if necessary, receives appropriate training.



Article 6

Member States shall ensure that temporary workers are not used for work requiring special medical supervision over a long period. However, in certain exceptional cases requiring medical supervision over a long period, temporary workers may be used but in such a case the Member States shall ensure that the latter are afforded medical supervision beyond the term of their contract.

Article 7

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

The provisions adopted pursuant to the preceding subparagraph shall make express reference to this Directive.

2. Member States shall forward to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

Article 8

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

COM(90) 228 final

# DOCUMENTS

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Catalogue number : CB-CO-90-378-EN-C  
ISBN 92-77-62822-7

PRICE	1 - 30 pages: 3.50 ECU	per additional 10 pages: 1.25 ECU
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Office for Official Publications of the European Communities  
L-2985 Luxembourg