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GUIDELINES FOR COMMUNITY ACTION  
IN THE FIELD OF TEMPORARY WORK  
(Agency work and Contracts for a limited period)

(Communication from the Commission)

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## GUIDELINES FOR COMMUNITY ACTION IN THE FIELD OF TEMPORARY WORK

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(Agency work and contracts for a limited period)

### INTRODUCTION

1. This Communication to the Standing Committee on Employment focusses on the two most common forms of temporary work : contracts for a limited period and agency work.

(a) The expression "contracts for a limited period" relates to a situation where a firm establishes a direct legal link with the worker and where termination of such a contract is determined by objective conditions, such as reaching a certain date, completion of assignment, return to work of an employee who has been temporarily replaced.

(b) In the case of "Agency work", a triangular relationship is set up between the user undertaking, the employment agency and the worker. In this case, the temporary worker is paid by the employment agency, but he is temporarily assigned to the user undertaking (\*).

2. Three important factors justify Community action to support the initiatives taken by each of the Member countries of the Community.

(a) Community action in this field is justified in the context of efforts to implement Community policy on the reorganization of working time. (\*\*) Restrictions on systematic overtime working will not increase the number of permanent jobs as long as firms can make repeated use of agency workers, or workers on contracts for a limited period.

(b) National legislations on temporary work may differ widely and even conflict. This can constitute serious obstacles to the unity of the Community labour market and workers' freedom of movement. Moreover, the complexity and diversity of national legislations can on occasion be exploited by undertakings, particularly in the case of cross-frontier agency work (that is where a firm in one Member State makes use of agency workers supplied by an agency located in another Community country).

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(\*) There are also other less usual forms of temporary work : casual subcontracting and free lending of employees (see Annex I).

(\*\*) See Council Resolution of 18 December 1979 (OJ C 2 of 4.1.1980).

(c) All the Community countries are faced with the need to cope with the problems that inevitably accompany the expansion of temporary work in an economy that has moved from full employment to under-employment. At present, temporary work is no longer solely a voluntary form of employment. In the main, today, it is a type of employment entered into unwillingly by workers seeking a permanent job.

The Standing Committee on Employment drew attention to the importance of this question at its meeting on 9 October 1979. In his conclusions, the Chairman emphasized that the Commission should study this question in close cooperation with the two sides of industry.

As a result of this recommendation, a study was entrusted to two independent experts (\*). Several consultations took place with the Group of Directors-General of Employment, the Group of Directors of Employment Agencies and the two sides of industry. The results of this study and these consultations have provided the basis for this Communication.

3. The first part of the Communication contains a short economic and social analysis of temporary work. The second part sets out the aims and guidelines for action advocated by the Commission.

#### I. ECONOMIC AND SOCIAL ANALYSIS OF TEMPORARY WORK

4. Despite their difference from the legal point of view, employment on contracts for a limited period and agency work can be analysed in similar terms from the economic and social viewpoints.

5. From the economic viewpoint, employment on contracts for a limited period and agency work fill the same need : industry's need for flexibility to react to temporary fluctuations in their permanent work force or in demand. There are many ways in which these two forms of temporary work may substitute for each other : employment on contracts for a limited period can often replace agency work (\*\*). In practice, however, the public employment services were not in the past, and are still not, in a position to provide sufficient temporary workers to fill all the temporary labour requirements of industry. This weakness on the part of the public employment services is one of the main reasons for the success of private agencies providing agency work.

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(\*) "Temporary work in the EEC countries : stocktaking and proposals", by Mr. DRUBIGNY and Mr. BLANPAIN, available in French, English and German.

(\*\*) The converse has less validity since agency work is mainly limited to short-term assignments. On the other hand, contracts for a limited period are sometimes issued for long periods that may even extend to several years in the case of a contract related to a specific task.

A ban on agency work, as called for by certain parties at the meeting of the Standing Committee on Employment of 9 October 1979, would certainly disrupt the economic sectors that at present make use of this facility in the absence of an appropriate public service. In addition, excessively rigid restrictions on agency work and contracts for a limited period would tend to have the opposite of the desired effect. To meet their need for flexibility, firms would be likely to fall back on the use of systematic overtime working (which it is hoped to limit in connection with the reorganization of working time) or other legal forms of temporary work, such as casual subcontracting or free lending of employees (neither of which is necessarily to be encouraged) or illegal forms (which must be fought against).

6. From the social point of view, it is important that the flexibility required by firms should not be achieved at the expense of workers temporarily in their employ (those holding contracts for a limited period and agency workers in particular).

In a time of full employment, temporary work answered the need for a form of employment adapted to those workers unwilling or unable to take up a permanent job : for example, young people during school holidays or women who assume family responsibilities. It was during this time that most of the legislation concerning agency work was adopted, the legislators' main concern being to control agency work to ensure that it did not disturb the stability of the labour market (in particular, through raising pay rates to draw permanent workers away from certain firms for re-employment as agency workers in other forms).

At the present time, with the high unemployment prevailing in Community countries, temporary work is no longer chiefly a voluntary form of employment. With respect to workers supplied by agencies, recent surveys show that most of them were obliged to take up agency work while seeking a permanent job (\*). With respect to workers on contracts for a limited period no figures are available except in France where the unemployment statistics show that in 1979, 25% of workers registering as unemployed did so at the expiry of a contract for a limited period as against 17% in 1976.

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(\*) These surveys were brought to the Commission's notice following its request for information expressed at the preliminary consultation with the employers' representatives. The surveys were carried out in France in 1979 (where 1/3rd of temporary (agency) workers are voluntary) and in Belgium 1978 (where 1/4 of such workers are voluntary).

This recent information with respect to temporary works calls for a reaction by Member States and the two sides of industry. Priority should be given to making sure that these workers are protected in their employment. The development of temporary work should not lead to the lowering of workers' status or render employment precarious.

Moreover, permanent employment should continue to be the rule and temporary work the exception, like the fluctuations that give rise to it. For example, the use of temporary labour should not be a means of circumventing current social provisions (calculation of the statutory number of staff representatives, for instance) or of weakening the negotiating position of the permanent work force (for example, in case of strike). Such evasions, although exceptional, should be proscribed.

## II. COMMUNITY AIMS AND GUIDING PRINCIPLES

7. In the light of these economic and social considerations, any action in respect of temporary work should seek to achieve four aims :

- (a) employers' operational flexibility should be maintained, in particular where they are subject to temporary fluctuations in staff numbers or economic activities;
- (b) the use of temporary labour should continue to be the exception, and permanent employment the rule;
- (c) employment protection for temporary workers (those on contract for a limited period and agency workers) should be assured;
- (d) public employment services should be in a better position to respond to workers' and employers' temporary employment requirements and should play a role in accordance with the recommendations of the International Labour Organization.

8. To achieve these aims, the Commission proposes a number of guiding principles for Community action. These proposals do not prejudge the means to be implemented (code of conduct, collective agreement or compulsory norms at national or Community level).

9. With respect to agency work, the Commission recommends the following lines of action :

A. ELIMINATION OF ABUSES

- (a) Grounds justifying the use of agency work should be limited to the two following sets of circumstances : temporary drop in the permanent work force (sickness, holidays, departures, retirement, resignation,...) or a temporary increase - exceptional or seasonal - in activity (increase in orders, launching of a new activity, performance of an exceptional, specialized task, ...).

This central principle should be reinforced by the following :

- (b) any employer using agency workers should inform the staff and their representatives. The information should be given beforehand and consultations held with staff representatives when several workers from agencies are called on at the same time;
- (c) a time limit should be imposed on the use of agency workers for a given job. The same applies to any extension of their assignment;
- (d) where the employer's social obligations are determined on the basis of the number of employees, agency workers should be taken into account;
- (e) the use of agency workers to replace permanent workers on strike should be banned.

B. PROTECTION OF AGENCY WORKERS

- (f) The employment contract concluded between the agency worker and the agency should be for an indefinite period. Failing that, the contract may be for a fixed period determined by objective conditions (given date of expiry, completion of a given task, return of the permanent worker being temporarily replaced) to obviate arbitrary unilateral decisions. The current practice in certain Member States, whereby temporary employment agencies do not inform their agency workers of the conditions under which their employment contract may be terminated, should be banned.
- (g) principal characteristics of the work to be provided by agency workers to the user undertaking should be specified in writing;
- (h) the remuneration of agency workers should be determined in the context of collective agreements. Failing this, such remuneration should be aligned with that of the permanent workers in the user undertaking;
- (i) the staff amenities provided by the user undertaking (e.g. canteens, showers, ...) should be accessible to agency workers;
- (j) agency workers (beyond a certain period of employment in the user undertaking) should be given priority (over a period to be specified) if the undertaking recruits new permanent staff with the same skills;

- (k) in the event of bankruptcy or insolvency of the agency providing agency work (with respect to the payment of wages or social security contributions) the interests of the workers should be safeguarded, either by requiring agencies to contribute to a guarantee fund or by providing for the secondary liability of the user undertaking.

C. SUPERVISION OF TEMPORARY EMPLOYMENT AGENCIES, IN PARTICULAR CROSS-FRONTIER ACTIVITIES

- (l) summary statistical information relating to the agency work force (including cross-frontier workers) and the duration of assignments should be supplied to the competent employment services reasonably frequently (for example, every six months);
- (m) any agency wishing to provide agency work should apply for prior authorization from the appropriate national authority;
- (n) prior authorization should be obtained from the competent national authorities in the host country by any agency wishing to engage in cross-frontier agency work (1);
- (o) any agency supplying cross-frontier agency workers should be compelled to observe the rules in effect in the host country;
- (p) to ensure observance of the above principles, particularly in the case of cross-frontier agency work, inspection visits to the user undertaking should be authorized;
- (q) any firm using workers supplied should be liable to penalties to be specified by the Member States. Direct cooperation between the Member States should be developed with respect to cross-frontier agency work.

10. With respect to employment on contracts for a limited period, the Commission recommends that principles similar to those set out above should be adopted.

A. ELIMINATION OF ABUSES WITH RESPECT TO CONTRACTS FOR A LIMITED PERIOD

- (a) grounds justifying the use of contracts for a limited period should be limited to the two following sets of circumstances : temporary reduction in the permanent work force and temporary increase - exceptional or seasonal - in activity. This central principle should be reinforced by the following :
- (b) any firm employing workers on a contract for a limited period should inform the staff and their representatives;
- (c) time limit : by definition, contracts for a limited period are for periods limited by objective conditions (reaching a certain date, completion of a given task, return of the permanent worker who is temporarily absent). Renewal of such contracts should be limited and a ban placed on the award of such contracts in series;
- (d) where an employer's social obligations are determined on the basis of the number of his employees, workers on contracts for a limited period should be taken into account;

(1) To ensure that the provisions relating to freedom of movement of workers and freedom to provide services are observed, the rules governing such authorization should not make it more difficult to use cross-frontier than

- (e) the use of workers on contracts for a limited period to replace permanent workers on strike should be banned;

#### B. PROTECTION OF WORKERS UNDER CONTRACTS FOR A LIMITED PERIOD

- (f) contracts for a limited period concluded between worker and employer should clearly state in writing the nature of the work to be performed and the objective conditions governing termination of the contract and, if applicable, the duration of the trial period;
- (g) remuneration and social benefits granted to workers on contracts for a limited period should be specified in the collective agreement applicable to the undertaking or sector. Failing this, they should be aligned with those applicable to the permanent employees;
- (h) workers on contracts for a limited period (beyond a given period of employment) should be given priority (over a period to be specified) if the undertaking recruits new permanent staff with the same skills.

#### C. SUPERVISION OF THE USE OF CONTRACTS FOR A LIMITED PERIOD

- (i) summary statistical information concerning the number of workers employed on contract for a limited period should be collected by the competent departments at reasonably frequent intervals (for example, every six months).

11. Lastly, public employment services should be in a position to accomplish their mission of regulating the labour market and the temporary work sector in particular.

With respect to agency work, action could be modelled on the experience of those Member States that have set up public services providing agency work, either in the context of public employment agencies or by setting up non-profit making undertakings.

With respect to temporary placement, the public employment services should set up specialized departments capable of meeting the needs of employers and workers with respect to contracts for a limited period.

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12. The parties present at the meeting of the Standing Committee on Employment are asked to state their position with respect to the aims and suggested guidelines set out in this Communication with a view to determining the actions to be taken with regard to collective agreements, national legislation and at Community level.

FRANCAIS	ENGLISH	DEUTSCH	ITALIANO	NEDERLANDS	DANSK
I. TRAVAIL TEMPORAIRE I=(a)+(b)+(c)+(d)	I. TEMPORARY WORK I=(a)+(b)+(c)+(d)	I. ZEITARBEIT I=(a)+(b)+(c)+(d)	I. LAVORO TEMPORANEO I=(a)+(b)+(c)+(d)	I. TIJDELIJKE ARBEID I=(a)+(b)+(c)+(d)	I. MIDLERTIDIG BESKÆFTIGELSE I=(a)+(b)+(c)+(d)
(a) Contrat à durée déterminée	(a) Contract for a limited period	(a) Befristeter Arbeitsvertrag	(a) Contratto a tempo determinato	(a) Arbejdsovereenkomst voor bepaalde duur	(a) Tidsbegrænset ansættelse
(b) Travail intérimaire	(b) Agency work	(b) Gewerksmäßige Arbeitnehmerüberlassung	(b) Lavoro interinario	(b) Uitzendarbeid (uitzendkrachten)	(b) Vikarbureauarbejde
(c) Sous-traitance temporaire	(c) Casual sub-contracting	(c) Zeitweilige Subunternehmerverhältnisse	(c) Subappalto temporaneo	(c) Onderaanneming tydelyke	(c) Midlertidig underentreprise
(d) Prêt gratuit de main-d'oeuvre	(d) Free lending of employees	(d) Kostentloser Arbeitnehmerverleih	(d) Prestito gratuito di manodopera	(d) Kostenloze terbeschikking stellen van werknemers	(d) Gratis udlån af arbejdskraft
II.	II.	II.	II.	II.	II.
(a) Travailleur intérimaire	(a) Agency worker	(a) Leiharbeitnehmer	(a) Lavoratore interinario	(a) Uitzendkrachten	(a) Vikar
(b) Entreprise intérimaire	(b) Agency providing agency work	(b) Verleihunternehmen	(b) Impresa fornitrice di manodopera	(b) Uitzendbureau	(b) Vikarbureau
(c) L'entreprise utilisatrice	(c) User undertaking	(c) Entleihunternehmen	(c) Impresa utilizzatrice	(c) Inlener	(c) Brugervirksomheder

EXAMPLES : In its data processing department, to replace four of its programmers on training leave, firm X could make use of four types of temporary work :

I. (a) Firm X recruits a worker with whom it concludes a contract for a limited period

I. (b) Firm X calls on "Manpower", which supplies an agency worker

I. (c) Firm X calls on "Computer", a sub-contracting firm, to carry out a specific programming task which should have been done by one of the four absent employees. The sub-contractor, "Computer", temporarily assigns one of its programmers to firm X to carry out the specific task and make the necessary adjustments to firm X's equipment

I. (d) Firm X calls on firm Y, which belongs to the same consortium, and requests the free and temporary lending of one of its programmers.