



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.07.1997
COM(97) 392 final

97/0221 (PRT)

Proposal for a

COUNCIL DIRECTIVE

**CONCERNING THE FRAMEWORK AGREEMENT ON
PART-TIME WORK
CONCLUDED BY UNICE, CEEP AND THE ETUC**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Introduction

1. The importance of new forms of flexible working, especially part-time work, has increased substantially over recent years, and the trend continues on national employment markets.
2. On 29 June 1990, the Commission submitted three proposals for Council Directives on certain employment relationships (e.g. part-time and temporary work)¹.
3. The Economic and Social Committee gave its opinion on 20.9.1990², while the European Parliament gave its opinion on 24.10.1990³. In accordance with Article 149 of the Treaty, the Commission submitted an amended proposal⁴ to the Council on 7.11.1990, incorporating certain of the amendments suggested by Parliament.
4. These proposals were subsequently discussed within the Council on various occasions between 1990 and 1994. Of the three proposals, only Council Directive 91/383/EEC "supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship"⁵ was ever adopted.
5. In July 1994, the Commission published its White Paper on the future of European social policy, in which the Commission reaffirms its determination to make progress in the social policy field and indicates, in Chapter III, that the highest priority must be to ensure that the proposals on atypical work are adopted by the Council: "The measures adopted will need to take account of the principles of the ILO Convention on part-time work adopted in June 1994. If no progress can be made in the Council on the basis of the current proposals by the end of 1994, the Commission will initiate consultations with the social partners under the Agreement on social policy."
6. The conclusions of the Essen European Council emphasised the need to take steps to improve the employment situation and equality of opportunity for men and women, and called for measures aimed at "increasing the employment-intensiveness of growth, in particular by more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition".

¹ COM(90) 228 final, 29.6.1990; OJ C 224, 8.9.1990, p. 8.

² OJ C 332, 31.12.1990, p. 167.

³ OJ C 295, 26.11.1990, p. 112.

⁴ COM(90) 533 final; OJ C 305, 5.12.1990, p. 12.

⁵ OJ L 206, 29.7.1991, p. 19.

7. As no progress has been made in the Council, the Commission decided to initiate the procedure under Article 3 of the Agreement on social policy. On 27 September 1995, it therefore gave its approval for consultation of the social partners under Article 3(2) of the said Agreement. By the end of a six-week consultation period, the Commission had received 22 replies.
8. The replies from the social partners showed that there was a broad measure of support for the fundamental guiding principle of non-discrimination of workers affected by the new, flexible forms of work, guaranteeing them the same treatment as for full-time workers with open-ended contracts. Although the respondents' views differed considerably as to the form and appropriate level of action to be taken in this area, most of the social partners said they were prepared to play an active part in defining the principles and putting them into effect, more especially by way of collective bargaining at the appropriate level.
9. After analysing the reactions, the Commission considered Community action advisable and decided, on 9 April 1996, to initiate the second round of consultation of the social partners provided for in Article 3(3) of the Agreement on social policy. On 19 June 1996, three organisations (UNICE, CEEP and the ETUC) announced their intention of starting negotiations on this subject, concentrating initially on part-time work. On 12 March 1997, they asked the Commission for a further three months by virtue of Article 3(4) of the Agreement on Social Policy. The Commission concurred. At the end of these negotiations, the three organisations concluded a framework Agreement on 6 June 1997. They forwarded the agreement to the Commission, asking for it to be implemented by a Council decision on a proposal from the Commission in accordance with Article 4(2) of the Agreement on social policy.
10. The social partners also requested the Commission, in its proposal to implement the agreement, to:

request that Member States adopt the laws, regulations and administrative provisions within two years from adoption of the decision, or to ensure, within the meaning of Article 2(4) of the Agreement on social policy annexed to the Treaty establishing the European Community, that the social partners establish the necessary measures by way of agreement by the end of this period; and

make provision for Member States to have, if necessary to take account of particular difficulties or implementation by collective agreement, up to one additional year to comply with the decision.
11. Although the document which was the subject of the second round of consultation was concerned with "the flexibility of working time and security for workers" (forms of employment other than full-time, open-ended employment), the social partners wanted to give particular attention to part-time work, indicating that it was their intention to consider the need for similar agreements covering other forms of work.

EXAMINATION OF THE AGREEMENT

12. In its Communication concerning the application of the Agreement on social policy¹, the Commission stressed that "by virtue of its role as guardian of the Treaties the Commission will prepare proposals for decisions to the Council following consideration of the representative status of the contracting parties, their mandate and the "legality" of each clause in the collective agreement in relation to Community law, and the provisions regarding small and medium-sized undertakings set out in Article 2(2). At all events, the Commission intends to provide an explanatory memorandum on any proposal presented to the Council in this area, giving its comments and assessment of the agreement concluded by the social partners".

i. REPRESENTATIVENESS OF THE CONTRACTING PARTIES AND THEIR RESPECTIVE MANDATES

13. The organisations which are signatory to the agreement are UNICE, CEEP and the ETUC. These three organisations have, since 1985, been engaged in an autonomous and voluntary process known as the "Val Duchesse" social dialogue. This has resulted in a total of 15 joint opinions, 2 recommendations, 3 agreements and 4 declarations. In particular, they came up with a significant agreement in October 1991 with a view to defining the role and place of the social dialogue within the new Community framework. Articles 3 and 4 of the Agreement on social policy drew very largely on this agreement.

14. The three organisations all meet the following criteria, as laid down in the Commission's Communication (point 24):

- they are cross-industry and are organised at European level;
- they consist of organisations which are themselves an integral and recognised part of Member State social partner structures, have the capacity to negotiate agreements and are representative of all Member States;
- they have appropriate structures to ensure their effective participation in implementing the Agreement on social policy.

15. These three organisations are the only three general cross-industry organisations within the meaning of Annex 2 to the Commission's Communication. The study on the social partners arrives at a number of conclusions (annexed to the Communication) with regard to the representative status of employers' and trade union organisations. In Chapter D.II of its Communication concerning the development of the social dialogue at Community level², the Commission said it "would like to encourage the European and social partner organisations to co-operate more closely in finding a solution to this question (of representativeness)".

¹ COM(93) 600, 14.12.1993.

² COM(96) 448 final, 18.9.1996.

EMPLOYERS' ORGANISATIONS

16. The employers' federation which is most representative of all industrial sectors and categories of enterprises is UNICE. In all the Member States, the organisations affiliated to the UNICE are by far the most representative cross-industry employers' federations. All the affiliated organisations at national level are directly or indirectly involved in collective bargaining and participate in the International Labour Conference. CEEP provides significant representation of public enterprises or enterprises with public participation in the Member States.

TRADE UNION ORGANISATIONS

17. By far the most representative cross-industry trade union confederation is the ETUC. Its affiliated organisations are the most representative cross-industry trade union confederations in all the Member States. All its affiliated organisations at national level are directly or indirectly involved in collective bargaining and participate in the International Labour Conference.

Conclusion

18. The Commission notes that the members of these three organisations at national level have given the three a specific mandate for negotiations on part-time work and have ratified the framework agreement. The three organisations have concluded the framework agreement on behalf of their national members.
19. The Commission concludes that these three organisations fulfil the condition of representativeness which it had undertaken to verify before forwarding its proposal.

ii. "LEGITIMACY" OF THE CLAUSES CONCERNING THE ROLE OF THE NON-SIGNATORY SOCIAL PARTNERS AND THEIR MEMBERS

20. A number of other social partners who were consulted by the Commission expressed a desire to take part in the negotiations. The Commission has been informed of the exchange of letters and discussions between the signatory social partners and these others. It has also been informed of the participation, within the UNICE delegation, of experts from three sectoral social partners' organisations.
21. The Commission has forwarded the framework agreement to all the organisations which it had previously consulted or informed, and has organised a meeting for the exchange of information and for dialogue with them.
22. Certain organisations have contested the representative status of contracting parties and maintained that the framework agreement does not take into account the interests of certain sectors or categories of enterprises. On the contrary, other organisations have underlined the flexible character of the provisions of the agreement that will allow account to be taken, when transposing it into national law, of the specific needs of certain sectors or sub-sectors.

23. Having verified the relevant clauses, the Commission feels that the framework agreement makes reference on a number of occasions to the social partners "at the appropriate level" and to "national law, collective agreements or practice", and thus very largely preserves the role of the non-signatory social partners and their members at national level.

iii. PROVISIONS REGARDING SMALL AND MEDIUM-SIZED ENTERPRISES

24. Article 2(2) of the Agreement on social policy provides that legislation on social policy shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings (or enterprises).
25. The specific situation of SMEs was given special attention when the text of the framework agreement was drawn up. Specific reference is made to SMEs, as follows :

General consideration 7: "Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community economy and to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings".

26. Clearly, the agreement does not provide for any exception to be made to the basic principle of non-discrimination in favour of SMEs. However, clause 1(B) sets out as a fundamental objective of the agreement the development of part-time work and the flexible organisation of working time. Within this framework, clauses 5(1) and (2) establish the need to eliminate by law or agreement any legal and administrative obstacles which might militate against part-time working. Although the reference to the development of part-time work relates to all undertakings in general, regardless of their size and staff, it is evident that SMEs should derive the greatest benefit from such a provision.
27. A number of clauses (2(2), 3(3), 4(3), 4(4), 6(2)) refer to national laws, collective agreements or practice and/or to the social partners at the appropriate level, leaving plenty of room for manoeuvre at enterprise level. Despite not explicitly mentioning SMEs, these provisions do enable national provisions to be adopted if necessary to take account of their special needs.
28. These provisions show that the social partners are keen to encourage new, flexible ways of organising work and time which are better suited to the changing needs of society and which should take the needs of both enterprises and workers into account (general considerations 4 and 5).
29. The Commission therefore concludes that the framework agreement complies with the provisions concerning small and medium-sized enterprises. In drawing it up, the social partners provided scope for the special circumstances of SMEs to be taken into account, particularly when the agreement is being transposed into national law.

iv. "LEGALITY" OF THE CLAUSES OF THE AGREEMENT

30. The Commission has carefully examined each of the clauses of the framework agreement and does not find any provisions contrary to Community law. The fact that the agreement provides for obligations on the Member States does not undermine its legality. On the contrary, it follows from the second declaration annexed to the Agreement on social policy⁸ that the second of the arrangements for applying agreements between management and labour at Community level is likely to create obligations for the Member States. The obligations imposed on Member States do not derive directly from the agreement between the social partners but from the arrangement for applying the agreement. Section (V) contains the Commission's assessment of the content of the agreement.

v. ASSESSMENT OF THE AGREEMENT

31. In the light of the conclusions of the Essen European Council and of subsequent European Councils, the Commission considers part-time work to be an important factor in promoting employment and equal opportunities for women and men. It also helps to boost the employment-intensity of growth, more particularly by way of more flexible working patterns designed to meet both workers' desires and the requirements of competition. As a result, the Commission asked the social partners for their reactions to this more broadly based approach. The social partners' contribution is positive in itself in that it guarantees that consideration is given both to business competitiveness and to the interests of workers.
32. The Commission wholeheartedly endorses the aims of the social partners' framework agreement and sees it as an important step in two respects.
33. Firstly, minimum standards with regard to part-time work are a big step forward in creating a minimum set of fundamental rights of workers. One effect is to promote equal opportunities for men and women. Sharing of family responsibilities between parents is a key element in the strategies designed to improve equality in the labour market.
34. Secondly, the agreement also contributes to implementing the conclusions of the Essen European Council in terms of the introduction of new, flexible ways of organising work. Such flexibility must meet the needs of enterprises and help them to become more competitive to cope with international competition. It must also take account of the interests of workers by enabling them to tailor their working hours more closely to their needs. An agreement between the social partners on this matter as a result of negotiations between employers and workers is the right vehicle for reconciling the interests of the two parties.

⁸ "The eleven High Contracting Parties declare that the first of the arrangements for application of the agreements between management and labour at Community level - referred to in Article 4(2) - will consist in developing, by collective bargaining according to the rules of each Member State, the content of the agreements, and that consequently this arrangement implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, nor any obligation to amend national legislation in force to facilitate their implementation."

35. The Commission considers that all the conditions are fulfilled for forwarding a proposal designed to implement the framework agreement between the social partners by way of a Council decision.

THE COMMISSION'S PROPOSAL

36. In its Communication of 14 December 1993, the Commission stated that "implementing an agreement concluded at Community level by means of a Council decision on a proposal from the Commission at the joint request of the social partners would give the Council no opportunity to amend the agreement. For this reason, the Commission will merely propose, following examination of the agreement between the social partners, the adoption of a decision on the agreement as concluded". In the present case, the proposed instrument is a Directive. It therefore contains the standard clauses relating to the implementation of the Directive at national level.
37. The Commission also took the view that "the Council decision must be limited to making binding provisions of the agreement concluded between the social partners, so the text of the agreement would not form part of the decision but would be annexed thereto".
38. Finally, the Commission announced that "if the Council decides, in accordance with the procedure set out in the last subparagraph of Article 4(2), not to implement the agreement as concluded by the social partners, the Commission will withdraw its proposal for a decision and will examine, in the light of the work done, whether a legislation instrument in the area in question would be appropriate".
39. Hence, the Commission has not incorporated the text of the agreement in its proposal but simply annexed it thereto. Moreover, it reiterates that, if the Council amends the agreement concluded between the social partners, it will withdraw its proposal.

i. LEGAL BASIS

40. Article 4(2) of the Agreement on social policy provides that "agreements concluded at Community level shall be implemented, in matters covered by Article 2, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission". The agreement on part-time work relates to working conditions, which come under Article 2(1) of the Agreement on social policy. This is one of the areas where the Council may act by a qualified majority. As a result, Article 4(2) is the proper legal basis for the Commission's proposal.
41. That Article does not provide for consultation of the European Parliament on requests addressed to the Commission by the social partners. However, in accordance with the undertaking in its Communication, the Commission has kept Parliament informed about the various phases of consultation of the social partners. It is also forwarding this proposal to Parliament so that it can deliver its opinion to the Commission and the Council if it so wishes. The same applies to the Economic and Social Committee.

ii. THE FORM THE INSTRUMENT IS TO TAKE

42. The term "decision" within the meaning of Article 4(2) of the Agreement on social policy refers to one of the binding legislative instruments under Article 189 of the Treaty. It is up to the Commission to propose to the Council the most appropriate of the three binding instruments under the said Article (regulation, directive or decision). In this case, given the nature (framework agreement) and the content of the social partners' document, it is clear that the framework agreement is intended to be applied indirectly by means of provisions to be transposed into national law by the Member States and/or the social partners. Hence, in that case, the most suitable instrument for its application is a Council Directive. Moreover, in accordance with the undertakings it has given, the Commission considers that the text of the agreement should not be part of the directive but should be annexed thereto.
43. The Commission's comments on the Articles in its proposal are given below.

Article 1

This article confines itself to making the framework agreement between the social partners obligatory in order to enable it to be implemented by a Council decision under Article 4(2) of the Agreement on social policy.

Articles 2 - 6

Article 2(1) says that the provisions of the Directive prescribe only minimum requirements, giving Member States the chance to adopt stricter measures in the relevant field.

Article 2(2) is a "non-regression" standard clause that affects Member States which have, at the time of adoption of the Directive, a higher level of protection than that guaranteed by the framework agreement. What this clause means is that there should be no lowering of the general level of protection for workers when the Community Directive is adopted. However, it offers Member States the possibility of adopting different measures as required by their economic and social policies, subject to observance of the minimum requirements prescribed by the framework agreement. It is at any rate clear that the Member States' room for manoeuvre covers only a level of protection exceeding that guaranteed by the Directive.

Article 3 is a non-discrimination clause in accordance with the undertaking given by the Commission in its Communication⁹ on racism, xenophobia and antisemitism. In this connection, the solemn declaration adopted by the social partners in Florence in October 1995 on the prevention of racial discrimination and xenophobia and the promotion of equal opportunities at work should also be borne in mind.

Article 4 obliges Member States to provide penalties which are effective, commensurate with the infringement and constitute a sufficient deterrent. In applying Community law, it is necessary, as in every legal system, on the one hand that those bearing obligations resulting from this law are dissuaded from infringing

⁹ COM(95) 653 final, 13.12.1995.

it and, on the other, that those who do not respect Community law are duly penalised.

Articles 5 and 6 contain the usual provisions for transposition into the national law of the Member States.

JUSTIFICATION FOR THE DIRECTIVE IN RESPECT OF SUBSIDIARITY

44. The proposal for a Council Directive concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC complies with the principle of subsidiarity as regards its two criteria, namely necessity and proportionality, as laid down in Article 3(b) of the Maastricht Treaty.
45. The first criterion, namely, the need to undertake Community action, is justified by the fact that the social partners, under the procedure provided for in Article 3 of the Agreement on social policy, have agreed that it is necessary to undertake action at Community level and have requested the implementation of their Community-level agreement through a Council decision based on a proposal from the Commission, pursuant to Article 4(2) of the Agreement on social policy. Moreover, this initiative is in keeping with the conclusions of the Essen European Council of December 1994 and its follow-up.
46. The Council Directive corresponds to the requirement of proportionality in so far as it only defines the major objectives to be attained by Member States, while allowing the social partners and not the Community to decide on the content.

CONCLUSION

47. The Council is requested to adopt the proposal for a Directive concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC.

PROPOSAL FOR A COUNCIL DIRECTIVE

concerning the framework agreement on part-time work

concluded by UNICE, CEEP and the ETUC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement on social policy annexed to the Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community and, in particular, Article 4(2) thereof,

Having regard to the proposal from the Commission¹⁰,

Whereas on the basis of the Protocol on social policy annexed to the Treaty establishing the European Community, the Member States, with the exception of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the Member States"), wishing to continue along the path laid down in the 1989 Social Charter, have concluded an agreement on social policy;

Whereas management and labour (the social partners) may, in accordance with Article 4(2) of the Agreement on social policy, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;

Whereas point 7 of the Community Charter of the Fundamental Social Rights of Workers provides *inter alia* 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 while the improvement is being maintained, 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 the Council has been unable to reach a decision on the proposal for a Directive on certain employment relationships with regard to distortions of competition¹¹, as amended¹², nor on the proposal for a Directive on certain employment relationships with regard to working conditions¹³;

¹⁰ OJ C ...

¹¹ OJ C 224, 8.9.1990, p. 6.

¹² COM(90) 533 final; OJ C 305, 5.12.1990, p. 8.

¹³ OJ C 224, 8.9.1990, p. 4.

Whereas the conclusions of the Essen European Council stressed the need to take measures to promote employment and equal opportunities for women and men, and called for measures with a view to "increasing the employment-intensiveness of growth, in particular by a more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition";

Whereas the Commission, in accordance with Article 3(2) of the Agreement on social policy, has consulted management and labour on the possible direction of Community action with regard to flexible working time and job security;

Whereas the Commission, considering after such consultation that Community action was desirable, once again consulted management and labour on the substance of the envisaged proposal in accordance with Article 3(3) of the said Agreement;

Whereas the general cross-industry organisations [the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trade Union Confederation (ETUC)] informed the Commission in their joint letter of 19 June 1996 of their desire to initiate the procedure provided for in Article 4 of the said Agreement; whereas they asked the Commission, in a joint letter dated 12 March 1997, for a further three months; whereas the Commission complied with this request;

Whereas the said cross-industry organisations concluded, on 6 June 1997, a framework agreement on part-time work; whereas they forwarded to the Commission their joint request to implement the framework agreement by a Council decision on a proposal from the Commission, in accordance with Article 4(2) of the said Agreement;

Whereas the Council, in its Resolution of 6 December 1994 on "prospects for a European Union social policy: a contribution to economic and social convergence in the Union"¹⁴, asked management and labour to make use of the opportunities for concluding agreements, since they are as a rule closer to social reality and to social problems;

Whereas the contracting parties wished to conclude a framework agreement on part-time work setting out the general principles and minimum requirements for part-time working; whereas they have demonstrated their desire to establish a general framework for eliminating discrimination against part-time workers and to contribute to developing the potential for part-time work on a basis which is acceptable for employers and workers alike;

Whereas the social partners wished to give particular attention to part-time work, while at the same time indicating that it was their intention to consider the need for similar agreements for other flexible forms of work;

Whereas, in the conclusions of the Amsterdam European Council, the Heads of State and Government of the European Union strongly welcomed the agreement concluded by the social partners on part-time work;

¹⁴ OJ C 368, 23.12.1994, p. 6.

Whereas the proper instrument for implementing the framework agreement is a directive within the meaning of Article 189 of the Treaty; whereas it therefore binds the Member States as to the result to be achieved, whilst leaving them the choice of form and methods;

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3(b) of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; Whereas this Directive limits itself to the minimum required for the attainment of those objectives and does not go beyond what is necessary for that purpose;

Whereas the Commission has drafted its proposal for a Directive, in accordance with its Communication of 14 December 1993¹⁵ concerning the application of the Agreement on social policy and its Communication of 18 September 1996¹⁶ concerning the development of the social dialogue at Community level, taking into account the representative status of the contracting parties, their mandate and the legality of each clause of the framework agreement;

Whereas the Commission has drafted its proposal for a Directive taking into account compliance with Article 2(2) of the Agreement on social policy which provides that directives in the social policy domain "shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings";

Whereas the Commission, in accordance with its Communication concerning the application of the Agreement on social policy, informed the European Parliament by sending it the text of the agreement, accompanied by its proposal for a Directive and the explanatory memorandum;

Whereas the Commission also informed the Economic and Social Committee by sending it the text of the agreement, accompanied by its proposal for a Directive and the explanatory memorandum;

Whereas the provisions of this Directive lay down minimum requirements, thus giving the Member States and/or the social partners the option of introducing more favourable provisions;

Whereas the implementation of this Directive should not serve to justify any regression in relation to the situation which already exists in each Member State;

Whereas the Community Charter of the Fundamental Social Rights of Workers recognises the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinion and creed;

¹⁵ COM(93) 600, 14.12.1993.

¹⁶ COM(96) 448, 18.9.1996.

Whereas Article F(2) of the Treaty on European Union states that “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and as they result from the constitutional traditions common to the Member States, as general principles of Community law”;

Whereas the Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;

Whereas the implementation of the framework agreement contributes to achieving the objectives under Article 1 of the Agreement on social policy,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Implementation of the framework agreement

This purpose of the Directive is to put into effect the annexed framework agreement on part-time work concluded on 6 June 1997 between the general cross-industry organisations (UNICE, CEEP and the ETUC).

Article 2

Minimum requirements

1. Member States may introduce more favourable provisions than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive; this shall be without prejudice to:

- the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of adoption of this Directive;
- the application of Clause 5.1 of the agreement in annex, provided the principle of non-discrimination as expressed in clause 4.1 of the agreement is complied with;

provided always that the minimum requirements laid down in this Directive are adhered to.

Article 3

Non-discrimination

When Member States adopt the provisions to implement this Directive, these shall prohibit any discrimination based on sex, race, ethnic origin, religion or beliefs, disability, age or sexual orientation.

Article 4

Penalties

Member States shall determine the range of penalties applicable for infringements of national provisions made in implementation of this Directive and shall take all necessary steps to ensure that they are enforced. The penalties must be effective, commensurate with the infringement, and must constitute a sufficient deterrent. Member States shall notify these provisions to the Commission by the date mentioned in Article 5 at the latest, and any subsequent amendment thereto in good time.

Article 5

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its adoption, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

Member States may have a maximum of one more year, if necessary, to take account of special difficulties or implementation by a collective agreement.

They shall inform the Commission forthwith in such circumstances.

When Member States adopt the provisions referred to in the first paragraph, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

European Framework Agreement on Part-time Work

PREAMBULE

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his framework agreement is a contribution to the overall European strategy on employment. Part-time work has had an important impact on employment in recent years. For this reason, the parties to this agreement have given priority attention to this form of work. It is the intention of the parties to consider the need for similar agreements relating to other forms of flexible work.

Recognising the diversity of situations in Member States and acknowledging that part-time work is a feature of employment in certain sectors and activities, this agreement sets out the general principles and minimum requirements relating to part-time work. It illustrates the willingness of the Social Partners to establish a general framework for the elimination of discrimination against part-time workers and to assist the development of opportunities for part-time working on a basis acceptable to employers and workers.

This agreement relates to employment conditions of part-time workers recognising that matters concerning statutory social security are for decision by the Member States. In the context of the principle of non-discrimination, the parties to this agreement have noted the Employment declaration of the Dublin European Council of December 1996, wherein the Council inter alia emphasised the need to make social security systems more employment friendly by 'developing social protection systems capable of adapting to new patterns of work and of providing appropriate protection to people engaged in such work'. The parties to this agreement consider that effect should be given to this declaration.

ETUC, UNICE and CEEP request the Commission to submit this framework agreement to the Council for a decision making these requirements binding in the Member States which are party to the Agreement on social policy annexed to the Protocol on social policy annexed to the Treaty establishing the European Community.

The parties to this agreement ask the Commission, in its proposal to implement this agreement, to request that Member States to adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of 2 years from its adoption or ensure¹ that the Social Partners establish the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective agreement have up to a maximum of one additional year to comply with this provision.

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

¹ within the meaning of article 24 of the Social Policy Agreement of the Treaty on European Union

I. General considerations

1 Having regard to the Agreement on social policy annexed to the Protocol on social policy attached to the treaty establishing the European Community, and in particular article 3.4 and 4.2 thereof.

2 Whereas article 4.2 of the Agreement on social policy provides that agreements concluded at Community level may be implemented, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

3 Whereas, in its second consultation document on flexibility of working time and security for workers, the Commission announced its intention to propose a legally binding Community measure.

4 Whereas the conclusions of the European Council meeting in Essen emphasised the need for measures to promote both employment and equal opportunities for women and men, and called for measures aimed at "increasing the employment intensiveness of growth, in particular by more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition".

5 Whereas the parties to this agreement attach importance to measures which would facilitate access to part-time work for men and women in order to prepare for retirement, reconcile professional and family life, and take up education and training opportunities to improve their skills and career opportunities for the mutual benefit of employers and workers and in a manner which would assist the development of enterprises.

6 Whereas this agreement refers back to Member States and Social Partners for the modalities of application of these general principles, minimum requirements and provisions, in order to take account of the situation in each Member State.

7 Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community

economy and to avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

8 Whereas the Social Partners are best placed to find solutions that correspond to the needs of both employers and workers and shall therefore be conferred a special role in the implementation and application of this agreement.

The signatory parties have agreed the following :

II. Content

Clause 1 : Purpose

The purpose of this framework agreement is :

- A. to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;
- B. to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers.

Clause 2 : Scope

1 This agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.

2 Member States, after consultation with the Social Partners in accordance with national law, collective agreements or practice, and/or the Social Partners at the appropriate level in conformity with national industrial relations practice may, for objective reasons, exclude wholly or partly from the terms of this agreement part-time workers who work on a casual basis. Such exclusions should be reviewed periodically to establish if the objective reasons for making them remain valid.

Clause 3 : Definitions

1 For the purpose of this agreement, the term "part-time worker" refers to an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full time worker.

2 For the purpose of this agreement, the term "comparable full-time worker" means a full time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority, qualification/skills.

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

Clause 4 : Principle of non-discrimination

1 In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part-time unless different treatment is justified on objective grounds.

2 Where appropriate, the principle of pro rata temporis shall apply.

3 The modalities of application of this clause shall be defined by the Member States and/or Social Partners, having regard to European legislation, national law, collective agreements and practice.

4 When justified by objective reasons, Member States after consultation of the Social Partners in accordance with national law or practice and/or Social Partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in clause 4.1

Clause 5 : Opportunities for part-time work

1 In the context of clause 1 of this agreement and of the principle of non-discrimination between part-time and full-time workers,

- A. Member States, following consultations with the Social Partners in accordance with national law or practice should identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them,
- B. the Social Partners, acting within their sphere of competence and through the procedures set out in collective agreements, should identify and review obstacles which may limit opportunities for part-time work and, where appropriate, eliminate them.

2 A worker's refusal to transfer from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to termination in accordance with national law, collective agreements and practice, for other reasons such as may arise from the operational requirements of the establishment concerned.

3 As far as possible, employers should give consideration to :

- A. requests by workers to transfer from full-time to part-time work that become available in the establishment;
- B. requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise;
- C. the provision of timely information on the availability of part-time and full-time positions in the establishment in order to facilitate transfers from full-time to part-time or vice-versa;
- D. measures to facilitate access to part-time work at all levels of the enterprise, including skilled and managerial positions, and where appropriate, to facilitate access by part-time workers to vocational training to enhance career opportunities and occupational mobility;
- E. the provision of appropriate information to existing bodies representing workers about part-time working in the enterprise.

Clause 6 : Provisions on implementation

1 Member States and/or Social Partners can maintain or introduce more favourable provisions than set out in this agreement.

2 Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field of this agreement. This does not prejudice the right of Member States and/or Social Partners to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances, and does not prejudice the application of clause 5.1. as long as the principle of non-discrimination as expressed in clause 4.1. is complied with.

3 The present agreement does not prejudice the right of the Social Partners to conclude, at the

appropriate level, including European level, agreements adapting and/or complementing the provisions of this agreement in a manner which will take account of the specific needs of the Social Partners concerned.

4 This agreement shall be without prejudice to any more specific Community provisions, and in particular Community provisions concerning equal treatment or opportunities for men and women.

5 The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and practice.

6 The signatory parties will review this agreement, five years after the date of the Council decision, if requested by one of the parties to this agreement.

Brussels, 6 June 1997



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IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS

with special reference to small and medium-sized enterprises (SMEs)

Title of proposal:

Proposal for a Council Directive concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC

The proposal:

1. TAKING ACCOUNT OF THE PRINCIPLE OF SUBSIDIARITY, WHY IS COMMUNITY LEGISLATION NECESSARY IN THIS AREA AND WHAT ARE ITS MAIN AIMS?

The aim of this Directive is to implement the framework agreement on part-time work under Article 4(2) of the Agreement on social policy annexed to the Treaty. This Article provides for implementing agreements concluded by the social partners by way of a Council decision on a proposal from the Commission. The signatories have jointly asked the Commission to present a proposal to the Council. The Commission, in accordance with its Communication¹ on the application of the Agreement on social policy, undertook a threefold analysis of the agreement. The Commission considers that all the conditions have been met (representative status of the signatories, legality of the clauses of the agreement and compliance with special provisions on SMEs) and that its proposal for a Council Directive should be adopted. The Amsterdam European Council also welcomed the agreement.

The impact on business:

2. WHO WILL BE AFFECTED BY THE PROPOSAL?

All enterprises and all workers may be affected by the framework agreement, irrespective of the sector or size of the enterprise concerned.

3. WHAT WILL BUSINESS HAVE TO DO TO COMPLY WITH THE PROPOSAL?

As indicated in clause 1 of the framework agreement, enterprises will have to

- ensure that any discrimination vis-à-vis part-time workers is done away with;
- facilitate the development of part-time working on a voluntary basis and contribute to the flexible organisation of working time in a way which takes account of the needs of both employers and workers.

¹ COM(93) 600 final.

A number of clauses refer to legislation, collective agreements or national practices, and/or to the social partners at the appropriate level, leaving plenty of room for manoeuvre for individual enterprises. Compliance with the provisions concerning SMEs is amply covered in points 24-29 of the explanatory memorandum.

4. WHAT ECONOMIC EFFECTS IS THE PROPOSAL LIKELY TO HAVE?

Implementation of the framework agreement on part-time work will contribute to the second priority laid down by the Essen European Council, viz. the introduction of new, flexible forms of work organisation. Such flexibility must meet the needs of firms which have to become more competitive in order to meet the challenge of international competition. Any new, flexible arrangements must also bear in mind the interests of workers, by enabling them to gear their working time better to their individual needs. An agreement between the social partners on this point is the outcome of negotiations between the two sides and would seem to be the most appropriate instrument for reconciling the two sides' interests.

The Member States and the social partners should identify and examine any obstacles which might restrict the opportunities for part-time work and, if necessary, get rid of them. This will help to make the labour market more flexible, with the eventual aim of boosting the employment-intensity of growth.

5. DOES THE PROPOSAL CONTAIN MEASURES TO TAKE ACCOUNT OF THE SPECIFIC SITUATION OF SMALL AND MEDIUM-SIZED FIRMS (REDUCED OR DIFFERENT REQUIREMENTS, ETC.)?

See points 24-29 of the explanatory memorandum accompanying the proposal.

Consultation

6. LIST THE ORGANISATIONS WHICH HAVE BEEN CONSULTED ABOUT THE PROPOSAL AND OUTLINE THEIR MAIN VIEWS.

All the representative organisations² were given an opportunity to air their views during the first phase of consultation. They were also invited by the Commission to a consultation meeting on the framework agreement. As regards their positions, see points 20-23 of the explanatory memorandum.

² In conformity with the Communication concerning the application of the Agreement on social policy: COM(93) 600, 14.12.1993.

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