



European Communities

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SERIES A

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\*/\*\*I

REPORT

of the Committee on Social Affairs, Employment and the Working Environment

on the proposals from the Commission to the Council for:

- \* I. directive on certain employment relationships with regard to working conditions  
(COM(90) 228 final - C3-0287/90)
- \*\*I II. directive on certain employment relationships with regard to distortions of competition  
(COM(90) 228 final - C3-0288/90 - SYN 280)
- \*\*I III. a directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers  
(COM(90) final - C3-0289/90 - SYN 281)

Rapporteur: Mrs Heinke SALISCH

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

\* = Consultation procedure requiring a single reading

\*\*II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

\*\*I = Cooperation procedure (first reading)

\*\*\* = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

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By letter of 5 September 1990 the Council consulted the European Parliament, pursuant to Articles 100, 100A and 118A of the EEC Treaty, on the proposals from the Commission to the Council for:

- I. a directive on certain employment relationships with regard to working conditions
- II. a directive on certain employment relationships with regard to distortions of competition
- III. a directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers.

At the sitting of 14 September 1990 the President of Parliament announced that he had referred these proposals to the Committee on Social Affairs, Employment and the Working Environment as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights for their opinions.

At its meeting of 17 September 1990 the Committee on Social Affairs, Employment and the Working Environment appointed Mrs Salisch rapporteur.

At its meeting of 17, 27 and 28 September it considered the Commission proposals and draft report.

At the last meeting it adopted the draft legislative resolutions on the

- proposal from the Commission for a directive on certain employment relationships with regard to working conditions,
- proposal from the Commission for a directive on certain employment relationships with regard to distortions of competition, by 16 votes to 7,
- proposal from the Commission for a directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers, by 15 votes to 0 with 6 abstentions.

The following were present for the vote: van Velzen, chairman; Salisch, rapporteur; Alvarez de Paz, Buron, Brok, Carniti, Catasta, Chanterie (for Deprez), Cramon Daiber, Glinne, Hadjigeorgiou, Hughes, Menrad, Nielsen, Oomen-Ruijten (for Pisoni) Onut (for Megahy), Pagaropoulos, Paisley, Peter, Polack (for Peter), Pronk, Rønn, Suarez Gonzalez, Torres Couto and Wilson.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy will be published separately; the Committee on Legal Affairs and Citizens' Rights decided on 19 September 1990 not to deliver an opinion. The opinion of the Committee on Women's Rights is attached.

The report was tabled on 1 October 1990.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on

- I. the Commission proposal for a Council directive on certain employment relationships with regard to working conditions

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 228 final)<sup>1</sup>,
- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (C3-0287/90),
- having regard to the report of the Committee on Social Affairs, Employment and the Working Environment and the opinion of the Committee on Women's Rights (A3-0241/90),

1. Rejects the Commission proposal;
2. Calls on the Commission to withdraw its proposal;
3. Instructs its President to forward this opinion to the Council and Commission.

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<sup>1</sup>OJ No. C224, 8.9.1990, p. 4

II. Proposal for a directive on certain employment relationships with regard to distortions of competition

Commission text	Amendments
----- (Amendment No. 1) -----	
Proposal for a Council directive on <u>certain employment relationships with regard to distortions of competition</u>	Proposal for a Council <u>framework directive relating to atypical employment contracts and employment relationships involving distortions of competition</u>
The Council of the European Communities,	Unchanged
(Amendment No. 2)	
Having regard to the Treaty establishing the European Economic Community, and in particular <u>Article 100a</u> thereof,	Having regard to the Treaty establishing the European Economic Community, and in particular <u>Articles 8a, 8b and 100a</u> thereof,
Having regard to the proposal from the Commission,	Unchanged
In cooperation with the European Parliament,	Unchanged
Having regard to the opinion of the Economic and Social Committee,	Unchanged,
(Amendment No. 3)	
	(new)
	<u>Whereas the Community Charter of the Fundamental Social Rights of Workers provides for the improvement of living and working conditions and the development of certain aspects of labour legislation for those who do not have full-time, permanent contracts;</u>

(Amendment No. 4)

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, pursuant to Article 8a of the Treaty, 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;

(Amendment No. 5)

(new)

Whereas the same article lays down the objective of establishing a market without frontiers in which the free movement of persons, services and capital is ensured;

(Amendment No. 6)

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 the aspirations of some workers; whereas the need for these particular forms of employment cannot, therefore, be called into question;

Whereas recent recruitment patterns show a marked increase in atypical employment relationships;

(Amendment No. 7)

(new)

Whereas Article 8b of the Treaty enables the Commission to make proposals determining the guidelines and conditions necessary for establishing the internal market and ensuring balanced progress in all the sectors concerned;

(Amendment No. 8)

(new)

Whereas, in addition, Article 100a allows the Council, acting by a qualified majority, to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action which have as their object the establishment and functioning of the internal market;

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

Unchanged

(Amendment No. 9)

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

Whereas this situation increases the distortions of competition resulting from certain differences in treatment between the undertakings of the Member States; and threatens the economic and social cohesion provided for in the Treaties;

(Amendment No. 10)

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

Deleted

(Amendment No. 11)

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

Whereas the freedom of movement of workers is affected thereby;

(Amendment No. 12)

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 must involve the two sides of industry in achieving the objectives set out in this directive;

(Amendment No. 13)

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

(Amendment No. 14)

(new)

Whereas Article 100a allows such  
measures to be taken if they are  
connected with an economic need and  
do not relate exclusively to the  
rights and interests of employed  
persons;

(Amendment No. 15)

(new)

Whereas the Council has on several  
occasions in the past found it  
necessary to take measures to  
strengthen the protection of workers  
in order to take into account the  
need for balance economic and social  
development within the Community;

(Amendment No. 16)

(new)

Whereas the growth in unprotected  
work is a major feature of the past  
decade;

(Amendment No. 17)

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 the differences in treatment  
concern mainly areas such as indirect  
costs resulting from social  
protection, the costs of benefits  
granted to workers in cash or in  
kind, 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;

Unchanged

(Amendment No. 18)

(new)

Whereas there are major differences between the regulations of the different countries and these differences, which can have a direct impact on the functioning of the market, should be reduced;

(Amendment No. 19)

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;

Deleted

(Amendment No. 20)

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 plus possible renewal or for an indefinite period;

Deleted

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';

Unchanged

(Amendment No. 21)

PURPOSE (new)

Article 1 (new)

The purpose of the present Directive is to protect individuals subject to atypical contracts or terms of employment. It shall enable them to benefit from the minimum guarantees set out below. To this end, it contains general principles relating to social protection, training, the consultation of staff representation bodies, pay and the social guarantees attaching to the status of employed persons.

DEFINITION (new)

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 user undertaking where he performs his activities.

Article 1

1. Atypical employment contracts or terms of employment mean any activity carried out by individuals under contracts or terms of employment which are not permanent and full-time and which offer reduced protection because of:

-the limited duration of the employment

-the limited number of hours worked

-alternation between periods of employment and non-employment

-the de facto or de jure exclusion from the provisions of laws, regulations or contracts applicable to full-time employees with permanent contracts

-the existence of a legal system which provides for derogations reducing the level of protection

-the dispersal of employment relations between several employers

-lack of integrated organization within an undertaking

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.

-the fact that the work is carried out at the employee's own home (out work).

#### SCOPE

2.This Directive shall apply to all public or private sectors of activity

3.Any individual who is subject either formally or in effect to the organizational and administrative authority of an employer must benefit from the minimum guarantees set out below, provided the average weekly working time is 8 hours or more. This working time shall be calculated taking into account all periods worked during the previous twelve months.

4.For workers who do not fall within this minimum limit the Member States shall undertake to establish a suitable system of protection.

(Amendment No. 23)

#### EMPLOYERS' OBLIGATIONS (new)

##### Article 1a (new)

Any terms of employment which objectively meet the criteria of paid employment must be capable of being redefined as such by a national authority, in accordance with national provisions, irrespective of the definitions used by the parties concerned.

(Amendment No. 24)

Article 1b (new)

All terms of employment shall be set down in writing within one week and a copy given to the employed person. In the absence of a written document, the terms of employment shall be deemed to be permanent.

This written document must, where appropriate, mention the existence of collective agreements into which the employer has entered or by which he or she is bound. It must also contain:

-the reasons why terms of employment of this nature have been entered into

-the probably duration of the employment

-the qualifications required

-the pay agreed

-the place, hours and particular feature of the work

(Amendment No. 25)

PROTECTION OF WORKERS (new)

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 under pinned by the same groundwork and the same criteria account being taken of the duration of work and/or pay.

Article 2

No worker in employment fulfilling the conditions set out in Article 1(3) above may be excluded from statutory, complementary or contractual social welfare schemes by virtue of the limited amount of work or its intermittent nature.

The Member States must ensure that membership of a statutory or contractual social welfare scheme always provides entitlement to proportional benefits.

(Amendment No. 26)

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 3

The existence of an atypical employment contract or atypical terms of employment shall not justify different treatment in the following areas:

- working conditions, as defined in cooperation with the staff representation bodies, in respect of the content and difficulty of the work, safety, protection of health, working pattern and the working environment, the payment of remuneration and the right to paid holidays when the hours worked per month are at least half the working hours under a normal employment contract
- the rules for dismissal laid down by legislation and collective agreements,
- the right to vote and stand for election to staff representation bodies
- social security benefits during periods of illness.

(Amendment No. 27)

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 a form of an equitable allowance, in the event of an unjustifiable break in the employment relationship before the term fixed.

Deleted

(Amendment No. 28)

Article 5

Deleted

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

(Amendment No. 29)

Article 6

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.

1. The Member States shall implement the laws, regulations and administrative provisions needed to comply with this directive by 31 December 1992 at the latest and shall inform the Commission and the European Parliament thereof immediately.

2. Member States shall forward to the Commission the text of the national legislation already adopted, or to be adopted, in the field governed by this directive.

(Amendment No. 30)

Article 6a (new)

An employer shall not be prevented by any statutory or contractual provision from employing on a permanent basis a worker whose atypical contract or terms of employment have come to an end.

(Amendment No. 31)

Article 6b (new)

The worker must not suffer any wage discrimination other than that connected with the amount of work carried out. He or she must be able to obtain an advance on his/her pay over a reasonable period.

(Amendment No. 32)

Article 6c (new)

Any individual subject to atypical terms of employment must benefit from specific measures designed to compensate for the unprotected nature of the employment. Such measures could take the form of an allowance or training.

(Amendment No. 33)

Article 6d (new)

The working hours must be clearly defined at the beginning of the terms of employment, including the possible amount of overtime and the periods during which it may be worked. Any increase in the hours laid down at the beginning must lead to a wage increase.

(Amendment No. 34)

Article 6e (new)

Recourse to any form of atypical employment must be the subject of specific, written, prior information issued to the staff representation bodies within the undertaking.

An annual summary of these forms of employment must be issued to these bodies, showing their distribution by age, sex, occupational category and duration of the terms of employment.

A worker who cannot, by virtue of the atypical terms of employment, take part in elections to the staff representation bodies or their activities, must be able to obtain collective and, if necessary, anonymous representation by them of his or her demands.



Workers covered by this directive must be taken into account in the same way as the other employed persons (in proportion to the number of hours worked) in calculating the limit, within the undertaking, above which the undertaking is obliged under national regulations to set up staff representation bodies.

Where the undertakings concerned recruit full-time workers on a permanent basis, they shall notify the workers covered by this directive in good time so that their applications, if any may be considered.

(Amendment No. 35)

FINAL PROVISIONS (new)

Article 6 (new)

This directive shall not affect Member States' ability to apply or introduce laws, regulations or administrative provisions more favourable to employed persons.

(Amendment No. 36)

Article 6 (new)

The Member States shall, within a period of two years from the expiry of the period laid down in Article 13(1), forward to the Commission all the information it requires to draw up a report, to be submitted to the Council and the European Parliament, on the implementation of this directive.

(Amendment No. 37)

Article 6 (new)

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this directive, having regard to Articles 13 and 14.

Article 7

Unchanged.

This directive is addressed to the Member States.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the Commission proposal for a Council directive on certain employment relationships with regard to distortions of competition

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 228-final - SYN 280)<sup>2</sup>,
  - having been consulted by the Council pursuant to Article 100A of the EEC Treaty (C3-0288/90),
  - having regard to the report of the Committee on Social Affairs, Employment and the Working Environment and the opinion of the Committee on Women's Rights. (A3-0241/90),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
  2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
  3. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
  5. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
  6. Instructs its President to forward this opinion to the Council and Commission.

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OJ<sup>2</sup>No. C 224, 8.9.1990, p. 6

III. Proposal for a directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers

Commission text	Amendments
(Amendment No. 1)	
<u>Proposal for a Council directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers</u>	<u>Proposal for a Council directive on the protection of the health and safety of atypical workers</u>
The Council of the European Communities,	Unchanged
Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,	Unchanged
Having regard to the proposal from the Commission,	Unchanged
In cooperation with the European Parliament,	Unchanged
Having regard to the opinion of the Economic and Social Committee	Unchanged
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;	Unchanged
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;	Unchanged

(Amendment No. 2)

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

Whereas recourse to atypical employment has increased considerably in recent years and will increase still further;

(Amendment No. 3)

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

Insert as penultimate recital

(Amendment No. 4)

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, nevertheless, atypical workers are subject to greater risks than other workers, as shown by the statistics on accidents at work and occupational diseases;

(Amendment No. 5)

(new)

Whereas these extra risks are largely related to the atypical nature of the employment relationship and the particular arrangements which therefore apply within the undertaking;

(Amendment No. 6)

Whereas the directives on health and safety, notably Directive 89/391/EEC, 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 these workers are fully covered by Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work;

(Amendment No. 7)

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;

Deleted

(Amendment No. 8)

(new)

Whereas the special nature of these risks therefore requires the introduction of special regulations;

(Amendment No. 9)

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, in order to ensure a better level of protection, information and training must enable the atypical 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;

(Amendment No. 10)

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

Whereas, whatever the atypical worker's employment relationship, it is the employer who must be responsible for applying 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;

Unchanged

HAS ADOPTED THIS DIRECTIVE

(Amendment No. 11)

DEFINITION (new)

Article 1

This Directive concerns temporary 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 user undertaking where he performs his activities;

1. Atypical employment contracts or terms of employment mean any activity carried out by individuals under contracts or terms of employment which are not permanent and full-time and which offer reduced protection because of:

- the limited duration of the employment
- the limited number of hours worked
- alternation between periods of employment and non-employment
- the de facto or de jure exclusion from the provisions of laws, regulations or contracts applicable to full-time employees with permanent contracts
- the existence of a legal system which provides for derogations reducing the level of protection
- the dispersal of employment relations between several employers.

(Amendment No. 12)

Article 2

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

Article 2

The purpose of this Directive is to protect individuals subject to atypical contracts or terms of employment. It shall enable them to attain a level of health and safety protection equivalent to that of other workers.

The existence of an atypical employment contract or terms of employment shall not justify different treatment with respect to working conditions as regards the content or difficulty of the work, the safety of the work and health protection, access to personal safety equipment, the working environment and pattern, including the arrangements for fixing working hours and paid maternity leave.

Directive 89/391/EEC and the individual directives within the meaning of Article 16(1) of Directive 89/391/EEC 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.

Directive 89/391/EEC and the individual directives within the meaning of Article 16(1) thereof shall apply in full to the atypical worker, without prejudice to more binding and/or more specific provisions set out in this Directive.

(Amendment No. 13)

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 working times, 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 3

Member States shall ensure that the atypical employment contract or terms of employment specifies the occupational qualification required, the place of work, the working times, the specific features of the job to be filled and the known or resumed risks connected with the job.

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

(Amendment No. 14)

Article 4

Member States shall ensure, without prejudice to the liability of the temporary employment business, that the user undertaking and/or establishment are 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 4

Member States shall ensure that, in the assignment of a worker, the user undertaking and/or establishment are responsible for the conditions governing performance of the work which are applicable thereto, without prejudice to Article 5 of Directive 89/391/EEC.



(Amendment No. 15)

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 user employer of the risks he faces and, if necessary, receives appropriate training.

Article 5  
Member States shall ensure that, before an atypical worker takes up any activity requiring special occupational qualifications or skills or special medical supervision, he is informed by the user employer of the risks he faces.

(Amendment No. 16)

Article 5a (new)

TRAINING OF WORKERS

In cases referred to under the foregoing article, the worker must undergo training appropriate to his or her needs, taking into account his or her qualifications and experience. If the job is dangerous, either in the short or long term, training shall be compulsory.

(Amendment No. 17)

Article 6

Member States shall ensure that temporary workers are not used for work requiring special medical supervision over a long period. Without prejudice to the foregoing and in certain exceptional cases requiring medical supervision over a long period, temporary workers may be used; in that 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.

Article 6

MEDICAL SUPERVISION

Atypical workers assigned to work requiring special medical supervision over a long period must receive medical supervision beyond the term of their contract.

Unchanged

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.
3. The provisions adopted pursuant to paragraph 1 shall refer explicitly to this Directive.

(Amendment No. 18)

Article 7a (new)

The body or persons within or outside an undertaking responsible for checking adherence to health and safety regulations shall be informed of the assignment of atypical workers to jobs which may involve risk.

(Amendment No. 19)

Article 7b (new)

Atypical workers may, if they judge it necessary, inform the bodies referred to in the foregoing paragraph of any problem connected with their working environment. Such bodies must have the means to act, if necessary, on behalf of such workers.

Atypical workers shall not be penalized for taking such a step.

(Amendment No. 20)

FINAL PROVISIONS (new)

Article 7c (new)

This directive shall not affect Member States' ability to apply or introduce laws, regulations or administrative provisions more favourable to employed persons.

(Amendment No. 21)

Article 7d (new)

The Member States shall, within a period of two years from the expiry of the period laid down in Article 13(1), forward to the Commission all the information it requires to draw up a report, to be submitted to the Council and the European Parliament, on the implementation of this directive.

(Amendment No. 22)

Article 7e (new)

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this directive, having regard to Articles 13 and 14.

Article 8

Unchanged

This directive is addressed to the Member States

A

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the Commission proposal for a Council directive supplementing the measures to encourage improvements in the safety and health at work of temporary workers

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 228 final - SYN 281)<sup>3</sup>
  - having been consulted by the Council pursuant to Article 118A of the EEC Treaty (C3-0289/90),
  - having regard to the report of the Committee on Social Affairs, Employment and the Working Environment and the opinion of the Committee on Women's Rights (A3-0241/90),
  - having regard to the Commission position on the amendments adopted by Parliament,
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
  2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
  3. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
  5. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
  6. Instructs its President to forward this opinion to the Council and Commission.

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OJ<sup>3</sup>No. C 224, 8.9.1990, p. 8

EXPLANATORY STATEMENTI. INTRODUCTION

1. Ever since the adoption of the White Paper<sup>4</sup> laying down the programme and the timetable for completing the single internal market by 1992, the European Parliament has repeatedly maintained that the internal market cannot possibly succeed unless practical measures are adopted in the social sector, which must be couched in such a way as to afford workers the greatest possible degree of protection and prevent the spread of 'social dumping', as would inevitably happen if economic integration were not accompanied by the necessary social integration.

2. One of the aims being pursued by means of the future internal market is to enable industry to organize itself flexibly so as to preserve competitiveness. As far as the labour force is concerned, this flexibility can be seen - and will be seen to an increasing extent in the future - in the emergence of specific forms of employment that may be described as 'atypical' not only in terms of the volume of work, but also in relation to the mode of regulation of the European labour market, the object of which remains permanent full-time employment. Since, however, the organization of the labour market is based on a 'traditional' structure that takes no account whatsoever of atypical work, the various forms of employment relationships - both those which exist already and the ones now newly emerging - assuming that they are regulated at Community level and brought into line with completion of the internal market, will lead to an increasingly wide disparity of labour costs in the individual Member States and to distortions of competition, whose inevitable adverse consequences will pose an obstacle to balanced growth of the Community regions and a threat to the economic and social cohesion provided for in the Treaties.

3. Moreover, the need to regulate atypical employment relationships was also affirmed in the Community Charter of Social Rights adopted by the Heads of State or Government at the Strasbourg Summit in December 1989, which seeks, among other things, to promote better living and working conditions and provide for a more effective way of regulating the work done by persons not employed under a full-time or temporary contract. These intentions have been confirmed in the Commission action programme setting out the measures required to implement the Charter.

Lastly, in its opinion on the most important legislative proposals in the social field to be included in the Commission's programme for 1990<sup>5</sup>, the European Parliament took the view that a Community directive on atypical employment contracts and relationships needed to be adopted as a matter of absolute priority.

4. The meeting on 26 and 27 April 1990 between the European Parliament's Committee on Social Affairs and the chairmen of the equivalent committees in the national parliaments likewise drew attention to the urgent need for atypical employment to be regulated at Community level in order to stem the

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<sup>4</sup> COM(85) 310 final

<sup>5</sup> OJ No. C 68, 19.3.1990, p. 155

threat of social dumping. It was stressed that minimum standards for all types of employment relationships had to be laid down without fail at Community level. A further idea put forward was that of a 'European factory inspectorate', which could be responsible for carrying out the necessary stringent checks right across the Community.

Since then, the European Parliament, disturbed at the Commission's slowness in drawing up the directive on atypical employment and wishing to provide positive help towards bringing about the social dimension of the internal market, has adopted a resolution<sup>6</sup> on an initiative aimed at a proposal for a directive on atypical employment contracts and terms of employment, which was tabled by the Committee on Social Affairs and received the endorsement of a large majority. The key point about the resolution is that it marks a new departure to the extent that it includes a genuine legislative proposal and - together with this latest report - constitutes an unambiguous statement of Parliament's position.

5. On 13 June 1990 the Commission adopted a document on 'special forms of employment' containing three proposals for directives, each based on a different article of the Treaty, namely Article 100, Article 100a, and Article 118a. The purpose of this report is to deliver an opinion on that document.

## II. ATYPICAL EMPLOYMENT

1. In view of the many guises in which atypical employment characteristically appears, the term may be used to denote any employment relationship that differs in at least one respect (duration of contract, working hours, job security and career prospects, social security benefits, etc.) from the 'typical' employment relationship.

In the last ten years, 'atypical' employment has increased not only in scale, but also in terms of the number of forms of work falling under that definition. Given that virtually no figures exist or, where available, are scarcely reliable, it is difficult to form a clear picture of the trend as regards these employment relationships. However, the principal reasons for the rise of atypical employment must be sought in increasing unemployment, the survival of traditional sex roles, and industry's attempts to achieve greater flexibility, resulting in changed working patterns and new modes of organization of working time.

2. Although 'atypical' employees have different profiles, they can generally be said to share a number of common features: a sizeable proportion is accounted for by women and young people who, on the whole, have a lower standard of professional qualifications than 'typical' employees. In fact, the frequency of 'atypical' characteristics stands in direct proportion to the lack of job security.

A great many atypical employees can find no place on the typical, traditional labour market and consequently accept atypical employment as the only alternative open to them. Though not invariably the case, atypical employees, compared with persons employed in secure, full-time jobs, are to be found in the main in more precarious situations in which they are exposed to

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<sup>6</sup> Minutes of the meeting of 10 July 1990

discrimination. That is why the growth of atypical employment would add still further to social inequalities and lead to fragmentation of the labour market unless the necessary regulation is brought about. Parallel to that, improved and more widespread new technology applications are giving rise to new forms of employment that may in many cases be classed as atypical.

The increase in atypical employment can be seen in all the Member States - albeit not to the same extent. Largely speaking, the necessary laws do not exist in the individual Member States or, where they do exist, are inadequate, confined as they are merely to specific principal - and by far the most frequent - forms of atypical employment such as part-time working, fixed-term contracts, and temporary work.

Owing to the lack of a comprehensive and effective regulatory framework, persons employed in an atypical employment relationship are especially devoid of protection and frequently the victims of abusive practices. At the practical level, they often suffer discrimination in terms of wages, protection and social security, dismissal, and working hours. It is therefore essential to take measures in an integrated European market to reduce the risks to employees associated with atypical employment to a minimum and, more generally, to protect the living conditions of the individual.

Laws differ greatly in the individual Member States, leading to very wide disparities in direct and indirect social costs and hampering fair competition among the different national undertakings. It is thus imperative for harmonization measures to be taken to remove these aberrations.

### III. THE COMMISSION PROPOSAL

1. As already mentioned, the Commission has thought fit to submit not one but three directives to regulate certain special forms of employment, confining itself to the principal and most widespread forms of atypical employment relationships, in particular part-time working and temporary work. What is more, three different legal bases are invoked for the three directives, namely Articles 100, 100a and 188a.

Whereas the first two directives relate to approximation of the laws of the Member States as regards working conditions on the one hand and distortions of competition on the other, the third directive is intended to supplement the measures to encourage improvements in the safety and health at work of temporary workers.

2. The directive to be based on Article 100, which requires the Council to act unanimously, is the one that contains the most important provisions. It relates to in-service training and provides for the employees concerned to be taken into account in calculations of firm size for the purposes of workers' representative organizations, to be given the necessary advance notice with a view to recruitment as full-time employees, and to enjoy equal treatment as regards benefits, social security systems, and welfare payments, etc.

The second directive, based on Article 100a, which requires the Council to act by a qualified majority, deals mainly with social protection, entitlement to annual holidays, the conditions of dismissal applying to temporary workers, and restrictions on the renewal of temporary contracts of less than twelve months.

The third directive, based on Article 118a, which again requires the Council to act by a qualified majority, is concerned chiefly with equal treatment of temporary and other workers as regards improved safety and health at work, information about specific occupational risks, medical supervision, and the responsibilities incumbent upon undertakings using the services of temporary workers.

3. The third Commission proposal applies only to temporary workers, including seasonal workers: all other persons employed in an atypical employment relationship are thus excluded. In addition, none of the three directives covers specific forms of employment such as work in the home.

Furthermore, the Commission text lays down no mandatory requirement for the special forms of employment concerned to be regulated by a written contract.

More seriously, no attempt has been made to create means of democratic control to ensure compliance with the provisions laid down in the three directives. Transparency of information and monitoring of the use made of the special forms of employment are the only ways of preventing abuses creeping in when contracts are concluded.

#### IV. LEGAL BASIS OF THE THREE DIRECTIVES

1. The Commission (see above) has thought fit to submit three proposals for directives to regulate atypical employment, each based on a different article of the Treaty, i.e. Articles 100, 100a and 118a, instead of submitting the single proposal announced in its action programme to implement the Community Charter of Basic Social Rights for Workers. In justification it argues that, in the light of detailed analysis, it appears impossible, given the many different aspects involved, to treat the employment relationships concerned as a single subject area.

2. We consider it unacceptable that three different legal bases, and in particular Article 100, should be invoked. Our views are supported by those of the labour law experts we consulted<sup>7</sup>, whose ideas we fully share.

With regard to special forms of employment, the directive based on Article 100 deals with working conditions, whereas the one based on Article 100a is concerned with distortions of competition. The inference is that the Commission is making a clear distinction between the economic and the social aspect and in that way, by removing the social aspect from Article 100a, is interpreting the scope of the latter article in extremely restrictive terms.

Article 100a allows the Council, 'acting by a qualified majority ... (to) adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market', i.e. specifically with a view to achieving the objectives set out in Article 8a.

3. However - as the Commission itself notes - the disparities in the provisions governing atypical employment in the individual Member States are

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<sup>7</sup> Institut du travail, Strasbourg



so patent that the distortions of competition which might result could jeopardize the smooth running of the market, a risk that should in no way be underestimated. As already stated, the scale of atypical employment (20% of the total Community labour force are employed in a relationship of this type) and the disparities in the laws currently existing in this area generate very substantial variations in direct and indirect social costs that hamper fair competition among undertakings in the individual Member States, and that is precisely why harmonization measures are required at Community level, which in our opinion are entirely in accord with Article 100a.

It is true that under paragraph 2, provisions relating to the rights and interests of employed persons are excluded from the scope of decision-making by a qualified majority, yet this derogation must not be applied indiscriminately to every provision affecting the rights and interests of employed persons. Careful analysis of Article 100a inevitably leads to the conclusion that social back-up measures connected with the internal market help to achieve the objectives set out in Article 8a and hence must not be subject to the restriction under Article 100a(2).

It is clear, moreover, that to the extent that labour is a production fact involved in completion of the internal market, most of the proposals required for the smooth running of the market will affect the rights and interests of employed persons in one way or another<sup>8</sup>. In fact, Article 100a(2) does not require Article 100 to be invoked in respect of social measures with economic consequences. If that were not the case, we would unfortunately be obliged to note that the Single Act - Article 118a apart - had brought no progress in the social sphere, contrary to all the utterances to the effect that completion of the internal market presupposes a Community social policy and economic progress must go hand-in-hand with social progress.

4. As far as Article 118a is concerned, we see no need to expand upon the clear interpretation given by the last European Parliament on the basis of a report by the Committee on Social Affairs and Employment<sup>9</sup>. The report states that:

'- the scope of Article 118a must not be restricted solely to the health and safety of workers ... in a narrow sense but should include provisions on ergonomics and the working environment and all direct and indirect material and psychological interests of workers';

'- the concept of "working environment" covers the duration, organization and content of work since these factors have a bearing on the health and safety of workers, as in the case of night work or certain forms of activity which are particularly arduous (shift work) or dangerous for workers'.

5. One final point to be made is that there are very few provisions applying to atypical employment relationships in the areas of health, safety, preventive measures, training, and medical supervision and those that do exist

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<sup>8</sup> On this point, see the extremely interesting article by Professor Eliane Vogel-Polsky: 'Quel futur pour l'Europe sociale après le Sommet de Strasbourg' (Droit social, February 1990)

<sup>9</sup> see Doc. A2-0226/88 and OJ No. C 12, 16.1.1989

are hardly observed, putting the workers concerned at greater risk from industrial accidents.

Article 118a consequently affords a means of adopting specific measures to improve the safety and the degree of health protection accorded to these workers.

#### V. CONCLUSIONS

On the basis of the foregoing remarks, this opinion concludes that the Commission proposal for a directive based on Article 100 should be rejected. To our mind, Article 100a or 118a of the Treaty offers a sufficient legal basis - depending on whether the subject is distortions of competition or health protection and improved safety - for any measures required for the adoption of basic provisions governing atypical employment relationships.

Our aim is to remove provisions of national laws on atypical employment that might worsen distortions of competition, in particular after 1992. On this point, we are firmly convinced, as already stated, that the economic objective of removing the distortions of competition requires social back-up measures as regards working conditions and social protection.

The amendments we have proposed are thus aimed purely at approximating national laws and enshrining general principles affording the 'atypical' employee the same guarantees as a person employed in a 'normal' employment relationship.

## O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Women's Rights

for the Committee on Social Affairs, Employment  
and the Working Environment

Draftsman : Mrs Anna HERMANS

At its meeting of 30 January 1990 the Committee on Women's Rights appointed Mrs Hermans draftsman.

It considered the draft opinion at its meetings of 19 and 20 September 1990.

At that meeting it adopted the conclusions by 4 votes to 1.

The following took part in the vote: Crawley, chairman; Domingo Segarra, second vice-chairman; van Dijk, Lenz and Tazdait (for Ernst de la Graete).

## I. Introduction

1. The European Parliament has repeatedly called for the social dimension to play as important a role as the economic dimension in the process of European unification. The social charter, the social action programme and the legislation implementing that programme should be the cornerstones of a 'social Europe'.
2. The Committee on Women's Rights has repeatedly called for the principle of equal treatment for men and women to become a more prominent feature of social and economic cohesion, both through specific measures aimed at overcoming the disadvantaged position of women in society and through general social measures providing scope for improving the integration of women in the social and economic reality of everyday life.
3. The social charter, the social action programme and the programme of priorities approved by Parliament all identified the creation of a legislative framework for 'atypical forms of employment' as one of the top priorities. The Committee on Women's Rights has consistently emphasized the importance of this, not least because in recent years 'atypical forms of employment' have come to be regarded as 'typical' in the sectors where women find work.
3. The Committee on Women's Rights welcomes the fact that an initiative by Parliament (the Salisch report) has prompted the drafting of legislation on 'atypical forms of employment' and that proposals have now been tabled on the position of workers in atypical forms of employment. The conclusions of the Committee on Women's Rights, based on an analysis of COM(90) 228 - SYN 280 - SYN 281, are as follows.

## II. Conclusions

1. The 3 proposals for directives envisage legislation in respect of the following: part-time employment, temporary employment, seasonal work, on-call employment, homeworking and teleworking (cf. para. 9 of the Explanatory Memorandum).

However, the substantive scope of the Directives is restricted to part-time and temporary employment (Explanatory Memorandum, para. 12).

The Commission holds out the prospect of legislation on the other types. The Committee on Women's Rights calls for the regulations proposed in the first directive (harmonization of Member States' legislation on working conditions in certain employment relationships) to be included in the directive on improving competition and the directive on health and safety; the proposals could then have as their legal basis Articles 100a and 118a of the Treaty of Rome.

3. Subject to inclusion of the articles of COM(90) 228 IN COM(90) 280 and 281, the Committee on Women's Rights proposes the following amendments:

Directive COM(90) 280:

Art. 1(3)

Replace '8 hours' with '2 hours'.

Art. 2

After 'social security schemes' insert: '- including statutory provisions or paid maternity leave-'.

Art. 4(a)

Replace '36 months' with '12 months'.

Directive COM(90) 281:

Art. 2

After 'health and safety at work, the same conditions' insert. '- including paid maternity leave-'.

4. The Committee on Women's Rights calls for the drafting of legislation (with penalty clauses) to enforce the directives.

