



Brussels, 5 June 2008  
JM/CP/em

Ms Marjeta Cotman  
Minister of Labour  
Family and Social Affairs  
Kotnikova 5  
SI - 1000 Ljubljana  
Slovenia

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**Re:**  
**Draft Directive on working conditions for temporary workers**  
**(Temporary Agency Directive)**

Dear Minister,

The ETUC is addressing you in your capacity as Minister of Labour, representing the Slovenian Presidency and as such chairing next week's meeting of the Council of the European Union (Employment, Social Policy, Health and Consumer Affairs).

At that meeting the Council will have on its agenda the Draft Temporary Agency Directive, with a view to reach agreement.

The ETUC would welcome an agreement in Council on the Temporary agency Directive, provided this would offer a clear regulatory framework for temporary agency work at EU level, based on the principle of equal treatment, and allowing for different arrangements including derogations **only** under very well defined and guaranteed conditions as further explained below. This would give a **clear signal that social progress at EU level is necessary and possible**.

ETUC understands your proposals on Article 5 of the Directive as going in this direction and is ready to support them, so long as they are phrased in a clear and unambiguous manner and no other proposals in Council would be adopted that would further weaken the text.

**Background**

This draft Directive has known a long and turbulent history.

It started with negotiations between the Social Partners at European level, who had successfully negotiated on part time work and fixed term contracts but in 2001 failed to reach agreement on agency work.

In March 2002, the Commission came up with its proposal for a draft Directive, which was discussed in the European Parliament in the course of 2002, leading to a clear majority vote in the Parliament's first reading on the Van den Burg report and to an amended Commission proposal in November 2002. Since then, it has not been possible to reach agreement in Council.

In the meantime, temporary agency work has further developed in Europe and, particularly since the 2004 enlargement, agencies are increasingly playing an important and sometimes problematic role in recruiting and making available migrant and mobile workers to user enterprises both within Member States and cross border.

While it should be recognized that temporary agencies can play a useful role in complex labour markets, it must also be understood that there is a potential of abuse and manipulation with detrimental effects for individual workers as well as labour markets and industrial relations, which demands a proper and specific regulatory framework at national and at EU level in the interest of both workers and honest employers and agencies. This was an important reason for the European institutions to exclude temporary agency work from the Services Directive in 2006.

### **Equal treatment: the guiding principle**

The draft Temporary agency Directive was the third in a series starting with the Part time work Directive, which was clearly based on the general principle of ensuring workers with 'non-standard' employment relationships **equal treatment** compared to workers with 'standard' employment relationships.

When it comes to temporary agency workers, the logical approach therefore is that the agency worker should not be treated less favourably than the comparable worker in the user enterprise.

Whereas this principle has been accepted from the very beginning as the guiding principle of the draft Directive, it was not possible until recently to reach agreement on the scope of this principle, and especially not on the extent to which it would be possible to derogate from it.

For ETUC, supported by the European Parliament, it has been always **unacceptable that there would be generalized exceptions to the principle**, especially in terms of qualifying periods that would in practice have the effect of excluding large percentages of agency workers from protection.

At the same time, on the basis of good practice examples of countries in which collective bargaining on agency work has been developed in the last few decades, and in the understanding that collective bargaining partners have sufficient countervailing power to ensure balanced outcomes, ETUC has agreed to allow for different arrangements for agency workers to be established in collective agreements, so long as these would – in an overall negotiated package – offer agency workers adequate protection.

### **Recent developments**

In the meantime, two important developments have taken place.

On 28 May, the European social partners in the temporary agency work sector, **UNI-Europa and Eurociett, adopted a joint declaration** on the draft Temporary agency Directive, in which they express their joint interest in the coming about of a regulatory framework for agency work at EU level.

This should provide for adequate protection of agency workers, recognize the role temporary work agencies can play in a well functioning labour market, and provide for a legal framework that would help to prevent unfair competition by fraudulent agencies or user-enterprises, and would counter abuses and illegal practices. Such a regulatory framework should be based on the principle of equal treatment between agency workers and comparable workers in the user enterprise, which should apply from the very first day of an assignment. They agree that derogations from this principle must be possible, but preferably only if based on collective agreements. In specific cases a derogation could also be made possible by way of agreement between the social partners and/or tripartite bodies at national level. (Please find the full text of the declaration attached).

ETUC has welcomed this declaration as an important step, showing the joint interests of both sides of industry in the adoption of an adequate and balanced Temporary Agency Directive.

On 20 May, the **social partners at national level in the UK, the CBI and TUC, reached an agreement** on how 'fairer treatment for agency workers in the UK should be promoted, while not removing the important flexibility that agency work can offer both employers and workers'. Among other things, agreement was reached to introduce equal treatment for agency workers in the UK, with a qualifying period of 12 weeks. It was also agreed that the Government of the UK would 'engage with its European partners to seek agreement on the terms of the Agency workers Directive that will enable this agreement to be brought into legal effect in the United Kingdom'.

ETUC has also welcomed the progress made in the UK as good news for temporary agency workers both in the UK and in Europe, because it would clear the way for the adoption of the Temporary agency Directive based on the principle of equal treatment from day one, with possibilities for different arrangements only by collective agreement or -under specific conditions- by agreement between the social partners at national level.

### **Relation to the draft Directive**

The ETUC continues to have strong reservations about the possibility for generalized qualifying periods to be introduced at any level.

However, ETUC would be ready to accept that such qualifying periods could form part of packages of arrangements made at national or sectoral level, under the following conditions:

- official and genuine **collective bargaining**, with all its safeguards in national and international law, would remain the preferred way of dealing with such different arrangements,
- there would be the clear obligation for collective bargaining parties **to respect and ensure the overall protection** of temporary agency workers
- the additional possibility to derogate would be clearly and unambiguously limited to an **agreement** between the **national** social partners, and **only** in countries where there is **no system in law or practice to extend the scope of collective agreements** to a sector or geographical area,
- also in this case, there would be the clear obligation for national social partners **to ensure an adequate level of protection** for such workers.

ETUC understands the proposals made by the Slovenian presidency in the framework of Article 5 (on equal treatment) of the draft Directive as going in this direction, and would therefore be ready to support them so long as they are phrased in a clear and unambiguous manner and no other proposals in Council would be adopted that would further weaken the text.

### **Conclusions**

As you are well aware, this debate is taking place in the context of another discussion, on the revision of the Working Time Directive, about which we have sent a separate letter to you expressing our strong concerns.

As said, the ETUC would welcome an agreement in Council on the Temporary agency Directive, paving the way for the second reading in the European Parliament and adoption of the Directive, provided this would offer a clear regulatory framework for temporary agency work at EU level, based on the principle of equal treatment as explained above. This would be a very welcome signal that the deadlock in the development of social Europe is broken, and that social progress at EU level is both necessary and possible.

In ETUC's view, a possible agreement on the draft Temporary agency Directive should not be used as an argument to at the same time adopt a revised Working Time Directive that can not be considered to offer any social progress at all, and may even do the opposite, as we argued in our previous letter. The ETUC opposes the linking of the two dossiers, and we call on you **to deal with both very important dossiers independently**, and ensure that decisions are made based on the merits of each dossier separately.

We thank you in advance for your support, and wish you strength and success in the upcoming negotiations in the Council.

Yours sincerely,



John Monks  
General Secretary

Cc: Commissioner Vladimír Špidla and  
Permanent Representatives of MS's to the EU