

Eurociett/UNI-Europa Joint Declaration on the Directive on working conditions for temporary agency workers

Brussels, 28th May 2008

As the debate on the draft directive on working conditions for temporary agency workers has been revived, Eurociett and UNI-Europa, the two EU sectoral social partners for temporary agency work, would like to address the Council, the Commission and the European Parliament in order to provide a contribution to the discussions. UNI-Europa and Eurociett have based their discussions on the draft Directive on working conditions for temporary workers as amended by the Commission in 2002, following the Parliament's first reading.

Guiding principles for an EU regulatory framework on TAW

1. UNI-Europa and Eurociett are of the opinion that an E.U. regulatory framework on temporary agency work (TAW) should be in the interest of both business and workers.
2. UNI-Europa and Eurociett believe that European integration and a proper functioning of the internal market require a regulatory framework for TAW covering all Member States and all temporary agency workers. No Member State can be excluded from the scope of the TAW directive.
3. UNI-Europa and Eurociett are of the opinion that the draft TAW Directive should be dealt with independently from other European legislative debates, on the basis of its own merits and its impact on working conditions and labour markets.
4. UNI-Europa and Eurociett consider that the proposed legislation should a) combine an adequate protection of agency workers and the role temporary work agencies can play in a well functioning labour market, b) provide a legal framework for temporary work agencies to operate that would help to prevent unfair competition by fraudulent agencies and/or user companies, counter abuses and illegal practices.
5. To this aim, the legislation must secure the equal treatment principle for temporary agency workers with regard to their basic working and employment conditions and allow for better conditions for the development of a well functioning European market for temporary agency work services.
6. UNI-Europa and Eurociett are convinced that a proper regulatory framework for TAW should promote social dialogue, collective bargaining and well-functioning industrial relations in the sector.
7. UNI-Europa and Eurociett stress on the one hand the necessity to identify and review obstacles of a legal or administrative nature, which may limit the opportunities for temporary agency work to operate,

and, where appropriate, eliminate them. On the other hand, they recognise the necessity of certain restrictions to prevent potential abuses, such as potential undermining of employment conditions of workers.

8. UNI-Europa and Eurociett agree that systems of licensing (which can include financial guarantees) certification, inspection or registration may contribute to the sound development of the sector, provided that such systems are proportional, non-discriminatory and objective and do not aim at hampering the development of temporary agency work.
9. The Directive should take into account the ILO Convention 181 and Recommendation 188 on private employment agencies adopted in 1997. The Directive should also respect the freedom of association and right to collective bargaining, including the promotion of voluntary negotiations¹ as guaranteed by ILO conventions 87 and 98.
10. The provisions of the Directive on temporary agency work are without prejudice to national legislation or practices prohibiting striking workers being replaced by temporary agency workers.

Contribution of temporary agency work to the labour market

11. UNI-Europa and Eurociett acknowledge that temporary agency work can, under the proper conditions, play a positive role in the labour market and contribute to meeting the requirements of the Lisbon Strategy.
12. UNI-Europa and Eurociett agree that temporary work agencies should not compete to the detriment of workers' rights and working conditions.

Review of restrictions

13. UNI-Europa and Eurociett recognise that temporary agency work fulfils specific needs for both companies and workers and aims at complementing other forms of employment.
14. UNI-Europa and Eurociett agree that restrictions and prohibitions on the use of temporary agency work should be proportionate, non-discriminatory and objective. They should be assessed and reviewed periodically by Member States - or by relevant social partners if such restrictions and prohibitions are laid down by collective labour agreements - to ensure that this remains the case. Unjustified restrictions to the supply of temporary agency workers should be removed.

¹ Article 4 of the ILO Convention on the right to Organise and Bargain Collectively states: *"Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."*

Principle of non discrimination

15. UNI-Europa and Eurociett agree that the non-discrimination principle should apply to temporary agency workers' basic working and employment conditions.
16. The non discrimination principle will apply from day 1 of an assignment unless a qualifying period is agreed on at national level by social partners and/or tripartite bodies.
17. The basic working and employment conditions of temporary workers shall be, for the duration of their posting at a user undertaking at least equal to those:
 - Pertaining to the comparable worker doing the same or similar job in the user company or,
 - That would apply if they had been recruited directly by that enterprise to occupy the same job²;

Derogations to the non discrimination principle

18. Member States may, after consulting representative social partners, give them, at the appropriate level, the possibility to upholding or concluding collective agreements, which, while providing for adequate protection of temporary agency workers, can derogate from the principle of non discrimination described in paragraph 15.
19. However, in some countries, other specific solutions may be necessary in order to take into account the heterogeneous state of the sector development, regulations and industrial relations in the EU 27 as well as specific markets characteristics and needs. These solutions may include transitional arrangements before the full implementation of the legislation, and/or other forms of adaptation (such as a qualifying period), to be agreed upon by national social partners, and/or tripartite bodies, according to national practices or capacities.
20. UNI-Europa and Eurociett underline that in several countries the implementation of the principle of non-discrimination is achieved through collective bargaining, offering a satisfactory framework for a balanced outcome. They are of the opinion that the Directive should reflect and favour this approach.
21. As regard pay, Member States may, after consulting the social partners, provide that an exemption to be made to the principle of non discrimination established in paragraph 15 for temporary workers who have a permanent contract of employment with a temporary work agency that guarantees them adequate and continuous payment whether or not they are on an assignment.

² *Different definitions currently apply in different Member States where the non discrimination principle already exists. As a result, social partner agreements can determine the most appropriate definition on a national level.*

Active labour market policies

22. With regards to active labour market policies, rules governing temporary agency work contracts should not hamper their use in comparison to other forms of flexible employment contracts. In that context, temporary agency work contracts may, following consultation with social partners, be subject to specific provisions at national level regarding the application of the non discrimination principle.

Reference to other EU Directives

23. The implementation of the posting of workers Directive (96/71/EC), which fully applies to cross border temporary agency workers, covering terms and conditions of work when being posted in another EU Member State, is of particular importance. As stated in their joint work program 2008/ 2009, Eurociett and UNI-Europa will devote a special attention to the implementation of the Posting of Workers Directive, and if possible, will adopt a joint contribution vis-à-vis the European institutions. Eurociett and UNI-Europa will set up a European Observatory on cross border activities within temporary agency work.
24. The two EU sectoral social partners also draw attention to the fact that the Directive (91/383/EEC) fully applies to temporary agency work, with the aim to ensure that temporary agency workers are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user company.

Follow up

25. This joint declaration will be widely promoted amongst all relevant E.U. institutions and stakeholders in order to have a maximum impact on the TAW Directive debate expected to take place within the forthcoming months.

(Original signed by)

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