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COUNCIL DIRECTIVE 1999/70/EC

of 28 June 1999

concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

(OJ L 175, 10.7.1999, p. 43)

Corrected by:

►**C1** Corrigendum, OJ L 244, 16.9.1999, p. 64 (1999/70/EC)

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COUNCIL DIRECTIVE 1999/70/EC

of 28 June 1999

concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Following the entry into force of the Treaty of Amsterdam the provisions of the Agreement on social policy annexed to the Protocol on social policy, annexed to the Treaty establishing the European Community have been incorporated into Articles 136 to 139 of the Treaty establishing the European Community;

(2) Management and labour (the social partners) may, in accordance with Article 139(2) of the Treaty, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;

(3) 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';

(4) The Council has been unable to reach a decision on the proposal for a Directive on certain employment relationships with regard to distortions of competition [1], nor on the proposal for a Directive on certain employment relationships with regard to working conditions [2];

(5) The conclusions of the Essen European Council stressed the need to take 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';

(6) The Council Resolution of 9 February 1999 on the 1999 Employment Guidelines invites the social partners at all appropriate levels to negotiate agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security;

(7) 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;

(8) 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;

(9) The general cross-industry organisations, namely 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

[1] OJ C 224, 8.9.1990, p. 6. and OJ C 305, 5.12.1990, p. 8.
[2] OJ C 224, 8.9.1990, p. 4.

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the Commission in a joint letter dated 23 March 1998 of their desire to initiate the procedure provided for in Article 4 of the said Agreement; they asked the Commission, in a joint letter, for a further period of three months; the Commission complied with this request extending the negotiation period to 30 March 1999;

(10) The said cross-industry organisations on 18 March 1999 concluded a framework agreement on fixed-term work; 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 Agreement on social policy;

(11) The Council, in its Resolution of 6 December 1994 on 'certain aspects for a European Union social policy: a contribution to economic and social convergence in the Union' ([1]), 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;

(12) The signatory parties, in the preamble to the framework agreement on part-time work concluded on 6 June 1997, announced their intention to consider the need for similar agreements relating to other forms of flexible work;

(13) Management and labour wished to give particular attention to fixed-term work, while at the same time indicating that it was their intention to consider the need for a similar agreement relating to temporary agency work;

(14) The signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships;

(15) The proper instrument for implementing the framework agreement is a directive within the meaning of Article 249 of the Treaty; it therefore binds the Member States as to the result to be achieved, whilst leaving them the choice of form and methods;

(16) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 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; 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;

(17) As regards terms used in the framework agreement but not specifically defined therein, this Directive allows Member States to define such terms in conformity with national law or practice as is the case for other Directives on social matters using similar terms, provided that the definitions in question respect the content of the framework agreement;

(18) The Commission has drafted its proposal for a Directive, in accordance with its Communication of 14 December 1993 concerning the application of the agreement on social policy and its Communication of 20 May 1998 on adapting and promoting 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; the contracting parties together have a sufficiently representative status;

([1]) OJ C 368, 23.12.1994, p. 6.

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(19) The Commission informed the European Parliament and the Economic and Social Committee by sending them the text of the agreement, accompanied by its proposal for a Directive and the explanatory memorandum, in accordance with its communication concerning the implementation of the Protocol on social policy;

(20) On 6 May 1999 the European Parliament adopted a Resolution on the framework agreement between the social partners;

(21) The implementation of the framework agreement contributes to achieving the objectives in Article 136 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of the Directive is to put into effect the framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary ►C1 to comply with this Directive by 10 July 2001, ◄ 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, and following consultation with management and labour, 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 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 1999.

For the Council

The President

M. NAUMANN