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COUNCIL DIRECTIVE 97/81/EC

of 15 December 1997

concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC

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COUNCIL DIRECTIVE 97/81/EC

of 15 December 1997

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 Commission,

(1) 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;

(2) 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;

(3) 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';

(4) Whereas the Council has not reached a decision on the proposal for a Directive on certain employment relationships with regard to distortions of competition [1], as amended [2], nor on the proposal for a Directive on certain employment relationships with regard to working conditions [3];

(5) 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 organization of work in a way which fulfils both the wishes of employees and the requirements of competition;

(6) 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;

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

(8) Whereas the general cross-industry organizations, the Union of Industrial and Employer's 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

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[1] OJ C 224, 8. 9. 1990, p. 6.
[2] OJ C 305, 5. 12. 1990, p. 8.
[3] OJ C 224, 8. 9. 1990, p. 4.

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of their desire to initiate the procedure provided for in Article 4 of the Agreement on social policy; 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;

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

(10) Whereas the Council, in its Resolution of 6 December 1994 on prospects for a European Union social policy: 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;

(11) Whereas the signatory 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;

(12) 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;

(13) 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) 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 national authorities the choice of form and methods;

(15) 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; wheres this Directive does not go beyond what is necessary for the attainment of those objectives;

(16) Whereas, with regard to terms used in the Framework Agreement which are not specifically defined therein, this Directive leaves Member States free to define those terms in accordance with national law and practice, as is the case for other social policy Directives using similar terms, providing that the said definitions respect the content of the Framework Agreement;

(17) Whereas the Commission has drafted its proposal for a Directive, in accordance with its Communication of 14 December 1993 concerning the application of the Protocol (No 14) on social policy and its Communication of 18 September 1996 concerning the development of the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Framework Agreement;

(18) Whereas the Commission has drafted its proposal for a Directive in compliance with Article 2(2) of the Agreement on social policy which provides that Directives in the social policy domain

[1] OJ C 368, 23. 12. 1994, p. 6.

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'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';

(19) Whereas the Commission, in accordance with its Communication of 14 December 1993 concerning the application of the Protocol (No 14) on social policy, informed the European Parliament by sending it the text of its proposal for a Directive containing the Framework Agreement;

(20) Whereas the Commission also informed the Economic and Social Committee;

(21) Whereas Clause 6.1 of the Framework Agreement provides that Member States and/or the social partners may maintain or introduce more favourable provisions;

(22) Whereas Clause 6.2 of the Framework Agreement provides that implementation of this Directive may not serve to justify any regression in relation to the situation which already exists in each Member State;

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

(24) 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 and as they result from the constitutional traditions common to the Member States, as general principles of Community law;

(25) Whereas the Member States may entrust the social partners, at their joint request, with the implementation of this Directive, provided that the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;

(26) 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

The purpose of this Directive is to implement the Framework Agreement on part-time work concluded on 6 June 1997 between the general cross-industry organizations (UNICE, CEEP and the ETUC) annexed hereto.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 20 January 2000, or shall ensure that, by that date at the latest, the social partners 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 measures referred to in the first subparagraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publi-