

The Directive on temporary agency work: issues of implementation

Bertrand MULLER-SCHLEIDEN

European Commission – DG Employment, Social Affairs and
Equal Opportunities – Labour Law Unit

26 November 2009

Overview

- I. The transposition exercise
- II. Setting up an expert group
- III. Possible issues to be tackled

I. The transposition exercise (1)

- Directive 2008/104/EC on temporary agency work adopted on 19 November 2008
- 3-year transposition period: expires on 5 December 2011
- Implementation by Member States or social partners, but Member States remain responsible

I. The transposition exercise (2)

- Strong involvement of social partners:
 - Derogations from the principle of equal treatment: Article 5(2), (3) and (4) provide for various degrees of involvement
 - Article 4(3): review of restrictions and prohibitions laid down by collective agreements may be carried out by social partners

I. The transposition exercise (3)

- During transposition period: Commission abstains from making comments about draft bills or proposals put forward by national governments or stakeholders
- After transposition deadline: Commission checks compliance of national implementing provisions and possibly launches infringement proceedings

II. Setting up an expert group (1)

- Expert group set up by DG Employment, Social Affairs and Equal Opportunities; DG Internal Market is associated
- Composition: representatives of ministries in charge of transposition in 27 Member States (members) and EEE-EFTA States (observers)
- Informal and temporary character: no meetings after transposition deadline

II. Setting up an expert group (2)

- Aim: provide technical support, reach common understanding/consensus on interpretation of provisions of the Directive whenever possible
- Meetings: first held in September 2009, 6 other meetings planned; examination article by article
- Involvement of European social partners: will be invited to attend certain meetings as experts

III. Possible issues to be tackled (1)

- **Article 1: Scope**

- Personal and material scope (notably, interpretation of notions of worker, temporary-work agency, supervision and direction by user undertaking)
- Scope of derogation for public/publicly supported vocational training, integration or retraining programmes
- Geographical scope: possible effects outside the territory of Member States (e.g. seafarers) and criteria to be applied

III. Possible issues to be tackled (2)

- **Article 3: Definitions**

- Art. 3(1)(f) and 3(2), first subparagraph to be examined together with Art. 5
- Definitions in Art. 3(1) to be examined with articles where relevant terms are used
- Interaction of Directives 97/81/EC on part-time work and 1999/70/EC on fixed-term work with temporary agency work

III. Possible issues to be tackled (3)

- **Article 4: Review of restrictions or prohibitions**
 - Interpretation of notions of prohibitions/restrictions on use of temporary agency work, grounds of general interest, protection of temporary agency workers, requirements of health and safety at work, need to ensure that the labour market functions properly and abuses are prevented

III. Possible issues to be tackled (4)

- What should the review exercise consist of?
- Review of restrictions or prohibitions by social partners provided for in Art. 4(3): in which cases and how could it be carried out?
- National requirements with regard to registration, licensing, certification etc.: how is Art. 4(4) to be interpreted?

III. Possible issues to be tackled (5)

- **Article 5: Principle of equal treatment (as well as Art. 3(1)(f) and 3(2), first subparagraph)**
 - Interpretation of notion of basic working and employment conditions, notably its pay component
 - Extent of national competence for defining notions of pay, contract of employment/employment relationship and worker

III. Possible issues to be tackled (6)

- Do Member States intend to use exemption on pay in Art. 5(2) and, if so, how? Interpretation of notion of continued payment in the time between assignments
- Extent of the possibility to deviate from the principle of equal treatment under Art. 5(3) and interpretation of the notion of overall protection of temporary agency workers

III. Possible issues to be tackled (7)

- Extent of the possibility to deviate from the principle of equal treatment under Art. 5(4) and interpretation of the notion of adequate level of protection
- Are Member States allowed to resort to both Art. 5(3) and 5(4)?
- Article 5(5): what may anti-avoidance measures consist of?

III. Possible issues to be tackled (8)

- **Article 6: Access to employment, collective facilities and vocational training**
 - Notion of objective reasons justifying a difference in treatment re access to collective facilities in the user undertaking
- **Article 7: Representation of temporary agency workers**
 - Interpretation of the notion of threshold for forming bodies representing workers provided for by Community and national law and collective agreements

III. Possible issues to be tackled (9)

- **Article 8: Information of workers' representatives**
 - Interpretation of the notion of suitable information on the use of temporary agency workers
- **Article 9: Minimum requirements**
 - Do Member States intend to apply or introduce provisions more favourable to workers?
- **Article 10: Penalties**
 - How do Member States intend to implement it?

Thank you for your attention!