



COMMISSION EUROPÉENNE
Secrétariat Général

SEC(96)658

Bruxelles, le 9 avril 1996

O/96/132

TEXTE E

DEUXIEME PHASE DE CONSULTATION DES PARTENAIRES SOCIAUX
SUR LA FLEXIBILITE DU TEMPS DE TRAVAIL ET LA SECURITE
DES TRAVAILLEURS

Communication de M. FLYNN

- Cette question est susceptible d'être inscrite à l'ordre du jour d'une prochaine réunion de la Commission.

Destinataires : Membres de la Commission
MM. LARSSON, RAVASIO, MICOSSI, SCHAUB, LEGRAS, MOGG, von MOLTKE,
VIGNON, WILLIAMSON, DEWOST

PREPARATION DU DOCUMENT

Direction(s) générale(s) responsable(s)

V Emploi, Relations Industrielles et Affaires Sociales

Service(s) consulté(s)

Consultation lancée le 6 mars 1996

- pour accord -

II	Affaires Economiques et Financières	: Accord
III	Industrie	: cf./2
IV	Concurrence	: Accord
I	Agriculture	: Accord
XV	Marché Intérieur et Services Financiers	: Accord oral
XXIII	Politique d'Entreprise, Commerce, Tourisme et Economie sociale	: cf./2
CPROS	Cellule de prospective	: Pas de réponse
SG	Secrétariat Général	: Accord

- pour avis -

SJ	Service Juridique	: Accord
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Langue originale	: EN
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SUMMARY

The aim of this document is to consult management and labour on the content of an envisaged community measure concerning "flexibility in working time and security for employees" pursuant to article 3, paragraph 3, of the Agreement on Social Policy annexed to the Treaty establishing the European Community.

In order to preserve the potentialities of a possible opening of negotiations between social partners at European level, this document tries to strike a balance between:

- the promotion of flexible working patterns and
- the introduction of legally binding basic principles governing those working patterns in order to enhance the attractiveness of those working patterns for both employers and employees.

The content of this document is based on former discussions in the Council on 2 pending proposals for a Directive on this issue, on the outcome of the Standing Committee for Employment and on the results of the first consultation pursuant to Article 3(2) of the Agreement on Social Policy.

The prevalent idea concerns the introduction of the principle of non-discrimination between flexible working patterns and full-time open-ended labour relations.

COMMUNICATION FROM MR FLYNN TO THE COMMISSION

Subject. **Initiation of the second stage consultation of management and labour on the content of the envisaged proposal on "Flexibility in working time and security for employees"**

On 27 September 1995, the Commission approved the initiation of consultations with the social partners on the basis of a document that recalled the need for a European legislative measure on the working conditions governing part-time, fixed-term and temporary work. Following a consultation period of six weeks, 22 replies were received by the Commission. A summary of the reactions of social partners is enclosed.

There is widespread support for the basic guiding principle that employees in new types of flexible work should not be discriminated against and should therefore receive treatment which is comparable to that given to full-time employees with a permanent working contract. Most of the social partners consider that the more specific rules in respect of the working conditions for each of the different types of work concerned should be based on this guiding principle.

This was in fact one of the most important objectives of the proposals for 2 directives which are still pending before the Council.¹

Although views on the appropriate form and level of any action on this issue varies greatly, most social partners stated that they were willing to play an active role in further developing these principles and implementing them, notably through collective bargaining at the appropriate level.

The aim of the second stage consultation should therefore be to invite the social partners to reflect on how to achieve these objectives.

The consultation document tries therefore to strike a balance between

- the promotion of new flexible working patterns to enhance the adaptability of the European labour market, and
- establishing common binding EU rules to ensure respect for the basic principle of equal treatment for all employees in new types of flexible work.

In view of the history of this dossier and the express wish of the social partners to play an active role on this issue

¹ COM (90) 228/I of 29.6.1990, OJ 90/C224/04
COM (90) 228/II of 29.6.1990, OJ 90/C224/05;
Amended by COM (90) 533/I, OJ 90/C305/06

the Commission is requested to:

- confirm that it considers that Community action on this issue is still advisable,
- initiate the second-stage consultation procedure on the content of the envisaged proposal pursuant to Article 3(3) of the Agreement on Social Policy by authorising the despatch of the paper (Document 1) to the social partners.

Flexibility in working time and security for employees

Doc 1

(other than full-time open ended working patterns)

Second stage consultation with the social partners pursuant to Article 3(3) of the Agreement on Social Policy.

I. Introduction.

1. The aim of this paper is to consult management and labour on the content of a Community measure on flexibility in working time and security for employees with a part-time, fixed term or temporary labour relation, pursuant to Article 3(3) of the Agreement on Social Policy annexed to the Treaty establishing the European Community.
2. On 27 September 1995, the Commission approved the initiation of consultations with the social partners on the basis of a document that recalled the need for a European legislative measure on the working conditions governing part-time, fixed-term and temporary work. Following a consultation period of six weeks, 22 replies were received by the Commission. In a few cases, a short extension of the original deadline was requested. These requests were granted.
3. The social partners were invited, under the terms of Article 3(2) of the Agreement on Social Policy, to express their views on the following questions:
 - 3.1. Do you share the Commission's view that European regulation of the conditions governing part-time, fixed-term and temporary work is necessary?
 - 3.2. If so, do you agree that it should in particular aim to:
 - provide common rules in order to ensure fair competition between companies located in different Member States
 - provide to the workers concerned a treatment comparable with that given to permanent full-time employees
 - contribute in this way, inter alia, to combating indirect discrimination against women?
 - 3.3. Should such action be effected by legislation, recommendation, collective agreement or any other form of regulation?
 - 3.4. Should such action simultaneously cover part-time, fixed-term and temporary workers or should there be individual action for each of these categories?
 - 3.5. If such action were to aim at guaranteeing comparable treatment between permanent, full-time employees and part-time, fixed-term and temporary workers, should that principle extend to working conditions, social security and

complementary social security provision?

A summary of the reactions of the social partners to these questions is annexed to this document.

II. Reactions from social partners in the first consultation.

4. There is widespread support for the basic guiding principle that employees in new types of flexible work should not be discriminated against and that they should receive treatment which is comparable to that given to permanent full-time employees. Most of the social partners consider that more specific rules in respect of the working conditions of each of the different types of work concerned should be based on this guiding principle. The question was also raised of how this principle should be applied (e.g. With reference to proportionality).

5. Most of the employers' organisations contested, as a matter of principle, the need for EU legislative action. However, some of them showed their support for common arrangements in line with their views on the follow-up to the Essen conclusions. Such arrangements might involve establishing terms of reference to guide implementation at national, local or company level.

Most social partners consider that the elimination of legal and administrative obstacles to the development of flexible working patterns is of major importance, but it needs to be balanced. On the one hand it could help to create new jobs and improve the competitiveness of European business. On the other hand it is important to provide appropriate protection for employees. In addition it could provide opportunities for an 'optimum individual working time', with a view to the reconciliation of work and family life.

All trade-union organisations expressed their strong support for the Commission's views as set out in the background paper for the first-stage consultation.

6. Most social partners stated that they were willing to play an active role in further developing the principles involved and in implementing them, notably through collective bargaining at the appropriate level.

7. Most of the contributions on the content of specific rules for the different types of flexible work, concentrated on part-time work. Sensitive issues mentioned included:

- thresholds, ensuring that those who earn their living in this working relationship would not be excluded from the application of the principle of non-discrimination
- the limits and conditions (e.g. proportionality) for applying the principle of equal treatment
- the coverage (i.e. whether some or all aspects of working conditions dealt with under labour law and/or social security regulations should be included, or indeed whether broader issues such as access to training and union rights should also be covered)

- the extra-costs for employers, related to the introduction of these flexible working patterns (organisational, administrative and financial aspects)
 - the principle of freedom to choose the 'optimum individual work form' and related issues like the opportunity to return to full-time employment when it is available.
8. Many of the contributions referred to the difficulty of applying some of these principles to temporary work, as the relationship between the employer-user and/ or the agency and the employee is very different in this case. Some contributors also said they were willing to discuss action at eu level on temporary work. Suggestions included liberalisation of the market.

III. The Commission's position.

9. Taking into account the comments received, the Commission considers that the results of the first round of consultation confirm its view that action remains desirable and that there is an appropriate role for the EU to play.

Figures from the Commission's annual employment report for 1995, quoted in the first consultation paper, show that employment in the new forms of flexible work has grown strongly over recent years, especially in relation to part-time work. Based on reports on what is happening in national labour markets, all the indications are that these trends will continue.

Justification.

In the light of recent developments in the labour market and the results of the meetings of the standing committee on employment, the Commission considers that the promotion of flexible working patterns is a major issue.

The Essen European Council Conclusions asked for new efforts aimed at "increasing the employment-intensiveness of growth, in particular by more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition".

In December 1995 the European Council reiterated its view "that job creation is the principal social, economic and political objective of the European Union" and it approved a Single Report on Employment drawn up by Ministers of Labour and Finance and the European Commission. The report identified the organisation of work and working time as priorities with regard to the development of multiannual programmes.

The Commission believes that these Conclusions of the European Council should now be followed up more vigorously. In particular it is important to secure a more active role for the social partners. This is highlighted by the recent proposal of a pact of

confidence for employment and the role of social partners in this aspect.

It considers that useful means of creating new jobs and sharing the available opportunities are being developed in those Member States where more flexible working patterns are being introduced on a consensual basis.

This present initiative is also in line with the proposals from the Commission submitted to the Council on 29 June 1990.² In the absence of a Council decision on these proposals, the Commission believes that a decision within the framework of the Social Protocol could contribute towards achieving the objectives set out in this initiative, while incorporating progress made on the pending proposals.

While taking into account the important existing differences in the legislation of the Member States and fully respecting the principle of subsidiarity, the Commission continues to believe that Community initiatives are necessary, if the objectives laid down in Article 1 of the Agreement on Social Policy are to be achieved. This is particularly the case in the light of the fact that flexible forms of work are becoming more and more widespread and should further be promoted.

However as stated in the background paper for the first-stage consultation, the original proposals need to be reformulated, in order to reinforce the impact flexible forms of work can have on job creation.

Accordingly, the Commission sets out below its views on the content of a Community initiative on flexibility in working time and security for employees.

Content of the Commission's initiative.

10. The Commission considers that the promotion of flexible working patterns is a major issue. All aspects of the problem, including practical issues, need to be taken into account. In particular, due weight needs to be given to both the requirements of competition and the wishes of employees. Flexible working arrangements need to be set in a framework which is acceptable to a wide variety of interests. In particular consultation with the parties concerned is essential.
- 10.1. Existing unnecessary obstacles (legal, administrative, organisational, financial) need to be re-examined. Flexible forms of work could also open up new opportunities, especially for young workers, who could be helped to make the transition from education to the world of work by combining jobs with training. Employers could also continue to benefit from the experience of employees who wish to retire from the labour market gradually. Employees who experience different forms of work throughout their career should also be more adaptable and better qualified as a result.

² COM (90) 228/I of 29.6.1990, OJ 90/C224/04
COM (90) 228/II of 29.6.1990, OJ 90/C224/05;
Amended by COM (90) 533/I, OJ 90/C305/06

- 10.2 The introduction of the principle of non-discrimination should make these forms of work more attractive to both employers and employees. Particular attention should be given in this respect to those forms of work, such as part-time work, which have had an important positive impact on employment in recent years.

This could also prove to be an important way of tackling indirect discrimination against women, as a high proportion of the employees concerned, especially in part-time jobs, are women. It is also important to promote facilities and working patterns which help to reconcile working and family life.

Such an approach can also help to avoid a further gender-based segregation of the labour market and the creation of a dual labour market for those who earn their living in those working patterns.

- 10.3. As all industries and services are affected, this initiative must not be restricted to particular groups of employees. Special attention should however be given to sectors where these new working patterns are not yet well developed.

- 10.4. The social partners should be involved at all appropriate levels, whenever new working patterns are being introduced, changed or adapted.

The Commission considers that the negotiating process should focus on elements such as the scope, extent, conditions and means of promoting new forms of flexible work.

11. In order to make these forms of work attractive, the Commission believes that it is necessary to ensure that they are freed of their second-rate image, by establishing a series of objectives.

- 11.1. The basic principle should be that employees in new types of flexible work should not be discriminated against and should therefore receive treatment which is comparable to that given to full-time employees with a permanent contract.

This principle should apply to every employee having an employment contract or employment relationship as defined by the law, collective agreement or practice in each Member State.

This guiding principle should cover all necessary terms and conditions (such as aspects of labour law, social security, social protection, social services and advantages, career advancement, participation in training schemes, job protection) and others related to the execution of the labour contract, in so far as they are not explicitly excluded because of the specific nature of the working pattern concerned.

This means that different treatment cannot be justified solely on the grounds of having a flexible working pattern.

- 11.2. New forms of work should be introduced only after consultation with the employees or their representatives, taking into account the advantages for both employers and employees. They should be introduced and attributed on a voluntary basis.

- 11.3. Adequate information on the employment opportunities and the different working patterns available should be given to employees and their representatives, including information on opportunities for employees to change working patterns within their firm.
- 11.4. Where it is possible for employees to change their working patterns, priority should be given to those employees of the company who have asked to change, provided that they are qualified for the new job.
- 11.5. All employees concerned should be informed in good time about their future schedules of work in order to enable them to organise their private and working lives.

Form and legal base

12. The legal basis for such an initiative is Article 2(2) of the Agreement on Social Policy. Under this Article, directives may be adopted laying down minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States and respecting the principle of proportionality. Such directives 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

With a view to implementing the above, the Commission is considering the introduction of a legally binding Community measure. The choice of the Agreement on Social Policy as the legal base has already been made by the decision of the Commission on September 27, 1995 to launch the first consultation of the social partners on this issue.

The form of the Community action to be taken in order to achieve the objectives laid down in this consultation paper will, however, depend on the outcome of the second consultation of the social partners, taking into account the principles of subsidiarity and proportionality.

IV. Issues for the second consultation of the social partners.

13. The Commission invites the social partners
 - to forward to the Commission an opinion or, where appropriate, a recommendation on the objectives and the content of the envisaged proposal, pursuant to Article 3 (3) of the Agreement on Social Policy.
 - to inform the Commission whether they wish to initiate the negotiating process on the basis of the proposals described in this document pursuant to Article 3 (4) and 4 of the Agreement. If so, to indicate whether they wish to adopt a comprehensive approach to the subject or to concentrate on certain elements.

Flexibility in working time and security for employees

(Relating to employees with a part-time, fixed-term or temporary employment relationship)

Summary of the social partners' reactions to the first stage of consultation pursuant to Article 3(2) of the Agreement on Social Policy

Introduction

On 27 September 1995, the Commission adopted an information document relating to the first stage of consultations with the social partners under Article 3(2) of the Agreement on Social Policy annexed to the Treaty establishing the European Community.

The social partners were invited to send the Commission their replies to the five questions set out in the document, within a six-week period.

The Commission has received 21 replies, 16 of them from employers' organisations and five from trade union organisations.

Summary of the social partners' reactions to the questions:

1.	Do you share the Commission's view that European regulation of the conditions governing part-time, fixed-term and temporary work is necessary?
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All the trade union organisations support the Commission's position in calling for a binding instrument at Community level on the three forms of work. ETUC and Eurocardres would like it extended to cover the principle of non-discrimination for all other new forms of work (e.g. teleworking, homeworking and seasonal work).

Most of the employers' organisations are opposed to any binding Community initiative. Others take a more nuanced view; for instance, CEEP feels that European-level regulatory action might be useful, while UNICE feels that an initiative of this kind is not necessary, but indicates that European employers are willing to play a full part in seeking a convergence of views with employees with a view to implementing the Essen conclusions. EFCI shares the Commission's view, and BIPAR is in favour so long as the initiative is restricted to part-time work. CIET is in favour of an initiative concerning temporary employment provided such work is liberalised throughout Europe.

2.	<p>If so, do you agree that it should in particular aim to:</p> <ul style="list-style-type: none"> - provide common rules in order to ensure fair competition between companies located in different Member States, - provide workers concerned with treatment comparable to that given to permanent full-time employees, - contribute in this way, <i>inter alia</i>, to combatting indirect discrimination against women?
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All the trade union organisations support the Commission's three objectives.

The employers' organisations' views are highly varied, ranging from support for all three objectives to outright rejection.

Most of them are opposed to a European initiative, but accept that the principle of equal treatment should be guaranteed, subject to certain conditions, between employees in the different forms of work; others accept the principle solely in respect of part-time workers.

3.	Should such action be effected by legislation, recommendation, collective agreement or any other form of regulation?
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All the trade union organisations favour a binding European instrument – either legislation or agreement-based.

Without prejudice to their basic position (i.e. no European initiative), most of the employers' organisations feel that a recommendation would suffice.

CEEP favours a European framework, where possible in the form of an agreement between the social partners, for legislation and collective agreements applied in the Member States.

UNICE does not have a clear position on this subject, but indicates that in the follow-up to Essen, the important thing is to do away with certain regulatory obstacles.

4.	Should such action simultaneously cover part-time, fixed-term and temporary workers or should there be individual action for each of these categories?
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All the trade union organisations prefer an overall approach for the three forms of work, albeit without denying the specific aspects of each form.

ETUC and Eurocadres feel that other new forms of work should also be covered (e.g. seasonal working, teleworking and home work) as part of a "common core" supplemented by specific instruments for each individual form of work.

For the great majority of employers' organisations (and without prejudice to their basic position), specific measures for each form of work are held to be preferable.

5.	If such action should aim at guaranteeing comparable treatment between permanent, full-time employees and part-time, fixed-term and temporary workers, should that principle extend to working conditions, social security and complementary social security provision?
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All the trade union organisations feel that comparable treatment should apply to all working conditions, including social security, social protection and other work-related rights (e.g. access to vocational training, guaranteed trade union rights).

The employers' organisations take very divergent views, ranging from just working conditions (in the strict sense of the term) for part-time workers only (Eurocommerce) to the full range of issues (GEOPA).