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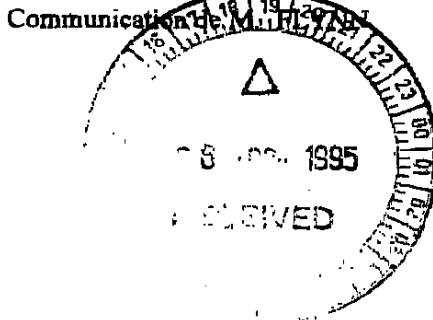
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TEXTE E

**FLEXIBILITE DU TEMPS DE TRAVAIL ET SECURITE DES TRAVAILLEURS
PREMIERE PHASE DE CONSULTATION AVEC LES PARTENAIRES SOCIAUX
CONFORMEMENT A L'ARTICLE 3 DE L'ACCORD SOCIAL ANNEXE AU TRAITE**



- Cette question est inscrite à l'ordre du jour de la 1262ème réunion de la Commission, le mercredi 27 septembre 1995.

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

Flexibility in working time and security for workers

Background paper for first-stage consultations with the social partners

1. The importance of working time for job creation

The European Council in Brussels in December 1993 identified the need for flexibility within companies and in the labour market as an area of special potential for improving the conditions for job creation.

The Council's decision was based on the Commission White Paper on growth, competitiveness and employment. The White Paper stated that:

"Member States should seek to remove obstacles to already changing trends, preferences and demands of employees and employers regarding patterns and hours of working, which will increase the number of jobs for given levels of output. This cannot be pursued by a top-down, mandatory approach seeking to legislate for a shorter working week".

In the White Paper on the future of European social policy, the importance of more flexible work contracts and the protection of workers was emphasised:

"The last four years have seen dramatic developments in the labour market brought about in particular by changes in both the production model and the service sector, leading to more flexible forms of work contract (fixed-term, temporary agency and part-time). This is not only because management wants to increase flexibility, but also because the workers involved quite often prefer alternative work patterns. If these flexible forms of work are to be generally accepted, it is important to ensure that such workers are given broadly-equivalent working conditions to standard workers, and there is a general concern to make a breakthrough at Union level in this area. The Commission recognizes that, as a result of these developments, its original proposals in this area may now need to be reformulated".

At the meeting of the Standing Committee on Employment in September 1994 (see Annex 8), agreement was reached between governments and both sides of industry indicating their broad support for the need to ensure that part-time work is attractive and that part-time workers are properly treated.

The governments and the social partners agreed that part-time working has its attractions for both sides - employers and employees - and that it must therefore lose its second-class connotations. There was also agreement that part-time work need not be restricted to working half-days but may also cover all the available options for a more flexible organisation of the working day, week, month, year or even an entire working life. It can also lead to a more flexible organisation of leisure time and private life.

The importance of taking steps in this field was further underlined at the European Council in Essen in December 1994. The Presidency conclusions emphasized the need for "more flexible organization of work in a way which fulfils both the wishes of employees and the requirements of competition".

Some of the most significant changes to work patterns, practices and conditions that are expected in the second half of the decade, and which indeed are already perceptible, are those brought about by the growth of the information society - for example teleworking, increased outsourcing by companies, work in the "virtual enterprise". These clearly will have a significant impact on flexibility in working time and on workers' security.

2. The growth of part-time and fixed-term employment

Part-time work has expanded rapidly in Europe over the last decade. It is much more frequent amongst women than men.

- The number of part-time workers in 1994 was more than 20% higher than in 1987. The rate of increase was almost 20 % for women part-timers and over 22% for men. In 1994, 15% of all those employed worked part-time, compared to 13% in 1987.
- Between 1987 and 1994, part-time work grew at the rate of 2.5% a year, while full-time work only increased by just over 0.5% a year.
- Women still make up 82% of part-time workers, despite an increase in part-time work among men between 1991 and 1994.
- One third of women and two-thirds of men who work part-time say that they would prefer full-time work if it was available.

Fixed-term employment (including temporary agency work) grew rapidly in the years up to 1990 but varying ups and downs between years and Member States have resulted in overall stability during the period 1991 - 1994.

- Fixed-term employment reached 8.5% of total EC employment in 1990.
- The rise was particularly marked in Spain, which alone accounted for almost 80% of the overall rise in fixed-term work in the EC, and in France. In both these countries, fixed-term work grew much faster than total employment.
- In most of the rest of the Community, fixed-term work became less common over this period.
- During the first half of the 1990s, fixed-term work fell in the period 1991-1993 to pick up again in 1993-1994.
- For the Community as a whole, two-thirds of all fixed-term contracts are for one year, with certain variations between Member States. The main exception is Germany, where 64% of such contracts are for a year or more and 50% are for two years or more.

The statistical annex (no. 1) is based on Labour Force Surveys and describes the development of part-time and fixed-term employment in recent years. It should be noted that data on fixed term working are not available for Austria..

3. Treatment of part-time, fixed-term and temporary agency workers in national systems

Most countries have no legal or clear-cut definition of part-time work. In some, for example France, Spain and Austria, a more precise definition has been established (see Annex 2).

On the question of protection, several countries have introduced the rule that part-timers have equal status, which means that wages are proportional to those of full-timers according to the numbers of hours worked. The most common practice is to make part-time work more attractive to employees by granting them proportionally equal status to that of full-timers in terms of employment rights. In some countries, however, many part-time workers do not benefit from equivalent protection. In the UK, there is a threshold of 16 hours (in some cases, 8 hours) in order to qualify for many employment rights. In Ireland, workers are not covered who do not fulfil the requirement for 8 hours a week and for 13 weeks of continuous service.

As far as social security is concerned, categories of part-time workers are often less well covered. For example, in Germany many part-time workers are not covered by the social insurance system because they earn less than the minimum level where contributions to social insurance schemes become compulsory (see also Annexes 5 and 6).

As regards employment, the key issue is the role played by national policy in the creation of part-time jobs.

Between 1987 and 1994, all Member States apart from Denmark and Greece saw an increase in the number of employees classified as part-time as a percentage of the total number of employees. The largest increases came in the Netherlands and Belgium, both of which have a relatively high level of regulation in respect of part-time work.

The case of the Netherlands is especially relevant here. Since about 1980, the Dutch government has lent its support in various ways, including legislation, to the removal of differences between part-time and full-time work. Part-time contracts now often have the same legal status and basic conditions on such questions as job protection, social security and pensions as full-time contracts.

One conclusion that has been drawn from Commission studies of part-time work and employment is that forms of employment such as part-time work cannot thrive in the long term unless:

- they offer companies a degree of flexibility that improves their capacity to meet new needs;
- there is a clear demand from people for part-time work, i.e. that such new forms of work are actually attractive to workers.

4. The need for EU action

The need for rules that strike a balance between the company's interest in greater flexibility and the worker's interest in greater security is demonstrated by national regulations and collective agreements between the social partners in the Member States.

In order to achieve the objectives laid down in Article 1 of the Agreement on Social Policy annexed to the Social Protocol of the TEU, Member States have agreed that the Union should support and complement their activities inter alia in the field of working conditions and equality between men and women with regard to labour market opportunities and treatment at work.

In their endorsement of the 1989 Community Charter of Fundamental Social Rights of Workers, 14 Member States have agreed that "the completion of the internal market must lead to an improvement of the living and working conditions of workers in the European Union. This process must result from an approximation of these conditions, as regards in particular forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working and seasonal work". The same Member States, wishing "to continue along the path laid down in the 1989 Social Charter, and to implement it on the basis of the *acquis communautaire*", are committed to implementing the Agreement on Social Policy annexed to the Social Protocol.

The legal treatment of part-time workers already falls within the scope of Community law relating to the notion of indirect discrimination between men and women. Indirect discrimination is specifically forbidden by the Equal Treatment Directive, which states that "the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status".

The Court has thrown light on this notion through its jurisprudence (see Annex 4). In *Bilka-Kaufhaus GmbH v. von Hartz*, the Court held that a practice which excluded part-time workers, where the exclusion affects a far greater proportion of women than men, was unlawful unless the employer could provide objective justification for the practice, unrelated to any discrimination on the grounds of sex.

In 1990, the Commission submitted three proposals concerning "atypical work" as part of its Action Programme relating to the implementation of the Community Charter of Fundamental Social Rights of Workers. One of these proposals, on safety and health issues affecting workers with a fixed-duration employment relationship or a temporary employment relationship, was adopted by the Council in June 1991. The other two proposals are still pending.

In June 1994 the International Labour Conference adopted a Convention and a Recommendation on part-time work (see Annex 7).

In the second half of 1994, the German Presidency made the treatment of the pending proposals a matter of top priority. They were discussed at several meetings of the Social Questions Group. As has already been indicated, after an orientation debate in Council, it

was formally confirmed at the Council meeting in December 1994 that a unanimous adoption of the Commission proposal, or even a part of them, by the 15 Member States was no longer likely to be obtained in the near future.

The Commission has therefore now chosen to use the Social Protocol and is initiating this first consultation of the social partners, in accordance with Article 3.

5. The role of the social partners

The question of working conditions in general is a common responsibility for social partners and governments. In the opinion of the Commission, the more that the social partners can reach agreement on outcomes that meet their different needs and interests, the less need there will be to develop a legal framework.

Significant progress has been made by the social partners at national level in the area of part-time, fixed-term and temporary work. In virtually all the Member States, agreements have been reached in a number of sectors which recognize the importance of adequate working conditions for "non-standard" employees.

At the meeting of the Standing Employment Committee of 22 September 1994, already mentioned above, there was broad support from both sides of industry for European action for the fair treatment of part-time workers and for the development of part-time work to meet the needs both of companies and of workers.

The Commission, as also referred to at the beginning of this paper, went on to indicate in its Medium-Term Social Action Programme for 1995-97, adopted on 12 April 1995 that it would be launching consultations with the social partners under the Agreement on Social Policy. These consultations were intended to consider further action, including a possible Directive on part-time work.

The Commission fully recognizes that these particular forms of employment relationship fulfil real needs on the part of both employers and employees. It believes that what is required is a set of basic rules which will:

- (i) reduce insecurity and segregation within the labour market and improve living and working conditions for workers with non-standard contracts by establishing the principle of equal treatment;
- (ii) combat indirect discrimination against women in the labour market;
- (iii) ensure fair competition between Member States by removing the risk of distortion of competition which could be caused by difference in labour costs resulting from differences in the national rules governing employment relationships, notably as regards working conditions, social security schemes and complementary social security provision.

6. Subjects for consultation

Against this background the social partners are invited, under the terms of Article 3(2) of the Agreement on Social Policy, to express their views on the following 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?
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 combatting indirect discrimination against women?
3. Should such action be effected by legislation, recommendation, collective agreement or any other form of regulation?
4. Should such action simultaneously cover part-time, fixed-term and temporary workers or should there be individual action for each of these categories?
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?