COMMISSION STAFF WORKING PAPER

Implementation by Member States of Council Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship

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1. INTRODUCTION

1.1. The Directive

Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (henceforth 'the Directive')[1] was adopted by the Council on 25 June 1991. It was adopted under Article 137 of the EC Treaty (ex Article 118a), which provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers.

The Directive supplements the Framework Directive 89/391/EEC on Health and Safety at work[2]. In its Article 2(3), the Directive provides for a full application of Directive 89/391/EEC and the individual directives within the meaning of Article 16(1) to fixed-term workers and temporary workers without prejudice to more binding and/or more specific provisions set out in the Directive.

This Directive takes into account the specific situation of workers with a fixed-term employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors. These risks justify special additional rules, particularly as regards the provision of information, the training and the medical surveillance of the workers concerned.

The purpose of the Directive is to ensure that workers with a fixed-term or temporary employment relationship are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

1.2. Monitoring and assessing the Directive

The Directive provides in Article 10 (3) that each Member State should submit every five years a report on the practical implementation of the Directive setting out the points of view of workers and employers. According to Article 10 (4) the Commission should submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this Directive[3].

However, the quality of the information provided by Member States has not been sufficient in many cases to allow for a proper monitoring of the Directive. In 2003 the Commission sent a questionnaire to help Member States fulfil their obligation under Article 10(3) of the

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1 OJ L 206, 29/07/1991, p. 19.

2 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ 183, 29/6/89, p.1.

3 Directive 2007/30/EC[3] has repealed Article 10 (3) and 10 (4) of the Directive and introduced a new Article 10 *bis* which provided for a new reporting scheme which will start at the end of the period 2007-2012.

Directive, but only some replied. The Commission adopted then a staff working paper on implementation of Directive 91/383/EC pursuant to Article 10 (3) of the Directive[4].

In order to have a more complete overview of the implementation of the Directive, and improve the quality of the information available the Commission launched two studies by independent experts. The first study[5] analyses and assesses the practical implementation of the Directive in the 15 Member States of the European Union before the 2004 enlargement ("the EU 15"), and a second study[6] analyses the transposition of the Directive by the 10 Member States which acceded to the European Union in 2004 ("the EU10").

The Commission supplemented these studies with the replies to a new questionnaire received from Member States and the European social partners in the course of 2008 and 2009. These replies allowed to include the situation in Bulgaria and Romania.

This Commission staff working paper makes use of the information made available through the two studies and the information recently provided by Member States and social partners in order to analyse the transposition and the application of the Directive by all Member States and to assess its practical effects. It fulfils the Commission's obligation to monitor the implementation of the Directive and its practical effects.

Given the different length of experience with the implementation of the Directive, the focus of the present report varies among Member States. Whereas for EU 15 Member States, where the Directive is implemented for more than 18 years, the emphasis in this working paper is laid on its practical implementation in order to identify any difficulties or insufficiencies which may not ensure the full achievement of the Directive's objectives, for the EU 12 Member States the emphasis is laid on the transposition of the Directive, and much less can be said about its practical effects.

It should be underlined that the Community Strategy 2007-2012 on health and safety at work[7] recognizes the particular situation of temporary and fixed-term workers, overexposed to the risk of accidents at work. In its resolution on the Community Strategy the European Parliament[8] urged the Commission to pay greater attention to the issue of health and safety of temporary and fixed-term workers.

The present staff working paper will focus on the national transposing measures in sections 2 to 7. Section 2 describes the national transposing measures adopted by Member States to implement the Directive. Section 3 analyses if these transposing measures comply with the scope and object of the Directive. Section 4 deals with the measures concerning information and training of workers. Section 5 considers if Member States made use of the possibility to prohibit the use of workers' services for dangerous work and if measures guaranteeing a

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4 See Commission staff working paper on the implementation of Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship, SEC(2004) 635.

5 Study to analyse and assess the practical implementation of national legislation of safety and health at work, Council Directive 91/383/EEC of 25 June 1991, Labour associados consultores, 2007.

6 Implementation report: Directive 91/383/EEC, Human European Consultancy, Middlesex University, July 2007.

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Improving quality and productivity at work : Community Strategy 2007-2012 on health and safety at work, COM(2007)62 final, 21.2.2007

8 European Parliament resolution of 15 January 2008 on the Community strategy 2007–2012 on health and safety at work (2007/2146(INI))

medical surveillance if they are used are provided by national law. The role of protection and prevention services is scrutinized in section 6, and section 7 deals with specific measures regarding temporary employment relationships. Finally section 8 will assess the practical effects of the Directive by analysing the risks to which workers are still exposed, the practical effects of the different provisions of the Directive, and the potential administrative burdens that the Directive may cause.

2. NATIONAL TRANSPOSING MEASURES

The Directive has been transposed in all Member States. They had to adopt the legislation to comply with the Directive by 31 December 1992. The Member States which joined the European Community afterwards, have implemented the Directive at the time of their accession. The Commission has information about the main national measures which were adopted and notified to the Commission, but sometimes lack information on specific implementation measures for each Member State which sometimes failed to notify them to the Commission.

The majority of Member States implemented the Directive by the way of general legislation, regulations and administrative provisions. The Directive does not provide for the possibility to adopt transposing measures through collective agreement or at least does not provide for the consultation of social partners. It might be for this reason that we find few collective agreements to implement it and implementing measures in Member States failed sometimes to take into account the social partners' views on how to better transpose the Directive.

In **Austria**, the general Health and Safety Act (ASchG) of 1 January 1995 (Federal Law Gazette 450/1994) transposed the Directive. The Act has been since amended several times. In this Act section 9 deals explicitly with temporary employment agencies. Two further sections mention temporary employment agencies only to supplement the general provisions (sections 76 and 81 dealing with preventive services). Following the principle of equal treatment, the further provisions of the Health and Safety Act apply for both temporary agency workers and workers with fixed-term contracts.

The Directive was transposed in **Belgium**, by two decrees:

· Royal decree of 19 February 1997 establishing measures with regard to safety and health at work of workers with a temporary employment relationship.

· Royal decree of 4 December 1997 establishing a central prevention service for the agency work sector.

· It should be mentioned as well the two framework laws of 24 July 1987 and of 4 August 1996 as amended by Programme-Law of 25 February 2003 and the Royal decree of 28 May 2003.

In **Bulgaria** the Directive was transposed by amending the Law on health and safety at work (ZZBUT) by introducing express additional requirements for workers employed on a fixed-term or temporary basis (State Gazette No. 76 of 2005). Additionally, Ordinance No. 5 of the Minister for Labour and Social Policy of 20 April 2006 on ensuring health and safety at work for workers on fixed-term or temporary contracts was promulgated to implement the Directive.

In **Cyprus** the Directive was transposed by Regulations issued under Article 38 of the Safety and Health at Work Law 1996-2003. These are the Regulations on Safety and Health at Work for Employees with a fixed-term employment Relationship or with a temporary Employment Relationship of 2002. In addition, the national authorities adopted Regulations on the Administration of Matters relating to Health and Safety at Work No. 173/2002 of 05.04.2002.

The national provisions transposing the Directive in the **Czech Republic** are Sections 132 to 137 on Occupational Health and Safety of Act No. 65/1965 (Coll. the Labour Code). The Labour Code and the Act No. 262/2006 Coll. entered into force on 1st January 2007. The Labour Code is supplemented by Act No. 309/2006 Coll. on Occupational Health and Safety, and Act No. 362/2007. Occupational Health and Safety are thus regulated by Sections 101 to 108 of the Labour Code and Sections 1 to 13 of the Occupational Health and Safety Act.

In **Denmark**, Directive 91/383/EEC was transposed by an amendment to the Danish Working Environment legislation. More specifically, Directive 91/383/EEC was transposed by amendments to the executive order on the Performance of work (BEK 492 of 20 June 2002), which came into force on 1 January 1993. The general legislation on health and safety is constituted by the executive order on the Performance of work No. 559 of 17 June 2004 and the executive order on Undertakings' work with safety and health measures No. 575 of 21 June 2001 (including later amendments). The current Working Environment Act (WEA) was brought into force by the executive order No. 268 of 18 March 2005.

In **Estonia** the Directive was transposed by the Occupational Health and Safety Act[9] (the TTOS) which entered into force on 26 July 1999. Following the adoption of the TTOS a number of regulations on occupational health and safety were adopted. The rules governing temporary workers are set out in the Employment contract Act (TLS 2008), which entered into force the 1st July 2009.

In **Finland** the basic text on occupational health and safety which transposes the Directive is the Occupational Safety and Health Act (738/2002). This legislation was amended in 2008 by Act 709/2008 which entered into force at the beginning of 2009. To supplement the legislation transposing Directive 91/383/EEC a Decision of the Council of State (782/1997) was adopted to ensure an equal level of occupational safety and health for hired workers and other workers. The decision was recently repealed and its provisions are now part of the law under the Occupational Safety and Health Act.

In **France** Directive 91/383/EEC was transposed through various legislative instruments and collective agreements. Thus, a number of provisions which stem from this Directive can be found in the main text of French Labour Law, the Labour Code. This legislation is supplemented by a number of collective rules, primarily contained in the « Accord national interprofessionnel » of 24 March 1990, on fixed-term employment contracts and temporary work agencies. There is also a "Convention collective Travail temporaire » JO 3212. In addition, there are a number of agreements on specific issues which also apply to these forms of employment:

· Agreement of the 10 April 1996 concerning personal protective equipment

· Framework agreement of the 28 February 1984 on occupational medical services

[9] Töötervishoiu ja tööohutuse seadus RT I 1999, 60, 616; 2000, 55, 362; 2001, 17, 78; 2002, 47, 297; 63, 387; 2003, 20, 120; 2004, 54, 389; 86, 584; 89, 612; 2005, 39, 308.

· Agreement of the 26 September 2002 on Health and Security at work

· Supplementing agreement of the 26 September 2002 on Health and Security at work

National rules transposing the Directive in **Germany** were adopted under the Law on Occupational Safety and Health of the 7 August 1996 (Arbeitsschutzgesetz - ArbSchG). The Labour Placement Act (Arbeitnehmerüberlassungsgesetz - AÜG) is the basic law regulating temporary agency work, whereas the Law on Part-Time Work and Fixed-Term Employment (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge) is for fixed-term employment relationships. For temporary agency workers as well as for workers with fixed-term contracts, the general regulations on social protection and occupational safety and health apply. Two additional laws had to be amended: the Law on Temporary Employment (Arbeitnehmerüberlassungsgesetz –AÜG) and the Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists (Arbeitssicherheitsgesetz – ASiG).

In **Greece**, the only piece of legislation notified to the Commission as transposing the Directive 91/383/EEC was Presidential Decree No. 17 of 18 January 1996 on measures to improve the health and safety of workers at work.

The legal situation is rather complex. There is first the Civil Code, Chapter 18 of which regulates issues of "Employment Contract" in general. Particularly relevant is Article 662, on "Health and Safety at Work", as well as Articles 648, 650 and 651, which is the basis on which the practice of "worker leasing", according to certain courts' decisions is acceptable. Then there is Law 1568/85 on "Health and Safety at Work", the law that set the general framework of Health and Safety policy in the private sector for the first time; and Law 1836/89, by which the provisions of Law 1568/85 were made applicable to the public sector as well. These pieces of legislation constitute the basic structure of occupational health and safety law in Greek legislation. With regard to general terms and conditions of employment for workers with fixed-term contracts, the relevant texts are:

· Presidential Decree 164/2004 "Regulations regarding workers with fixed-term employment contracts in the public sector" which regulates the working status of this type of workers in the public sector

· Presidential Decree 81/2003 "Regulations regarding workers with fixed-term employment contracts (77/A)" amended by PD 180/2004 which regulates the working status of this type of workers in the private sector.

For workers hired by temporary work agencies the basic texts are Law 2956/2001 "Reorganization of OAED (Employment Observatory) and other provisions" which introduced the statute of temporary Employment Agencies; Ministerial Decision with Protocol number 30342, issued on 6/3/2002, "Regulation of terms, conditions and procedure on the implementation of Law 2956/2001, regarding Temporary Employment Agencies" which regulates the role of temporary employment agencies.

A number of additional texts are to be mentioned:

· Circular 130297/15.7.96 "Circular on the implementation of Presidential Decree 17/96", an explanatory circular of the aforementioned Decree.

· Law 2639/98 "Regulation of working relationships, establishment of the Labour Inspectorate and other provisions" which established the Labour Inspectorate

· Presidential Decree 159/1999, [Amendment of Presidential Decree 17/96] “measures for the improvement of workers’ health and safety in the course of their work in compliance with Directives 89/391/EEC and 91/383/EEC” (11/A) and Presidential Decree 70a/88 “Protection of workers who are exposed to asbestos in the course of their work” (31/A) as amended by Presidential Decree 175/97 (150/A)

· Presidential Decree 219/2000 “Measures for the protection of expatriate workers in the land of Greece, in order to work temporarily within the framework of international supply of services".

In **Hungary** the Directive has been transposed by the 2004 Amendment of the Labour Protection Act (Act XCIII. of 1993), Sections 9, 40, 42, 54(7), 55, 57, 61, 70; and the 2001 Amendment of the Labour Code (Act XXII. of 1992), Sections 22, 71, 73, 75, 79, 193. The provisions of Decree No. 33/1998 (VI. 24) of the Minister of Welfare on the medical examination and reporting on job, professional and personal hygienic suitability (Sections 6 and 15) also transpose the Directive.

In **Ireland**, the Directive 91/383/EEC was transposed by the Safety, Heath and Welfare at Work Regulations of 1993 as amended in June 2005. These provisions are now included in the Safety, Health and Welfare Act 2005 (Afterwards '2005 Act') which contains provisions for securing and improving the safety, health and welfare for all workers.

In **Italy**, the Directive was transposed both by Act No.196 of 1997 and by Legislative Decree 626/94, as modified by Legislative Decree No. 242 of 19 March 1996. The Legislative Decree 626/94 was repealed by Legislative Decree No. 81 of 9 April 2008 which entered into force the 15 May 2008. Some specific regulations also implement Directive 91/383/EC, such as the Decree of 31 May 1999 and national collective agreements for temporary workers, agreed in 1998 and 2002. In the case of fixed-term contracts, their working relationship is regulated by D.Lgs.368/01.

In **Latvia** the provisions of the Directive have been transposed by the Labour Protection Law, which was adopted on the 20 June 2001, took effect on the 1 January 2002 and was afterwards amended in April 2004 and September 2006. A number of other national rules transposed the Directive, such as: Articles 28, 39, 44(1), 100(2) and 113 of the Labour Law of Latvia; Ministerial Regulation 353 on Work in Activity Areas where an Employment Contract is normally not entered into for an Unspecified duration, as amended in February 2005 and May 2007; Ministerial Regulation 272 on Seasonal Work, as amended in January 2005 and May 2007.

In **Lithuania**, Articles 89, 260, 263, 265, 266 and 270 of the Labour Code, partly transposed the Directive. There are also Articles 3, 11, 27 and 28 of the Law on Safety and Health at Work No.IX-1672 of 1 July 2003, as amended by Law No.IX-20055 of the 5 February 2004.

In **Luxembourg**, Directive 91/383/EEC was transposed by the Act of 24 May 1989 on the contract of employment, as amended by the Act of 15 May 1995, the Act of 17 June 1994 on the safety and health of workers at work, the Act of 19 May 1994 regulating temporary employment and the hiring out of labour and by the Act of 13 January 2002. These laws have now been included in the Labour code in Part I Sections I and II on work contract and temporary work, and in Part III on security and health.

In **Malta**, the Directive was transposed by Articles 3, 4, 6, 9, 11, 12, 13, 14, 16 and 18 of the Major Accident Hazard Regulations (LN 36/03). The Occupational Health and Safety Authority Act of 2000 is also relevant.

In the **Netherlands** the transposition of Directive 91/383/EEC was completed through various legislative instruments:

· The Civil Code, which gives the basic rules for labour contracts and, within that context, also the rules on employers' responsibility for health and safety at work

· Specific legislation regarding occupational safety and health: the Dutch OSH Act and related ministerial Decrees (Arbeidsomstandighedenwet or 'Arbowet'); revised in 1994 and amended again in 1998.

· Specific new legislation on the employment of temporary workers by intermediate agencies (such as temporary work agencies): the Law on Allocation of Workers by Intermediates (Wet Allocatie van Arbeidskrachten Door Intermediairs or 'WAADI'), introduced in 1999.

· Specific legislation regarding labour contracts for temporary workers: the Law on Flexibility and Security (Wet Flexibiliteit en Zekerheid or ‘Flexwet’), introduced in 1999; Specific legislation regarding workers’ participation: the Works Councils Act (Wet op de Ondernemingsraden or 'WOR'); Collective bargaining has also played an important role in this implementation process, especially as the temporary work sector itself concluded a collective labour agreement for agency workers during the nineties. In this agreement the social partners, among other relevant issues, agreed upon the need for an adequate health and safety policy and extra training provisions for temporary agency workers.

In **Poland** the Directive was transposed by several provisions of the Labour Code; and the Act of 9 July 2003 on the Employment of Temporary Workers (Journal of Laws (*Dziennik Ustaw*) No. 166, item 1608; of 2004, No. 96, item 959; and of 2007, No. 89, item 589).

In **Portugal**, the Directive was transposed by the Labour Code registered as Law 99/2003, which was enacted in 2003. It applies, among other atypical forms of employment, to workers with fixed-term contracts. The Framework Act on Safety and Health was enacted by Decree-Law 441/91, of 14th November, and transposed the Framework Directive 89/391/CEE. Temporary workers hired by a temporary work agency to perform their work at a user undertaking are regulated under specific legislation. The Decree-Law 358/89 of 17 October 1989 established the obligation of a social protection system for temporary workers and insurance against work accidents, without addressing safety and health issues. Subsequently, Decree-Law 358/87 was amended by the Law 146/99 of 1st September 1999.

In **Romania,** the Directive was transposed by the Government Decision No. 557/2007 on supplementing the measures to improve the health and safety at work of employees engaged on fixed-duration individual contract and of temporary employees engaged at temporary employment businesses. The protection of the safety and heath of temporary workers and fixed-term workers is also governed by the Law on health and safety at work No. 319/2006 and by the regulatory actions elaborated in the framework of its application.

In **Slovakia**, the Directive was transposed by the Act No. 124/2006 on Health and Safety in the Workplace which specifies the obligations and duties of employers and was incorporated into the new Labour Code of 2001 (Act No. 311/2001) and Act No 355/2007 on the

protection, promotion and development of public health and supplementing certain acts, as amended by Act No 140/2008. In addition, there are seven governmental regulations which govern and implement provisions of the new Act on Health and Safety. Article 6 of Act No. 125/2006 on Work Inspection implements the relevant parts of the Directive.

In **Slovenia**, the Directive was transposed by Articles 52, 55, 57, 60, 61 and 62 of the Employment Relationships Act – ZDR (and other acts), Article 10 of the Workers' Participation in Management Act, and Articles 18, 19, 20, 23 and 24 of the Health and Safety at Work Act (ZVZD, Official Gazette of the Republic of Slovenia, No. 56/99 and 64/01).

In **Spain**, the Directive was transposed by Article 28 of Act No. 31/1995 on the Prevention of Occupational Hazards which is devoted to the specific situation of temporary workers, applying equally to "temporary workers, fixed-term contracts and temporary work agencies" (Articles 12(3) and 16 of Act No. 14/1994 on the Regulation of temporary Work Agencies also deal with these issues) and by Royal Decree 216/1999. The State Collective Agreement of temporary Employment Agencies of 3 December 2007 has to be taken into account as well.

In **Sweden**, Directive 91/383/EEC was implemented by the Work Environment Act (1977/1160) by adding an additional section. The amendment to the Act came into force on 1 October 1994. Furthermore, some of the Directive's provisions were implemented in other Swedish legislation, such as the Systematic Work Environment Act (AFS 2001/1) and the Medical Controls Act (AFS 2005/06). A number of collective agreements apply as well to the matter (FAS 05 Agreement, The temporary work agreement).

In the **United Kingdom**, Directive 91/383/EEC was transposed by successive versions of the Management of Health and Safety at Work Regulations 1999 (MHSWR). More specifically, the basic text in this field is the Health and Safety at Work Act 1974, which applies to all workers, including those employed under fixed-term contracts and through temporary work agencies. Additionally, the Directive was implemented in United Kingdom through the Management of Health and Safety at Work Regulations 1992, known as the Management Regulations. Regulations 12 and 15 of the revised Management Regulations contain the specific provisions for temporary workers.

The requirement of a Regulatory Impact Assessment for the Health and Safety (Miscellaneous Amendments) Regulations 2002 can be particularly relevant to temporary workers. There are also important provisions for information and training for temporary workers arising from the Control of Substances Hazardous to Health 2002 and from the Control of Asbestos at work Regulations 2002. The provision of personal protective equipment for temporary workers from their first day at work is also important, under the Personal Protective Equipment Regulations 1992. There are provisions for the fire safety of temporary workers, under fire safety law, consolidated in the Regulatory Reform Order 2005 (Fire Safety). Temporary workers are also included as display screen equipment users under the Health and Safety (Display Screen Equipment) Regulations 1992. Finally, there are other regulations, such as the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and the Gangmasters (Licensing) Act 2004 and subsequent regulations, which currently fall outside the responsibilities of health and safety at work, but are nonetheless relevant to the safety and health of temporary workers.

3. SCOPE AND OBJECT OF THE DIRECTIVE

Article 1: Scope

This Directive shall apply to:

"1. employment relationships governed by a fixed-duration contract of employment concluded directly between the employer and the worker, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a specific event;

2. temporary employment relationships between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services."

Article 2: Object

"1. The purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

2. The existence of an employment relationship as referred to in Article 1 shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.

3. Directive 89/391/EEC and the individual Directives within the meaning of Article 16 (1) thereof shall apply in full to workers with an employment relationship as referred to in Article 1, without prejudice to more binding and/or more specific provisions set out in this Directive."

The Directive deals with the protection of the safety and health of workers within two particular forms of employment: fixed-term employment contract and temporary employment relationships. In the first category, the fixed-term employment contract, the contract is concluded directly between the employer and the worker, and the end of the contract is established by objective condition. In the second category, temporary employment relationship, the contract is concluded between a temporary employment agency and the worker, but the latter is assigned to work in a user undertaking.

These two categories of working relations differ from a legal point of view, but it was considered at the time of the adoption of the Directive, that they had similarities regarding the greater exposure of the workers concerned[10], to health and safety risks in comparison to the situation of workers with an open-ended employment contract or permanent contract. For this reason, a set of rules was adopted to ensure that these workers are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.

Most of the Member States have correctly transposed Article 1 as their implementing measures cover the two categories of workers described by the Directive. They seem to have

[10] See also explanation in Section 8 of this staff working paper

made more changes in national legislation in connection with workers employed by temporary employment agencies. This may be due to the legal complexity of the three way relationship which is involved. However it should be mentioned that few Member States do not recognise expressly temporary employment relationships in their legal order. There is a risk that the concerned workers might be excluded from the protection of the Directive.

As for fixed-term workers, the majority of Member States implemented the Directive by means of their general rules on health and safety stating that they will apply to them, rather than enacting other specific legislation to these workers. In most Member States it is common to find general statements declaring a general right to equal treatment which applies to all aspects of the employment relationship, although specific equal treatment rights in the field of safety and health can also be found. The problem is that a right to equal treatment is not automatically equivalent to a right to be afforded the same level of protection in a context where the temporary and fixed-term workers are more exposed to risks.

In **Austria**, pursuant to Article 1(1), the ASchG applies to workers at work. Article 2(1) of the ASchG defines workers as "all persons performing an activity in the framework of an employment or training relationship". The ASchG also applies in full to workers on a fixed-term contract of employment. Workers assigned to work for a user undertaking and under its supervision are also workers within the meaning of the ASchG, as stated in Article 9(1) in conjunction with Article 2(1) of the Act.

Article 2 of the Directive does not seem to have been expressly transposed. However employers may not treat workers with a fixed-duration employment relationship differently as regards health and safety at work, pursuant to the general principle of equal opportunities enshrined in social legislation. The ASchG also applies to assigned workers with a fixed-term employment relationship, i.e. temporary workers.

Belgian law provides for fixed-term contracts of employment terminating on a specific date and contracts for the performance of "a clearly defined task" (Act of 3 July 1978) as defined in article 1 of the Directive. The legal provisions and regulations regarding Health and Safety apply to all employees irrespective of the duration of their employment relationship. Moreover, the Royal Decree of 19 February 1997 lays down measures concerning the occupational health of temporary workers, and recognises and specifically addresses the occupational hazards associated with this particular form of employment.

As for the transposition of the Article 2 of the Directive, Belgian law does not appear to make a distinction between workers with a fixed-term or temporary employment relationship and other employees, and so they are entitled to equal treatment in respect of hygiene, health and medical surveillance. The conditions governing access to personal protective equipment are the same for all categories of workers.

In **Bulgaria**, Ordinance No. 5 of the Minister for Labour and Social Policy of 20 April 2006 on ensuring health and safety at work for workers on fixed-term or temporary contracts provides a legal definition of "temporary employment business". The status of fixed-term workers is also recognised as provided in Article 1 of the Directive.

According to Article 68(2) of the Labour Code and Article 14(1) of the Law on health and safety at work, employees with fixed-term employment contract shall not be treated less favourably than those with indefinite contracts. Article 14 of the Law on health and safety at work (ZZBUT) requires employers to provide safe and healthy working conditions for all

employees, regardless of whether they are employed under an indefinite, fixed-term or temporary employment contract, and indeed for any other persons who happen to find themselves in or around work premises, sites or facilities.

These provisions seem to be an adequate transposition of Article 2 (1) and 2 (2) of the Directive.

As for **Cyprus**, the Law on Safety and Health at Work 1996-2003 defines an 'employee' as any person working with an employment contract or a trainee or an apprentice and includes persons who carry out work assigned to them as inmates of an institution. Article 2 of the Regulations provides for a definition of fixed-term employment relationships and temporary employment relationships in workplaces, which is similar to that in Article 1 of the Directive.

Regulations P.I 184/2002, particularly regulation 4 part (1) and part (2), provide for a principle of equal treatment and for the same level of protection for atypical workers.

In the **Czech Republic**, national law provides that a person who has an employment relationship is considered to be a worker or an employee. The employment relationship is defined as an employment contract, or either of the two types of agreements on work performed outside an employment contract. The agreements on work performed outside an employment contract are: an agreement for the performance of a work assignment and an agreement on working activity. The Labour Code covers all employees, except some public officials with specific tasks.

According to national law the normal employment contract is for an indefinite duration. However, a fixed-term contract can be concluded. Temporary agency employment is regulated by Sections 38(a) and 38(b) of the Labour Code and Sections 308 and 309(b) of the Labour Code. These definitions seem to comply with Article 1 of the Directive.

It is not expressly stipulated that fixed-term workers and temporary workers should receive the same level of safety and health at work protection as other workers as required in article 2 of the Directive. However according to the available information, all the employees enjoy in practice the same treatment with respect to working conditions inasmuch as the protection of safety and health at work is involved, regardless of the type of contract that they have concluded. Section 104 of the Labour Code provides for the provision of personal protective equipment to all employees.

As for **Denmark**, national legislation seems to comply with the Directive's provisions as it prohibits all forms of discrimination in the field of health and safety at work based on the nature of the employment contract (Working Environment Act 1977, amended in June 1998, and Order on the Performance of Work 867/1994 concerning the mutual obligations of the user undertaking and the temporary employment agency in respect of assigned workers).

In **Estonia**, the Employment Contracts Act provides for definitions as set out in Article 1 of the Directive. According to Article 1(1) of the Occupational Health and Safety Act the scope of application of the Act covers occupational health and safety requirements for work performed by persons working on the basis of employment contracts and as public servants. The general principle of non-discrimination in employment relationships in relation to fixed-term workers is provided in Article 13(1) and 13(2) of the ECA. These provisions seem to cover all different situations in employment relationships including requirements on Health and safety arising from the TTOS.

Article 13(1) (11) of the TTOS provides that an employer shall provide workers, at his own expense, with personal protective equipment and special work clothes. The rights and obligations of employers and employees in relation to personal protective equipment are also regulated by Government Regulation No.12. It does not refer to fixed-term employment contract workers or workers with temporary employment relationships.

According to the **Finnish** legislation on Health and Safety protection at work, all categories of workers seem to be covered, irrespective of the nature or the duration of their employment relationship. However no detailed information is available on the definition of employment relationships as referred to in Article 1 of the Directive. Chapter 2 Section 2 of the Employment contracts Act (55/2001) prohibits discrimination on the ground of the nature and the duration of the contract and provides for equal treatment regarding health and safety provisions.

In **France**, the existence of both fixed-term contracts and temporary employment contracts is recognised by law and their definition complies with the Directive's provisions. These two forms of employment relationships trigger the application of particular health and safety measures at work, both under laws and regulations and under law developed on the basis of collective agreements. Both employees recruited by temporary employment agencies and assigned to the user undertaking and employees on a fixed-term employment contract, are considered as employees exposed to additional risks, and specific prevention measures apply to them.

Regarding safety equipment, the national agreement of 24 March 1990 stipulates that the employer must take all necessary measures to ensure that employees with a fixed-term employment relationship are provided with the same protective equipment as employees with a permanent employment relationship doing the same jobs, and that they effectively use them (Article 16(3) of the agreement). As regards temporary workers, Article 16(2), sentence 4 of the agreement states that the head of the user undertaking must ensure that these workers actually use the collective and individual protective equipment provided. These provisions seem to transpose Article 2 of the Directive.

In **Germany** the ArbSchG, as defined in Article 1, covers all workers in all fields of activity, including workers with a temporary employment relationship or a fixed-term employment relationship as referred to in Article 1 of the Directive. Moreover, the particular situation of these workers is taken into account in certain provisions of the AÜG. Fixed-term workers and temporary workers benefit from the same conditions as all other workers. The ArbSchG does not seem to contain an express ban on discrimination as provided under Article 2(2). However, the general principle of equal opportunities enshrined in labour law applies to all matters regarding labour law, including Health and Safety duties. These national rules seem to be in conformity with the Directive.

In **Greece**, Article 2(1) of Presidential Decree 17/1996 defines a worker, for the purposes of transposing Directive 91/383/EEC, as “any person employed by an employer under any employment relationship, including trainees and apprentices, except for domestic staff”. The employment relationships as defined in Article 1 of the Directive are defined under different national rules and seem to comply with the Directive's requirements. All workers including those with fixed-term employment contracts and those hired through temporary employment agencies are fully covered by the legislation in force on the safety and health of workers. Discrimination based on the type of contract is forbidden as concerns health and safety issues.

In **Hungary**, the Labour Code contains definitions of employment relationships covering the categories provided for in Article 1 of the Directive. Fixed-term employment and temporary employment are among the employment relationships provided by law and their definitions under Hungarian law are in line with the Directive's provisions.

Act XCIII of 1993 on Labour Safety (Mvt.) does not differentiate between the different forms of employment for its application. According to its Section 9 it covers “all forms of organized employment”, irrespective of their organisational or ownership form. Section 87 defines organized employment as work performed in any legal form, such as an employment relationship, civil service or public employment relationship. This seems to include fixed-term and temporary workers. The implementing regulations of the Mvt provide for an equal treatment with respect to working conditions without any distinction based on the form of work (contract) or duration of work.

According to Section 42(b) of the Mvt. the employer must provide the employees with appropriate personal protective equipment against dangers. It is not specified whether fixed-term and temporary workers are equally covered by this obligation of the employer. The special rules on personal protective equipment are found in Decree of the Minister of Welfare No. 2 of 2002 (2/2002. (II. 7.) SZCSM rendelet).

According to the available information regarding the situation in **Ireland**, it seems that Section 2(1) of the 2005 Act correctly transposed the definitions given in Article 1 of the Directive. Section 8(3) and (4) expressly covers all the obligations contained in Article 2 of the Directive as regards workers with a temporary or fixed-term employment relationship.

In **Italy**, the scope of Legislative Decree No. 81/2008 covers all temporary workers and workers with fixed-term employment contracts as referred to in Article 1 of the Directive.

It seems that the Court of Cassation had enshrined the principle that health and safety rules should apply to all workers, irrespective of the nature of their employment relationship. This jurisprudence is reflected in Article 2 (1) (a) of Legislative Decree 81/2008.

There is no available information on the prohibition against discrimination based on the type of employment contract with respect to working conditions.

In **Latvia**, Article 1(13) of the Labour Protection Law (LL) defines an employee as any natural person who, on the basis of an employment contract for agreed remuneration, performs specific work under the guidance of an employer. The general principle is that employment contracts are concluded for an unspecified duration except in the cases set out in Section 44 of the LL, which provides for cases of fixed-term employment relationships.

It seems from the available information that there are no provisions concerning temporary employment agencies and user undertakings and/or establishments. Should a person be employed by a temporary employment agency, his or her employment contract is treated as any other employment contract. Work at a user undertaking would still normally be regarded as work for the temporary employment agency only, the latter simply providing services to the former. This does not seem to be in line with the provisions of the Directive, and the specific situation of temporary workers does not seem to be taken into consideration by national rules.

As for the implementation of Article 2 of the Directive, Article 7 of the LL provides as a general principle for an equal right 'to work, to fair, safe and healthy working conditions.' Furthermore, Article 29 of the LL provides for a general prohibition of discrimination based on gender, (…) or other circumstances of an employee. Finally, Article 44(6) of the LL contains an equality clause specifically regarding fixed-term workers providing that the same provisions apply to employees with an employment contract of indefinite duration, and employees with a fixed-term employment relationship.

In **Lithuania**, there is a single definition of an employee who is a natural person possessing legal capacity in labour relations, employed under an employment contract for remuneration (Article 15 of the Labour Code). Temporary workers as referred to in Article 1 of the Directive do not seem to be recognised under Lithuanian law. A draft Law on Agency work is under discussion with the social partners within a working group set up in 2007.

Article 3 of the Law on Safety and Health at Work lays down that safe and healthy working conditions must be provided for all employees, regardless of the type of work contract concerned. Article 260 of the Labour Code does confer a right for every employee, irrespective of the type of contract, to work in safety and provides this level of protection equally to all workers.

Article 263(3) of the Labour Code sets out a general obligation for the employer to provide personal protective equipment for employees. It is not clear whether workers as defined in Article 1 of the Directive are covered by this provision as required in Article 2(2) of the Directive.

In **Luxembourg's** legislation, the definitions of the employment relationships as referred to in Article 1 of the Directive are in line with the Directive's requirements. The existence of a fixed-term employment contract or a temporary employment contract triggers the application of special measures on safety and health at work. Thus, these workers are considered as workers exposed to additional risks which are subject to specific prevention measures.

Article L311-2 of the Labour code on safety and health issues covers all type of contract labour situation, including the one covered by the Directive.

In **Malta,** Regulation 3(1) sets out definitions of 'fixed-term contract of employment' and of 'temporary worker' which are in line with the definition of the employment relationships in Article 1 of the Directive.

Regulation 18 provides that an employer shall ensure that such atypical workers are afforded the same level of occupational health and safety protection as that of other workers. The existence of an atypical employment relationship, including temporary employment relationship, does not justify different treatment with respect to working conditions insofar as the protection of safety and health at work are involved, especially as regards access to personal protective equipment. This provision appears to be in conformity with the Directive.

In the **Netherlands**, the scope of the 1998 Working Conditions Act covers the employment relationships defined in Article 1(1) of the Directive.

The Working Conditions Act does not seem to contain any express ban on discrimination corresponding to Article 2(2) of the Directive. However, specific rules guarantee equal treatment to all workers. Under Dutch law, the employer or user undertaking is subject to the

same obligations in respect of workers with a fixed-term or temporary employment relationship as in the case of any other employees. The same applies to temporary workers because, by virtue of Article 1(1) (a b), they are considered to be employees of the user undertaking. These national rules seem to comply with the Directive.

In **Poland** Article 2 of the Labour Code defines an employee as a person employed under an employment contract. Article 2 of the Act on temporary workers' employment, states that a temporary worker is a person employed by a temporary work agency solely to perform temporary work for and under the supervision of the user employer. The user employer is defined as an operator determining tasks for temporary workers and supervising those temporary workers. These definitions appear to be in line with the definition of employment relationships which are covered by the Directive.

As for the transposition of Article 2 of the Directive, Article 15 of the Act on Temporary Workers' Employment states that all employers are obliged to provide safe and hygienic conditions of work irrespective of whether the contract is an employment contract or a civil contract. Article 11(3) of the Labour Code states that any form of discrimination in employment, either direct or indirect, based on the type of employment contract (fixed-term or indefinite) is inadmissible.

Portuguese law seems to be in line with the definition of employment relationships set out in Article 1 of the Directive.

The Decree-law No. 441/91 (Framework Act on Safety, Hygiene and Health at Work) applies to all workers and all undertakings. Portuguese law does not expressly forbid the discrimination against temporary workers. However such discrimination seems to be prohibited either by the Framework Act on Safety, Hygiene and Health at Work or by the Portuguese legal order as a whole.

In **Romania**, the legislation seems to be in line with the definition of employment relationships covered by the Directive. The Government Decision No. 577/2007 covers employees engaged on a fixed-term individual contract, and temporary workers engaged by temporary employment agencies.

The Government Decision No. 577/2007 provides for the obligation of the employer, or the user undertaking, to ensure to employees engaged on a fixed-term contract of employment and to temporary workers the same working conditions as regards health and safety at work, particularly regarding access to personal protective equipment. Moreover, the decision states that the provisions of the Law on health and safety at work No. 319/2006 and of the regulatory actions elaborated in the framework of its application, also apply to these workers.

These provisions appear to be an adequate transposition of Article 1 and Article 2(1) and 2(2) of the Directive.

In **Slovakia**, Article 2 Section 1 of the Act on Health and Safety states that an employee is defined as an individual who performs supervised work for an employer pursuant to instructions, for a wage or for remuneration. Employees working for definite or indefinite duration are included. Moreover, the Act on Health and Safety extends its scope to temporary agency workers as defined in Article 1 of the Directive.

Article 48 Section 6 states for an equal treatment for fixed-term employment relationship concerning working conditions with respect to occupational health and safety. Article 58 of the Labour Code defines temporary employment or temporary assignment. In Section 4, it states that the user undertaking shall provide for 'favourable working conditions and provide for safety and protection of health at work to the same extent as applies to other employees'.

Article 6 Section 2 point b) of the Act on Health and Safety guarantees that employees shall be provided with personal protective equipment without charge, if it is necessary for ensuring their health and safety in the workplace.

In **Slovenia**, Article 4 and 5 of the Employment Relationship Act defines an 'employment relationship' and a 'worker'. Article 52 of the Employment Relationship Act defines fixed-term employment contracts and the conditions to be fulfilled in order for such a contract to be legally binding. Temporary agency work is defined in Article 57 of the ERA. These definitions seem to be in line with the Directive's provisions.

Moreover, Article 3 of the Health and Safety at Work Act sets out a broader definition of the terms 'employer' and 'worker'. Under this Act, an 'employee' also means a person employed on any other legal basis, performing work independently or as a self-employed person in agricultural or other activity; or performing work in the workplace as part of a training scheme.

According to the Health and Safety at Work Act 2003 an employer has a duty to ensure the health and safety of his or her employees in every aspect of the work. The Act sets out minimum safety standards for all types of employment relationships, irrespective of the duration of the employment contract.

Article 55 provides for the principle of non-discrimination between fixed-term workers and workers employed for an indefinite duration. They shall have the same rights and obligations unless stipulated otherwise by the ERA. The right to be provided with personal protective equipment, to have a preventive medical examination, to be trained on safe work methods, and to consultation and information are guaranteed to all employees according to the Acts. These provisions seem to be an adequate transposition of the provisions of the Directive.

Spanish law seems to transpose adequately Article 1 of the Directive (Ley de Prevención de Riesgos Laborales, LPRL, and Ley del Estatuto de los Trabajadores, LETT, which covers the employment relationships described in Article 1 of the Directive). Article 28(1) of the LPRL appears to have transposed Article 2 of the Directive into domestic law and provides, as a protection against occupational hazards, that temporary agency workers must be treated in the same way as other workers in the undertaking in which they are employed. No detailed information is available on the precise content of these national rules.

The **Swedish** Health and Safety act covers all types of employment relationships, both permanent and temporary, as required in Article 1 of the Directive. Temporary and assigned workers are also covered by the scope of the national provisions transposing the Directive. Workers with a fixed-term employment relationship and workers assigned by a temporary employment agency are entitled to equal treatment pursuant to the basic health and safety legislation (Working Environment Act 1977/1160).

According to the available information, **United Kingdom** law seems to be in line with the definition of employment relationships provided by the Directive. Under the national

legislation, employers must provide their employees with suitable protective equipment (Regulation 4(1) of the Personal Protective Equipment at Work Regulations 1992). Hence, in the case of temporary agency workers, the obligation applies only to the temporary employment agency, and not the user undertaking. Temporary and fixed-term workers are covered by national legislation implementing directives on health and safety at work and are afforded the same level of protection as other workers.

4. INFORMATION AND TRAINING OF WORKERS

4.1. Provision of information to workers

Article 3 of Directive 91/383/EEC states that:

"Without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;

2. such information:
- covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and
- states clearly any increased specific risks, as defined in national legislation, that the job may entail."

Information is a central element of the special system of protection of Safety and Health set by the Framework Directive and Directive 91/383/EEC. The latter ensure that workers with fixed-term contracts and temporary employment relationships would have the same level of information as other workers and would enjoy at least the same level of protection against work-related hazards as other workers.

Article 3 of the Directive refers to the obligations stemming from Article 10 of the Framework Directive and provides for additional obligations specific to temporary workers and fixed-term workers. Article 10 of the Framework Directive provides that the employer shall inform workers on the safety and health risks and protective and preventive measures and activities at work and on all measures concerning first aid, fire-fighting and evacuation of workers, and serious and imminent danger. It provides as well for the information of all workers assigned in the undertaking premises and for the information of workers with specific functions in protecting the safety and health of workers or workers representatives with specific responsibilities in these issues.

Article 3 provides that the worker shall be informed before he takes up any activity on the specific risks which he faces. This is a key provision as temporary workers frequently change jobs and workplaces for short term durations, and are often unaware of potential risks when they are assigned to a new job. The information shall cover any special occupational qualification or skills or special medical surveillance required and shall state clearly any specific risks that the job may entail.

Although a majority of Member States provided for an obligation to inform the worker, before he takes up any activity, about risks in the workplace, several national legislations did not implement this key provision. When evaluating implementing measures in this context, it is important to see first if they provide for an obligation to give the information to the worker before he stars working. It is the case for most Member states (*Austria, Belgium, Cyprus, Demark, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Romania, Slovakia, Spain, Sweden and United Kingdom*). For other Member States, national legislation provide for information to the workers, but it is not clear whether this information shall be given before the worker start working. The second aspect to examine is whether the content of the information provided by national measures comply with the provisions of the Directive. It seems that for *Bulgaria, Estonia, Italy, Luxembourg and Poland* it is not clear if the information given to the worker covers all the aspects required by the Directive. Some difficulties may be raised in *Finland, Luxembourg and Netherlands*, about the implementation of the obligation for the user undertaking to inform directly its temporary workers about the risks of the workplace.

Under **Austrian** law, Section 12 in conjunction with Section 9(2) of the Health and Safety Act states that the temporary employment agency has to provide workers with sufficient information on risks and hazards to safety and health. Moreover, the user undertaking has to inform temporary workers about preventive measures. This information has to be given before any activity starts. Fixed-term workers are subject to the same health and safety regulations regarding information and training as permanent staff, since they must be informed about health and safety hazards and hazard prevention measures in accordance with § 12 subpara. (1) ASchG and trained accordingly under § 14 AschG.

In **Belgium**, Article 5 of Royal decree of 19 February 1997 imposes a duty to provide information prior to the performance of an assignment in a user undertaking, regarding any specific risks that the organisation or job may entail and any special occupational qualifications or skills needed. If the job evaluation indicates a specific risk to safety and health, the user undertaking must take additional measures with regard to the temporary worker, such as providing information and safety instructions, and information about dangerous entrances. The obligation to inform the temporary worker about special medical surveillance relies on the temporary work agency and not on the user undertaking as required by the Directive.

As for **Bulgaria**, Ordinance No. 5 of the Minister for Labour and Social Policy of 20 April 2006 on ensuring health and safety at work for workers on fixed-term or temporary contracts states that all workers in the target groups (i.e. temporary workers and fixed-term workers) shall be duly informed of the risks to their health and safety and the measures to be taken to eliminate, reduce or control such risks. There is no further information on the content of the information to be given and whether the information should be provided before workers are taking up their activity.

In **Cyprus**, according to Regulations P.I 184/2002, fixed-term workers and temporary workers must be informed about the risks they face before they start their duties. The employer has to establish a written risk assessment of the workplace and distribute it to all workers. The workers have to be informed of the necessary professional qualifications or skills for the job.

In the **Czech Republic** there is an obligation for an employer to inform his or her employees about occupational health and safety, under Section 18(2) (g) of the Labour Code.

Section 103(1) (b) of the Labour Code states that the employer shall provide information which covers, in particular, any special occupational qualifications or skills or special medical surveillance required. The duty of an employer to provide information which states clearly any increased specific risks that the job may entail is provided in Section 103(1) (f) of the Labour Code.

As for **Denmark**, Article 18(1) of the Order on the Performance of Work states that the employer's information obligations apply to all types of employment relationships. Article 21 of the Executive order No. 559 of 17 June 2004 specifies that the information to temporary worker shall be given before the commencement of employment and shall include information on the required professional level and qualifications, any requirement on health certificate, and on the special nature of the work including any risk.

In **Estonia**, workers covered by the Directive are protected under general provisions applying to all workers, without having their specific needs taken into account. Article 13 (1) (6) provides for an obligation for an employer to "familiarise workers with the occupational health and safety requirements, and monitor compliance therewith." the information shall be provided before the beginning of the assignment and shall include information on the risks related to the work and the measures taken to address them.

In **Finland**, Section 14 of the Occupational Safety and Health Act transposes the Directive's provisions and states that employers shall give to temporary workers and fixed-term workers, before they start their duties, the necessary information on the hazards and risk factors of the workplace. When doing so they have to take the employees' occupational skills and work experience into consideration.

According to Section 3 of the Occupational Safety and Health Act, any user undertaking is required to inform the temporary employment agency about Health and Safety conditions. The temporary employment agency is afterwards responsible for giving the information to the worker.

In **France**, the duty to inform workers is contained in the contract of employment. The Labour Code imposes different rules for workers with fixed-tem contracts and for temporary workers. For the former, Article L-122-3-1 provides for a written contract of employment, with a minimum content including the qualifications needed for the position, and the detailed identification of the position to be filled. For the latter, Article L 124-3 defines the content of the contract between the user undertaking and the temporary work agency, which should include, among other items, the qualifications required for the position, the specific characteristics of the position, and the protective equipment required for the job. These items are to be included also in the contract of employment between the worker and the temporary work agency. An obligation to inform the worker on the risks which he faces is provided in the framework agreement on occupational Health signed on 28 February 1994.

In **Germany**, a general information obligation is established by the Health and Safety Act (ArbSchG). According to Section 11(6) of the ArbSchG the employer has to inform the temporary worker about safety and health risks in the workplace and about measures and equipment. Information has to take place before starting the work or any related activity.

In **Greece**, Article 7 (6) of the Presidential Decree 17/1996 lays down general provisions about employers responsibilities for the information of workers, including temporary workers as required in Article 3 of the Directive. Under this article the employer is obliged to inform workers about any potential hazards from the work they do. In the explanatory circular, the passage referring to Article 7 (9) of the Presidential Decree underlines that where more than one employer exercises their activities in the same establishment, each one is responsible for informing their own workers and their representatives. Article 22(8) of the Statutory Law 2956/2001 regarding the Consolidation of the Working Rights of Temporary Employees, stipulates that the user undertaking must define, before the temporary worker is at his disposal through contract, the following information: the occupational qualifications or skills required, special medical surveillance needed, particular characteristics of the job position to be covered, and the higher or specific risks related to the job. The temporary employment agency is legally obliged to notify this information to the workers.

The **Hungarian** legislation contains provisions on information for workers which seems to comply with Articles 3 of the Directive. Section 54 (7) provides that all necessary information should be given before work starts and ensures that reviews of employee knowledge and observation of safety and health take place. It also provides for discussion with employees, or their safety representatives, about the introduction of new processes and its potential impact on health and safety. According to the Mvt, workers should be informed on special danger and any enhanced risk in the workplace that the job may entail.

In **Ireland** the Safety, Health and Welfare at Work Act 2005 states that employers should provide information on occupational safety to workers in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and includes a number of relevant items specified in the text of the Act. This Act also states that when an employee of an agency is assigned in a user undertaking, the latter shall take measures to ensure that the employee receives adequate information concerning these matters. Finally, where an employer proposes to use the services of a fixed-term worker or a temporary worker, the employer shall, prior to commencement of employment, give information to the employee relating to any potential risks to the safety, health and welfare of the employee at work; health surveillance; any special occupational qualifications or skills required in the workplace; and any increased specific risks which the work may involve.

In **Italy** the duty to inform temporary workers is set out in paragraph (5) of the Legislative Decree No. 276/2003. The specific contents of obligatory information can be found in the Legislative Decree 81/2008 which provides that employers shall inform workers as soon as possible if they are exposed to a potentially serious and immediate hazard. Article 36 (2) of 81/2008 provides that all workers shall be informed by the employer on all specific risks which the job entails. These provisions do not seem to provide for an obligation to inform the worker on any special occupational qualifications and skills as required by Article 3 paragraph 2.

Latvia does not seem to have specific rules regarding information for fixed-term workers and temporary workers.

However, Article 14 of the Labour Protection Law provides that employers must ensure that each employee receives instructions and is trained in the field of labour protection, which is directly related to his or her workplace and work performance. Such instructions shall be carried out on commencement of work, and shall be adapted to the professional preparedness of the employees, taking into account their education, work experience, skills and previous

training (Clause 14 of Cabinet Regulation No. 323 of 17 June 2003). The instructions shall be adapted to any changes in work environment risks, and shall be repeated periodically.

Article 10(3) of the Labour Protection Law provides that an employer shall ensure that employees have access to information regarding the results of risk assessments on their work environment, occupation or workplace and other aspects regarding health and safety prevention.

Under **Lithuanian** legislation there are no specific rules regarding information for fixed-term workers and temporary workers. These workers are covered by general provisions of the Labour Code which states that the employer must inform and consult employees about all issues related to the analysis and planning of occupational safety and health and the organisation and control of appropriate measures.

According to Article 27 of the Law on Safety and Health at work, workers are prohibited from starting their work unless they have received safety instruction. This prohibition applies equally to all workers. The user undertaking also has to ensure that employees assigned under its supervision should not start work until they are informed of the potential risks in the enterprise and have received the necessary training.

Only workers who have specific knowledge and have passed relevant qualification tests in accordance with the procedure laid down in the General Regulations of the Training and Testing of Knowledge in Safety and Health at Work may be permitted to operate potentially dangerous equipment.

In **Luxembourg**, the employer's duties to inform on health and safety issues are set out in Part III of the Labour code concerning Health and Safety of workers. The employer has to inform a fixed-term worker on the risks entailed by the job to be performed.

Regarding temporary workers, no information is available about the direct duty of the user undertaking to inform the worker about the risks of the workplace. The Labour code stipulates that the user undertaking shall provide the temporary work agency with the necessary information concerning the qualifications needed for the position to be filled and the special characteristics of the workplace. The agency must bring this information to the knowledge of its employee who is to be assigned at the user undertaking.

In **Malta**, Regulation 18(2) states that an employer shall provide temporary and fixed-term workers with information on any special qualifications or skills necessary for working safely and on any health surveillance required. They must also be informed of any specific risks or health and safety issues. All this information must be given before the worker commences his or her duties. According to Regulation 11(2) all workers exposed to serious and imminent danger shall be informed of the risks involved and of the steps to be taken in order to protect themselves.

Regulation 12(1) provides that the employer shall provide workers and their representatives with 'comprehensible and relevant' information on the risks to health and safety identified in the workplace in general, and in respect of any particular job, task or work as well as the preventive and protective measures required.

In the case of the **Netherlands**, according to the Organisational Safety and Health Act, the temporary work agency has to inform workers before the commencement of the job. Workers

have to receive relevant sections of the contract between the agency and the user undertaking with information about job features, job risks, safety regulations and protective measures.

In **Poland** Article 226 of the Labour Code obliges employers to conduct a risk assessment of the work to be performed to spot possible health and safety hazards and apply the necessary measures to address these risks. Following this provision, workers have to be informed of possible health and safety hazards identified and about the way to work safely. The provisions of the Labour Code on work safety and hygiene apply to all workers, including fixed-term and temporary workers. According to the provisions of Article 237 (3) of the Labour Code, it shall be forbidden to admit a worker to work if he lacks required qualifications or necessary skills and sufficient knowledge of the provisions and rules of work safety and hygiene to perform such work.

In **Portugal**, Article 20(2) of the Act 358/89 states that the user undertaking must inform the temporary employment agency and the temporary worker about any risks for safety and health arising from the specific workplace where he will work. Furthermore, Article 275(1) of the Labour Code provides that workers must have full information regarding: risks to safety and health and preventive measures related specifically to the workplace or task or, in general, to the undertaking and/or establishment; preventive measures and safety instructions in case of severe and imminent hazard/danger, and first aid measures, fire prevention and evacuation of workers in case of accident. According to Article 275(2), information must always be provided in a number of situations, including activities that involve workers from different companies.

In **Romania**, Government Decision No. 577/2007 states that the employer, or the user undertaking, shall inform workers about health and safety at the workplace before they start their activity. The information provided shall cover the professional qualifications, the personal skills, the prophylactic medical services necessary to carry out the activity, and the job specific major risks.

In **Slovakia**, provisions on information and training are contained both in the Labour Code and the Act on Health and Safety. This legislation concern all workers including the categories described in Article 1 of the Directive. Article 47 Section 2 of the Labour Code provides that the employer shall inform newly hired employees about rights and duties regarding health and safety in the workplace.

According to the Act on Health and Safety an employer must inform every worker on a regular basis and in an understandable and provable way about legislation and other rules on health and safety in the workplace, rules on safe work and health protection, rules on safe behaviour in the workplace and safe work procedures, and possible health and safety hazards and their impact on health and protection. The employer must provide this information whenever an employee is being hired, or is transferred to a new workplace or position. The duty also applies when new technology, new work procedures or production is introduced.

In **Slovenia**, Article 24 of the Health and Safety at Work Act provides that the employer has a responsibility for informing employees or their representatives about the introduction of new technologies or means of work, as well as any potential or actual dangers of injury or health impairment possibly related to them, for issuing instructions on safe working practice, and for training employees on safe working practices.

Health and safety training must be adjusted to the characteristics of the workplace, and must be carried out according to a programme which must be, as required by circumstances, renewed and modified with regard to new forms and types of danger.

Spanish legislation provides for an obligation to inform workers, including atypical workers in order to improve their knowledge and awareness of risks and hazards in the workplace. These obligations can be found in Article 18 of the Act nº 31/1995 on the Prevention of Occupational Hazards, which is devoted to "Information, consultation and participation of workers". According to Article 28(2) of the Act nº 31/1995, the employer shall adopt the necessary measures to ensure that, before the commencement of duties, temporary workers are provided with information on the risks which they are going to be exposed to. The information provided shall cover any special occupational qualifications or skills required, any special health surveillance needed, any specific risks of the job, and measures of prevention and protection from those risks.

As for **Sweden**, section 3(3) of the Work Environment Act of 1997 provides that the employer shall ensure that the employee acquires knowledge of the conditions in which work is performed and that he is informed of the hazards which the work may entail. When providing for the information, the employer shall take into account the employee's specific aptitudes. The information has to be provided before the work starts, as only workers who have received adequate instructions may gain access to areas with potential risk to safety and health. A user undertaking shall take the safety measures which are needed for the work which is assigned to the worker (Section 3(12)). The employer shall make sure that the employee knows what measures should be taken to avoid risks at work (Section 3(3)).

In the **United Kingdom** this obligation to inform workers can be found in Regulation 15 (1), (2) and (3) of the Management of Health and Safety at Work Regulations 1999. The regulations require every employer to provide any worker assigned in his undertaking, with comprehensible information on any special qualifications or skills needed to carry out work safely, and on any health surveillance required to be provided to that worker. This information must be provided before they start their activity.

4.2. Workers' training

Article 4 of the Directive 91/383/EEC provides that:

"Without prejudice to Article 12 of Directive 89/391/EEC, Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience."

Training is considered as a basic element for European Community policies on health and safety in the workplace.

The Framework Directive sets general rules on this issue. According to its Article 12, the employer shall ensure that each worker receives adequate safety and health training specific to his workstation or job. The training shall be provided to all workers assigned in the undertaking, including workers from outside and workers' representatives with a specific role in protecting the safety and health of workers. The training shall not be at the expense of the worker and shall take place during working hours.

Article 4 of Directive 91/383/EEC applies the same rules to the specific needs of workers with fixed-term contracts and temporary employment relationships. Particularly, as in Article 3, the worker shall be trained to protect himself against the risks involved by his work before he starts the activity and the training should be appropriate to the particular characteristics of the job.

Member States have mainly adopted specific measures to provide for training for temporary workers. As for workers with a fixed-term contract, Member States rely on national rules applying to all workers under the principle of equal treatment enshrined in their Labour Law.

In the context of this provision, the training has to take place before the activity starts. Only 11 Member States state it clearly in their implementing measures: *Cyprus, Czech Republic, Denmark, Estonia, France, Hungary, Luxembourg, Malta, Poland, Portugal, Romania, and Sweden.* As for the content, almost all Member States provide for training appropriate to the particular characteristics of the job. The implementing measures in *Netherlands* and in *Lithuania* are not clear in this regard. Another aspect which may raise problems as for the conformity of legislations, is that many Member States did not specify if the training provider had to take into account the qualifications and the experience of the workers. Only few took this aspect into account expressly: *Austria, Cyprus, Estonia, Germany, Ireland, Luxembourg, Poland, and Portugal.* However an interesting point is that in *Italy*, the training has to be adapted to the linguistic capacities of the worker.

The **Austrian** Health and Safety Act (ASchG) provides that during the duration of assignment, the user undertaking is considered to be the employer (section 9(2)), and has an obligation to provide temporary workers with sufficient training (section 14). Training must be adapted to the workplace conditions and to the worker's experience.

The **Belgian** Royal decree of 19 February 1997 states that if the job evaluation indicates a specific risk for safety and health, the user undertaking must take the necessary measures to provide sufficient and adequate training to the worker (article 5(3) (3e)).

In **Bulgaria**, Ordinance No. 5 of 20 April 2006 states that temporary workers and fixed-term workers shall be given appropriate training in health and safety at work in connection with the specific nature of the job.

In **Cyprus,** the general provisions on the obligation for the employer to train workers also apply to temporary workers and fixed-term workers. The training concerns the particular characteristics of the job and may be provided before workers start their assigned tasks. According to Regulation 6 of the P.I 184/2002, when providing the training, the employer has to ensure that it takes into consideration the skills and experience of each worker.

In **Czech Republic** Section 103(1) (f) and (g) of the Labour Code have transposed the Directive's provisions on training. Information has to be given to the worker on the risks at work, the result of the risks assessment and the preventive measures taken to tackle the identified risk. In practice, it seems that workers need to pass a test about the training they received and to sign a certificate confirming that they received all the information required by law before starting working.

In **Denmark**, Article 18 of the Executive Order No. 559 of 17 June 2004 stipulates that the employer shall ensure that the employee has received the training and instructions necessary to perform the work free from danger. Article 18 also states that the training and instructions

shall particularly be provided on recruitment and in connection with access to employment, transfer of employees or change of job contents, introduction of new equipment or change of equipment, and introduction of new technology.

In **Estonia**, Article 13 of the ECA provides for an obligation on the employer to give adequate training to the workers before they start the performance of their duties. The training shall be adapted to the work to be performed and employers may not allow workers without the necessary specialist knowledge and skills to begin work.

For **Finland**, Section 14 of the Occupational Safety and Health Act provides for the training and guidance to be delivered to employees. The user undertaking shall, according to Section 3 of the Occupational Safety and Health Act, give instructions to employees with regard to the working conditions in the workplace, the occupational safety and health procedures and, when necessary, the arrangements for cooperation and information on occupational safety and health and for occupational health care.

In **France**, Article L231-3-1 of the Labour code provides that all employers must provide an adequate and sufficient training for all newly employed workers, for workers who change their position within the undertaking and for those with fixed-term contracts. Both the "Accord national interprofessionnel" of 24 March 1990 and the Agreement of the 26 September 2002 on Health and Security at Work, also deal with the workers' training, with special provisions for temporary workers.

In **Germany**, Section 12(1) of the Health and Safety Act (ArbSchG) transposes Article 12(1) of the Framework Directive. Pursuant to this section, the employer must provide sufficient and appropriate training to all workers on occupational safety and health. In addition, Section 12(2) implements Article 4 of Directive 91/383/EEC. This provision states that the user undertaking must ensure that temporary workers assigned under its supervision receive appropriate training, taking account of their occupational skills, knowledge and experience.

In **Greece**, Presidential Decree 17/1996 does not seem to contain specific provisions for workers with an employment relationship as referred to in Article 1 of the Directive. The general provisions regarding the training of workers provided in the Decree and the explanatory circular are valid for all workers, irrespective of the type of employment relationship.

The **Hungarian** legislation (MVT) contains provisions on training for workers which transposes Article 4 of the Directive. The employer shall provide training to the employee both when he starts work, and during the course of employment, on health and safety provisions and orders. Section 55 of the Mvt states that employers shall provide adequate training for employees to obtain theoretical and practical knowledge regarding occupational safety and health, and to be able to use it during their assignment. The Mvt also obliges employers to inform workers on the necessary rules, instructions and information upon commencement of work, changing workplace or position, as well as changes in occupational safety and health standards, including the introduction of new technological processes.

In **Ireland**, Section 10 of the Safety, Health and Welfare at Work Act 2005 provides for the instruction, training and supervision of employees. It provides that every employer shall ensure that workers assigned in their undertaking, who are employees of another employer, receive instructions related to any risks to their safety, health and welfare involved by the place of work as necessary or appropriate (paragraph 5). This duty applies as well to every

employer who uses the services of a fixed-term worker or a temporary worker, and who shall ensure that the workers concerned receive the training appropriate to the work which they are required to carry out, having regard to their qualifications and experience (paragraph 6).

Italian regulation on the training of fixed-term workers and temporary workers with regard to occupational health and safety can be found in paragraph 3 of Legislative Decree No 276/2003, as well as in Article 37 (1) of Legislative Decree No 81/2008. There are also some relevant provisions on the successive national collective agreements for temporary workers. The content of the training seems satisfactory, but does not seem to take into account the qualifications and experience of the worker. However the provisions cited above provide for a special attention to the language abilities of the worker.

In **Latvia** Article 14 of the Labour Protection Law provides that employers shall ensure that each employee receives instructions and is trained to work safely. The training shall be directly related to his workplace and work performance. According to clause 17 and Annex 1 of cabinet Regulation No. 323, the training of employees shall be appropriate to the particular characteristics of the job.

Under the **Lithuanian** Labour Code, when a worker has insufficient professional skills or knowledge to be able to work in safety and avoid harm to his or her health, persons authorised by the employer must organise the training of the worker at the workstation, or at an enterprise or an educational institution which carries out training in accordance with the General Regulations of the Training and Testing of Knowledge in Safety and Health at Work.

In **Luxemburg**, Part III of the Labour code concerning Health and Security of workers stipulates that the employer, before assigning a given job to a worker employed through a fixed-term contract or placed at his disposal by a temporary work agency, must provide this worker with adequate and sufficient training, appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.

Malta provides in its Regulation 18(2) that an employer shall provide temporary workers (including fixed-term workers) with information on any special qualifications or skills necessary for working in safe conditions and on any health surveillance requirement. They must also be informed of any specific risks or health and safety issues. All this information must be given before the worker commences his or her duties.

The employer must also ensure that the worker receives adequate training on health and safety. This takes the form of information and instructions specific to the individual workplace and to the task assigned (Regulation 14).

In the **Netherlands**, according to the Occupational Safety and Health Act, the user undertaking has to provide sufficient and adequate instruction and training on health and safety to all workers. No information is available on the training of workers on the particular characteristics of the job as provided for in Article 4 of the Directive.

In **Poland** as mentioned above Article 237(1) of the Labour Code prevents the employee from performing any job for which he is not sufficiently qualified for, or where he has inadequate skills or knowledge on legislation and health and safety rules. Article 237(2) obliges employers to provide employees with any necessary training on health and safety before they begin work and with provision of periodic trainings on the matter. The training should be

performed during working time and the employer must bear the burden of the costs of the training.

As for **Portugal**, Article 8(3) of the Act nº 146/99 stipulates that temporary work agencies must allocate, at least, 1% of business volume arising from temporary work to the occupational training of workers. Likewise, Article 278 of the Labour Code provides that workers must have adequate and permanent training on safety and health, related to the workplace and the performance of high risk activities.

As for **Romania**, Government Decision No. 577/2007 states that the employer shall ensure the conditions for every employee to receive adequate and sufficient training on the health and safety at work, notably by way of information and work instructions specific for his/her job and position. The training shall take place at the time of recruitment; when the job change in nature; when there is new working equipment or some changes to the existing equipment; when any new technology or working procedure is introduced; before the execution of some special works.

The training shall be adapted to the evolution of risks or to the occurrence of new risks and shall be achieved on a periodical basis and at any time it is required.

In **Slovakia** provisions on training are contained both in the Labour Code and the Act on Health and Safety.

Article 146 Section 4 of the Labour Code provides that the employer shall provide training about legislation and other health and safety rules in the workplace to its employees, including temporary and fixed-term workers. According to Article 27 of the Act on Health and Safety, the training provided shall include measures on health and safety in the workplace and the prevention of risks.

In **Slovenia** health and safety training must be adjusted to the characteristics of the workplace and must be carried out according to a programme which must be, as required by circumstances, renewed and modified with regard to new forms and types of danger.

The training referred to must take place during working time and may not be at the employee's expense. The purpose of the training programmes is to enable workers to identify healthy and safe working conditions. The Health and Safety at Work Act as well as the Worker's Participation in Management Act sets out equal rights and obligations for all employees, regardless of the duration of the employment contract.

In **Spain** this provision of the Directive on training has been transposed in national legislation both at a general level, for all workers (Article 19 of Act No. 31/1995, on the Prevention of Occupational Hazards), and at a specific level, for those workers with fixed-term contracts and temporary employment relationships (Article 28 of Act nº 31/1995 on the Prevention of Occupational Hazards and Article 12 of Act nº 14/1994 on the Regulation of Temporary Work Agencies).

In **Sweden** Article 3.3 of the Work Environment Act stipulates that the employer shall make sure that the employee has received the necessary training, and has sufficient knowledge, before starting to provide his services. No information is available about the content of the necessary training mentioned above.

In the **United Kingdom** Regulation 13 (2) of the Management of Health and Safety at Work Regulations 1999 imposes a similar obligation on employers of temporary workers and users of the services of temporary work agencies, to provide their employees with adequate health and safety training.

5. USE OF WORKERS' SERVICES AND MEDICAL SURVEILLANCE OF WORKERS

According to Article 5 of Directive 91/383/EEC:

"1. Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.

2. Where Member States do not avail themselves of the option referred to in paragraph 1, they shall, without prejudice to Article 14 of Directive 89/391/EEC, take the necessary measures to ensure that workers with an employment relationship as referred to in Article 1 who are used for work which requires special medical surveillance, as defined in national legislation, are provided with appropriate special medical surveillance.

3. It shall be open to Member States to provide that the appropriate special medical surveillance referred to in paragraph 2 shall extend beyond the end of the employment relationship of the worker concerned."

At the time of the adoption of the Directive, the legislator considered that temporary workers and fixed-term workers were particularly exposed to work dangerous to health and safety. Moreover, it has been proved that a worker can be in contact with a specific environment or material at a period, and may have health problems connected to that work environment or material only years after stopping his activity. For this reason, Article 5 of the Directive gives Member States the option to prohibit works particularly dangerous, and in particular work requiring special medical surveillance. If Member States do not avail of the prohibition option, they shall provide for special medical surveillance for the workers, with the possibility to choose to extend the surveillance beyond the end of the employment relationship of the worker concerned. These provisions shall be applied without prejudice to Article 14 of the Framework Directive, which provide for a general obligation of health surveillance of workers appropriate to the specific risks incurred at their workstation.

5 Member States, *Belgium, France, Poland, Portugal and Spain*, have made use of the prohibition option, although the implementing provisions vary between national jurisdictions. It is quite common to see a prohibition of dangerous work only on temporary workers, but there are generally no limits on the use of fixed-term workers in this context. The majority of Member States, who do not use the option of prohibiting dangerous work for temporary workers and fixed-term workers, provides for a medical surveillance. Only *Portugal and Romania* did not provide clear information about the rules applicable in this respect. However, the obligation for medical surveillance provided in Member States is often general and does not concern the specific risks involved by the dangerous works and does not address the specific needs of fixed-term and temporary agency workers. According to the available information, only *Luxembourg and Austria* made use of the option to extend the medical surveillance beyond the end of the employment relationship.

Austria does not avail of the options provided for in paragraphs 1 and 3. Paragraph 2 is transposed by Article 9(5) of the ASchG, which prohibits temporary workers being assigned to activities which require fitness for work examinations or subsequent examinations, unless these examinations have been performed and the worker has not been declared unfit on health grounds. The user undertaking must ensure and be able to provide proof that these examinations have been carried out and that the worker has not been declared unfit. Under § 49 ASchG, workers, including fixed-term workers, performing activities where there is a risk of an occupational illness, and for whom a medical examination is important as a prophylactic measure in view of the specific danger to health associated with the activities, may be used only if such an examination has been completed prior to the start of the activities (suitability examination) and if such examinations are carried out at regular intervals where the activities are continued over a long period (follow-up examinations).

No provision in **Belgian** law appears to prohibit employers from assigning fixed-term workers to dangerous work as provided in Article 5(1) of the Directive. Temporary workers may not be used for three types of work: demolition and removal of asbestos, gassing activities, and removal of poisonous waste products (Article 11 of the Royal decree of 19 February 1997).

However there are regulations governing work subject to special medical surveillance which apply to all workers, irrespective of the nature of their employment contract.

No specific provision provides for an extension of medical surveillance beyond the end of the fixed-term employment relationship. Only the nature of the risk to which the employee has been exposed may require such an extension.

In **Bulgaria**, Ordinance No. 5 of 20 April 2006 provides that the medical surveillance and care stipulated in national law shall be guaranteed to temporary workers and fixed-term workers. No further information is available about the content of the national law and the implementation of Article 5.

Cyprus did not take advantage of the option provided in Article 5(1) of the Directive.

Article 5(2) of the Directive is implemented by Article 7 of the Regulations which provides that employers or self-employed persons must provide for the medical surveillance of employees with a fixed-term employment relationship or with a temporary employment relationship, on the basis of Regulations 173/2002. The article also provides that: “In any other case, the medical surveillance of the employees shall be secured by the temporary employment office provided the employees continue to be employed by it.”

There is no provision for extending medical surveillance after the end of the employment relationship, according to the option in Article 5(3) of the Directive.

The **Czech Republic** did not avail of the option referred to in Article 5(1) of the Directive. Compulsory special medical surveillance is required under Section 103(1) of the Labour Code. These provisions apply to all workers, including fixed-term and temporary workers.

Czech law does not take advantage of the option provided under Article 5(3) of the Directive.

It seems that **Denmark** did not avail of the option referred to in Article 5(1) of the Directive. Article 63 of the Working Environment Act governs special medical surveillance applicable to certain industries, occupations or groups of workers. As regards the option provided for Article 5 (3), Article 2 of the Executive order No. 1165 provides for a possibility for the

Danish working Environment authority to require health examinations to be performed before and during the employment relationship if the work concerned could involve potential health hazards.

Estonia did not take advantage of the option referred to in Article 5(1) of the Directive.

A general procedure for the medical surveillance of employees is provided in Regulation 74 of the Minister of Social Affairs' "Procedure on Medical Surveillance of Employees", adopted on 24 April 2003, as amended by regulation 26 of 28 February 2006. Additionally a number of national Regulations adopted on the basis of the Occupational Health and Safety Act provide for medical surveillance in various specific fields, including in relation to dangerous chemical or biological substances. It seems that provisions against discrimination in the ECA are sufficiently broad to be interpreted as also prohibiting discrimination against fixed-term and temporary workers in relation to the medical surveillance requirements.

Estonian law does not take advantage of the option provided for in Article 5(3) of the Directive.

Finland does not avail of the option referred to in Article 5(1) of the Directive. However, special surveillance is mandatory in Finland for certain specific tasks involving exposure to chemicals or dangerous substances. The Act on Health Care at Work (743/1978) provides for regular medical examinations in respect of work associated with specific health and safety risks. The Council of State decree 1485/2001 provides for medical examinations in jobs presenting a special risk of illness. The Finnish legislator did not seem to take advantage of the option provided for in Article 5(3).

France exercised the option referred to in article 5(1) of the Directive. Both Article L122-3 (for fixed-term contracts) and Article L124-2-3 (for agency work) prohibit using workers as referred to in Article 1 of the Directive for some "particularly dangerous work", to be identified by orders of the Ministry of Labour and the Ministry of Agriculture.

There is no rule concerning special medical surveillance of employees recruited on a fixed-term contract. They are subject to the same medical examinations and surveillance as any other employees in the undertaking. However, French law has adapted these general rules to the particular case of temporary workers. In principle, the occupational health of temporary workers is a matter for the employer, i.e. the temporary employment agency (Article L. 124-4-6 sentence 3 of the Labour Code). Depending on the size of its payroll, the temporary employment agency must either have its own independent medical service or must avail of an inter-company medical service.

Generally, all employees are subject to special medical surveillance when they are assigned either to a post associated with particular hazards because of exposure to specific occupational disease factors (performance of certain work, handling of certain products or exposure to biological agents), or to certain work involving special requirements or special risks. In either case supplementary examinations are required to enable the occupational physician to evaluate the employee's fitness for the job.

There is no particular provision entitling employees under a fixed-term employment contract or temporary workers to extended medical surveillance after the end of their employment relationship.

Germany does not avail of the options provided for in Article 5(1) and (3) of the Directive. Regarding the obligation for medical surveillance, it seems that the same rules apply to all workers. However no information is available on the content of these rules. It seems that the Occupational Medical Care Order will soon come into force in order to make health checks obligations more clear.

In **Greece** Presidential Decree 17/1996 does not exercise the option of prohibiting temporary workers from performing certain dangerous activities as provided in Article 5 (1) of the Directive. However it provides for the medical surveillance of all workers. As regards temporary workers, user undertakings are obliged – before a worker is made available to them – to specify *inter alia* the special medical surveillance required by the particular type of work (article 22(8) of Law 2956/2001).The general rules on medical surveillance seem to apply to atypical workers.

Hungary has not availed of the options provided by Article 5(1) and 5(3) of the Directive.

Decree No 33/1998 of the Minister of Welfare provides that workers with an employment relationship are subject to periodic medical surveillance. This applies to a number of categories including those exposed to the effects of physical and chemical pathogens, and those with an increased risk of accident. Following the principle of Equal treatment enshrined in national legislation, these rules apply to fixed-term and temporary workers.

In **Ireland**, Article 5 of the Directive does not seem to have been transposed into domestic law. There are no specific provisions regarding health surveillance for atypical workers. Under Section 22 of the 2005 Act, there is a general duty to ensure that health surveillance relevant to the risk identified by risk assessment is available to all employees.

In **Italy**, there does not seem to be any provision in the law which prohibits employees on a fixed-term employment or temporary contract from performing certain dangerous work as provided, as an option, in Article 5(1) of the Directive. However there is a general duty under Article 41 of Legislative Decree 81/2008 to provide health surveillance when the work exposes a worker to health risks.

Latvia did not avail of the option referred to in Article 5(1) of the Directive.

Article 15 of the Labour Protection Law provides that employers shall ensure mandatory health examinations for all employees whose state of health is affected or may be affected by work environment factors which are harmful to health, and for those employees who have special conditions at work. The Labour Protection Law has not used the option provided for under Article 5(3) of the Directive.

In **Lithuania**, there is no prohibition of dangerous work for atypical workers, as permitted under Article 5(1) of the Directive. Employees, including those with an employment relationship referred under Article 1 of the Directive, who are likely to be exposed to occupational risk, or who use dangerous carcinogenic substances during the course of their employment, must undergo a pre-entry medical examination and periodic medical examinations during the course of employment Article 265(2) of the Labour Code.

The option provided by Directive Article 5(3) has not been used.

In **Luxembourg** there is no provision in the law which prohibits employees on a fixed- term employment or temporary contract from performing certain dangerous work as provided in

Article 5(1) of the Directive. Medical surveillance, which is mandatory for all employees, includes a pre-recruitment medical examination. Medical surveillance also includes regular subsequent examinations, notably in cases of workers exposed to the risk of occupational disease. There is no specific rule which provides for extending medical surveillance beyond the end of the fixed- term employment relationship. Only the nature of the risk to which the employee has been exposed is relevant to such an extension. These medical surveillance rules apply to all workers, including temporary workers. Medical surveillance is under the responsibility of the user undertaking (Article L.321.1 to L.327.2 of the Labour code).

Malta did not avail of the option referred to in Article 5(1) of the Directive. No information is available on the transposition of article 5(3).

Under Regulation 16, a worker is entitled to health examinations, at regular intervals appropriate to the health and safety risks at work. Medical surveillance includes an obligation for the employer to conduct a risk assessment on workers' health, in order 'to protect, identify, and quantify any medical abnormality, and to protect the health of the individual' as well as the collective health in the workplace. Whenever a risk assessment reveals a potential disease or adverse health condition related to the work, then the health surveillance is mandatory.

The **Netherlands** do not avail of the option provided for in Article 5(1) and (3) of the Directive. Temporary workers are deemed to be employees of the user undertaking and are entitled to the same medical surveillance as other employees of the undertaking.

Poland exercised the option referred to in Article 5(1) of the Directive. Temporary employees may not be obliged to perform any particularly dangerous work, as defined in the provisions issued under Article 237 of the Polish Labour Code.

Regulations were adopted in 1997 concerning health and safety at work. Dangerous types of work are defined in these Regulations and the employer is obliged to provide and update the list of such particularly dangerous work being performed in the entity. The Regulations include construction work, deconstruction work, installation work and work performed in channels, inside of technical machines and other closed spaces, as types of dangerous work.

Pursuant to Article 229, paragraph 1 of the Labour Code, all workers, including fixed-term and temporary ones, are subject to periodic medical examinations. An employer cannot admit to work any worker without a valid medical certificate confirming the lack of contraindications to work at specific post (Article 229, paragraph 4).

The **Portuguese** law took advantage of the option provided in Article 5(1) of the Directive. Article 20 (3) of Act 146/99 provides that the use of temporary workers is forbidden in workplaces that are particularly dangerous for their safety and health. No information is available about any obligation concerning health surveillance of workers.

In **Romania**, Government Decision No. 577/2007 states that the employer shall ensure the funds and the conditions for the performance of all prophylactic medical services which are required for the surveillance of employees' health. No further information is available on the implementation of Article 5 of the Directive.

Slovakia did not avail of the option referred to in Article 5(1) of the Directive.

Article 5(2) of the Directive was transposed by Article §6 (1) (q) of the Act on Health and Safety. When workers are assigned to dangerous work, they should be subject to specific medical monitoring by qualified occupational medicine professionals. These provisions apply equally to all workers, including fixed-term and temporary workers. Slovakia did not take advantage of the option provided in Article 5(3) of the Directive.

Slovenia does not avail of the option referred to in Article 5.1 of the Directive.

As for complying with the requirements of Article 5(2) of the Directive, Article 35 of the Health and Safety at Work Act states that an employee may only work in a workplace or in conditions in which he or she is exposed to increased danger of injury or health impairment only after approval of the authorised medical practitioner stating the employee's ability for the work. An employer shall provide for periodic examinations in safe working practice for all employees working in workplaces where there is an increased danger of injury and health impairment, which has been established during a risk assessment. The frequency of these examinations may not be less than once every two years. Work which requires special medical surveillance is covered in more detail by the Regulation on medical surveillance of workers exposed to risks (Official Journal RS, Num. 3-86/2004). The Regulation does not distinguish between workers covered by Article 1 of the Directive and a comparable permanent worker.

Spain exercised the option referred to in Article 5(1) of the Directive. According to Article 8(1) of the Act 14/1994, potential user undertakings cannot use the services of temporary work agencies, among other cases, “to carry out activities and jobs which shall be specified by regulation as being particularly dangerous to safety and health”. Royal-Decree 216/1999 identifies those circumstances in which temporary work cannot be used on health and safety grounds. First of all, those positions in the user firm that have not undergone the appropriate process of risk evaluation were excluded; secondly, those activities included in a list set by Article 8 Royal Decree 216/1999, among which are mining activities, the construction sector, jobs which imply the use of explosives, etc.

In the situation where atypical workers are assigned to dangerous work, Article 28 of the Prevention of Workplace Hazards Act 31/1995 states that they shall be entitled to regular medical examinations under the terms set out in general rules concerning Prevention Services. These rules include Medical examinations at regular intervals for the concerned workers.

Sweden did not avail of the option referred to in Article 5(1) of the Directive. Chapter 4(5) of the Swedish Working Environment Act and the various regulations adopted by the National Labour Protection Council require special surveillance for certain specified tasks, i.e. those involving potential exposure to chemical or dangerous substances. This provision applies to all categories of workers who perform such tasks or exercise such occupations. The Swedish legislator did not avail of the option provided for in Article 5 (3).

United Kingdom did not avail of the option provided for in Article 5 (1) of the Directive. However national legislation requires employers, as well as user undertakings, to perform a risk assessment. Once the risks have been assessed, the employer must ensure that his employees are afforded appropriate health surveillance with regard to the risks to their health and safety identified by the assessment.

6. PROTECTION AND PREVENTION SERVICES

Article 6 of the Directive 91/383/EEC states that:

"Member States shall take the necessary measures to ensure that workers, services or persons designated, in accordance with Article 7 of Directive 89/391/EEC, to carry out activities related to protection from and prevention of occupational risks are informed of the assignment of workers with an employment relationship as referred to in Article 1, to the extent necessary for the workers, services or persons designated to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment."

The Framework Directive establishes through its Article 7, an obligation on employers to designate one or more workers to carry out activities related to the prevention and protection of occupational risks for the undertaking and/or establishment or, if its internal capabilities are insufficient, to enlist competent external services or persons.

Article 6 of Directive 91/383/EEC sets some special provisions applying to these services which should be informed of the assignment of atypical workers to the extent necessary to carry out their protection and prevention activities.

From the information collected at national level and the analyses carried out, the conclusion that can be drawn is that Member States often failed to fulfil the requirement of Article 6. They do not provide for the obligation to inform bodies responsible for protection and prevention of the presence of fixed-term and temporary workers in undertakings. Member States declare however that their national rules comply with the Directive provisions, but do not explain, or give the information, on how the body responsible for protection and prevention will be able to carry out its duties when necessary, without this information. This is the case for *Belgium, Bulgaria, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Portugal, Romania and Sweden.* However concerning *Belgium, Denmark, Hungary and Lithuania,* it seems that services or bodies responsible for protection and prevention can have this information if they require so.

Only the following Member States clearly provide for an obligation to inform competent bodies of the presence of atypical workers in the undertaking: *Austria, Cyprus, Finland, Germany, Luxembourg, Malta, Poland, Slovakia, Slovenia, Spain and United Kingdom*

In **Austria,** according to § 76 subparagraph 82) ASchG, employers must inform safety experts separately when workers are recruited on a fixed-term or open-ended basis or when they are temporarily hired pursuant to § 9 ASchG. Under § 81 subparagraph (2) ASchG, employers must inform occupational physicians separately when workers are recruited on a fixed-term or open-ended basis or when they are temporarily hired pursuant to § 9 ASchG.

Belgian law does not require employers to inform persons and services responsible for health and safety that they are employing workers on a fixed-term employment contract. Article 147(c) of the RGPT merely provides that a list of workers subject to special medical surveillance shall be made available to the workers' representatives of the Safety, Hygiene and improvement of workplaces committee, or if there is no such committee, to the trade union delegation, and to administrative bodies responsible for monitoring health and safety issues Pursuant to Article 5(4) of the Royal Decree, a user undertaking must keep a list of all his

temporary workers, featuring in particular their names and the posts they occupy. This does not seem to transpose adequately the Article 6 of the Directive.

As for **Bulgaria**, there is no explicit provision which appears to be in line with the requirements of Article 6 of the Directive, on a duty to inform designated persons about the assignment of fixed-tem and temporary workers.

In **Cyprus** Article 6 of the Directive was transposed by Article 8 of the Regulations, which states that an employer who hires fixed-term or temporary workers must inform employees, service providers, or persons appointed in accordance with Regulations 173/2002, who undertake activities of protection and prevention of risks, to the extent necessary so that they can suitably exercise the tasks of protection and prevention for all employees in the undertaking. These provisions appear to be in conformity with the Directive's provisions.

In the **Czech Republic**, Article 7 of Directive 89/391/EEC was transposed by Section 9 to 11 of the Occupational Health and Safety Act which regulate the prevention of occupational risks. Section 101(1) of the Labour Code provide that managers have responsibility for occupational health and safety, both prevention and protection.

There is no explicit provision about a duty to inform designated persons about the assignment of fixed-tem and temporary workers in line with the requirements of Article 6 of the Directive.

Danish law does not seem to provide for the information requirement set out in Article 6 of the Directive. According to Article 3 of Executive Order No. 575, each enterprise of more than 10 employees has to set up a Safety group which is in charge of monitoring the working environment and conducting workplace assessment. As the safety group includes safety representatives, it is supposed to be informed of the presence of new employees, including atypical workers. However there is no obligation to inform the concerned prevention and protection services.

In **Estonian** legislation, there does not seem to be any specific information requirements to protection and prevention services in relation to those with an employment relationship as referred to in Article 1 of the Directive. Article 16 of the TTOS provides for organisation, duties and training of working environment specialists; Article 17 governs the role of working environment representatives and Article 18 deals with working environment councils. However, Estonian Law does not seem to comply with the requirements of Article 6 of the Directive

In **Finland**, Section 3 of the Occupational Safety and Health Act provides that employers must inform personnel responsible for health care, as well as the workers' health and safety representative, whenever they recruit temporary workers.

In **France**, national law does not seem to contain any provision requiring the undertaking to inform the bodies, services or persons responsible for prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract, as required in Article 6 of the Directive.

In **Germany**, Article 6 of the Directive was transposed by Article 2(2) sentence 3 and Article 5(2) sentence 3 of the Safety at Work Act (Arbeitssicherheitsgesetz or ArbSiG). These amendments provide that employers must inform the occupational physicians and

occupational safety specialists whenever they recruit workers with a fixed-term employment relationship or workers assigned to them to accomplish a specific task.

The **Greek** Presidential Decree 17/96 does not seem to contain any provision on specific information of persons and services responsible for protective and preventive measures in respect of the recruitment of workers on a fixed-term or temporary employment contract.

The **Hungarian** legislation does not seem to contain specific provisions requiring the undertaking to inform the bodies, services or persons responsible for prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract as required in Article 6 of the Directive. However a work safety agent is appointed in every enterprise and has the possibility to request any information necessary for the performance of his tasks regarding safety and Health within the undertaking.

Irish Law does not seem to contain any provision requiring the undertaking to inform the bodies, services or persons responsible for prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract as required in Article 6 of the Directive.

Section 18(5)(d) of the 2005 Act provides for the appointment of health and safety "competent person" to assist employers to comply with safety and health legislation. The employer must provide the competent person with information on factors which affect or may affect the safety, health and welfare of the employees.

In **Italy,** there is a list of specific information to be provided by employers to the persons and services responsible for applying protective and preventive measures in the field of health and safety, but it does not include the information on the recruitment of workers on a fixed-term or temporary employment contract. National law does not seem to comply with the Directive's requirements in this regard.

In **Latvia**, there does not seem to be any specific requirement to inform designated persons of the assignment of employees on a fixed-term or temporary employment contract, as required in Article 6 of the Directive.

Lithuania does not seem to have adopted specific national legal provisions expressly transposing Article 6 of the Directive. It should be mentioned that the services responsible for health and safety issues within enterprises are entitled to gather information form the personnel department on the employees working in the enterprise. Under national law, all employers are required to notify the Social Security Insurance Board about each worker employed, irrespective of type of employment contract or employment relationships. However these provisions do not seem sufficient to comply with the Directive unless the Social Security insurance board would have the duty to inform Labour Inspectorate or relevant services.

In **Luxembourg**, pursuant to Article 312-3 paragraph (7) of the Labour code, "worker(s) and service(s) must be informed of the recruitment of workers on the basis of a fixed-term employment contract or workers assigned on the basis of a contract for the hiring of labour to the extent necessary for them to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment".

In **Malta**, Regulation 9 provides that the employer shall ensure that designated workers or services are informed when temporary workers are assigned so that the designated workers are able to carry out their protection and prevention duties for all affected workers.

In the **Netherlands** the Working Conditions Act does not contain any particular obligation as regards the information of persons or services about the assignment of temporary workers. In principle these workers are on the same footing as other employees in the user undertaking and so temporary workers are in theory under the responsibility of the services covered by Article 8. However, the information requirement enshrined in this article must take account of the particular risks associated with the use of temporary workers. It seems from the available information that the Netherlands did not transpose correctly Article 6 of the Directive.

As for **Poland,** the Work Safety and Hygiene service (WSH), established under Article 237 (11) of the Labour Code, should receive information on temporary workers and fixed-term workers employed by an employing establishment in order to monitor the proper application of safety and Health rules.

In **Portugal** national Law does not seem to contain provision requiring the undertaking to inform the bodies, services or persons responsible for prevention and safety of the recruitment of employees on a fixed-term or temporary employment contract as required in Article 6 of the Directive.

Portuguese law provides for the right of the protective and safety services to be informed on technical aspects of the undertaking and on accident statistics. Undertakings which employ temporary workers have a duty to inform the works committee.

As for **Romania**, there does not seem to be any specific requirement to inform designated persons of the assignment of employees on a fixed-term or temporary employment contract, as required in Article 6 of the Directive.

In the **Slovakian** Act on Health and Safety §6(6) provides that the employer must, for the sake of safety and health at work, inform the preventive and protective services in writing of the employment of employees for a fixed-term and of seconded employees.

In **Slovenia**, pursuant to Article 43 paragraph 2 of the Employment Relationships Act, the employer must inform the expert worker or expert department performing expert tasks in the area of safety and health at work when fixed-term workers or temporary workers start working in the undertaking.

In **Spain**, risk prevention services are governed by Articles 30 to 32 of the LPRL. They are responsible for information, training and medical surveillance, both in respect of fixed-term workers and employees of temporary employment agencies. In compliance with Article 6 of the Directive, Article 28(4) of the LPRL provides that: "Employers shall inform the workers responsible for prevention and protection or, where appropriate, the prevention service provided for in Article 31 of this Act, of the assignment of workers within the meaning of this article, to the extent that this is necessary for them to fulfil their duties in respect of all workers in the undertaking."

Swedish Law does not seem to contain any provision requiring the undertaking to inform the bodies, services or persons responsible for risk prevention and safety of the recruitment of

employees on a fixed-term or temporary employment contract as required in Article 6 of the Directive.

In the **United Kingdom**, Regulation 7(1) and (3) of SI 1999/3242 provides for the designation of competent persons to assist with the implementation of health and safety measures, and Regulation 7(4)(b) transposes Article 6 of the Directive. It seems that national rules oblige employers to inform these services of the assignment of temporary and fixed-term workers in their undertaking.

7. TEMPORARY EMPLOYMENT RELATIONSHIPS: INFORMATION AND RESPONSIBILITY

Article 7 of the Directive 91/383/EEC states that:

"Without prejudice to Article 3, Member States shall take the necessary steps to ensure that:

1. before workers with an employment relationship as referred to in Article 1 (2) are supplied, a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled;

2. the temporary employment business shall bring all these facts to the attention of the workers concerned.

Member States may provide that the details to be given by the user undertaking and/or establishment to the temporary employment business in accordance with point 1 of the first subparagraph shall appear in a contract of assignment."

Article 8 of the Directive 91/383/EEC states that:

"Member States shall take the necessary steps to ensure that:

1. without prejudice to the responsibility of the temporary employment business as laid down in national legislation, the user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work;

2. for the application of point 1, the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work."

Articles 7 and 8 of the Directive are specially targeted to temporary agency workers. These provisions aim to clarify responsibilities between user undertakings and temporary employment agencies. Article 7 provides for a duty to inform workers before their assignment on the occupational qualifications required and the specific features of the job to be filled. The user undertaking shall inform the temporary employment agency, who shall bring the facts to the attention of the worker. Member States may provide that the information shall appear in a contract of assignment. Article 8 states that the user undertaking shall be responsible for the condition governing performance of the work for the duration of assignment of a temporary worker.

A number of States implemented adequately the requirement of the Directive. Most of the national legislations recognise the responsibility of the user undertaking for the conditions governing performance of the work for the duration of assignment of a temporary worker. However it is still not clear in few national legislations whether user undertakings are

responsible or not. It is the case for *Bulgaria and Latvia.* The system of dual responsibility in *Finland, Portugal and United Kingdom* may lead to legal and practical difficulties as well.

The main problem in transposition is found on the duty to inform the temporary worker. In some cases, the user undertaking has to inform the worker directly. But in other Member States, although the user undertaking has to inform the temporary employment agency on the occupational qualifications required and the specific features of the job to be filled, no provision expressly obliges the agency to inform the worker before his assignment on these aspects. This is clearly an inadequate transposition of Article 7 of the Directive. Not all Member States used the option to provide for a written contract of assignment.

In **Austria**, pursuant to Article 9(3) of the *ASchG* the user undertaking is required, prior to the assignment of a worker, to inform the temporary employment agency of the occupational skills and knowledge required and the specific features of the job to be filled as well as the health requirements. Under § 9 (4) ASchG, temporary employment agencies are obliged to inform workers before their assignment of the aptitudes or specialist knowledge necessary for a job or activity. This information may be given verbally or in writing.

There does not seem to be an obligation to establish a contract of assignment as proposed in Article 7 (2) paragraph 2 of the Directive.

According to Article 9(2) of the ASchG, during the employment of temporary workers, the user undertaking is deemed to be the employer within the meaning of the legislation; hence, the occupational health and safety requirements concerning assigned workers which the ASchG imposes on the employer apply to the user undertaking. Article 8 of the Directive, on the user undertaking's general responsibility for safety, hygiene and health at work, appears to be transposed by Article 3 (1) of the ASchG, which requires the employer to ensure the protection of workers' health and safety in all work-related contexts.

In **Belgium**, the Royal Decree of 17 February 1997 requires the user undertaking to inform the temporary employment agency, before recruitment, of the occupational qualifications required and the specific features of the job to be filled, as well as the results of the risk assessment pertaining to the work to be done. This information must be provided to the temporary employment agency for each job and for each temporary worker in the context of a contract between the user undertaking and the temporary employment agency (Article 2 of the Royal Decree). If the job in question is a hazardous one, the user undertaking must indicate the nature of the physical, chemical and biological agents to which the worker is liable to be exposed, as well as other specific features of the post. If the job exposes the temporary worker to work-linked constraints, the type of constraints must be specified. However there is no available information on the duty to inform the temporary worker.

Article 5(1) of the Royal Decree of 19 February 1997 provides that the user undertaking is responsible for working conditions as regards safety and hygiene at work such that the temporary worker is afforded the same level of protection as other workers in the undertaking.

Working conditions for temporary workers are also regulated by the Collective Labour Agreement No. 36, concluded by the National Labour Council and given force of law by the Royal Decree of 9 December 1981.

As for **Bulgaria**, Ordinance No. 5 of 20 April 2006 provides for a duty to inform temporary workers on the risks to their health and safety in the workplace, but no provision seems to

specify who is responsible for giving this information as required by Article 7 of the Directive. Article 14 of the Law on health and safety at work (ZZBUT) requires employers to provide safe and healthy working conditions for all employees, including temporary workers, who are assigned in the work premises, sites or facilities of the user undertaking.

In **Cyprus**, Article 9(1) of the Regulations uses wording similar to that in Article 7(1) of the Directive. It provides that the user undertaking/establishment must specify the qualifications required for the worker and the features of the job. As for the duty of the temporary employment agency to inform the temporary worker, it seems that Article 9(2) of the Regulations transposes this provision.

There does not seem to be an obligation to establish a contract of assignment as provided in Article 7 (2) paragraph 2 of the Directive.

According to Article 10(1) of the Regulations, the user undertaking/establishment is responsible for the conditions under which the work is performed.

In **Czech Republic,** Section 308 of the Labour Code provides for a duty to establish a written agreement between the agency and the user, which should mention the necessary qualifications and health requirement to perform the work. In Section 103 (1)(f) of the Labour Code there is a duty of the agency to inform its workers about risks, the results of their evaluation, and measures taken to combat the risks.

As for the responsibility during the assignment of the temporary worker, Section 309(1) of the Labour Code states that: "occupational health and safety is provided by the user".

As for **Denmark**, Article 20 of the Order on the Performance of work requires the employer to provide the necessary health and safety instructions to workers belonging to external undertakings performing tasks in the workplace. Article 21(3) also requires the user undertaking to provide information on occupational qualifications, the risks entailed, etc. as required by Article 3, to the temporary agency, which in turn must communicate this information to the workers concerned.

According to Article 2, 1st Section of the Executive Order No. 559 of 17 June 2004, the user undertaking is responsible for the conditions governing performance of the work of temporary workers.

In **Estonia**, Section 12(6) of TTOS obliges user undertakings to inform temporary employment agencies of the risk related to the workplace for temporary workers. The temporary agency must in turn inform its workers of the risks present in the workplace and instruct them about means to avoid such risks before they commence performance of their duties. The user undertaking where the worker is assigned is responsible for the conditions governing performance of the work.

According to the available information, Article 7 of the Directive was transposed into national legislation by Section 3 **Finnish** Occupational Safety and Health Act.

As mentioned above the user undertaking as to inform the temporary employment agency of the specific features of the job and define the occupational qualifications required. The agency has then the obligation to inform the worker and has to ensure that he has adequate occupational skills and experience and that he is suitable for the work concerned.

Article 3(2) of the Protection at Work Act provides that both entities, namely the user undertaking and the temporary employment agency, are to be considered as employers insofar as the legal obligations are concerned. Hence it seems that both are responsible, in their capacity as employers, for the conditions governing the performance of work.

In **France**, pursuant to Article L. 124-3 of the Labour Code, whenever a temporary employment agency assigns an employee to a user, a specific contract between the user and the temporary employment agency must be concluded in writing no later than two working days prior to the assignment. The contract must indicate the specific features of the job to be filled and in particular, state whether it is a hazardous one. It must also identify what personal protective equipment the employee must use and, where appropriate, specify whether these are supplied by the temporary employment agency. Furthermore, under a framework agreement on occupational health signed on 28 February 1994 by the employers' organisations representing temporary employment agencies and various representative trade unions the contract must indicate: the machinery and tools used, the materials or substances handled, the working conditions and the work environment, the specific occupational hazards entailed, possible contraindications, any special medical surveillance that may be required and the identity of the user undertaking's occupational physician.

All these particulars must be communicated to the temporary worker and are contained in the temporary employment contract.

Pursuant to Article L. 124-4-6 of the Labour Code the user undertaking is responsible, for the duration of the assignment, for the conditions governing performance of the work as laid down by the laws, regulations and agreements which apply to the workplace.

In **Germany**, Article 7(1) of the Directive was transposed by Article 12(1) sentence 2 of the *AÜG*. The provision requires the user undertaking to specify, in a contract of assignment, the specific features of the work to be performed by the temporary worker and the occupational qualifications required.

Article 7(2) of the Directive was transposed by an amendment to Article 11(1), sentence 2, point 3 of the *AÜG*. The text requires the temporary employment agency to indicate, in the document to be handed to the temporary worker, the specific nature and characteristics of the task and the qualifications required. The German legislator has availed of the option provided for in the second paragraph of Article 2. Article 12(1), sentence 3 of the *AÜG* requires that a contract of assignment specify the characteristics specific to the job to be filled by the temporary worker and the occupational qualifications required.

Article 11(6), sentence 1 of the AÜG provides that the activity performed by the temporary worker at the user undertaking is subject to public law rules in the field of health and safety at work. The employer’s obligations arising from this legislation apply to the user undertaking, without prejudice to any legal obligations of the temporary employment agency.

As for **Greece**, Article 22(8) of the Statutory Law 2956/2001 regarding the Consolidation of the Working Rights of Temporary Employees, stipulates that the user undertaking must define in a contract, before the temporary worker is at its disposal, the following information: the occupational qualifications or skills required, special medical surveillance needed, particular characteristics of the job position to be covered, and the higher or specific risks related to the specific job. The temporary employment agency is legally obliged to notify this information to the workers.

According to an Athens Court of Final Instance ruling (Ruling 3390/1997), it seems that when workers are assigned to a user undertaking, the latter must protect the workers against dangers to their life and health, supervise performance of the work, eliminate dangerous work, provide guidance to workers about use of dangerous machinery and alert them to the potential hazards associated with the use of such machinery.

The **Hungarian** Labour Code states that the user undertaking (hirer) shall inform the temporary agency (lender) in writing about the occupational qualifications required and the specific features of the job to be filled. The agreement between the lender and hirer must be in writing and contain at least the following: duration of the assignment, place of the work, and feature of the work to be performed (Section 193/G Subsection 1 of the Labour Code). Beyond these the hirer must inform the lender in writing of the working conditions concerning the work to be performed and all circumstances which are essential in relation to the employment of the worker (Section 193/G Subsection 2 of the Labour Code)**.**

Section 193(H) (6) of the Labour Code obliges the temporary employment agency to inform the temporary workers in writing about the occupational qualifications required and the specific features of the job concerned. In addition the employer must always check whether the employee has the prescribed skills and authorizations for the job in question (Section 51 of Mvt.).

Under the Section 193(G) (5) of the Labour Code, the user undertaking is considered to be the employer in terms of health and safety protection of the worker and is responsible for conditions (safety, hygiene and health) of work for the duration of the assignment.

In **Ireland**, Article 7(1) of the Directive is transposed by Section 9(4)(b) of the 2005 Act which provides for an obligation to inform the temporary employment agency about the occupational skills or qualifications required for the job and the specific features of the work. The user undertaking must ensure that the temporary employment agency fulfil its obligation to bring these facts to the attention of the workers concerned, as provided for in Article 7(2).

Section 8 of the 2005 Act provides that the duties on the employer to ensure safety, health and welfare in the workplace also extend to temporary contract employees.

In **Italy**, with regard to information for temporary workers, paragraph 5 of Legislative Decree No 276/2003 stipulates that in the case of companies which dispatch temporary workers to other undertakings, "the supplier shall inform the workers of the health and safety risks in connection with production activities in general", and in the case of the undertakings which use such workers, Article 36 (1) of Legislative Decree No 81/2008 states that they must provide adequate information on the specific risks that the job may entail.

As regards working conditions, Article 3 (5) of Legislative Decree No 81/2008 provides that "all the requirements concerning prevention and protection are the responsibility of the user". The legislation requires user undertakings to apply fully health and safety provisions to temporary agency workers, in the same way as for any other worker.

As for **Latvia**, there are no specific rules governing the relations between a temporary employment agency, a temporary worker and a user undertaking. Therefore the general rules of labour law apply to the matter. Article 16 of the Labour Protection Law stipulates that if several workers hired by different employers are assigned in a single workplace, then the employers have an obligation to co-operate regarding labour protection measures by taking

into account the nature and circumstances of the work. The employers shall inform each other, their employees and representatives regarding work environment risks, as well as provide relevant instruction to employees.

In **Lithuania**, temporary work is not recognised by law as such. Article 89(1) of the Labour Code states that employers have to provide all necessary information when they recruit workers (nature of work, qualifications, etc.). However, it seems that this provision is of a general nature and does not address the specific situation where the user undertaking has to inform a temporary employment agency on working conditions of workers for health and safety purposes.

There are no specific provisions under the national legislation implementing Article 8 of the Directive. However, under the provisions of the Labour Code and Safety and Health at Work Law, it seems that it is the user undertaking which, for the duration of the assignment under the employment contract, has responsibility for the conditions governing the performance of the work, including safety, hygiene and health at work.

Luxembourg national legislation seems to have transposed adequately Article 7 and Article 8 of the Directive. There is an obligation on the user undertaking to provide information to the temporary employment agency as required by Article 7(1) of the Directive.

According to the Labour code, the user undertaking and the temporary employment agency shall conclude a written contract describing the characteristics of the job and the occupational qualifications required, no later than three working days after assignment of the temporary worker. The temporary employment agency shall bring all these facts to the attention of the workers concerned as provided in Article 7(2) of the Directive

The national legislation allocates clear responsibilities during the assignment of the worker. Article 12 of the Act of 19 May 1994 governing temporary employment and the hiring of labour provides that "for the duration of the assignment, the user undertaking is exclusively responsible for compliance with the safety, hygiene and health at work conditions and for applying to these workers the laws, regulations, and administrative and contractual rules governing working conditions and the protection of employees in the performance of their work".

In **Malta** the Directive's provisions have been transposed by Regulation 18(2) which states that an employer shall provide temporary workers with understandable information on any special qualifications or skills required for the job, any health surveillance required and the specific features of the job together with any additional specific risks. This appears to be a direct obligation to the temporary workers, rather than an obligation to inform the employment agency as provided by the Directive.

There does not seem to be any obligation to give this information through a contract of assignment.

Regulation 18 (1) transposes Article 8 of the Directive by stating that the user undertaking and, or establishment, 'shall remain responsible, for the duration of the assignment, for the conditions connected with safety, hygiene and health at work governing performance of the work.’

In the **Netherlands**, under the Working Conditions Act transposing the Directive's provisions, the user undertaking must provide information directly to the temporary worker. Furthermore, the Act of 14 May 1998 on the supply of temporary workers by agencies (*Wet allocatie arbeidskrachten door intermediairs*) requires temporary employment agencies to pass on to the temporary workers concerned any information provided by the user undertaking.

According to the Working Conditions Act (and in particular Article 6(1)(a 2) and Articles 3, 4, 5 and 8), the user undertaking is deemed to be the employer and is therefore responsible, for the duration of the assignment, for the conditions governing performance of the work.

In **Poland**, Article 7 of the Directive is transposed by Article 9 of the Act on employment of temporary workers. This provision states that before the conclusion of an employment contract between a temporary work agency and a temporary worker, the temporary work agency and the user undertaking shall agree in writing on the conditions of performance of temporary work. This agreement includes the following information: the scope of the user undertaking responsibilities concerning safety and hygiene at work and the provision of work wear and footwear and personal protective equipment, provision of courses on safety and hygiene at work, definition of circumstances and causes of accidents at work, conduction of occupational risk assessment and information about the risks.

Article 11 of the Act provides that a temporary work agency must inform a temporary worker about any agreements concluded under Articles 9 and 10 of the Act, before the contract of assignment is concluded. The information provided under Article 9 of the Act covers information on occupational qualifications required and the specific features of the job concerned.

Article 8 of the Directive is implemented by Article 14 of the Act on employment of temporary workers, which provides that the duties and obligations of an employer under the Polish Labour Code will apply to the user undertaking. The article provides that the user undertaking has the obligation to ensure the protection of health and safety at the place where work is performed.

Under **Portuguese** law user undertakings must inform the temporary employment agency of the general characteristics of the job to be filled, which must appear in a contract of assignment. There is also an obligation to inform the works committee.

According to Article 9(2) (e) of the Framework Act on Safety, Hygiene and Health at Work, the user undertaking shall give the temporary worker appropriate information on the health and safety risks and the specific features of the job to be filled.

Article 20 of the Law governing temporary employment agencies provides that during the assignment, the worker shall be subject to the hygiene, safety and occupational health conditions of the user organisation in the same conditions as other workers. Moreover, the same obligation applies under the Act on safety, hygiene and health at work. Article 8(4)(a) provides that the user undertaking, even if it is not the employer, must be considered as subject to all the health and safety obligations. However the temporary employment agency is also liable for damages in the event of an accident at work (Act No 100/97 of 13 September).

In **Romania**, according to the Government Decision No. 577/2007 and to the Law No. 53/2003 (Labour code), the temporary employment business and the user undertaking shall conclude a written contract of assignment before a temporary worker starts working.

The user undertaking shall inform the temporary employment agency on the characteristics of the job, notably on the required qualifications and the actual working conditions. The temporary employment agency concludes a written temporary employment contract with the worker, which shall contain the elements provided for by the legislation in force.

Throughout the mission, the user undertaking is responsible for ensuring the safety, health and hygiene at work of the temporary worker as required in Article 8 of the Directive.

In **Slovakia** Article 7 and Article 8 of the Directive were transposed by the Labour Code and the Health and Safety Act. According to Article 58(3) of the Labour Code, a user undertaking shall specify the working conditions in advance to the temporary employment agency, including occupational qualifications and specific features of the job to be filled and the working conditions that apply to a comparable worker.

The temporary employment agency is supposed to inform the worker concerned by means of an employment contract.

The Act on Health and Safety provides that an employer is obliged to ensure that any employee assigned within its undertaking shall receive relevant information and instructions to secure health and safety in the workplace. Under §58(4) of the Labour Code, the user undertaking to whom the employee is temporarily assigned must organise, manage and monitor his work, give him or her instructions to that end, put in place favourable working conditions and guarantee him or her safety and health protection at work equal to that provided for other employees.

As for **Slovenia**, Article 7 and Article 8 of the Directive were transposed by the Employment Relationship Act and collective agreements. According to Article 61 of the Employment Relationship Act, the temporary employment agency and the user undertaking shall conclude an agreement in writing which defines mutual rights and obligations as well as the rights and obligations of the worker. Furthermore, the user undertaking has an obligation to inform the temporary employment agency about the occupational qualifications required and a risk assessment of the job to be filled. The worker must be informed in writing about working conditions with the user undertaking as well as about the rights and obligations which are directly related to the work, before the commencement of its assignment. He should be informed both by the temporary agency and the user undertaking.

Slovenian law states that for the duration of the worker’s assignment in the user undertaking, the latter and the worker should be in conformity with the provisions of the Employment Relationships Act and of collective agreements, regarding rights and obligations related to the performance of work. Under Article 27 of Labour Protection Law, an employer, in this case the user undertaking is liable regarding the safety and health of employees at work.

In **Spain**, Article 28(5) of the *LPRL* provides that the user undertaking shall provide information on the risks entailed by each job, both to temporary workers and the temporary employment agency. This provision seems to transpose adequately Article 7 of the Directive.

Article 28(1) to (4) of the LPRL defines the employers' obligations and responsibilities between temporary employment agencies and user undertakings. Similarly Articles 14 and 15 of Act 14/1994 of 1 June 1994 regulate temporary employment agencies and lays down the occupational safety and health obligations which apply to user undertakings and temporary

employment agencies. According to these provisions the user undertaking shall be responsible for health and safety protection at work.

As for **Sweden**, under the provisions on systematic work-environment management, an employer who hires out workers is responsible for planning and following up the work carefully, e.g. as regards the choice of workplace, duties and working hours, and summarising the experience gained in an assignment. An employer hiring out workers remains responsible for them and is obliged to carry out long-term measures relating to the working environment, e.g. with regard to training and rehabilitation.

An employer using agency staff is obliged – as far as the work involved in the assignment is concerned – to follow and apply work environment legislation in the same way as he does for his own employees. This can, for example, mean informing workers about risks entailed in the work, and ensuring that they are sufficiently qualified for the work concerned.

In the **United Kingdom**, Regulation 15(3) of SI 1999/3242 transposes Article 7, and provides that the user undertaking must inform the temporary employment agency of the occupational hazards to which the temporary worker is exposed in the workplace, and the temporary employment agency must bring the facts to the attention of the workers concerned.

Section 3 of the Health and Safety at Work Act 1974 provides that the employer must organise his business in such a way that persons not employed by him who may be affected are not exposed to health and safety risks; this would seem to cover temporary workers assigned to a user undertaking, but does not appear to be an adequate transposition of the Article 8 of the Directive. It seems that in practice, in the majority of cases the responsibility would lie with the user undertaking. It is to the relevant court to establish whether, in the circumstances of a particular case, an employment relationship exists. If it does, employer duties under health and safety legislation cannot be avoided - even if the employment business is deemed to be the employer.

8. GENERAL ISSUES: ASSESSMENT OF THE PRACTICAL EFFECTS OF THE DIRECTIVE

Earlier chapters of this working paper have described how the different provisions of the Directive have been transposed and applied in Member States from a legal point of view. This chapter gives an overview of the practical effects of the Directive on the situation of fixed-term and temporary workers in Member States as regards their health and safety at work.

The present chapter is based on recent statistical evidence as well as the results of a study[11] commissioned by the Commission where the consultant collected information on the implementation from Member State authorities and from social partners.

8.1. Statistical evidence on risks

At the time of the adoption of the Directive in 1991, it was feared that the increasing numbers of workers engaged in new forms of employment such as fixed-term employment and temporary employment were, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers. Therefore the purpose of the Directive was to

[11] Study to analyse and assess the practical implementation of national legislation of safety and health at work, Council Directive 91/383/EEC of 25 June 1991, Labour associados consultores, 2007.

reduce the exposure of temporary and fixed-term workers to such risks and to ensure an equal level of protection as regards occupational health and safety in relation to other workers.

According to the Fourth European Working Conditions survey[12], temporary employment (i.e temporary agency workers and fixed-term workers) has continued to increase since the adoption of the Directive. Its share in the total EU workforce has increased by 4% between 1991 and 2005. Nowadays, workers subject to the Directive represent 14% gross of all employees; 12% are on fixed-term contracts and 2% are on temporary agency contracts. There are important differences among Member States regarding the importance of atypical workers and how they are distributed by sectors[13]. EU10 Member States have the highest proportion of fixed-term contracts which makes 17% of their workforce in average which is 10 percentage points higher than the average of the group composed by France, Germany, Belgium, Austria and Luxembourg.

In the EU27, fixed-term contracts are most common in the hotels and restaurants sector (21%), education (16%), agriculture (15%), health and the wholesale and retail trade (14% in both sectors). As for temporary agency workers, the available data show a different distribution of the workers by sector among Member States. In a first group temporary workers are most commonly found in manufacturing (Austria, France, the Netherlands and Portugal), in a second group they are to be found in the service sectors (Spain, Sweden and the UK) and in a third group the profile is more or less mixed (Belgium, Denmark, Finland and Italy).

There is evidence showing that temporary and fixed-term workers are more exposed to health and safety risks than other workers In EU 27, 41.7% of workers on temporary employment status were exposed to risks affecting physical health[14][15], in comparison to an average of 39.9% of permanent workers. It is important to mention at this stage that other aspects which characterise atypical workers, like a prevalence of young workers, their often lower level of qualification and their assignment to sectors more exposed to risks, can have as well an influence on the higher exposition to risk of this category of workers.

Analysis conducted by the Dublin Foundation corroborates this correlation between atypical forms of employment and overexposure to risk factors[16]. 51% of temporary agency workers are exposed to painful positions in comparison to 45% of workers with indefinite contracts. Similarly, 29% of temporary workers are exposed to vibrations and 35% are exposed to noise in comparison to respectively 23% and 30% of workers with indefinite contracts. These findings underline the Community Strategy 2007-2012 on the health and safety at work which notes that workers whose jobs are insecure are still overexposed to occupational risks.

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12 Fourth European Working Conditions Survey, European Foundation for the Improvement of Living and Working Conditions, 2007.

13 Ibid, p 3

14 Eurostat - Labour Force Survey 2007 ad hoc module on accidents at work and work-related health problems - preliminary results.

15 According to Eurostat methodological notes, this question concern workplace exposure to a number of mentioned factors that a person is clearly exposed to more frequently or more intensively that people experience in general day to day life. The factors related to physical well-being include: Chemicals, dust, fumes, smoke or gases; noise or vibration; difficult work postures, work movements or handling of heavy loads; risks of accidents.

16 Quality of work and employment in Europe – Issues and challenges, European Foundation for the Improvement of Living and Working Conditions, Foundation paper, N°1 February 2002, p. 9-10

At the national level, according to the data gathered, among the 13 Member States which produced figures on the rate of accidents at work for temporary workers, seven indicate an increased risk for atypical workers. As for the five other Member States it was not possible to determine from the statistics provided if there was more exposure to occupational accidents or diseases for atypical workers. According to the French national statistical office, in 2003, 12.6% of atypical workers had an accident at work, compared to 8.1% of permanent staff (including civil servants)[17]. In Spain, a study on the number of accidents at work between 1988 and 1995 showed that the rate was 2.47 times higher for temporary workers than for other workers. In 2004, the Dutch Labour Inspection examined 1700 work accidents reported in 2002, and it was found that 13% of the people involved in an accident at work with serious injuries were temporary agency workers, albeit these represent only 3% of the jobs. The same tendency applies for temporary agency workers in Germany (private sector) who are involved in 48.32 accidents per 1000 insurance cases while the general average is 37.10[18].

The seriousness of the health and safety problems borne by fixed-term and temporary workers tends to be compounded in some sectors by the particularly painful nature of the job, as it is the case with most manual workers. Higher-than-average proportions of unskilled workers hold fixed-term contracts (15%). For instance, in France, over half of temporary agency workers are exposed to manual handling of weights, in comparison to 41% of workers on fixed-term contracts and 37% of permanent workers[19].

Trade unions tend to emphasise the higher risk of occupational accidents and diseases among temporary and fixed-term workers. For instance, according to Austrian trade unions, temporary workers continue to be victims of an "extremely large number of industrial accidents". Spanish unions made the same comment showing that the rate of workplace accidents remains high in comparison to that of permanent workers and "cannot be dissociated from the temporary and precarious nature of work". Indeed the figures provided by them show that between 2004 and 2005 the number of deaths at work for temporary workers increased in Spain by 4.1% while it decreased by 8.4% among workers on permanent contract for the same period.

However, there is not a shared view about the existence of higher risks of occupational accidents and diseases for atypical workers, among the social partners. On the employers' side, some consider that the statistical evidence is too weak to support the view that there is a greater risk in the workplace for temporary workers. The statistical evidence is still largely fragmentary and this led the trade unions to complain about the lack of consistent and comparable data and to ask for the establishment of a new system of information about workplace accidents.

From a general point of view, the Community legislative 'acquis' has contributed to improve health and safety in the EU, as the number of occupational accidents has decreased for all workers over the period 1994-2004 (even more significantly for the period 2000-2004 – the rate of fatal accidents has fallen by 17% and the rate for non-fatal accidents has fallen by 20%). However, as there is no data broken down by type of contract over this period, it is not possible to measure the direct impact of the Directive on the health and safety of temporary

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17 Accidents and working conditions, DARES, 2007

18 Report on temporary agency work in the EU, European Foundation for the Improvement of Living and Working Conditions, 2007, p 12

19 Report on temporary agency work in the EU, ibid

workers. It can however be assumed that this Directive, as part of the Community 'acquis', has contributed to the overall positive evolution of the health and safety situation. Nevertheless the absolute figures remain high, and the differences between permanent workers and fixed-term and temporary workers are still important.

8.2. Assessment of the practical effect of the provisions of the Directive

8.2.1. Right to be afforded the same level of protection

As mentioned above, Article 2 of the Directive sets out the purpose of the Directive as ensuring that fixed-term and temporary workers are afforded the same level of protection as regards safety and health at work as that of other workers. It sets out as well the right of fixed-term and temporary workers not to be treated differently in respect of working conditions inasmuch as the protection of the safety and health at work are involved, especially as regards access to personal protective equipment on the grounds of the nature of their contract.

To comply with the Directive, most of the Member States adopted provisions declaring that their health and safety legislation would apply to all workers regardless of the nature of their contract. Therefore, temporary and fixed-term workers are afforded the same rights as the other workers.

When looking at the practical implementation of the Directive in Member States, it seems that this legal solution in transposing measures is not always sufficient to afford workers the same level of protection regarding health and safety.

As we saw above, despite somewhat fragmentary statistical evidence, there are indications that temporary workers and fixed-term workers still continue to be more exposed to the risk of accidents at work and occupational diseases than other workers and therefore, do not benefit from equal protection in practice.

Both sides of industry were asked in every Member State about their perception of whether the equal protection principle applied in their country. Replies were received from twelve Member States, and in six, both trade unions and employers' representatives considered that the principle applied in practice in their country, at least for fixed-term workers. In the other six Members States, even if the principle of equal treatment have been introduced in national law, social partners still consider atypical workers as more exposed to risks. One of the reasons given is the fact that they are assigned more often to dangerous workplaces than other workers. As regards temporary agency workers, the social partners from eight Member States agreed that such workers did not benefit from the same level of protection as other workers and were more likely to be exposed to risks in the workplace. No concern was raised in the other four Member States.

In six Member States, social partners considered that the implementing legislation of the Directive at national level had positive effects in this respect. However, trade unions considered that the Directive's model of protection is not adapted to different forms of contracts and subcontracts, as in the construction sector for instance.

8.2.2. Information and training for temporary and fixed-term workers

One of the main issues regarding health and safety of atypical workers is their inadequate integration in the undertaking for which they are performing tasks. This is connected to their status, as they often change their place of work. Indeed a high percentage of newly-hired staff

work under atypical forms of employment. Only 40% of workers who have been in a undertaking for less than one year hold an indefinite-term contract; almost 45% are hired under an atypical form of employment and 15% hold no contract at all [20]. Another factor is young age, with the under-25s making up between 20% and 50% of all the agency workers in the various Member States. For these reasons the Directive provided for an obligation to give information and training to these workers on the risks that they may incur and to assist them in adapting more quickly to the new work place.

As regards fixed-term workers, national reports suggest that there is no major problem regarding their right to information at work. They generally receive the same information as other workers and are well informed on the different aspects of the work regarding health and safety.

In contrast, in many Member States, temporary workers often are not given sufficient information about the special occupational qualifications or special medical surveillance required or about any increased specific risks that the job may entail. The user company often does not inform properly the temporary employment agency as required by the national transposing measures of the Directive. The assignment frequently has to be filled urgently and there is no time for providing the compulsory information to the worker. According to the European survey above mentioned, 19% of atypical workers consider that they lack information about workplace risks as well as about the need to wear personal protective equipment, compared to 14% among employees with indefinite-term contracts.

There is in some Member States an obligation to provide a written contract, but this obligation can be bypassed by temporary agencies by using standard contracts or pro formas with the same content for all workers but without the relevant information. Sometimes the given information is inadequate, as it does not take into account the qualification or the specific characteristics of the worker. This occurs in particular for migrant workers whose command of the national language may be inadequate and therefore do not fully understand the information.

Major problems with information given to temporary workers were raised in nine Member States. Only in four the information addressing temporary workers seems to have been transmitted appropriately.

Trade unions complain about the lack of information to temporary workers about the nature of their assignment and the risks they may be faced with. They consider that written information, including workplace risk assessments, should to be given to workers. According to the unions, efforts should be made in order to develop an improved culture of accident prevention in undertakings and to increase the number of labour inspectors.

8.2.3. Medical surveillance of workers and prohibition of dangerous work

While no major problem is raised regarding fixed-term workers there are concerns about the quality of medical surveillance provided to temporary workers. They often do not benefit from the medical checks imposed by national legislation for different reasons: incomplete availability of external services; shortage of occupational doctors in external services; employment periods that are too short to grant access to health surveillance; lack of

[20] Fourth European Working Conditions Survey, European Foundation for the Improvement of Living and Working Conditions, 2007, p 9

information on the necessity to follow-up health checks. There are also difficulties when temporary workers leave the job market and are not followed up. It is not always clear who should provide the heath check to temporary workers - the user undertaking or the temporary employment agency.

The Framework Directive provides in Article 7 that employers are obliged to designate one or more workers to carry out activities related to the prevention and protection of occupational risks for the undertaking and/or establishment or, if its internal capabilities are insufficient, to enlist competent external services or persons. To supplement this provision, Article 6 of Directive 91/383/EEC sets some special provisions applying to these services which should be informed of the assignment of atypical workers to the extent necessary to carry out their protection and prevention activities.

As mentioned before, many Member States did not implement this provision in their legal order. And where it is implemented it appears that fixed-term and temporary workers do not benefit in practice of the support of the designated persons or services. One of the consequences is that these workers may not be properly informed about the risks in the undertaking and are not given the means to be protected against these risks. Therefore they are more likely to be exposed to risks. The other consequence is that when an accident occurs, the designated person or service may not be able to take the necessary measures to protect and support the workers if they are not aware of their presence in the undertaking.

Very few Member States made use of the option in Article 5 (1) of the Directive to forbid dangerous work for fixed-term and temporary workers. In such cases, such prohibition is contested by employers' representatives. They claim that no data or information is available to indicate if this measure has decreased the accident rate among temporary workers. Spanish employers consider that "there are no grounds for continuing to exclude temporary [workers] from performing particular types of work", since "such workers have not been exposed to greater risks or suffered more accidents at work or occupational illnesses than other workers". Moreover, they claim that a majority of temporary employment agencies would have the same standards of health and safety protection for their employees as the major companies hiring permanent staff.

8.2.4. Responsibility in Temporary Employment relationships

The Directive provides that for the duration of the assignment, the user undertaking is responsible for the conditions governing performance of the work connected with safety, hygiene and health at work. Many Member States have declared that this provision has been correctly transposed but it seems that in practice some problems still arise. At least in seven Member States it is not always clear for the worker who should take the responsibility for health and safety conditions. For three other Member States responsibilities are clearly attributed to the user undertaking.

8.2.5. Implementation and enforcement

Efforts to disseminate information about the provisions of the Directive are reported in nine Member States. It seems that the information given by public bodies in Member States are of a general nature without focusing on temporary and fixed-term workers. Most of the Member States published brochures and leaflets on health and safety at work for all workers including atypical workers. It is reported that the main information activities targeted on the provisions of the Directive are conducted by trade unions or other social partners. Employers

associations organise for instance workshops for their members and for human resource services to raise awareness about this issue. No specific dissemination action towards SMEs was reported.

Monitoring and enforcement actions or mechanisms were reported by ten Member States. The enforcement of the Directive is the responsibility of labour inspectorates or other specialised bodies in most of the Member States.

For a majority of Member States, concerns were raised regarding enforcement. The main concern is that there is no specific action focusing on temporary workers and fixed-term workers. Only two Member States seem to target these workers when carrying out inspections in establishments. Additional problems are identified, including the lack of training of inspectors on the provisions of the Directive and the lack of sufficient staff and resources to conduct inspections.

8.3. Assessment of the potential administrative burdens

When assessing the practical effects of the Directive, it is appropriate to analyse the Directive in the context of the Action Programme for Reducing Administrative Burdens in the European Union[21], in order to determine whether its implementation requires an excessive amount of information from the companies, which could be regarded as an administrative burden.

Directive 91/383 imposes two obligations on businesses to provide information to public authorities or private parties. Firstly, according to Article 6 of the Directive, businesses shall ensure that workers, services or persons designated and responsible for activities related to protection from and prevention of occupational risks are informed of the assignment of atypical workers to the extent necessary for them to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment. This provision gives enough flexibility to companies to implement it. The competent body to be informed is determined by the Framework Directive 89/391/EC. These bodies could not perform their duties if they were not informed of the presence of the workers in the company. The obligation to inform them is therefore necessary for the compliance with the obligations laid down in Article 7 of Framework Directive 89/391/EC.

No Member State has reported excessive administrative burden on businesses created by this provision. The social partners themselves did not mention any particular concern in this respect.

Secondly, according to Article 7 "a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled". The user undertaking is best placed to know the risks involved at the work place, and is directly responsible for the health and safety of workers during the performance of the work. It is therefore consistent with the objectives of the

[21] Communication from the Commission on an *Action Programme for Reducing Administrative Burdens in the European Union*, COM (2007)23 final, 23.01.2007. This Action Programme aims to suppress unnecessary administrative burdens on companies when applying Community law. Administrative costs are defined as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Administrative burdens are the administrative costs for collection of information that would not be done by businesses without the EC legal provisions.

Directive, that the workers are informed of the dangers of the work place to which they are assigned before they start working. No Member States or social partners have raised the issue of an excessive administrative burden on businesses caused by this obligation.