

Proposal for a fairer Directive on Temporary Agency Work

3F calls for a revision of the Directive on temporary agency work (2008/104/EF) to improve working conditions and equal treatment for temporary agency workers and other temporary workers.

The Directive on temporary agency work is now more than a decade old, but there are still many temporary agency workers who have significantly poorer working conditions compared to their colleagues with permanent employment. Similarly, permanently employed workers are challenged by the more flexible and often cheaper labour of temporary agency workers and hired labour.

Based on more than a decade experience with the current Directive, 3F's proposes the following elements of revision:

1. **Balancing the two purposes of the Directive**

In an updated Directive, the balance between the two purposes of 1) protecting temporary agency workers by ensuring equal treatment and 2) developing flexible forms of work for companies, must be clearer to enable a realisation of the European Commissions' aim to ensure decent work for all.

- 3F calls for a stronger clarification of the equal nature of the two purposes of the Directive, preferably with a priority on the first purpose. The aim is to ensure that the Directive cannot be used, either in national implementation or in rulings by the European Court of Justice, to emphasise flexibility and the conditions of companies more strongly than the conditions of the workers.

2. **Clarity on the temporary agency workers' rights**

The scope of the Directive is currently too narrow to include the aspect of collective agreements' range and protection. The unclear concepts in the Directive such as "remuneration" and "employment contract" spill over to the national implementation. This is problematic since the unclear concepts may lead to the disadvantage of the temporary workers compared to permanently employed colleagues. This happens despite that the core regulatory principle of the Directive is equal treatment of temporary agency workers.

- 3F calls for a statement in the directive that "in cases where a collective agreement applies at the user undertaking, the entire collective agreement apply".

3. **Prevention of unreasonably lengthy and prolonged temporary work¹**

Too often companies hire temporary workers from temporary-work agencies for long-term projects, rather than employing the workers directly and permanently at the company. This allows companies to circumvent their obligations as employers. These circumvented obligations include the user undertaking's collective agreement, notice periods, sick pay and obligations towards particularly vulnerable workers.

- 3F calls for a clarification of the length of the employment relationship for temporary agency workers in the user undertaking (both in the public and the private sector). In this context, the verification of the existence of a genuine employment relationship of indefinite duration should be easier for authorities and trade unions to control.

¹ Temporary assignments must be genuinely temporary, as ruled by the European Court of Justice in C-681/18. The ruling stresses, that it must be possible to check whether it is a permanent employment relationship or if the employment relationship is maintained artificially by means of consecutive contracts for temporary work.

4. Increasing temporary agency workers' opportunities for permanent employment

User undertakings benefit from the fact that the temporary work-agencies are responsible for the temporary worker's recruitment and related administrative tasks. This outsourcing of management responsibilities removes the incentive for transition to employing directly and permanently at the user undertaking. Further, it is problematic that the Directive does not prevent a company from dismissing its permanently employed workers and employing temporary agency workers to do the same work.

- 3F suggests that in case of a reduction of the workforce at the workplace, it should not be possible, within an agreed period, to reorganise by using temporary agency workers.
- 3F suggests that before user undertakings initiate external vacancies for permanent contracts, the position should be offered to the temporary agency workers already employed at the user undertaking. In this way, the company's flexibility is maintained while the temporary agency workers connection to the company is improved.

5. Transparency and the right to information

In several Member States, trade unions have a key role to play in the enforcement of collective agreements and labour law. It is therefore essential that trade unions have access to information on an equal footing with public authorities. In 3F's experience in cases of temporary work-agencies that exclusively recruit foreign workers, it is particularly challenging to gain insight.

- 3F calls for a revision of the Directive to include new articles on the right to information both for public authorities and for trade unions, where they have an enforcement role.
- 3F suggests national certification of temporary work-agencies that wish to operate on the Single Market, including registration in a new European register linked to the European Labour Authority.

6. Accountability in cases of circumvention

To be able to ensure that temporary agency workers have the protection provided for by the Directive, a revision of the Directive needs to address circumvention. A well-known circumvention is through de facto temporary agency-work via hiring out of labour via enterprise models. To tackle this issue, trade unions must have the opportunity to address this.

- 3F calls for the introduction of a presumption rule, whereby it is up to the company to prove, through a reversed burden of proof, that a business relationship actually exists. In the event of circumvention through de facto temporary agency-work via an enterprise, the user undertaking must be held legally responsible as the employer.
- 3F calls for the hiring-out of labour to be included in the Directive, under the same conditions, without distinction, as temporary agency workers, to create clarity and possibilities for enforcement.

7. Increase the user companies' responsibility for decent work

A revision of the Directive must strengthen decent working conditions and equal treatment for temporary agency workers and other temporary workers. 3F experiences that user undertakings are not sufficiently obliged to comply with basic employer responsibilities under the current Directive. Also, it is currently not clear that the collective agreement in force at the user undertaking must be followed, and that the user undertaking is responsible for the conditions given to temporary workers.

- 3F proposes that the obligations of the user undertaking should be clarified in the Directive.
- 3F calls for user undertaking to have an increased responsibility to comply with basic pay and working conditions.

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