



15 July 2013

1. On the basis of the experience gained since the Directive became fully applicable in December 2011, do you consider that the Directive has achieved its social policy goals as set out in Article 2?

BUSINESSEUROPE is of the opinion that the Directive has not fully achieved its social policy goals.

One of the purposes of the Directive is to *ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment is applied to temporary agency workers as set out in Article 5*. According to our assessment this objective has been fulfilled.

Another aim of the Directive set out in Article 2 is to create *a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working*. This aim is further reflected in Recital 18 and in Article 4 which bans all prohibitions and restrictions on the use of temporary agency work except those that are justified on the grounds mentioned in the article.

However, the implementation of Article 4 has not delivered expected results. Unjustified barriers to the use of agency work still exist, hindering the achievement of the above mentioned objective set out in Article 2. In particular:

- Bulgaria - Bulgarian legislation transposing the Directive includes several restrictions which may be unjustified, e.g. quotas.
- Czech Republic - there exists several restrictions and prohibitions in law, which seem unjustified. In particular, temporary agencies cannot employ third country nationals, nor people with disability.
- Finland - about 100 collective agreements include provisions restricting or prohibiting the use of temporary agency work (e.g. some CLA restrict the use of temporary agency workers to peak periods only; paper industry's CLA prohibits the use of temporary agency work in any tasks that are part of the production process). Employers have sought to lift restrictions and prohibitions which seem unjustified according to the Directive, but have not been successful in any sectors. On the contrary, the number of restrictions seems to have grown in the recent years.
- The Netherlands – Dutch legislation transposing the Directive does not include a provision transposing Article 4.1. According to Article 4.3 the cross-sectoral social partners have asked the sectoral social partners engaged in collective bargaining to reconsider whether existing prohibitions or restrictions can be justified and, if not, to lift these obstacles. Moreover, they are asked to report about this review process to the national level. The results of this exercise are still disappointing.
- Spain – unjustified restrictions remain in place primarily regarding the use of agency work in the public sector. These restrictions result from a lack of adequate regulations implementing public procurement and budgetary legislation. CLAs in various sectors also contain unjustified restrictions on the use of agency work.
- Sweden – Swedish legislation transposing the Directive does not include any provisions transposing Article 4.1. A number of restrictions exist in CLAs and



Swedish law, some of which are unjustified. These include legislation with the possibility of employees' organisation to veto the use of temporary work agency and agreements containing statutory "waiting period" of six months during which an agency worker may not be assigned to the company at which (s)he has been directly employed before. The implementation of the Directive has also made it more difficult for temporary work agencies from other EU-states to post workers in Sweden.

- Portugal – a number of restrictions exist in law, including on the reasons for use and the maximum length of assignments, which seem unjustified.
- Germany – the user undertaking can be liable in addition to a temporary work agency for social security contributions, contributions to accident insurance and the transfer of income tax. This negatively affects the use of temporary agency work.

Moreover, our Irish member regrets that Ireland did not use the derogations permitted by Article 5.4 of the Directive. This limited to some extent the contribution of agency work to job creation, especially in case of short-term assignments, due to high compliance costs.

2. Do you consider that any provision of the Directive needs clarification or review? If yes, which provisions and what are the problems encountered?

BUSINESSEUROPE considers that the Directive does not need a revision.

What is now needed is proper implementation of Article 4 in those Member States where there are unjustified barriers to the use of agency work. The Commission should pay particular attention to this issue when drafting the implementation report. BUSINESSEUROPE would appreciate if the report outlines how the Commission intends to proceed to ensure Article 4 is properly implemented.

We believe that it could be helpful if the Commission issue an interpretative communication to: a) further underline that article 4.1 forbids Member States to have in place restrictions and prohibitions which are not justified on grounds of general interests, relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented; and b) assess on this basis the implementation of Article 4 in Member States to date.

Country-specific recommendations should also be used to encourage Member States to remove unjustified barriers on temporary agency work.

Finally, the Commission should consider using the instrument of infringement procedures in case the abovementioned measures do not result in the lifting of unjustified restrictions.

3. Do you find that the substantive provisions of the Directive entail significant costs or obstacles for temporary-work agencies, or user undertakings? Have those costs been assessed in your Member State / by your organisation?



Main obstacles for users and temporary work agencies result from poor or non-implementation of Article 4 of the Directive, as outlined above. It is not possible to assess the financial costs of non-compliance with Article 4, but the social costs are considerable given its consequences for job growth and flexibility in the labour markets.

In some countries, e.g. in Ireland, substantive provisions of the Directive entailed substantial compliance costs for employers. Prior to the transposition of the Directive, many agency workers received basic working and employment conditions which were lower than the conditions received by direct employees, especially in the public sector. These costs are borne by temporary work agencies in the first instance and have been passed on to user undertakings.

We have also received information about the rising administrative costs for temporary work agencies in Czech Republic (e.g. costs of licence, obligatory insurance against bankruptcy). These costs do not result from the substantive provisions of the Directive, but they may hinder the attainment of one of the goals of the Directive which is to create a suitable framework for the use of temporary agency work.

4. Is there any information available in relation to the costs borne by small and medium-sized enterprises and/or micro-enterprises?

BUSINESSEUROPE members have no such information.