



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

UEAPME reply on the Commission services draft working document

Report by the Commission services on the implementation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

UEAPME has carefully read the draft report elaborated by the European Commission on the implementation of the directive concerning the framework agreement on fixed term work.

Generally speaking it seems that the directive has been correctly transposed by each of the 15 Member States so far, whereas there is yet no information available on the 10 new Member States in the report.

The report does not call for many comments from part of UEAPME.

As stated in the report one of the main changes for many Member States with already existing legislation in this area, was the introduction of the principle of non-discrimination, one of the key objectives of the social partners' agreement.

Another important element is the fact that the directive was exclusively transposed through the legislative route (new legislation or amended legislation) and not through collective agreements, in order to have an universal application.

Specific comments:

The transposition of the directive in the various member States seems to be correctly reported, with some minor exceptions.

- Concerning Austria, the report mentioned under point 3.7.11, that the AVRAG (Arbeitsvertragsrechtsanpassungsgesetz) does not make any distinction between fixed-term workers and permanent workers in calculation of threshold for the representation of workers.
In order to be perfectly accurate, we would like to precise that this specification is not part of the AVRAG but the ArbVG (Arbeitsverfassungsgesetz).
- Concerning Germany, under point 3.5.3, the Commission reports that:

“According to Article 14 (3) *TzBfG* an objective reason is not required for fixed-term contracts when the worker has reached the age of 58. Such a fixed-term contract may however not be concluded if there is a close objective link between a preceding open-ended contract and the fixed-term, in particular when the period ranging between these two contracts is shorter than six months. This age limit has later been temporarily lowered to 52 years (by the legislation adopted on 23 December 2002).

Following the recent judgment of the European Court of Justice, this should be actualised.

According to the ECJ judgment of 22. November 2005 in case *Mangold./Helm* (C-144/04), the age lowering to 52 years to conclude a fixed term contract without objective reason, constitutes an infringement to the European law, in particular to Article 13 and the non-discrimination directives.

Therefore, the German government announced a change of this regulation very soon.

- Concerning Italy, the report mentioned under point 3.7.8 that Article 8 of the Decree of 2001 provides that fixed term contracts longer than six months shall be taken into account when calculating the threshold for the constitution of the worker’s representation bodies. In order to be perfectly accurate we would like to precise that provisions under Article 8 of the Decree of 2001 concern fixed term contracts longer than nine months, and not six months.

12/01/06