

Directive 2008/104/EC of the European Parliament and of  
the Council of 19 November 2008 on temporary agency work

CHAPTER I

**GENERAL PROVISIONS**

*Article 1*

**Scope**

- 1 This Directive applies to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.
- 2 This Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.
- 3 Member States may, after consulting the social partners, provide that this Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.

*Article 2*

**Aim**

The purpose of this 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, as set out in Article 5, is applied to temporary agency workers, and by recognising temporary-work agencies as employers, while taking into account the need to establish 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.

*Article 3*

**Definitions**

- 1 For the purposes of this Directive:
  - a ‘worker’ means any person who, in the Member State concerned, is protected as a worker under national employment law;
  - b ‘temporary-work agency’ means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;
  - c ‘temporary agency worker’ means a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction;

- d 'user undertaking' means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily;
- e 'assignment' means the period during which the temporary agency worker is placed at the user undertaking to work temporarily under its supervision and direction;
- f 'basic working and employment conditions' means working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:
  - (i) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;
  - (ii) pay.

2 This Directive shall be without prejudice to national law as regards the definition of pay, contract of employment, employment relationship or worker.

Member States shall not exclude from the scope of this Directive workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary-work agency.

#### *Article 4*

#### **Review of restrictions or prohibitions**

1 Prohibitions or restrictions on the use of temporary agency work shall be justified only on grounds of general interest 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.

2 By 5 December 2011, Member States shall, after consulting the social partners in accordance with national legislation, collective agreements and practices, review any restrictions or prohibitions on the use of temporary agency work in order to verify whether they are justified on the grounds mentioned in paragraph 1.

3 If such restrictions or prohibitions are laid down by collective agreements, the review referred to in paragraph 2 may be carried out by the social partners who have negotiated the relevant agreement.

4 Paragraphs 1, 2 and 3 shall be without prejudice to national requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies.

5 The Member States shall inform the Commission of the results of the review referred to in paragraphs 2 and 3 by 5 December 2011.