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REPORT 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

(Council Directive 91/383/EEC of 25 June 1991)

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I. INTRODUCTION

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 was adopted by the Council of the European Communities on 25 June 1991[1]

Pursuant to Article 10(1) Member States must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. Member States must inform the Commission of the measures taken to implement the Directive.

This Directive is based on 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.

Research has shown that in general workers with a fixed-duration employment relationship or temporary employment relationship are, in certain sectors, more exposed to the risk of accidents at work and occupational diseases than other workers.

These additional risks in certain sectors are in part linked to certain particular modes of integrating new workers into the undertaking. These risks can be reduced through adequate provision of information and training from the beginning of employment.

This Directive takes into account the specific situation of workers with a fixed-duration employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors, justifying 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-duration employment relationship or a 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, especially as regards access to personal protective equipment.

The national legislation transposing Directive 91/383/EEC, as communicated by the Member States, is as follows:

GERMANY

Provisions transposing Directive 91/383/EEC were adopted in the form of the Act of 7 August 1996, which came into force on 21 August 1996 (*ArbSchG*). The obligatory reference to Directive 91/383/EEC accompanied these provisions on the occasion of their official publication. Certain provisions of the Directive were transposed by an amendment to the *Arbeitnehmerüberlassungsgesetz (AÜG).*

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[1] OJ L 206, page 10, 29.7.1991.

AUSTRIA

Directive 91/383/EEC was incorporated into Austrian law through the Act of 1 January 1995 (*ASchG*).

BELGIUM

The Directive was incorporated into Belgian domestic law through the Act of 3 July 1978 (fixed-duration employment contracts), the Act of 24 July 1987, Collective Agreement No 36 (on the division of responsibilities relating to hygiene and safety in the context of a triangular employment relationship), the Royal Decree of 19 February 1997 (laying down measures concerning the occupational health of temporary workers), Collective Agreement No 38 of 6 December 1983 (on the recruitment and selection of workers), and the provisions of Section III, Title I, Chapter III of the Wellbeing at Work Code (on information concerning workstation risks).

DENMARK

The Directive was transposed by health and safety at work legislation (consolidated as the Working Environment Act of 1977, amended in June 1998) concerning the mutual obligations of the user establishment and the labour supply establishment towards the workers supplied.

SPAIN

Provisions transposing Directive 91/383/EEC were adopted in the form of Act 31/1995 of 8 November 1995 on the prevention of occupational risks (*LPRL*), Act 14/1994 of 1 June 1994 on temporary employment businesses, Royal Decree 4/1995 of 13 January 1995, Royal Decree 216/1999 of 5 January 1999, and Act 29/1999 of 16 July 1999 amending Act 14/1994.

FINLAND

The national provisions transposing Directive 91/383/EEC are the Act on Protection at Work (1958/299), amended in 1994 and supplemented by Act 1997/782 on the responsibility of the user undertaking, and Ministerial Decree 1997/782 on the obligations of users and suppliers of labour as regards information for workers.

FRANCE

Essentially, the Directive was incorporated into French law by Articles L-122-3-1, 124-4-6, indents 5 and 6, 231-3-1, indent 5, and 231-8, indent 3 of the Labour Code, the Decree of 8 October 1990, and the Decree of 27 June 1991 (ban on assigning temporary workers to certain jobs).

GREECE

Directive 91/383/EEC was transposed into Greek law by Presidential Decree No 17 of 18 January 1996 on measures to improve the health and safety of workers at work in compliance with Directives 89/391/EEC and 91/383/EEC.

IRELAND

Directive 91/383/EEC was transposed by SI 44/1993, the Safety, Health and Welfare at Work (General Application) Regulations 1993.

ITALY

Directive 91/383/EEC was incorporated into Italian domestic law by Legislative Decree 626 of 19 September 1994, which also transposes the Framework Directive 89/391/EEC, and Act 196 of 24 June 1997 which legalises temporary employment contracts.

LUXEMBOURG

In the Grand-Duchy of 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, and the Act of 19 May 1994 regulating temporary employment and the hiring out of labour.

NETHERLANDS

The Directive was partly transposed into Netherlands law by the *Arbeitsomstandighedenwet* of 22 December 1993, which was replaced by the *Arbeitsomstandighedenwet* of 1994, and partly by the *Wet allocatie arbeidskrachten door intermediairs* of 14 May 1998.

PORTUGAL

Portuguese law does not contain any regulatory text which directly transposes Directive 91/383/EEC. The Directive was transposed indirectly by the Framework Act on safety, hygiene and health at work, the Act on the expiry of employment contracts and fixed-duration contracts, and the Act on temporary employment.

UNITED KINGDOM

The basic statute governing health and safety at work in the United Kingdom is the Health and Safety at Work (HSW) Act 1974. The essential content of Directive 91/383/EEC was transposed by a regulatory instrument, SI 1999/3242, the Management of Health and Safety at Work (MHSW) Regulations 1999, which also transpose the Framework Health and Safety Directive 89/391/EEC.

Various aspects of Directive 91/383/EEC have been transposed through other regulations, notably:

– SI 1992/3004 The Workplace (Health, Safety and Welfare) Regulations 1992

– SI 1992/2932 The Provision and Use of Work Equipment Regulations 1992

– SI 1992/2966 The Personal Protective Equipment at Work Regulations 1992

– SI 1992/2793 The Manual Handling Operations Regulations 1992

– SI 1992/2792 The Health and Safety (Display Screen Equipment) Regulations 1992.

SWEDEN

The Directive was indirectly transposed into Swedish law in the basic legislation on health and safety at work, namely the "Work Environment Act" (1977:1160), which applies to all types of employment relationships including fixed-duration employment relationships. It was also transposed by Act 1994:79, which makes the user undertaking responsible for the health and safety of temporary workers and amends Act 1993:440 on private employment agencies and the recruitment of temporary labour.

II. TRANSPOSITION OF DIRECTIVE 91/383/EEC BY THE MEMBERS

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.

GERMANY

The *ArbSchG*, as defined in Article 1, covers all workers in all fields of activity, i.e. both the private sector and public services. Article 1(2), sentence 2 excludes persons working on seagoing vessels and undertakings subject to the Federal Mining Act (*Bundesberggesetz*). However this derogation is acceptable because it kicks in only where other appropriate provisions exist. Article 1(2), sentence 1, exempts another category (domestic workers working for private households).

As regards temporary employment, the *ArbSchG* applies to all workers, hence including temporary workers. Besides, the particular situation of these workers is taken into account in certain provisions of the AÜG.

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-duration contract of employment.

Workers assigned to third parties to work for them and under their control are also workers within the meaning of the *ASchG*, as is clear from Article 9(1) in conjunction with Article 2(1) of the act.

In accordance with Article 9(1) of the *ASchG*, the following terms correspond to those used in Article 1(2) of the Directive:

The term *Überlasser* (labour supplier) corresponds to the term *Leiharbeitsunternehmen* (temporary employment business). The term *Beschäftiger* (user) corresponds to the term *entleihenden Unternehmen und/oder der entleihenden Einrichtung* (undertaking and/or establishment making use of his services). The *Arbeitgeber* (employer) within the meaning of Article 9(2) *ASchG* corresponds to the "undertaking and/or establishment making use of his services".

BELGIUM

Belgian law provides for fixed-duration contracts of employment terminating on a specific date and contracts for the performance of "a clearly defined task" (Act of 3 July 1978). But the law does not contain any provision to the effect that a fixed-duration contract of employment has specific implications for health and safety at work. The legal provisions and regulations apply to all employees across the board irrespective of the duration of the contract binding them to the employer.

However, Belgian law does contain specific rules concerning temporary workers. Initially the law did not treat this category of workers as workers exposed to greater risk. The main concern was to assign health and safety responsibilities in the context of a triangular employment relationship (Article 19 of the Act of 24 July 1998 and Article 16 of Collective Agreement No 36, which acquired force of law with the adoption of the Royal Decree of 9 December 1991). But with the adoption of the Royal Decree of 19 February 1997 laying down measures concerning the occupational health of temporary workers, Belgian law recognised and specifically addressed the occupational hazards associated with this particular form of employment.

The Directive's provisions on worker protection are very wide-ranging. In Belgian law, only domestic help and other household staff are excluded.

DENMARK

In Danish law it is the user of the temporary worker who is responsible for compliance with the health and safety at work requirements. These requirements are also binding on any establishment that uses labour which it has recruited itself or has been assigned to it by another establishment (Article 21 of Ministerial Order 867/1994).

SPAIN

Spanish law correctly transposes 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).

FINLAND

In Finnish legislation all categories of workers are covered, irrespective of whether they are on a fixed duration employment relationship, a temporary employment relationship or have been assigned to the user to work under his authority.

FRANCE

The existence of a fixed-duration contract triggers the application of particular health and safety at work measures, both in the laws and regulations and in the law developed on the basis of collective agreements.

The existence of a temporary employment contract triggers the application of particular safety and health at work measures.

Both employees recruited by temporary employment businesses and assigned to the user undertaking and employees on a fixed-duration employment contract are considered as employees exposed to additional risks and specific prevention measures apply to them.

GREECE

Article 2(1) of Presidential Decree 17/1996 defines a worker, for the purposes of applying Directive 91/383/EEC as "any person employed by an employer under any employment relationship, including trainees and apprentices, except for domestic staff".

IRELAND

Irish law correctly transposes Article 1 of the Directive.

ITALY

Generally, the scope of Legislative Decree 626/1994 is broad enough and even affords protection to "atypical" workers who do not have a stable full-time job or fixed-duration employment contract, only domestic and family help being excluded.

LUXEMBOURG

The existence of a fixed-duration employment contract or a temporary employment contract triggers the application of special safety and health at work measures. Thus workers recruited under a fixed-duration employment contract or workers recruited by temporary employment businesses to be assigned to a user enterprise are also considered as workers exposed to additional risks and are the subject of specific prevention measures.

NETHERLANDS

The scope of the 1998 Working Conditions Act covers the employment relationships defined in Article 1(1) of the Directive.

PORTUGAL

Portuguese law correctly transposes Article 1 of the Directive.

UNITED KINGDOM

UK law correctly transposes Article 1 of the Directive.

SWEDEN

The Swedish health and safety act covers all types of employment relationships, both permanent and temporary.

Temporary and assigned workers are also covered by the scope of the national provisions transposing the Directive 91/383/EEC.

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.

GERMANY

The *ArbSchG* covers workers with a temporary employment relationship or a fixed-duration employment relationship under the same conditions as all other workers.

The discrimination ban under Article 2(2) has not been spelled out in the *ArbSchG*. However, it is not necessary to do so because any discrimination in the field of health and safety at work would fall foul of the general principle of equal opportunities enshrined in labour law.

AUSTRIA

This article has not been expressly transposed but there was no need to do so. 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-duration employment relationship.

BELGIUM

Belgian law does not distinguish here between workers with a fixed-duration 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.

DENMARK

Danish law 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 business in respect of assigned workers.

SPAIN

Article 28(1) of the *LPRL* provides, as an initial and fundamental condition for protecting temporary workers against occupational hazards, that they be treated in the same way as other workers in the undertaking in which they are employed.

In fact Article 28(1) of the *LPRL* almost literally transposes Article 2 of the Directive, duly adapted to domestic law.

FINLAND

Finnish legislation does not countenance any discrimination as regards health and safety at work grounded in the nature of the employment contract (Protection at Work Act 1958/299, supplemented by Act 1977/782.

FRANCE

French law on fixed-duration and temporary employment relationships does not in any way call into question the application of the general protective measures applicable to all workers. In particular, the conditions governing access to personal protective equipment fully apply to these categories of workers.

In the case of safety equipment, the national inter-trade agreement of 24 March 1990 which applies to all non-agricultural economic sectors stipulates that the employer must take all necessary measures to ensure that employees with a fixed-duration 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 see to it that such workers actually use the collective and individual protective equipment provided.

GREECE

Greek law (Presidential Decree No 17 of 18 January 1996) does not pose problems on this point. National law does not authorise any discrimination based on the nature of the employment contract as regards safety and health at work.

IRELAND

Regulation 4(2) of SI 44/1993 expressly covers all the obligations contained in this article as regards workers with a temporary or fixed-duration employment relationship.

ITALY

This article does not pose any problems in Italian law. Indeed, even before the new legislation entered into force, the Court of Cassation had on several occasions enshrined the principle that health and safety rules should apply to all workers, irrespectively of how they are recruited.

This jurisprudence is reflected in Article 2 of Legislative Decree 626/1994.

LUXEMBOURG

Luxembourg law pertaining to fixed-duration and temporary employment relationships does not call into question the general protective measures applicable to all workers.

As regards employees with a fixed-duration employment relationship, Article 14 of the Act of 24 May 1989 on the employment contract provides, in the section "equal treatment", that "unless otherwise ordained, the legal provisions and the agreement-based rules applicable to employees with an open-ended employment relationship shall also apply to employees with a fixed-duration employment relationship".

There is no specific provision of this type for temporary workers. However, the minimum guarantees applicable to all workers also include this category.

NETHERLANDS

Article 1(1)(a 2) of the Working Conditions Act states that, for the purposes of this Act, the employer of an assigned worker is not the temporary employment agency with which the employment contract has been concluded but the user firm; consequently, the latter is subject to the same legal obligations in the case of temporary workers as those that apply to other employees.

The Working Conditions Act does not contain any express discrimination ban corresponding to Article 2(2) of the Directive. However, such a ban is not necessary: firstly, the employer or user has the same rights and is subject to the same obligations in respect of workers with a fixed-duration or temporary employment relationship as those that apply to other employees; secondly, to penalise these workers would fall foul of the general principle of equal treatment enshrined in the Netherlands Constitution (Article 1). 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.

PORTUGAL

Decree-law No 441/91 (Framework Act on Safety, Hygiene and Health at Work) has a general scope, as defined in Article 2. It applies to all workers and all undertakings, except for government activities in the field of security, such as the police and armed forces.

Even if Portuguese law does not expressly outlaw the discrimination of temporary workers, any such discrimination is - directly or indirectly - prohibited either by the Framework Act on Safety, Hygiene and Health at Work or by the Portuguese legal order as a whole.

UNITED KINGDOM

Under UK 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 workers, the obligation is incumbent only on the temporary employment business and not the user.

SWEDEN

Workers with a fixed-duration employment relationship and workers assigned by a temporary employment business are entitled to equal treatment pursuant to the basic health and safety legislation (Working Environment Act 1977:1160).

ARTICLE 3 – INFORMATION OF WORKERS

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.

GERMANY

This Article was transposed by an amendment to Article 11 of the AÜG. Paragraph 6, sentence 2, of Article 11 requires the user to inform the temporary worker, before his starting work and whenever there is a change in his tasks, of the potential health and safety risks, as well as the measures and equipment required to eliminate these risks.

Article 11(6), sentence 3 of the AÜG also requires the user undertaking to inform the temporary worker of the need for special occupational qualifications or skills or special medical surveillance, and of any increased specific risks that the job may entail.

AUSTRIA

Article 3(1) of the Directive was transposed by Article 12 in conjunction with Article 9(2) of the *ASchG*, which require the user undertaking (*Beschäftiger*), before the start of activity, to provide workers with sufficient information on safety and health hazards and hazard prevention measures.

The obligations of the user undertaking (*Beschäftiger*) corresponding to the provisions of Article 3(2) of the Directive derive from Article 12(3) in conjunction with Article 9(2) of the *ASchG*: workers liable to be exposed to a direct and considerable hazard must be informed about this hazard without delay. The obligations of the user undertaking in terms of information on the necessary qualifications and skills also derive from Article 14

(training) and Article 9(4) of the *ASchG* (required medical surveillance), which requires temporary workers to be informed of the need for aptitude tests and monitoring tests.

BELGIUM

Information of workers is governed by Collective Labour Agreement No 38 of 6 December 1983 on the recruitment and selection of workers, which acquired force of law by the Royal Decree of 11 July 1984 (Moniteur Belge / 28 July 1983). Pursuant to Article 8 of this Agreement, the employer must provide the applicants with "sufficient information on the job offered", notably "the nature of the activity" and "the requirements for performing the activity". These rules cover particulars relating to qualifications and skills and the eventuality of special medical surveillance.

Information on risks is prescribed by the Wellbeing at Work Code, which applies to all employees and hence to workers on a fixed-duration contract. Indeed every employer is obliged to assess risks. Employees are informed of the risks which the job may entail, without prejudice to other information concerning safety in the undertaking.

The temporary employment contract must indicate the occupational qualifications which the temporary worker must possess: Article 9 of the Act of 24 July 1987 on Temporary and Occasional Work; Article 2 of Collective Agreement No 36e, of 27 November 1981, as amended.

Articles 2 and 3 of the Royal Decree of 19 February 1997 are the main rules governing the health and safety information to be provided to temporary workers.

The procedure begins with the information provided by the user undertaking to the temporary employment business before a temporary worker is assigned. Hence the user undertaking must specify the occupational qualifications required and the specific features of the job in question, as well as the results of the assessment of the risks the job may entail.

The temporary employment business must communicate to the temporary worker all the information provided to it by the user undertaking.

DENMARK

Article 18(1) of the Order on the Performance of Work explicitly states that the employer’s information obligations apply to all types of employment relationships.

Article 20 of the Order requires the employer to provide the necessary health and safety instructions to workers belonging to external undertakings performing tasks at 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.

SPAIN

Article 28(2) of the *LPRL* provides that employers must inform temporary workers "before they commence their activity". This expression covers not only the time preceding recruitment as such but also the time preceding the commencement of any task

arising from the worker's functional or geographical mobility or a substantial change in working conditions, if the activity is different from the one previously being performed by the worker since his recruitment.

The content of the information obligation includes all the particulars referred to in Article 3 of the Directive.

Spanish law transposes this article of the Directive almost literally, by requiring the most comprehensive possible information of temporary workers concerning the safety aspects of their work.

FINLAND

Finnish law does not contain a specific rule pertaining to the information of workers with a fixed-duration employment relationship. But Ministerial Decree 782/1997 contains a detailed provision which transposes Article 3 in respect of temporary workers. Besides the information required by this article, Article 4(1) of the Decree provides that the worker must be informed about the way worker participation is organised and about the organisation of the health services at the workplace. The user undertaking must provide this information to the worker before he starts work.

FRANCE

Pursuant to Article L. 122-3-1 of the Labour Code, the fixed-duration employment contract must be in writing and must be given to the employee at the latest two days after recruitment. When the contract concerns the replacement of an employee on leave of absence, it must indicate the name and qualifications of the employee who has been replaced. The job's designation must be indicated and hence indirectly the reference to a particular qualification. Besides, the collective branch agreements generally define the employees' qualifications and hence require the employer to indicate a precise qualification when recruiting an employee, so that the latter is well informed on this point.

Information on the particular risks the job may entail is clearly stipulated by Article L. 122-3-1. When workers with a fixed-duration employment relationship are assigned to dangerous work, this must be mentioned in the contract.

Dangerous work is defined by Article L. 231-3-1, indent 5, of the Labour Code.

Article L. 124-4 of the Labour Code requires that temporary employment contracts be in writing and given to the employee at the latest two days after his starting work. The contract must identify the occupational qualifications required.

The contract must also specify the characteristics of the job and notably state whether it is a dangerous one or not. It must also mention the type of personnel protective equipment which the employee must use and, where appropriate, must specify whether these are provided by the temporary employment business.

GREECE

Article 7 of Presidential Decree 17/1996 laying down the general obligations of the employer fully enshrines the temporary workers' right to individual information. Pursuant

to paragraph 5 of this article "in the framework of these responsibilities, the employer shall take all the necessary measures to protect the health and safety of workers, including prevention of occupational hazards, information and training, and the creation of the necessary organisation and provision of the necessary resources". Pursuant to paragraph 6(c) of the same article the employer must "notify the workers of the occupational hazards their job may entail".

Besides, Article 11(1) of Presidential Decree 17/1996 extends and generalises this obligation by prescribing the general principle of the employer's obligation to notify the workers and their representatives on all matters pertaining to health and safety at work. This includes information on "the risks, the measures to be taken and the relevant protective and preventive activities".

IRELAND

In Ireland, Regulation 11(e) of SI 44/1993 almost literally transposes the obligation contained in Article 3(1)(2).

ITALY

The right of temporary workers to individual information is enshrined in Article 4(2)(i) of Legislative Decree 626/1994, which provides that employers must inform workers exposed to a potentially serious and immediate hazard as soon as possible and instruct them about the measures to be taken with a view to their protection.

Article 3(1)(s) includes among the general measures for the protection of the health and safety of workers "information, training, consultation and participation of workers or their representatives on matters pertaining to safety devices, in compliance with the indications given by the manufacturers".

But the key provision is Article 21 which provides that all workers be informed by the employer on all specific risks which the job entails.

Temporary workers are also covered by the information obligation provided for in Article 3 of the Directive (Article 3, indent 5 of Act 196/1997).

LUXEMBOURG

Pursuant to Article 4 of the Act of 24 May 1989 on the employment contract as amended by the Act of 15 May 1995, fixed-duration employment contracts (just like open-ended ones) must be individually drafted for each employee at the latest by the time he enters into service. This Article requires that the nature of the job be identified and, where appropriate, that the employee’s responsibilities be described; this means in effect that the required qualifications must be specified. More precisely, Article 5(3)(f) of the Act of 17 June 1994 on the safety and health of workers at work requires employers to "inform the employee recruited on a fixed-duration contract ... of the risks entailed by the job: this information must in particular specify the qualifications or particular occupational skills required, medical surveillance as provided for in the Act of 17 June 1994 on occupational health services, and must indicate any increased specific risks".

Article 6 (1) of the Act of 19 May 1994 governing temporary employment and the hiring out of labour provides that "the contract binding the temporary employment business to

each of the employees assigned to a user must be drawn up in writing and given to the employee no later than two working days from his starting work"; this contract must include the particulars referred to in Article 4 (2) concerning contracts of assignment, i.e. notably "the particular characteristics of the workplace (and) the occupational qualifications".

Besides, Article 5 (3) f of the Act of 17 June 1994 on the health and safety of workers at work requires employers to "inform employees ... assigned to them under a contract for the hiring of labour of the risks entailed".

As in the case of employees on a fixed-duration employment contract, temporary workers are currently considered as belonging to the category of risk groups, covered notably by Articles 8 and 11 of the Act of 17 June 1994 on the safety and health of workers at work.

NETHERLANDS

Pursuant to Article 8 of the Working Conditions Act the employer must ensure that any worker, as soon as he takes up work, is precisely informed about the nature of the job and the associated risk, as well as the measures taken to address these risks. Since, pursuant to the Working Conditions Act, Article 1(1)(a 2), the user is considered to be the employer, it is for him to inform the worker of the risks entailed.

However, the obligation on the employer to inform the worker provided for in Article 8 does not expressly mention qualifications or particular occupational skills or special medical surveillance. The Netherlands text merely prescribes in very general terms the provision of information on the risks and the measures taken to eliminate or reduce them.

Article 6 of the Netherlands Act mandates employers to inform the worker of all particular risks associated with the workplace. The text does not specifically require the employer to specify the additional specific risks linked to this workplace. However, since employers must provide details on *all particular risks*, one may consider that additional risks are also included.

PORTUGAL

The obligation to provide prior information on health and safety risks and to adopt protective and preventive measures derives from Article 9 of the Framework Act on safety, hygiene and health at work. It applies to all workers employed in the undertaking, even if they have been recruited by other bodies (Article 9(2)(e), as in the case of temporary employment businesses. This article does not prescribe all the specific information obligations in respect of the temporary workers referred to in Article 3 of the Directive.

UNITED KINGDOM

The general information requirement prescribed by Article 3 is set out in Regulation 15 of SI 1999/3242. This requirement applies to all persons employed under a fixed-duration employment contract and all persons employed by a temporary employment business and working for and under the control of another company.

SWEDEN

Swedish legislation does not contain any specific rules with a view to informing workers with an employment relationship as defined in Article 1 in respect of the risks entailed by the job.

ARTICLE 4 - WORKERS' TRAINING

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.

GERMANY

Pursuant to Article 12 (1) of the *ArbSchG*, the employer must provide workers, during their working hours, with sufficient and appropriate training on occupational safety and health. This training includes instructions and explanations devoted in particular to the job or field of activity concerned. In the case of assigned workers, Article 12 (2) provides that this obligation is incumbent on the user. The latter must ensure that the workers assigned to him receive training, account being taken of their qualifications and experience.

AUSTRIA

Pursuant to Article 9 (2) of the *ASchG*, the user undertaking is considered to be the employer during the period in which personnel are assigned to it. Hence the obligation to provide workers with sufficient safety and health protection training pursuant to Article 14 also applies to user undertakings in respect of workers assigned to them within the meaning of Article 9 (1) of the ASchG. Pursuant to Article 14(3) and (4) of the ASchG, the training must also be adapted to the job and the workers' experience.

BELGIUM

Safety training of employees with fixed-duration employment contracts, just like other employees, is covered by the General Regulation on Protection at Work (RGPT) and other texts of a general scope.

The provisions of Section III, Title I, Chapter III of the Wellbeing at Work Code requires employers to provide sufficient and appropriate health and safety training to all workers, notably in the shape of specific information and instructions concerning the worker's job or function.

The same provisions also require employers to ensure that workers receive all necessary information on health and safety risks and protective measures and activities concerning the undertaking and the type of job or function in question.

Safety training of temporary workers is governed by the Royal Decree of 19 February 1997. Pursuant to Article 5 thereof, the user is responsible for safety and health at work and must see to it that the temporary worker is afforded the same degree of protection as other workers in the undertaking.

Prior to recruiting temporary workers, the user must ascertain the temporary worker's qualifications and occupational skills. The user must also inform him of specific health and safety risks at the establishment and of risks associated with the job to be done.

DENMARK

The provisions governing worker training apply to workers as defined in Article 1 of the Directive and go beyond the requirements and general terms contained in Article 4 (Article 18 of the Order on the Performance of Work).

SPAIN

Article 28 (2), second indent, of the *LPRL* requires that the undertaking provide information to temporary workers or to employees of temporary employment businesses. This is a general obligation which covers all workers.

FINLAND

Finnish legislation fully covers the employer’s training obligations as regards workers as defined in Article 1 of the Directive.

FRANCE

All employees on fixed-duration employment contracts must first receive safety training under the same conditions as permanent staff.

This "practical and appropriate safety training" (Article L 231-3-1 of the Labour Code) must be designed in liaison with the staff representatives.

Article L. 231-3-1, indent 5 of the Labour Code provides that employees on fixed-duration employment contracts assigned to jobs that entail particular health and safety risks, having regard to the specific nature of their employment contract, shall receive intensified safety training as well as appropriate guidance and information at the firm in which they are employed.

All these rules also apply to temporary workers. The texts on basic training apply both to the undertaking's own staff and to workers assigned to it by temporary employment businesses.

GREECE

The right of workers on a fixed-duration employment contract to receive training is enshrined in Article 12 of Presidential Decree 17/1996, as is the general principle of the employer's obligation to provide each worker with appropriate and sufficient vocational training in the field of health and hygiene at the time of recruitment, in the event of a transfer, in the event of a change in the work performed, and in the event of the introduction of new equipment, a change in equipment or the introduction of new technologies.

IRELAND

Regulation 13, paragraph 4 of SI 44/1993 provides that it for each employer availing of the services of an employee under a fixed-duration employment contract or a temporary

employment contract to ensure that this employee receives training appropriate to the particular characteristics of the work in question, account being taken of his skills and experience, and takes over the text of the Directive almost literally.

ITALY

Article 22 of the Legislative Decree 626/94 concerns the right of workers on a fixed-duration employment contract to receive training. The employer must ensure that each worker receives sufficient and appropriate health and safety training, with particular reference to his job and the tasks assigned to him. The training must be provided on recruitment, in the event of transfer or change in tasks, the introduction of new technology or new equipment. It is for the employer to provide the training, which must be given during working hours.

Legislative Decree 626/94 does not envisage the possibility of prohibiting fixed-duration workers from performing certain activities, but Articles 16 and 17 thereof govern the medical surveillance of all workers pursuant to the national legislation in force: the person responsible for surveillance is the competent doctor. This surveillance takes the form of screening with a view to ascertaining the existence of contraindications for assignment to a certain activity and aptitudes for specified tasks.

The obligation to provide temporary workers with appropriate safety and health training is also incumbent on user undertakings in respect of workers assigned to them (Article 3, indent 5 of Act 196/97).

LUXEMBOURG

Pursuant to Article 4 of the Act of 17 June 1994 on the safety and health of workers at work, "employers must ensure the safety and health of workers in respect of all aspects of work". In the context of this general obligation, Article 5 provides that "employers shall take the measures necessary to protect the health and safety of workers, including prevention of occupational hazards, information and training, as well as providing all the necessary organisation and means".

Article 11 of the amended Act of 18 May 1979 reforming the staff delegations requires the head of the undertaking to consult and inform the safety delegate on the subject of "appropriate training of each worker in the interests of his health and safety". Hence each individual worker is entitled to receive training.

More specifically, Article 5 (3) (c) of the Act of 17 June 1994 on the health and safety of workers at work provides that "when he assigns tasks to an employee employed on a fixed-duration employment contract" the employer must "ensure that this worker receives sufficient and appropriate training in respect of the characteristics of the workplace, account being taken of his skills and experience".

Temporary employment businesses are of course subject to the obligations incumbent on all employers in respect of their permanent staff, but also in respect of temporary workers.

However, it is for the user undertaking to provide training at work. Article 5 (3) (c) of the Act of 17 June 1994 provides that "when he allocates tasks to an employee assigned under a contract for the hiring of labour" the employer must "ensure that this worker

receives sufficient and appropriate training in respect of the characteristics of the workplace, account being taken of his skills and experience".

NETHERLANDS

The Directive's provisions on training have been transposed by Article 8 of the Working Conditions Act. This article requires employers to notify the worker, at the time of recruitment, of the associated hazards and the measures to be taken to prevent them. Such information must also be provided in the course of his work if this is necessary for reasons of health or hygiene, or to improve the worker's welfare at work.

PORTUGAL

Articles 12 and 16 (2) of Decree Law No 441/91 provide for the training of workers working in the employer organisation's establishments and of workers who have been specifically designated for risk prevention work; besides, the entities external to the firms in which they are working must have at their disposal appropriate, job-specific instructions; finally, it is forbidden to discriminate workers receiving training in any way. Although they are covered by these rules, there is no specific provision in Portuguese law governing the training of temporary workers under a fixed-duration employment contract or subject to the temporary employment rules which satisfies the special conditions referred to in Article 4.

UNITED KINGDOM

Regulation 13 (2) of SI 1999/3242 requires employers to ensure that adequate training is provided only to their employees and not to all employees of temporary employment businesses working in their undertakings. Temporary employment businesses are ultimately responsible for providing training for their employees who are working for and under the control of another undertaking.

SWEDEN

Swedish law is in compliance with Article 4 of the Directive, in that health and safety provisions applicable to workers on an open-ended employment contract also apply to temporary workers and to workers assigned to a user undertaking.

ARTICLE 5 - USE OF WORKERS' SERVICES AND MEDICAL SURVEILLANCE OF WORKERS

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.

GERMANY

German legislation does not avail of the options provided for in paragraphs 1 and 3.

The *ArbSchG* does not transpose paragraph 2 in so many words. However – just like its implementing decrees transposing the individual Directives relating to health and safety at work – the Act also applies to workers on a temporary or fixed-duration employment contract.

AUSTRIA

Austrian legislation does not avail of the options provided for in paragraphs 1 and 3.

Paragraph 2 is transposed by Article 9 (5) of the *ASchG*. This prohibits the assignment of workers to activities for which fitness for work examinations or subsequent examinations are prescribed unless these examinations have been performed and the worker has not been declared unfit on health grounds. The user undertaking must ensure and elicit proof that these examinations have been carried out and that the worker has not been declared unfit.

BELGIUM

No provision is Belgian law prohibits employers of workers with a fixed-duration employment relationship from performing dangerous work.

Special medical surveillance is organised for certain workers, namely workers performing dangerous work; workers exposed to a risk of occupational disease due to exposure to certain agents; and workers occupying a post to which they are exposed to certain work-linked constraints. In the case of employees doing dangerous work or employees exposed to certain biological agents, surveillance begins with a medical examination on recruitment. The legal rules governing work subject to this special medical surveillance 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-duration employment relationship. Only the nature of the risk to which the employee has been exposed may determine such an extension.

The Royal Decree of 19 February 1997 specifies the types of work which may not be performed by temporary workers.

The provisions on special medical surveillance apply to all workers, including temporary workers. This surveillance is incumbent on the temporary employment business and includes vaccinations, examination on assignment to hazardous jobs and regular examinations.

DENMARK

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), Danish law provides for the authorisation to require health examinations to be performed beyond the end of the employment relationship (Article 63 (1) of the Working Environment Act).

SPAIN

This article was transposed by Article 28 (3) of the *LPRL*:

"Workers covered by this Article are entitled to regular surveillance of their state of health under the terms of Article 22 of this Act and its implementing provisions".

Article 22 (1) of the *LPRL* specifies that "this surveillance may only be performed with the worker's consent".

Like Article 5, Article 22 (5) of the *LPRL* provides that "where warranted by the nature of the risks inherent to the work, the workers' right to regular health surveillance may be extended beyond the end of the employment relationship, in accordance with the procedures provided for by law". This rule was enshrined in the "National Health System" as specified in Article 37.3 (e) of Royal Decree 39/1997 of 17 January 1997, adopting the Prevention Services Regulation.

FINLAND

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. Dangerous work of this kind and special medical surveillance are regulated in detail by Ministerial Decree 1672/1992.

The Finnish legislator has not availed of the options provided for in paragraphs 1 and 3 of Article 5.

FRANCE

French law prohibits the recruitment of workers with a fixed-duration employment relationship and the use of temporary workers for certain types of work. The list of jobs in question was laid down in a Decree of 8 October 1990 for the non-agricultural sector and a Decree of 27 June 1991 (amended) for the agricultural sector.

There is no rule concerning special medical surveillance of employees recruited on a fixed-duration contract. They are subject to the same 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 business (Article L. 124-4-6 sentence 3 of the Labour Code). Depending on the size of its payroll, the temporary employment business 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 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 both eventualities specified in the regulatory texts, supplementary examinations are required to enable the occupational physician to judge the employee's fitness for the job.

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

GREECE

Presidential Decree 17/1996 does not avail of the option of prohibiting temporary workers from exercising certain activities; rather, it provides for the medical surveillance of all workers. Article 14 entitles all workers to avail of the occupational physician or any other competent service, be it the Sickness Insurance Fund or the National Health System (ESY), even as regards preventive examinations, and provided no special measure concerning the worker's medical examination is prescribed by the general legislation.

IRELAND

Article 5 of the Directive has not been transposed into domestic law.

ITALY

Article 5 of Directive 91/383 is transposed by Article 1 of Act 196/1997. This article prohibits the performance of temporary work by workers who require special medical surveillance and of certain types of work defined by decree of the Minister for Employment (part 1, indent 4, letter f of Act 196/1997).

LUXEMBOURG

There is no provision in Luxembourg law that prohibits the employment of employees on a fixed-duration employment contract from performing certain dangerous work.

Medical surveillance, which is mandatory for all employees, includes a pre-recruitment medical examination with a view to "determining whether the candidate is fit or unfit for the post or, if appropriate, laying down the conditions under which he may be declared fit" (Article 15 of the Act of 17 June 1994 on the occupational health services). Medical surveillance also includes regular subsequent examinations, notably in the 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-duration 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 a matter for the user undertaking (Article 12 of the Act of 19 May 1994 on temporary work and the hiring out of labour and Article 20 of the Act of 17 June 1994 on the occupational health services).

NETHERLANDS

The Netherlands has not availed of the option provided for in paragraphs 1 and 3.

Temporary workers are deemed to be employees of the user undertaking and are always entitled to the same medical surveillance as other employees of the undertaking.

PORTUGAL

Apparently this article has not been transposed into Portuguese law.

UNITED KINGDOM

United Kingdom legislation has not availed of the option of prohibiting atypical workers from performing dangerous activities, but it requires employers, as well as the 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.

SWEDEN

Chapter 4(5) of the Swedish Working Environment Act and the various regulations adopted by the National Labour Protection Council mandate 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 has not availed of the options provided for in paragraphs 1 and 3 of Article 5.

ARTICLE 6 - PROTECTION AND PREVENTION SERVICES

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.

GERMANY

This provision was transposed by the incorporation, in the Safety at Work Act (*Arbeitssicherheitsgesetz* or *ArbSiG*), of Article 2(2) sentence 3 and Article 5(2) sentence 3. These amendments provide that employers must inform the occupational physicians and safety at work specialists whenever they recruit workers with a fixed-duration employment relationship or workers assigned to them to accomplish a specific task.

AUSTRIA

This provision was transposed into Austrian law by Article 76(2) and Article 81(2) of the *ASchG*. These rules provide that the employer must provide the safety experts and occupational physicians with all the information and the documents they need to

accomplish their tasks, notably health and safety documents, information and reports on accidents at work, the results of measurements of dangerous substances and noise and other measurements and studies of relevance to safety and health. Particular information must also be provided to safety professionals and occupational physicians in the case of assigned workers, if this is necessary for the performance of their activities.

BELGIUM

Belgian law does not require employers to inform persons and services responsible for health and safety to the effect that they are employing workers on a fixed-duration employment contract. Article 147c of the RGPT merely provides that a list of workers subject to special medical surveillance be made available to the workers' representatives on the safety, hygiene and improvement of workplaces committee, or if there is no such no committee, to the trade union delegation, and to various administrative bodies responsible for monitoring.

However, temporary work is governed by specific provisions that satisfy the Directive's requirements. Pursuant to Article 5(4) of the Royal Decree, the user must keep a list of all his temporary workers, featuring in particular their names and the posts they occupy.

DENMARK

Danish law contains absolutely no reference to the information requirement set out in Article 6 of the Directive.

SPAIN

The preventive services are governed by Articles 30 to 32 of the *LPRL*; they are largely responsible for information, training and medical surveillance, both in respect of temporary workers and employees of temporary employment businesses.

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."

FINLAND

Article 4(2) of Ministerial Decree 782/1997 provides that employers must inform personnel responsible for health care as well as the workers' health and safety representative whenever they recruit temporary workers. There is a lacuna as regards workers on a fixed-duration employment contract, for whom such notification is not required.

FRANCE

There is no provision requiring the undertaking to inform the bodies, services or persons responsible for prevention and safety of the recruitment of employees on a fixed-duration or temporary employment contract.

GREECE

Presidential Decree 17/96 does not 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-duration employment contract.

IRELAND

In Ireland, Regulation 8 of SI 44/1993 provides for the appointment of health and safety representatives. Point e) of this Regulation extends their obligations to protective and preventive activities in respect of occupational hazards to all workers with a fixed-duration or temporary employment contract.

ITALY

The list of specific particulars to be provided by employers to the persons and services responsible for applying protective and preventive measures in the field of health and safety does not include the obligation to inform them as to the recruitment of workers on a fixed-duration employment contract.

LUXEMBOURG

Pursuant to Article 6(6) of the Act of 17 June 1994 on the health and safety of workers at work, "worker(s) and service(s) must be informed of the recruitment of workers on the basis of a fixed-duration 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

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.

PORTUGAL

As regards the information requirement enshrined by Article 6 of the Directive, and although Portuguese law enshrines the right of the protective and safety services to information on technical aspects of the undertaking and on accident statistics, it does not specifically prescribe that these services be informed about the assignment of temporary workers. Undertakings that employ temporary workers have practically no other obligation than to inform the works committee that they are doing so.

UNITED KINGDOM

In the United Kingdom, Regulation 7 paragraphs (1)-(3) of SI 1999/3242 provides for the designation of competent persons to assist with the implementation of health and safety

measures, and the subsequent paragraph 4(b) of the same Regulation transposes Article 6 of the Directive.

SWEDEN

Swedish law does not require that personnel responsible for health at work be informed of the recruitment of temporary workers.

ARTICLE 7 - TEMPORARY EMPLOYMENT RELATIONSHIPS: INFORMATION

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.

GERMANY

Paragraph 1 was transposed by adding sentence 2 to Article 12(1) of the *AÜG*. This sentence requires the user to specify, in the contract of assignment, the specific features of the work to be performed by the temporary worker and the occupational qualifications required.

Article 7(2) was transposed by an amendment to Article 11(1), sentence 2, point 3 of the *AÜG*. The new text requires the hiring undertaking to indicate in particular, 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 the contract of assignment specify the characteristics specific to the job to be filled by the temporary worker and the occupational qualifications required.

AUSTRIA

Pursuant to Article 9(3) of the *ASchG* the user undertaking is required, prior to the assignment a worker, to inform the temporary employment business of the occupational skills and knowledge required and the specific features of the job to be filled as well as the health requirements.

Article 7(2) was transposed by Article 9(4) of the *ASchG*.

The Austrian legislator has not availed of the option provided for in the final paragraph of Article 7.

BELGIUM

The Royal Decree of 17 February 1997 requires the user undertaking to inform the temporary employment business, 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 business for each job and for each temporary worker in the context of a contract between the user undertaking and the temporary employment business (Article 2 of the Royal Decree).

If the job in question is a hazardous one, the nature of the physical, chemical and biological agents to which the worker is liable to be exposed must be indicated, 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.

DENMARK

The information procedure is governed by Article 21(2) of the Order on the Performance of Work 867/1994.

SPAIN

Article 28.5 of the *LPRL* lays down information obligations, whose content depends on the addressee in question.

The user undertaking must provide information on the risks entailed by each job both to temporary workers and the temporary employment business.

The Spanish provision faithfully transposes Article 7 of the Directive.

FINLAND

Article 7 is faithfully transposed into national legislation by Articles 3 and 5 of Ministerial Decree 782/1997.

FRANCE

Pursuant to Article L. 124-3 of the Labour Code, whenever a temporary employment business assigns an employee to a user, a specific contract between the user and the temporary employment business 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 notably state whether it is a hazardous one. It must also identify the nature of the personal protective equipment which the employee must use and, where appropriate, specify whether these are supplied by the temporary employment business.

Furthermore, under a framework agreement on occupational health signed on 28 February 1994 by the employers' organisations representing temporary employment businesses 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.

GREECE

Temporary work is illegal in Greece, and private employment agencies and companies are prohibited. Act 1346/1984 imposes severe penalties in the event of infringements.

IRELAND

The specific obligation to provide information to temporary workers is contained in Regulation 11(d) of SI 44/1993, which transposes Article 7(1) almost word for word. The Irish rule also requires the user undertaking to provide the details to the temporary employment business so that the latter can bring these facts to the attention of the workers concerned, as provided for in Article 7(2).

ITALY

The specific obligations prescribed by Article 7 have been taken into account in two articles covering two different circumstances, viz. the case in which the temporary worker is assigned to normal work and the case in which he is assigned to dangerous work requiring special medical surveillance.

In the first case the information requirements are specified by Article 3, sentence 5, of Act 196/1997 as follows: "The temporary employment agency shall inform the temporary workers of the health and safety risks associated with the production activities in general". Alternatively, "the employment contract concluded with the temporary agency may provide that this obligation be met by the user undertaking".

In the second eventuality, Article 6(1) of Act 196/1997 provides that "in cases in which the job to which the temporary worker is to be assigned requires special medical surveillance or is associated with specific hazards, the user undertaking must inform the worker in compliance with Legislative Decree 626/1994".

LUXEMBOURG

Under Luxembourg law, temporary employment is permitted only provided a contract is concluded in writing between the user and the temporary employment business no later than three working days after assignment of the temporary worker (Article 4(1) of the Act of 19 May 1994 governing temporary employment and the provision of labour). This contract, which must be drawn up for each employee, must identify "the characteristics of the job in question, the occupational qualifications required (…)". This requirement is also set out in Article 6(6) of the Act of 17 June 1994 on the health and safety of workers at work which specifies the "features specific to the job to be filled" and which, in the light of its objective, implies information relating to the risks the job may entail. This text also requires the temporary employment business to bring all these facts to the attention of the workers concerned.

NETHERLANDS

Pursuant to the Working Conditions Act the user undertaking must directly inform the temporary worker. This particularity may be due to the fact that it is not the temporary agency but the user undertaking who is deemed to be the employer for the purposes of implementing the Working Conditions Act.

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 workers concerned any information provided by the user undertaking.

PORTUGAL

In Portuguese law many information requirements are incumbent on the user undertakings. Firstly, they must inform the temporary agency of the general characteristics of the job in question, which must feature in the contract of assignment.

Likewise the undertaking must inform the works committee of the tasks to be performed by the temporary workers, pursuant to Article 13(2) of the Decree-Law on temporary employment.

Finally, in compliance with Article 9(2)(e) of the Framework Act on Safety, Hygiene and Health at Work, the user undertaking must give the temporary worker appropriate information on the health and safety risks, protective and preventive measures, measures and instructions to be followed in the event of a serious and immediate hazard, first aid measures, fire-fighting measures and measures to evacuate workers in the event of an accident.

UNITED KINGDOM

Regulation 15 (3) of SI 1999/3242 implements Article 7, i.e. the undertaking must inform the temporary employment business of the occupational hazards to which the temporary worker is exposed within the user undertaking, and the temporary employment business must bring the facts to the attention of the workers concerned.

SWEDEN

No provision has been introduced to transpose Article 7 of the Directive.

ARTICLE 8 - TEMPORARY EMPLOYMENT RELATIONSHIPS: RESPONSIBILITY

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.

GERMANY

Article 11(6), sentence 1 of the *AÜG* provides that the activity performed by the temporary worker at the user undertaking is subject to the public law rules applicable to the latter in the field of health and safety at work and that the employer's obligations arising therefrom are incumbent on the user undertaking, without prejudice to the supplier's obligations.

AUSTRIA

Article 9(2) of the *ASchG* provides that during the employment of temporary workers, the user undertaking is deemed to be the employer within the meaning of the act; hence, the occupational health and safety requirements concerning assigned workers which the *ASchG* imposes on the employer are (also) incumbent on the user undertaking.

A provision that is comparable to Article 8 of the Directive, on the user undertaking's general responsibility for safety, hygiene and health at work, is found in Article 3 (1) of the *ASchG*, which requires the employer to ensure the safety and health protection of workers in all work-related contexts.

BELGIUM

Article 16 of Collective Labour Agreement No 36 concluded by the National Labour Council and given force of law by the Royal Decree of 9 December 1981 provides that the temporary employment business may not assign a temporary worker to a user undertaking unless the latter undertakes to comply with the provisions of the legislation governing protection at work, these provisions being understood to concern the health and safety of workers and the salubrity of the work and the workplaces.

Article 19 of the Act of 24 July 1987 on temporary work provides that temporary work and the assignment of workers to user undertakings shall be subject to the same conditions as those set out in the aforementioned collective agreement.

Article 5(1) of the Royal Decree of 19 February 1997 provides that the user undertaking is responsible for the 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.

DENMARK

The obligation enshrined by Article 8 of the Directive has been transposed into Danish law by Article 21(1) of the Order on the Performance of Work.

SPAIN

Employees of temporary employment businesses assigned to a user undertaking are afforded the same protection as temporary workers as such. Article 28(1) to (4) of the *LPRL* applies to them, as do other specific rules contained in paragraph 5 of the above-mentioned article, designed to allocate the employers' obligations and responsibilities between the temporary employment businesses and the user undertakings.

Likewise, Act 14/1994 of 1 June 1994 should be taken into account, since it governs temporary employment businesses and lays down the safety and health at work obligations incumbent on user undertakings and temporary employment businesses.

FINLAND

The new Article 3(2), which was introduced into the Protection at Work Act in 1997, provides that the two entities, namely the user undertaking and the supplier of labour, 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.

FRANCE

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.

GREECE

As already pointed out, temporary employment is illegal in Greece.

At any rate, whenever workers are "hired out" to a user undertaking, this latter must meet its providential obligations inherent to all subordinate employment relationships. The providential obligation means that the user undertaking must protect the workers against dangers to their life and health, supervise performance of the work, eliminate dangerous work, provide guidance to workers as regards the use of dangerous machinery and alert them to the potential hazards associated with the use of such machinery (Athens Court of Final Instance 3390/1997).

IRELAND

The obligation contained in Article 8 (the user undertaking is responsible for the duration of the assignment, for the conditions governing performance of the work) does not seem to have been transposed into national law.

ITALY

In general, temporary workers are afforded the same protection as other employees. Pursuant to the general clause contained in Article 6 of Act 196/1997, the user undertaking must also, in respect of the temporary employment business, meet all the protection obligations that apply to his own employees and is responsible for any infringement of statutory or contractual safety requirements.

LUXEMBOURG

Pursuant to Article 12 of the Act of 19 May 1994 governing temporary employment and the hiring of labour "in the case of temporary workers, 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".

NETHERLANDS

Pursuant 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.

PORTUGAL

Article 20 of the law governing temporary employment businesses provides that the worker shall be subject to the hygiene, safety and occupational health conditions of the user organisation. This implies that the user undertaking must afford the temporary worker the same protection as its own workers. Besides, the same obligation derives from 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 relevant obligations. Besides, the temporary employment business is also liable for damages in the event of an accident at work (Act No 100/97 of 13 September).

UNITED KINGDOM

Section 3 of HSW 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.

SWEDEN

Chapter 3, Article 12(2) of the Working Environment Act transposes the user undertaking's responsibility as regards the health and safety conditions of temporary workers for the duration of their assignment.

ARTICLE 9 - MORE FAVOURABLE PROVISIONS

This Directive shall be without prejudice to existing or future national or Community provisions which are more favourable to the safety and health protection of workers with an employment relationship as referred to in Article 1.

This provision does not require transposition into national law of the Member States.

ARTICLE 10 - FINAL PROVISIONS

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, the latter shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall forward to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.

3. Member States shall report to the Commission every five years on the practical implementation of this Directive, setting out the points of view of workers and employers.

The Commission shall bring the report to the attention of the European Parliament, the Council, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health Protection at Work.

4. The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a regular report on the implementation of this Directive, due account being taken of paragraphs 1, 2 and 3.

Details of the provisions of national law adopted by the Member States can be found in section I.

Paragraphs 3 and 4 do not have to be transposed into national legislation.