



Final report 2009

# Representation of Agency Workers

The representation of agency workers in Europe at national and local level in France, Netherlands, Sweden, Poland and the UK.

by

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## Preface and acknowledgements

This report is the result of the joint efforts by researchers, project leaders and social partners with an interest in improving the conditions in the temporary work agency industry. The individual chapters in this report have been discussed at workshops in Paris, Göteborg and London during the course of the project. Different constellations of authors have been responsible for different chapters and the authors' names are listed under each chapter heading.

The Representation of Agency Workers project ran from December 2007 to November 2008. The members of the international steering group and authors of this report were from France: Christophe Teissier; Sweden: Associate Professor Kristina Håkansson and Dr. Tommy Isidorsson; Netherlands: Associate Professor Els Sol; Poland: Dr. Joanna Unterschütz, and the UK: Richard Pond. Fabrice Warneck from Uni-Europa represented a pan European perspective. Tommy Isidorsson was overall project leader.

Each partner organisation formed national advisory boards consisting of social partners representing employers, employees and public authorities who contributed with valuable comments at different stages of the project.

Besides the 150-page *Final report* in English there is a *Short summary and Policy recommendation* that is available in English, Swedish, French, Dutch and Polish. The Final report and the national version of the *Short summary and Policy recommendation* are accessible on the websites of the partner organisation. All reports are accessible at University of Gothenburg, [www.av.gu.se](http://www.av.gu.se). The project group also produced a 25-minute film *Agency work* with examples of temporary agency work in four countries in Swedish, French, English and Dutch. The film is accessible through streaming video in four languages at the University of Gothenburg website:

English [mms://wms.it.gu.se/gutv/agencywork\\_eng.wmv](mms://wms.it.gu.se/gutv/agencywork_eng.wmv)

Swedish [mms://wms.it.gu.se/gutv/agencywork\\_swe.wmv](mms://wms.it.gu.se/gutv/agencywork_swe.wmv)

French [mms://wms.it.gu.se/gutv/agencywork\\_fr.wmv](mms://wms.it.gu.se/gutv/agencywork_fr.wmv)

Dutch [mms://wms.it.gu.se/gutv/agencywork\\_nl.wmv](mms://wms.it.gu.se/gutv/agencywork_nl.wmv)

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# **1. Introduction**

The purpose of this chapter is to provide some background on temporary agency work in Europe and to present the aim of the project and the report. There is also a short presentation of the RAW project and the project organisation.

## **Background**

The basic idea of temporary employment agencies is to provide workplaces with staff for a limited period. The temporary agency worker does not have one fixed workplace, but has to be mobile, moving between different workplaces depending on the needs of user firms. The hiring periods can vary between hours and years. The number of temporary agency workers has grown sharply in many European Union (EU) member states, especially towards the end of the 1990s (Arrowsmith 2006; Storrie 2002; 2007). Even in the Eastern European states where agency work is relatively new, there is evidence of significant growth with multinational temporary employment agencies setting up there. Storrie (2002) estimates that there were more than 2 million temporary agency workers in the EU 15 by the turn of the century. However, the number of temporary agency workers has stabilised in most countries since 2000 (Storrie 2007A). The proportion of temporary agency workers is approximately 1.5 per cent of the total labour force in the EU, ranging from less than one per cent in some countries up to around three per cent in others (Arrowsmith 2006). While these figures are low, the impact of temporary agency work on the labour market should not be underestimated and the proportion of workplaces using temporary agency workers is considerable. Analysis of extensive survey data by Håkansson and Isidorsson (2007) shows that over 40 per cent of all private and public workplaces with more than 100 employees in the UK use temporary agency workers. In Sweden the comparable data are 32 per cent in the public sector and 22 per cent in the private sector. This implies that the use of temporary agency work affects a significant proportion of all workplaces in those countries.

Temporary agency work is also an interesting aspect of the “Flexicurity” debate that has been taking place across the EU in recent years. The word is a combination of the two words flexibility and security. There are probably several ways of achieving flexicurity, but at least one way to obtain more labour market flexibility is by using temporary agency workers. It is however uncertain and little investigated if agency work could be considered to give any “security” to workers. Berg (2008) argues that agency work could be regarded as an example of flexicurity under certain conditions, when agency workers get permanent employment contracts, and when there are collective agreements regulating and guaranteeing wage equality. The Swedish system with permanent employment contracts in the temporary work agency industry then has the potential to be one way to achieve flexicurity. The importance of permanent employment contracts in the flexicurity trade-off is also emphasised by Storrie (2007B). The EU member states have agreed on the following main elements of the EU flexicurity strategy: flexible contractual arrangements, reliable and responsive lifelong learning, effective labour market policies and modern social security systems (Pacelli et al 2008).

While there is evidence, certainly in the EU15 states, that temporary agency workers are offered some protection by collective agreements, equal treatment legislation and other regulations, there is still a question as to how these work in practice at workplace level and the extent to which temporary agency workers are properly represented. These questions are important in both old and new member states, but particularly so in Central and Eastern Europe where comparatively little progress has been made in terms of collective bargaining.

Temporary agency workers face different working conditions in countries with different labour market regimes such as the Scandinavian, the Anglo-Saxon, and the Continental systems (Ruyssveldt and Visser 1996, Bamber et al 2004). The European social partners proposed a directive for the regulation of temporary work in Europe as early as 1982, however, due to differences of opinion on equality and terms and conditions of employment (particularly pay) (Arrowsmith 2006), progress on the directive came only in 2008 as a result of a deal between the social partners in the UK and a revised directive that allows derogations if they are negotiated between the social partners. . This means that regulation, and as a consequence working conditions, for temporary agency workers has differed between European countries. While the directive requires equal treatment of agency workers with permanent staff it doesn't lay down a broader regulatory regime and so there will continue to be significant variation across Europe in the way that agencies are regulated.

## **Aim of the project and report**

This project had several aims. The main focus was on the representation of agency workers. These included a European, national and local workplace perspective on the representation of agency work. The representation of temporary agency workers was seen as especially interesting in terms of its impact on issues such as pay, work environment (health and safety) and (vocational) training.

The project sought to promote knowledge in the area of agency work representation. We aimed to explore the nature of national, sectoral and company-level agreements that cover temporary agency workers, but also the reality of representation and organisation at company and workplace level. Above all the project aimed to promote dialogue among the social partners and different stakeholders at European, national and local level and to generalise examples of best practice and union capacity in this area.

It also aimed at promoting a wider discussion on the situation of temporary agency workers by producing a documentary film that was seen as an important way of disseminating information beyond the time limit of this project.

## **Short description of the project**

The Representation of Agency Workers project ran from December 2007 to November 2008. Research partners from five countries and a pan European organisation representative constituted an international steering group. Members in the international steering group were from France: Christophe Teissier and Claude Emmanuel Triomphe; Sweden: Associate professor Kristina Håkansson and Dr. Tommy Isidorsson; Netherlands: Associate professor Els Sol; Poland Dr. Joanna Unterschütz, and the UK: Professor Steve Jefferys, Dr. Howard Potter, Dr. Eugenia Markova and Richard Pond, and repre-

senting a pan European perspective Fabrice Warneck from Uni-Europa. International project leader during the project was Tommy Isidorsson.

Each partner organisation formed national advisory boards consisting of social partners although the exact form differed somewhat between countries. In Sweden there were monthly meetings while those in other countries met at different intervals and through other media.

There were two national workshops in each country and three international workshops. Participants in the workshops included the national advisory boards and other key experts from the social partners. Up to five social partner representatives and researchers from each country participated in the international workshop hosted by one of the participating countries. The organising country invited between eight and 14 social partners. The national workshops aimed at exchanging experiences and facilitating discussions between the social partners and were an important part of the project. The international workshops focused on exchanging cross border experiences in line with the so-called Open Method of Co-ordination, OMC, adopted by the EU in 1997 (European Employment Strategy).

A third and final international dissemination workshop was held at the end of November 2008 in London. Experiences from the different workshops, the main results from the draft final report and draft policy recommendations on temporary agency work were discussed by national and European key actors.

## **Project methods**

The project design is qualitative and based upon documentation of union strategies and activity and upon case studies. Methods have been continuously improved by discussions with practitioners from the social partners. The main forums for this dialogue were the national advisory board meetings but also the national and international workshops, all with a majority of social partners. The main idea has been that researchers facilitated the dialogue between the social partners. This was done in several ways. In each country, the researchers co-operated with social partner experts. Researchers and social partner experts from each country formed national advisory boards. There were recurrent national meetings with the national advisory boards. The national advisory board discussed experiences and findings carried out by the researchers; hence the researchers role is to facilitate the social dialogue by relevant input in the workshops and other meetings. The advisory boards have also planned the national and international workshops. The work in the international steering group has been accomplished by monthly video conferences.

## **Selection of countries**

The project countries were France, Sweden, the Netherlands, Poland and the UK. The five countries represent five different industrial relation (IR) systems. The UK is an “Anglo Saxon” liberal labour market system with a medium level of union organisation. Sweden has a “Scandinavian” system with strong labour market organisations and regulation primarily through collective agreements. Holland has a “continental” IR system with a rather strong state and a medium level of unionisation at national level but weak union activity at local level. France has a “Mediterranean” IR system with strong individual rights and relatively weak unions and a low level of unionisation compared to other EU 15 countries. Poland is a former Eastern Europe Communist state whose IR

system is in transition but marked by rapid moves to a liberal market economy, very sharp falls in trade union membership and low levels of collective bargaining.

### **Overview in a Pan-European perspective**

The project collected information on the representation of temporary agency workers in five European states representing different labour market systems and also pan-European agreements and legislation. The project had comparative elements and a wider European Union context. This broader European analysis was based upon secondary sources and informed the outcomes of the project and allowed for conclusions on the representation of temporary agency workers.

### **Collection of collective agreements and other documents**

The project collected and analysed national and international collective agreements and legislation covering temporary agency workers. The initial stages of the project and the first national and international workshops involved analysis of the policies and strategies of trade unions and trade union confederations on temporary agency workers at national and European level. We also collected other documentation on representation and bargaining. The project examined available documentation on existing representation in the agencies themselves and local collective and other agreements in user firms, i.e. local unions and works councils.

### **Interviews with key actors**

To answer the question on the representation of temporary agency workers there were a number of interviews with key actors from national as well as local employee and employer organisations, but also managers in agencies and user firms and workers. We also set out to interview agencies in both UK and Poland and Eastern Europe. These interviews were aimed at finding out about current representative arrangements for temporary agency workers and how individual and collective grievances are addressed. We have also been in contact with pan European organisations such as Euro-CIETT the International Confederation of Private Employment Agencies. UNI-Europa the European industry federation for temporary agency workers has been a partner in the project.

To answer the question on what different forms of representation take at workplace level we conducted interviews with local key actors at workplaces using temporary agency workers and with key actors at the agencies themselves including managers and workers in agencies and user firms. These interviews aimed to explore in more detail, strategies among labour market actors and their application in practice and the barriers to representation among temporary agency workers. The interviews provided information about union membership, recruitment trends and the work situation for temporary agency workers and their user firm workmates. The interviews identified existing representative arrangements and bargaining outcomes.

### **Case Studies**

The two national case studies from each participant country were an important part of the project, reflecting concrete issues arising from the representation of agency workers. These case studies covered companies using temporary agency workers, so called user firms, and the temporary work agency providing the user with temporary agency workers itself. Interviewees included managers and workers from the agency and the user

firm as well as local union representatives or works council representatives at the user firm and agency.

The case study method was felt to be conducive to capturing in-depth data relating to factors underlying the representation of temporary agency workers; the motivations of the actors, that is temporary agency workers and permanent workers; the specific role of the agencies themselves, user organisations and unions. In particular it highlights the specific context of the national framework and demonstrates how the law and collective agreements affect the behaviour of the parties.

In the case studies we have tried to track the extent and use of temporary agency workers; the terms and conditions upon which they are engaged and differences from the permanent workforce such as remuneration, work tasks, work environment and employment contracts, representative arrangements for temporary agency workers and the permanent workforce; how individual and collective grievances are expressed; the strategy of trade unions nationally, regionally and at workplace level towards temporary agency workers; the extent of union membership and participation by temporary agency workers at organisational and workplace level; the nature of union representation of temporary agency workers; the fate of temporary agency workers in critical incidents, such as periods of restructuring and the behaviour of trade unions; and examples of conflict or joint activity between temporary agency workers and the permanent workforce.

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## **2. International literature review on agency work**

This chapter is written by Associate professor Kristina Håkansson and Dr. Tommy Isidorsson, Department of Work Science, University of Gothenburg, Sweden

This chapter presents previous research relevant to the representation of agency workers. Agency work has to be examined in context and this chapter therefore discusses previous research on the prevalence, integration and regulation of temporary agency workers to form a better understanding of the issue of representation.

### **Prevalence, regulation and the development of agency work**

In the background chapter of this report we mention that approximately 1.5 per cent of the workforce in the EU are employed via temporary work agencies. There is not a large amount of research in this field, and this makes international comparisons of agency work difficult – a problem discussed by Storrie (2002) and by Burgess and Connell (2004). Despite these problems there is a consensus that the number of temporary agency workers has increased over the last two decades. This increase can be understood in several different ways. It can be driven by the needs of organisations in different industries, i.e. user firm driven. One might also understand the increase in temporary agency workers from a political perspective and from the perspective of the temporary employment agency industry. This leaves us with three different types of explanations related to demand, political decisions or regulation, and ideology.

The demand or user firm perspective sees the use of temporary agency work as a means of achieving flexibility (Houseman 2001; Kauhanen 2001; Kalleberg 2001; Kalleberg et al. 2003:532). Atkinson's (1984) model of "The Flexible Firm", although often questioned or modified (Håkansson and Isidorsson 2003; Kalleberg 2001; Nesheim 2004), is a frequently used and influential reference on this subject. In general, the flexibility concept has been well used, if not overused, in discussions of different staffing models, particularly since the late 1980s when Lean Production concepts, such as Just-in-Time, became popular. Although Just-in-Time referred to supplies of parts, it was also a good fit as a human resource concept for flexible use of labour. Just-in-Time implies an elimination of all buffers, and leads to a need for capacity flexibility – a need to adjust production to match current demand. Organisations can attain this flexibility in three principle ways. Numerical flexibility can be achieved by varying the number of staff – by using temporary agency workers. It is important to note that production also can be matched to current demand by working-time flexibility and by functional flexibility; the former strategy implies varying working hours, and the latter strategy involves designing the work organisation so that employees can vary their work tasks according to current needs. All three strategies – numerical, working-time, and functional flexibility – are used to help the organisation adapt to market demands. The main reason for implementing these strategies is not to give employees greater flexibility. However, in some cases market demands and employee needs coincide. In fact, all three strategies lead to an intensification of work for individuals. Because the use of temporary agency work is

the focus of this chapter, we refer to our previous research for a fully developed discussion on the relationships between these three strategies for achieving flexibility and their effects on individuals, organisations and the labour market (Håkansson and Isidorsson 2003). The use of production concepts like Just-in-Time, production on demand and no buffers implies that fluctuations in the product or service market will precipitate an immediate need for additional staff at peak demand times. Temporary agency workers are then used as a means to achieve numerical flexibility. However, the ways in which employers implement these production concepts depend on the societal context faced by the user organisation (Rubery and Grimshaw 2003; Lane 1995). The different institutional settings in Britain and Sweden would suggest differences in the use of temporary agency workers. Therefore, the effects of the strategies must be analysed in relation to the social and political environment.

It is also possible to understand the increase in temporary agency work from a political or regulatory perspective. As in other fields within EU legislation there are national regulations on agency work and EU regulations. After a long delay the EU directive on temporary agency work was finally adopted in 2008.<sup>1</sup> Bercusson (2008:15) argues that the attempts at EU regulation in the temporary work industry can be understood as an attempt to harmonise national labour regulations. This would then be in line the political decision of free movement of workers and capital. According to Bruun & Malmberg(2008) and Bruun (2008) it is also possible to understand several labour market decisions in the EU Court, for example Laval and Rüffert as a liberalisation of the free movement of workers. There is research that tries to show that a political or regulative perspective can explain the increase of agency work. Mitlacher (2007) has investigated the use of temporary agency work in a qualitative study of client organisations in the US and Germany. He concludes that differences in deployment of agency work in the two countries are related to different legal regulations and employers' different strategies of labour use. The increasing level of agency work in Germany is explained by a strict legal regulation. By using temporary agency workers, German employers circumvent dismissal protection rules or participation rights in works councils (Mitlacher 2007:595). Rubery and Grimshaw (2003) notice that the relationship between labour market flexibility and regulation is quite complicated. They argue that a categorisation of employment systems along one dimension from regulated to deregulated labour market is insufficient in an analysis of flexibility. Deregulation may both enhance and counteract flexibility. Also Biggs et al (2006) suggest that the relationship between temporary work (including agency work) and regulation is more complicated.

According to Bercusson (2008:15) the attempts to harmonise and liberalise EU legislation could also be seen as part of a strategy by the multinationals within the temporary agency work industry to facilitate and increase their businesses within different EU member states and between different member states. Peck and Theodore (2002:169) argue that the agency work industry itself plays an active role in labour-market deregulation and restructuring. This deregulation has given preferential treatment to agency-mediated staffing of temporary workers. Forde (2008) supports this explanation in his analysis of the development of work agencies in Britain. The agency work industry also plays an active role in the flexibility discourse. In his analysis of a temporary employment agency, Walter (2005) discusses how agency salespeople in dialogue with user firms emphasise not only how the agency can solve an urgent need for temporary staffing; they also emphasise how it contributes to an *image* of flexible staffing. 'The user

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<sup>1</sup> (The development of the EU directive on agency works is discussed in more detail in chapter 4.)

company does not hire workers because somebody is sick, but because the company is a flexible firm.’ (Walter 2005:124).

## **Integration and agency work**

The way agency workers are integrated at the user firm is highly relevant in understanding the reality agency workers face when they are on assignments. One influential source from the early research on flexibility is John Atkinson’s theoretical model of the flexible firm. Atkinson placed agency workers as a secondary group of workers who contributed to numerical flexibility (Atkinson 1984; Atkinson & Meager 1986). The same conception of agency workers appears in several later studies (Houseman 2001; Kauhanen 2001; Kalleberg 2001; Kalleberg et al. 2003:532). Numerical flexibility is often polarised to functional flexibility (Kalleberg 2001, Smith 1997).

The core-periphery model indicates segmentation at workplace level. Core workers are more likely to have opportunities to develop competences, and to increase their participation and levels of responsibility. The periphery on the other hand, has fewer opportunities in these areas, if not fully excluded. At least some parts of the periphery are excluded from social company events as well. The combination of functional and numerical flexibility is then pitting different groups of workers against each other (Smith 1997).

The core-periphery model can be linked to theories on labour market segmentation. According to these theories there is a shift in employment relations, where the internal primary labour market is becoming smaller but more secure and the external secondary labour market with casual and precarious work is growing. A look at the composition of agency workers could support this theory; using Labour Force Survey data a British study revealed that agency work corresponds to low-skilled work and that these workers stay in agency work for a long time, indicating that agency workers belong to the secondary labour market (Forde and Slater 2005). In Sweden the biggest group of agency workers are those typically employed in low-skilled jobs in warehouses and industry. Their numbers grew by 50 per cent between 2005 and 2006 (Bemanningsföretagen 2007:10).

The third European survey of working conditions reveals some interesting differences between agency workers and permanent employees (Paoli and Merllié 2001).<sup>2</sup> Some data from this survey seems to support the segmentation theory. The proportion of agency workers solving unforeseen problems is lower compared to permanent employees (60 per cent compared to 82 per cent). Furthermore, agency workers are to a larger extent unable to get assistance from colleagues when required compared to permanent employees (8 per cent compared to 17 per cent). Forde and Slater (2006) found that agency workers are less satisfied with the nature of their work than other employees. Besides the differences in work tasks and working conditions, agency workers also feel like outsiders or strangers in the user firm (Olofsdotter 2008).

However, this segmentation theory has been called into question. The European Survey of working conditions (Paoi and Merllié 2001) also shows some conforming patterns developed between 1995 and 2000. The proportion of agency workers benefiting from

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<sup>2</sup> Unfortunately, the fourth European survey on working conditions from 2007 does not account for differences between agency workers and permanent employees.

training provided by their company increased during this period from 12 to 23 per cent and the proportion of agency workers learning new skills increased from 58 to 60 per cent while permanent employees learning new skills decreased from 75 to 72 per cent. This result indicates a real diminution of the different segments in the labour market. Another interesting result in their study is the decline in job rotation, from 55 per cent in 1995 to 44 per cent in 2000. This may indicate that permanent employees have to adapt to a work organisation that makes it possible to use temporary agency workers and therefore reduces job rotation opportunities for permanent staff.

The segmentation theory is called into question by Grimshaw et al (2001). They argue that the internal labour market has gone through substantial changes in the last decades and that the boundary line between the internal and external labour market has diminished. The internal labour market does not offer life-long employment, training and career opportunities. The use of agency workers implies internal conflicts like high turnover of permanent workers and lack of loyalty among all workers. According to Grimshaw et al, all workers suffer as a result of the new employment relations based on flexibility.

In contrast, there is also research pointing to the new knowledge economy and the growth of knowledge work. In line with this research, agency workers are seen to contribute with specialist knowledge. In this assessment agency workers do not belong to the secondary labour market; they are in high demand and the agency is the intermediary matching workers and user firms. A British study found support for this statement only in terms of professionals in welfare services (nurses, therapists and welfare workers) in the public sector (Forde and Slater 2005).

Even though some empirical evidence supports the segmentation theory it is clear that neither all agency workers nor all temporary workers belong to the periphery. There is also some evidence pointing at a connection between the use of temporary workers and the knowledge economy, but by no means all temporary workers can be associated with knowledge work and the so called new economy. We argue that agency work is polarised in two different kind of business. One part of agency work is connected to theories on the peripheral workforce and labour market segmentation, the other part of agency work is connected to the knowledge-based economy. These different groups of agency workers receive different pay and benefits and are used for different purposes in user firms.

## **Representation and agency work**

The unionisation of agency workers is low in all countries. Young people and immigrants are over-represented in the sector and these groups are also less likely to be trade union members than workers in the rest of the labour market (Kjellberg 2002; Kountouros 2008:57) Trade unions face great challenges in recruiting temporary agency workers. Arrowsmith (2008) argues that the combination of high employment turnover and low union membership among temporary agency workers leads to double representation gap in both the agency and the user firm. Holst et al (2008) investigated union representation in Germany and talk about a “threefold crisis” for the unions consisting of a loss of legitimacy, a decline in membership and financial problems. They claim that atypical employees are not regarded as fully fledged union members in terms of representation issues and that this reinforces the union crisis. According to Holst et al unions have to reconsider atypical employees in their strategies. Croucher and Brewster (1998)

argued in the late 90s that the need for union representation is manifest, particularly amongst flexible workers such as agency workers. The recipe for the unions, according to Croucher and Brewster, is to adapt union organisation to the new labour market where flexible workers might need other kinds of support compared to employees in traditional sectors.

Trade unions can take up different strategies towards agency work. Heery (2004) investigated British unions and identified four different union strategies towards temporary agency workers and the temporary work industry during the past five decades. See figure below

**Figure 1. Trade union response to agency work**

		Agency Suppliers	
		Rejection	Acceptance
Agency Workers	Exclusion	<i>Exclusion</i>	<i>Regulation</i>
	Inclusion	<i>Replacement</i>	<i>Engagement</i>

Source: Heery, Edmund (2004) 'The trade union response to agency labour in Britain' in *Industrial Relations Journal* 35:5, p 437.

The two extreme strategies are *exclusion* and *engagement*. According to Heery (Heery 2004; Heery et al 2004), the initial union response when new categories of workers enter the labour market is exclusion. *Exclusion* means a rejection of both the temporary work industry and the agency workers. Temporary agency workers are not regarded as legitimate targets for recruitment and organisation. Trade unions are opposed to the whole industry.

*Replacement* means defending temporary agency workers but maintaining a position against the temporary work industry. The TUC used this as a secondary strategy in the UK in the 1960s and 1970s. The main TUC concern was to protect young workers who were thought to be badly advised by these private temporary employment agencies. Heery (2004: 439) refers to TUC proposals to replace these private agencies with public ones.

*Regulation* implies that core workers attempt to regulate the use of agency work at workplace level. This outcome articulates the interests of economic insiders, core workers in permanent employment, i.e. a strong domestic employee organisation. The central feature is the imposition of restrictions on the numbers and functions for which agency workers can be used. The aim, according to Heery (2004:441) is to prevent agency labour 'undermining the core'.

The fourth and last outcome means an acceptance and a direct involvement with temporary work industries, with unions striving to improve the terms and conditions of the temporary agency workers themselves (Heery 2004:442). The fourth strategy, engagement, means not only accepting but also adopting a different view towards non-standard workers. Non-standard forms of employment are regarded as legitimate and the workers are not so much victims, but may have chosen this form of employment (Heery et al 2004).

Heery et al conclude from the case studies of some British unions that there has been a movement over time from exclusion to engagement of non-standard workers. In a survey of British unions the authors note that the unions use different strategies towards different groups of non-standard workers. For agency workers, the most frequent strategy is exclusion thus reflecting an attitude towards agency workers as a threat to unionised workers. Exclusion implies a denial of both agency suppliers and agency workers (Heery 2004). The analysis of the survey also pointed to a dual strategy where unions have simultaneously tried to restrict the number of temporary agency workers and worked for equal pay and equal conditions (Heery et al 2004). Also Arrowsmith (2008) observes a number of initiatives from unions to draw attention to temporary agency work. This could be measures to facilitate representation or political campaigns to raise awareness about temporary agency workers' conditions.

Druker and Stanworth (2004) note that union representation is rare among temporary agency workers. This is even more likely when agency workers are allocated to specific tasks and are not integrated at all with the permanent employees at the user firm. Druker and Stanworth discuss alternative ways of representation and point to the agency itself as a possible mechanism to give the agency worker a "voice". They conclude from interviews with British agency workers that employees at the agency are key actors in securing assignments for agency workers and looking after their interests. This was especially true for older agency workers. However, Druker and Stanworth focused on large reputable agencies and those agency workers who were successfully placed. The authors do not discuss how the 'agency voice' works when the agency workers are dissatisfied with pay, work tasks, training etc.

This research review shows that it is relevant to study both central and local trade unions strategies towards temporary agency workers according to our research design.

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### **3. Temporary agency work at national level**

#### **The extent, use and regulation of agency workers in France, The Netherlands, Sweden, Poland and the UK**

##### **Introduction**

This chapter describes the regulation on agency work in France, Sweden the Netherlands, Poland and the UK. The chapter is divided in five sections, one for each country, and deals with regulation regime, representation structure, working conditions like pay, vocational training and health and safety. Each country section concludes with future challenges. The chapter ends with a comparative analysis of national features regarding regulation and representation of agency workers.

##### **France: Agency work at national level**

This chapter is written by Project manager Christophe Teissier, ASTREES, France.

###### *Introduction*

###### **General data**

The first legislative framework for agency work dates back to 1972. Since then, the principles have remained the same but changes have been introduced many times, in particular those concerning reasons for the use of temporary agency workers by the user company, as well as the permissible length of temporary assignments.

From a quantitative point of view, agency work in France is now well established. Even though number of agency workers may vary from one year to another, one has to highlight that from 2003 number of agency workers has been increasing regularly. In 2007, two million people worked as agency workers. There were 637 900 agency workers (full time equivalents over a 12 month period). It means that in 2007, 3,6% of the employees were agency workers. In 2007, almost the half of agency workers was employed within the industrial sector. About 20% were employed in the building sector and about 30% in the tertiary sector.<sup>3</sup>

It's also important to stress that average length of (achieved) assignments was 1, 9 weeks, that is 9, 5 days, bearing in mind that :

- 25 % of the assignments lasted only one day
- 8 assignments out of 10 did not exceed 2 weeks long.

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<sup>3</sup> See DARES, l'intérim en 2007 : en forte croissance, Premières Informations, Premières Synthèses, n° 36.1, septembre 2008

In addition, 75% of agency workers worked less than 16 weeks in 2007 (considering all the assignments they benefited from).

Assignments are usually longer in the building sector and shorter in the tertiary one.

In 2007, increase in the number of temporary agency workers concerned all kind of occupations except for professionals. However, blue collar workers represent the majority of temporary agency workers, i.e. 79,1% of agency workers in 2007 (40% of them being skilled blue-collar workers and 38,9% low-qualified blue-collar workers).

As for agency workers profile, one may notice that even if agency work has increased a lot among ageing workers since 2006, young people still form the majority of temporary agency workers. In 2007, people aged less than 30 years old represented 58% of French agency workers.

#### Workplace representation: general information

Before presenting issues related to temporary agency workers ' representation, it's important to have in mind some general information about workplace representation in France. France has a dual channel of workplace representation.

Some employees representatives are directly elected by workers either at company or at plant level (depending on the company organisation). It is the case of :

- employee delegates (délégués du personnel) : this kind of representatives are to be elected in all establishments with more than 10 employees. They are especially responsible for presenting individual and collective grievances to management.
- Works councils : they are to be set up in all establishments with 50 or more employees. Their members are elected by workers every four years. Works councils are to be informed and consulted on a wide range of issues related to the company's economic and social situation. In companies including several establishments, there may be several works councils at establishments level and one central works council at company level.

In addition, health and safety committees are to be set up in all establishments with 50 or more employees. Members of these committees are elected by employee delegates and elected members of the works council. In establishments with less than 50 employees, employees delegates benefit from the same rights as health and safety committees.

Some employee representatives are not elected but may be appointed by representative trade unions in all establishments with 50 or more employees. It is especially the case of unions delegates. The latter are responsible for presenting claims to management. They also have the power to conclude collective agreements with the employer at company level.

#### *Legal framework*

Under its legal meaning, the concept of agency work refers to the triangular form of employment whereby a company, called a temporary work company, assigns a worker to a company customer, called user. From two perspectives, agency work is considered as an atypical or non-standard form of employment. Firstly, temporary agency work requires a triangular relationship as opposed to bilateral forms of employment, seen as the typical model of employment. Secondly, agency work implies, under French labour

law, a contract of assignment while the typical employment relationship is the open-ended contract.

French law restricts the use of agency work contracts. The Labour Code sets out the general principle according to which ‘whatever the ground, the temporary contract of employment can have neither as an aim or for effect to fill durably a job related to the normal and permanent activity of a company’. Therefore, fixed-term contracts and contracts of assignment can only be concluded for a ‘precise and temporary task’. The main concern of the legislator is to avoid the use of agency work contracts to fill permanent jobs within companies. Only jobs of a temporary character may justify the recourse to agency work.<sup>4</sup> In practice, some infringements of this rule occur. In particular, these contracts are used as a probationary period, which is not a ground for hiring agency workers.

In addition, French law also plans that agency work contract may be used for “social and professional difficulties reasons”: recruitment of unemployed people with specific social concerns and providing of additional vocational training.

Temporary agency work constitutes a tripartite form of employment articulated around two distinct contracts: a contract of secondment (commercial contract between the agency and the user) and a contract of assignment (between the temporary agency worker and the agency).

Even though there’s no contractual link between the temporary agency worker and the user company, some rights and obligations exist between the two. The only fact that the agency worker performs his work within the user company creates some legal obligations for the user. The French labour code plans that during the assignment the user is responsible for all conditions of work. Therefore, a general obligation of protection of the agency worker lies down on the user. Any damages caused to the agency worker during the assignment may lead to criminal or civil liability of the user. In particular, the user has a duty to ensure the safety of temporary agency workers.

Temporary agency workers have a general right to be trained to security matters within the user company. This duty only lays down on the temporary agency work in case of assignment based on the ground of urgent works needed for safety measures. In this situation, it is the responsibility of the temporary agency work firm to make sure that the workers sent are trained for the task and carry the adequate equipment. The user has only to inform the agency of the characteristics of the undertaking and the job to be performed.

#### Structures for representation and role of collective bargaining

Temporary employment agencies as a bloc make up a sector in its own right. This industry has its own trade association (named PRISME). The PRISME represents both small and large agencies.

On the employees’ side, all trade unions are now organised in order to represent agency workers’ interests, even if internal structures may differ. Agency work is often not considered as a trade but as a form of employment likely to be found in any sector. Agency workers may thus be represented through national trade unions confederations (CGT).

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<sup>4</sup> This refers to different reasons for using AW, such as replacement of an employee temporarily absent, dealing with temporary increase in workload, etc...

However, within some unions, issue of agency work is managed by sectoral federations: it is the case of CFDT union, as agency work is part of the issues covered by its federation of services.

Although role of legal regulation is significant in France, collective bargaining also plays an important role, and is covered by a set of sector-level collective agreements. Sectoral collective bargaining has been privileged as a mean to harmonise rights temporary agency workers are entitled to. Sectoral collective bargaining has especially been dealing with welfare provisions, working conditions (and especially occupational health and safety) and vocational training for several years.

Collective bargaining at company level especially exists in large temporary agencies. Agreements concluded at this level may be related to union rights. However, this kind of collective bargaining is more often related to agencies' permanent employees.

Several outputs resulting from sectoral collective bargaining may be mentioned such as the establishment of two joint bodies gathering employees and employers representatives: the Temporary Work Social Action Fund (Fonds d'Action Sociale du Travail Temporaire, Fastt), and especially the Temporary Work Training Insurance Fund (Fonds d'Assurance Formation du Travail Temporaire, FAF-TT) have provided for contributions to be paid by temporary employment agencies. These contributions are used by the Fastt, to give access to housing, and consumer credit, insurance with mutual societies, study grants and children's holidays. The FAF-TT on the other hand uses its funds to finance any training undertaken as part of sector-level agreements (training programmes, individual study leave, and periods of alternating work experience and training courses for young people).

In addition, since 1990, many collective agreements have been signed within the Temporary agency work industry, regarding welfare protection, vocational training, occupational health and safety, union rights and staff representation.

### **Institutional arrangements: Strategies on selected topics**

#### *Requirements applied to temporary employment agencies*

A temporary employment agency must be declared to the Labour Inspectorate. Temporary employment agencies must provide monthly reports to the UNEDIC (jointly-run body responsible for managing the unemployment insurance fund) listing the temporary work contracts concluded and those having ended by the end of the month.

Temporary employment agencies must, be covered by a financial guarantee (endorsed by the financial body of their choice) which ensures that wages, compensation and social security contributions will be paid out even if the agency defaults.

#### *Equal treatment*

A principle of equal treatment is set out between agency and permanent workers within the same user company. Therefore, permanent workers within the user company serves as references for determining most of the employment rights of temporary agency workers. The French legislator thus gives priority to the working community rather than to the legal status to determine temporary agency workers' rights. Equality refers to pay and all working conditions. Temporary agency workers may not receive a lower remuneration.

neration than the one paid to a permanent employee who would be employed by the company of the company, i.e. without seniority. The concept of remuneration includes all wages and bonuses given directly or indirectly, in cash or in nature, to employees of the user. Temporary agency workers are entitled to the same public holidays given than employees of the user company.

The principle of equality does not only apply to remuneration but also applies to any working condition applicable to employees within the user company. The Labour code indicates that working conditions include "the duration of the work, the night-work, the weekly rest and the public holidays, health and safety, the work of the women, the children and the young workers ". Equal treatment is extended to all services provided to the permanent workforce of the user company (transport, canteen, sport facilities, showers, restrooms, library, and medical departments). In general temporary agency workers must benefit from all advantages granted to the permanent employees of the user company. These advantages may come from statutory legislation or collective agreements concluded at national, sectoral or company level. Users who infringe the equality rule may be exposed to criminal liability. Representatives of the workers within the user company must forward to the employer all complaints from agency workers related to discriminations within the company.

#### *Vocational training*

The access of temporary agency workers to vocational training requires adjusting common rules to the characteristics of this form of employment. In 1983, a collective agreement was concluded at national level by the national federation of temporary agency work and trade unions. This agreement has organised vocational training for agency workers. A training insurance fund has been created that aim at subsidizing vocational training for agency workers. In 1990, the contribution of temporary work firms to the development of the vocational training was raised to 2.15 % of the total payroll while the rate is only 1,5 % in other sectors. This measure shows the significant place given by social partners to training in the temporary work industry. In order to give access to training to agency workers, the collective agreement has created a specific regime. Firstly, seniority conditions are calculated on the basis of a number of hours performed as temporary agency workers. Therefore, the seniority is not calculated as usually on a company basis but on a sectoral basis. Any assignment counts whatever the temporary work firm. However, the collective agreement imposes to have done at least half of these hours within the temporary work firm where the leave for training is performed. Another adjustment of the common legal provisions relates to the calculation of the remuneration of the temporary worker during his leave for training. The remuneration during the leave is calculated on the basis of the wages perceived during the last mission at the time the leave was requested. In fact, temporary agency firms and workers have a common interest to develop training in the framework of agency work. Agency workers, being disproportionately young and low qualified, find special interest to increase their qualification. As to temporary work firms, developing training may be a way to have better qualified temporary agency workers. They may also develop training in accordance with needs on the labour market.

#### *Collective rights of agency workers*

Collective rights of temporary agency workers constitute a very sensitive issue. The precarious character of agency work prevents temporary agency workers from exercising their right to collective representation. Most temporary agency workers hesitate to join trade union or to stand for professional elections mainly because they fear reprisals

from the temporary agency firm. To be more precise, they fear not to be offered further assignments. In a sense one may wonder whether this form of employment is compatible with collective rights. The performance of the assignment within the user company, the short duration of the assignment and the permanent change of employer make particularly difficult for temporary agency workers to exercise collective rights. In order to give agency workers such a possibility, a specific regime has been established for collective rights. The first problem has been to determine how to calculate temporary agency workers within the workforce of the user company for all matters related to collective rights. The law includes temporary agency workers within the calculation of the workforce in order to decide whether the number of employees of the user firm goes beyond the threshold established for appointment of trade union representatives or election of works council or shop stewards. The second problem relates to the rights of temporary agency workers to vote and to stand for elections within temporary employment agency. French law has organised specific rules to permit agency workers to exercise right of staff representation and union rights. Agency workers may participate in elections within the temporary agency work when they may justify of three months seniority during the last twelve months preceding the setting of the lists. In order to stand to the elections they must have been employed by the temporary agency firm at least six months during the last eighteen months before the election. Besides, the workers must have been employees of the temporary agency firm at the time of setting the lists.

Two others aspects of the collective rights of temporary agency workers are worth mentioning because they take into account the specificity of this form of employment. One interesting development of French law regards the credit of hours given to agency workers acting as trade union representatives or representatives elected by the workforce. French law gives to these categories of workers a credit of hours to perform their task. However, the specificity of the agency work relationship required establishing a specific regime for this category of workers. A sectoral collective agreement plans that agency workers having a mandate of representation enjoy the full monthly credit of hours without consideration of the duration of the assignment month. Moreover, the period in-between two assignments of less than a month do not interrupt the mandate. Therefore, the agency worker having a mandate of representation will be able to perform his task even though he has no assignment if this period is less than a month. The hours of delegation can be taken during or apart from the periods of the assignment. Hours taken outside from the period of assignment are paid 25 % more than the normal wage. This provision aims at encouraging agency workers being representative of workers not to exercise their task during the assignment period.

Another interesting development of French Law relates to the protection of agency workers being trade union representatives or elected representatives of workers. Collective agreements establish these agency workers should not suffer any discrimination in the proposals for assignments. Besides, these workers are presumed to ask for new assignments when the last one comes to an end. A presumption of extinction of the mandate is set when the agency worker appointed as trade union representative has not performed any assignment for a duration of at least three months. This period is extended to six months in case of agency workers members of the works council. Finally, the dismissal of these categories of agency workers is subject to the special rules concerning trade union representatives and workers elected as representatives of the workforce. The authorisation of the labour administration is therefore necessary. In addition, in order to struggle against discriminations agency workers exercising their collective rights may face, it is possible for workers or unions to ask a joint commission set up at sectoral level (commission paritaire professionnelle nationale du travail temporaire) to

solve individual or collective conflicts arisen.. Despite all these innovative provisions, the collective representation of agency workers still seems to face serious challenges.

### *Occupational health and safety*

This topic is of common interest for both temporary employment agencies and trade unions. As a result, many initiatives (from both employers' organisation and trade unions) and collective agreements can be noticed. One of the main stakes in the field is related to the role of user companies. Legally speaking, these latter are responsible for working conditions (including OHS) of agency workers during their assignment. During the assignment, the user firm is indeed responsible for working conditions. It means that the user is especially responsible for health and safety issues.

He has to assess risks (including the impact of the use of agency work) and take initiatives to ensure agency workers' health and safety. He has to provide to workers general information about health and safety. He has to draw up a list of jobs exposed to particular risks. If the agency worker is assigned to one of these jobs, the user has to provide him a specific training. If not, he is especially exposed to civil and/or criminal liability. In addition, job features have to be mentioned on both commercial and employment contract.

Main problem is how to really translate in practice this legal duty, bearing in mind that agency workers more suffer from occupational accidents than permanent workers. As a result, a significant part of the debate is focused on the costs of occupational accidents, as regulated by French social security law. As a principle, contributions to social security bodies, resulting from the rate of occupational accidents, are charged to the agency. Only in case of serious accidents (including fatal ones), contributions to be paid are shared between the agency and the user (but mainly impact the agency, i.e. 1/3 for the user and 2/3 for the agency in case of serious or fatal accident).

That's why employers' organisation in the sector (PRISME) as well as certain unions claim for an equal contribution for the user and the agency.

Moreover, collective agreements have set up provisions aiming at ensuring that agencies check the worker's skills in respect to the job offered but also at ensuring that the user informs the agency of jobs' features and at providing tools for risks prevention.

At company level, under certain conditions, temporary agency workers are represented by health and safety committees (CHSCT), within the user firm and sometimes the agency. These committees can participate in risk assessment and analysis and carry out investigations in case of accidents.

It is the CHSCT at the user firm which is responsible for health and safety of temporary agency workers. In that extent, CHSCT at the agency may not really participate in risks management within the user firm. It cannot freely reach the user's premises and thus identify risks workers may be exposed to. Possible improvements in the field (for instance, better identification of occupational risks) may lie on a better cooperation between health and safety representatives at the agency and their counterpart at the user firm.

### **Conclusion**

In France, regulation of agency work, resulting from both law and collective bargaining is significant. Rights of agency workers especially result from the involvement of both



unions and agencies in sectoral social dialogue. However, many agency workers ignore the rights they are entitled to and only few of them are unionised (even if evaluations in respect to this are especially difficult, some authors state that only 1000 to 2000 workers could be affiliated to trade unions).

This situation may of course hinder effectiveness of their rights in various fields, such as equal treatment, training, occupational health and safety. Unions are aware of this situation and have launched different initiatives aiming, for instance, at informing workers about their rights through specific leaflets. However, they face important difficulties to enrol agency workers who are generally young, mobile and isolated. Provisions aiming at organising representation of workers at workplace level (both at the agency and at the user firm) exist but do not work well in practice. In that extent, representation of agency workers probably remains a challenge for unions.

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## **Sweden: Agency work at national level**

This chapter is written by Associate professor Kristina Håkansson and Dr. Tommy Isidorsson, Department of Work Science, University of Gothenburg, Sweden

### **Introduction**

#### *Historical position of agency work in the Sweden*

Prior to the legislation in 1993 it was illegal to run private work agencies for the purpose of profit-making (Berg 2008:106). The number of employees in temporary work agencies rose rapidly during the 1990s in Sweden, and was estimated by the end of the decade to be 42,000. This is equivalent to around 1 per cent of the labour force. In the 2000's numbers first decreased to just under 30,000 in 2003. Since then numbers have increased. In 2007 the number of employees was 42.715 which was an increase with 22 per cent compared to previous year. (Bemanningsföretagen 2008).<sup>5</sup> However, the impact of these small numbers on the labour market should not be underestimated. Work organisation in user firms has to be adjusted according to the use of temporary agency workers, meaning that the use of a small number of temporary agency workers affects many more employees.

The temporary work agency industry is considered as any other industry in Sweden. There are no specific regulations for starting a temporary work agency compared to start any other business. The lack of legal regulation in the industry is compensated by the so called "Swedish model" with regulations through collective agreements negotiated by strong employer and employee organisations. Union membership has historically been around 80 per cent the last couple of decades. During the last couple of years trade union membership has fallen dramatically; from 76,9 per cent in 2006 to 73.45 per cent in 2007. The sharp fall in 2007 is the equivalent to the decrease in membership rates for the whole period 2000 to 2006. The main explanation for this rapid decrease in 2007 is due to a political decision imposed by the right wing government, that came in office in 2007, on increased fees to the trade union organised unemployment insurance (Kjellberg 2000:204; Kjellberg 2008). Swedish trade unionists estimate that union density is significantly lower in the temporary work industry. The rough figure 30 per cent has been mentioned. One should however bear in mind that the age group 16-29 years, which is over represented in the temporary work agency industry, has witnessed a far more dramatic decline union density; more than twice compared to the age group 30-64 years. In 2007 union density for 16-29 years was 53 per cent (Kjellberg 2008:7). According to information from the employer organisation Swedish Staffing Agencies there are 500 member companies operating in Sweden. The majority of work agencies have less than 50 employees. However a handful of and companies for example Manpower

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<sup>5</sup> These figures are built on the average number of employees on the pay-roll in the two months June and December in the 35 biggest TWAs in Sweden. It is worthwhile to notice that this is not full-time equivalents. In 2007 the reporting companies was increased in two steps. In the first step to the 135 biggest companies with a response rate of 90 percent, which gave 55,500 employees on the pay-roll in the two months June and December? In a second step inquiries were sent to all 500 TWA members in the employer organisation Bemanningsföretagen. The response rate for the 365 extra companies was 34 per cent and gave the total number in the whole industry of 59,400 in 250 Swedish TWAs. Interview with Jessica Lindblom, analyst HUI, and responsible for compilation of the employer's organisation statistics, 3 December 2008. The higher figure is equivalent to 1.3 per cent of the labour force.

and Adecco employ the vast majority of temporary agency workers (Bemanningsföretagen 2008B)

*Recent developments on agency work in Sweden*

During the last decade work agencies and agency workers have been more and more accepted by the social partners. When profit-making in the work agencies was legalised 1993 there were strong protest within blue collar trade unions. In the late 2000's work agencies could be said to be an integrated part of the Swedish labour market institutions. In year 2000 a unique collective agreement for blue collar workers was coordinated by LO and is valid for 15 affiliated trade unions (Bergström et. al. 2007:55). The white collar workers union had collective agreement prior to the change in in the legislation in 1993. However, Swedish trade unions are still looking on how to best represent temporary agency workers in the work agency industry.

### **Institutional Framework**

*Regulatory regime: legislation and regulations*

The Swedish system of Industrial Relations (IR) could be labelled as a Scandinavian IR system. This means, as mentioned above, that the organisations on the labour market play an active and important role in forming employment and working conditions. For example Sweden lack legislation on minimum wages; those are settled through collective agreement. There is legislation that effect working conditions, for example on working time. However this legislation has usually the form of "optional legislation" (in Swedish "dispositiv lagstiftning"). This means that the social partners can negotiate on other terms in a collective agreement. Since Sweden joined the European Union some EU directives have interfered with this tradition. The government plays an important role with active labour market policies such as vocational training courses for workers with mismatch in their education compared to what is demanded on the labour market. The government also plays a role as a major employer. More than 30 per cent are employed in the public sector (SCB 2008). Employers in the public sector are organised in The Swedish Agency for Government Employers. One of their principal duties is handling negotiations with trade unions on pay and employment conditions for employees in the public sector. However, these negotiations only concerns overall pay structures and salary increases for central agreements. Individual salary agreements are determined at local level (Arbetsgivarverket 2008)

There is no governmental approval needed for starting a temporary work agency. Establishments within this industry follow the same rules and regulations as other businesses. There is no governmental authorisation within the work agency industry. The employer organisation Swedish Staffing Agencies have introduced a voluntarily authorisation system. This voluntary authorisation system also includes union representatives in the inquiry board where applications from work agencies that want to be authorised are tried. On the whole one can say that specific legal restriction in the temporary work agency industry is weak (Arrowsmith 2006:17; Storrie 2002:5, 10).

Another legal framework could be mentioned in this connection: the Act on Employee Consultation and Participation in Working Life, or the so-called Co-determination Act (MBL *Medbestämmandelagen*) of 1976. It includes the explicit obligation for an employer to inform the union holding a collective agreement at the workplace about work affecting workers/members before using external (e.g. agency) workers. In some cases

there is a right for trade unions to veto the use of external workers (SFS 1976:580, § 38–39).

*Representation structure*

Swedish trade unions are strong and well organised. They are not only strong on a national level where the national collective agreements are negotiated; they are also well organised on local level in so called “trade union clubs” (klubbar) where local collective agreements can be signed. Most unions organise workers by the industry principle. This means that all employees at a workplace are organised by the same trade union. However, union membership in Sweden is based on educational level. This means for example that blue collar workers in a car factory are organised by the Metalworkers union and that white collar workers with white undergraduate education are organised by the white collar union UNIONEN. Engineers with a master in engineering are in a car factory organised by The Swedish Association of Graduate Engineers. Trade unions are in other words class divided in Sweden (Kjellberg 2002). Since temporary agency workers perform their work at several different workplaces there are no clear cut rules for trade union membership for employees within the temporary work industry. This holds true especially among blue collar workers. However, there is a collective agreement signed by the trade unions confederation LO similar for all affiliated trade unions organising workers within the work agency industry. For white collar workers there are not that many trade unions to choose from, especially since the merger in 2008 by the two white collar unions HTF (clerical workers within trade and commerce) and SIF (clerical workers within industry) forming the union UNIONEN..

The vast majority of employers in the temporary work agency industry belong to the employer organisation Swedish Staffing Agencies (Bemanningsföretagen). According to information from the Swedish Staffing Agencies there are 500 companies operating in Sweden in 2008. 478 of these are organised within the Swedish Staffing Agencies. Swedish Staffing Agencies signs the national collective agreement for the employer. There is one collective agreement similar for blue collar workers but signed individually by 15 LO affiliated trade unions with the employer organisation. For white collar unions there is one major collective agreement for white collar workers signed by HTF (since 2008 merged into the trade union UNIONEN) and a similar collective agreement for Akademikerna, nine unions within Saco - The Swedish Confederation of Professional Associations.

*Representation and degree of organisation for temporary agency workers*

The success of the Swedish model for labour market relations is built on one important precondition: strong worker organisations and employer organisations on both local and national level (Kjellberg 2002:70). At a national level there are national trade unions and national employer organisation signing a national collective agreement. The implementation on local level is then done by the local trade union. In some national collective agreements the wage increase is specified in per cent or in absolute amounts, in others there could be a national collective agreement on an average wage space to negotiate on local level by local union representatives. However, the collective negotiating system was established prior to the establishment of work agencies in Sweden. The basis for the Swedish model was a clear-cut employer-employee relationship. New forms of work relationship like agency work, out-sourcing or in-sourcing is not well integrated into the Swedish model. This gives the Swedish representation system within the temporary work agency industry three major shortcomings: 1) low/weak local union repre-

sentation; 2) the lack of industry principal for trade union organisation; 3) local trade union representative's rights.

Firstly, due to the fact that employees within a temporary work agency are posted in many workplaces the Swedish local trade union club system does not work properly. In cases that there is a local trade union club formed at the work agency it is very hard to organise union meetings and other activities since the employees never are gathered. Secondly since work agencies offer different kind of temporary agency workers, for example assembly workers and retail trade workers; the industry principal for organising workers at the workplace is hindered since temporary agency workers in one work agency can be organised by different unions. Thirdly when temporary agency workers are posted to a user firm it is not possible for the local union representative at the user firm to represent temporary agency workers since local union representative's rights only is valid for his employer's employees (SFS 1974:358; §1, Lag om facklig förtroendemanns ställning på arbetsplatsen). This shortcoming in the local union representative's right not only hinders him to represent temporary agency workers in wage discussions it also hinder him from represent the temporary agency worker in work environmental and health & safety issues. The proper way of representing temporary agency workers is via a regional trade union ombudsman. Since the industry principle does not apply for agencies it is not unusual that a regional union ombudsman from the transport sector is the appointed union representative for temporary agency workers within engineering industry.

### **Institutional arrangements: Strategies on selected topics**

#### *Licence*

Compared to most other EU countries, the legal regulations covering work agencies is liberal in both the UK and Sweden (Storrie 2002:7). The major goal behind the Swedish statutory regulations on agency work, implemented in 1993, was to protect individuals from hindrances they might face when taking employment in the client organisation. It is explicitly stressed that no agreement can be made to override this clause in the legislation, and employers are not permitted to take any fees from employees. Neither is it allowed to post a temporary agency worker at a workplace where he or she formerly has been employed by within a six month period. The act consists of only seven paragraphs (SFS 1993: 440). However, for the temporary work agency industry itself, there is no specific regulation in Sweden. There are no clauses on authorisation, licensing or permission; work agencies are treated like any other business in this regard. The lack of specific legal regulation is in line with the Swedish tradition of regulations on the labour market. This tradition gives the social partners responsibility for regulation via collective agreements. It is in this Swedish model tradition one must understand the self regulative traits of the bipartite authorisation board organised by the employer organisation.

#### *Equal pay*

There is no legislation on equal pay in Sweden. Salaries are negotiated between trade unions and employer organisations and fixed in collective agreements. Employers that have not signed a collective agreement can be forced to do this by strikes, blockades and other secondary actions. For blue collar workers employed in temporary work agencies there is a collective agreement "The work agency collective agreements" coordinated by LO but signed individually by some 15 affiliated trade unions and their counterpart Swedish Staffing Agencies (Avtal för bemanningsföretag 2007). This col-

lective agreement stipulates that temporary agency workers must have salary according to average pay at the workplace where they are posted (Avtal för bemanningsföretag 2007:§5 Mom 1). This means that a newly work agency employee has higher pay than a newly employed at the user firm. This is independently of if their individual salary is equivalent to the minimum wage according to “The work agency collective agreements”. However, agency workers can have a higher individually negotiated salary than the average pay at the workplace. In this case they will have pay according to this pay level. The individual salary is based on four different qualification levels (Avtal för bemanningsföretag 2007:§6 Mom 1)

The white collar workers collective agreement stresses that salaries are based individually on qualifications and competences. The collective agreement stipulates minimum salary and the scope for yearly percentage increase in salary plus yearly minimum rises expressed in kronor (Bemanningsföretagen, HTF, Akademikerförbunden 2007: Protokollbilaga 1, HTF §1.1, 1.2, 1.3). The individually set salaries means that two white collar temporary agency workers doing the same work at the user firm can have different payment.

#### *Vocational training*

Both white and blue collar workers collective agreements mention competence development for temporary agency workers. According to the agreements, the employer (that is the agency) is responsible for arranging competence development, but both agreements state that this question requires the employee’s engagement and willingness to take part in such activities. The agreements are formulated in quite general terms, they speak about the need for training as competitive means and that the employer should offer training, but there are no specified obligations for the employer (Avtal för bemanningsföretag 2007; Bemanningsföretagen, HTF & Akademikerförbunden 2007).

The collective agreement for white collar workers states that if the employer gives order of training the training should be regarded as work and compensated for.

#### *Occupational Health and Safety*

The statutory foundations are laid in the Work Environment Act (AML), passed by the Riksdag (Sweden’s parliament). The Work Environment Act defines the outer framework of work environment regulation.

The Swedish Work Environment Authority is the administrative authority for questions relating to the working environment. This authority formulates provisions which in more detail prescribe stipulations and obligations with reference to the work environment. These provisions are regulated in The Work Environment Authority’s Statute Book, in Swedish called AFS. The authority elaborates these provisions in co-operation with the social partners. The provisions concern risks, psychological and physical strains, dangerous substances or machinery etcetera (Arbetsmiljöverket 2008).

According to the Work environment act, work environment and health & safety is a joint concern. Employer and employees must co-operate in these issues. The employees are represented by safety representatives appointed by the local union. The safety representatives have some rights: they have the right to take part of documents regarding work environment, they have the right to get education in work environment issues and they have the right to stop a job if there is a risk for accidents.

The employer has the ultimate responsibility for the work environment and has to take measures to prevent ill-health and accidents among the employees. This means that work agencies are responsible for their employees. However, since it is difficult for the agency to influence the work environment at the user firm, the law was changed in 1994. Since then it stipulates that also the user firm is responsible for work environment issues for temporary agency workers in their workplace. "The person controlling a worksite shall ensure the existence at the worksite of permanent devices of such kind that a person working there without being an employee in relation to him is not exposed to the risk of ill-health or accident. He shall also ensure that other devices existing at the worksite can be used without any such risk. A person hiring rented labour to work in his activity shall take the safety measures which are needed in that work." (Work environment act, chapter 3, § 12, paragraph 2)

According to the provisions both the agency and the user firm are obliged to carry out systematic work environment management. This act means that the employer has to "...investigate, carry out and follow up activities in such a way that ill-health and accidents at work are prevented and a satisfactory working environment achieved". (Arbetsmiljöverket, AFS 2001:1) For the user firm, this means that the temporary agency workers shall be placed on an equal footing as permanent employees regarding the work environment. For the agency, this means that the temporary work agency has to investigate the conditions at the user firm to secure the work environment. Both the agency and the user firm are obliged to document accidents and near-accidents yearly (Arbetsmiljöverket 2004) ADI 538 2004). The agency is responsible for the long term work environment obligations, such as training and rehabilitation (AFS 2001:1).

The rights for the safety representatives are related to the employer. This means that the safety representative at the agency has the right to visit the user firm where temporary agency workers work, but the safety representative can only act towards his/her employer, that is the agency. The safety representative at the user firm has not the right to demand measures for the temporary agency workers. This means that there is an obvious risk that work environment and health & safety issues for agency workers fall between two stools.

#### *Employment contracts and employment security within work agencies*

According to Swedish legislation there are principally two different types of contracts: employment 'until further notice' (tillsvidareanställning); and limited duration (tidsbegränsad anställning) (SFS 1982:80). The contract form employment 'until further notice' (tillvidareanställning) is not common within the EU. Equivalent terms are 'open-ended contracts' or the more lay-men used term 'permanent employees'. Limited duration contracts (allmän visstidsanställning), i.e. employed for a specified period are usually called 'fixed-term contracts' or 'temporary employment contracts'.

The normal employment contract is according to the act on employment security (LAS) stated to be 'until further notice'. It is legitimate, however, to use fixed-term contracts in some act-specified cases: general limited duration; deputyship (vikariat) i.e. work as a substitute; seasonal work; for workers older than 67; and probationary work (SFS 1982:80 § 4 and § 5). Because temporary work agencies in Sweden are treated like any other business, the normal employment contract for an agency worker should be an open-ended contract. It is quite common for agencies to employ staff on a probationary contract for the first six months. After this period of 6 months, if not extended to 12 months by a local collective agreement, the employment contract becomes an open-ended contract, thus being a permanent employee within the work agency. As labour

turnover is high in the temporary work agency industry, there are a large number of employees on probationary contract. The practice of probationary work and the high turnover in the industry imply that there are a high proportion of limited duration contracts within the temporary work agency industry. It should also be mentioned that act on employment security (LAS) is 'optional legislation' which means that parts of it could be regulated by collective agreement by a national employer organisation, i.e. trade union. In the blue collar collective agreement the central agreement states that the local union can increase the statutory probationary period from 6 months to a 12 months period by a local agreement, this is an example of that the collective regulation of the working conditions is more restrictive than the general legislation.

One major goal behind the Swedish regulations on agency work, implemented in 1993, was to protect individuals from hindrances they might face when taking employment in the client organisation. It is explicitly stressed that no agreement can be made to override this clause, and employers are not permitted to take any fees from employees for placing them at a user-firm.

### *Pensions*

Employment in an agency is considered as any other employment. The right to pensions is therefore the same for people employed at agencies as for employees in other industries.

### **Strategies and challenges**

The three most important issues discussed in Sweden could be summarised in the following areas: 1) local union representative's rights concerning temporary agency workers; 2) the work agency industries employer organisation's wish NOT to have separate regulations for their industry; and 3) the hindering of social dumping and unfair competition within the temporary work agency industry (e.g. by authorisation within the temporary work industry) .

### **Conclusion**

The temporary work agency industry is considered as any other industry in Sweden. There is no specific legislation for employees in the temporary work agency industry. Compared to other countries the legal regulations for the temporary work agency industry is weak. The Swedish tradition with collective agreements and bipartite bodies exemplified by the joint authorisation board characterises the Swedish temporary work agency industry as self-regulation. One can say that there are mainly two major collective agreements in the agency industry, one for white collar workers and one for blue collar workers; the latter individually signed by some 20 trade unions. Due the triangular relationship between temporary work agency employer –user firm–temporary agency worker. the nature of agency work diverges from other business and the representation system within temporary work agency industry has several shortcomings.

Firstly, due to the fact that employees in a temporary work agency can be posted to different workplaces during an employment the Swedish local union club system does not work as intended when it was implemented decades ago. In cases that there is a local union club formed at the temporary work agency, which is unusual for blue collar workers, it is very hard to organise trade union meetings and other activities since the employees seldom are gathered. Secondly since temporary work agencies offer different kind of temporary agency workers, for example assembly workers and retail trade workers; the industry principal for organising workers at the workplace is hindered since



different groups of temporary agency workers finds it natural to be organised by different unions. Thirdly when posted to a user firm it is not possible for the local union representative at the user firm to represent temporary agency workers since local union representative's rights only apply for his/her employers employees. This shortcoming in the local trade union representative's right not only hinders him/her to represent agency workers in wage discussions it also hinder the local union representative from represent the agency worker in work environmental and health & safety issues. It is worth noticing that union density in general is lower for young and for employees with limited duration contracts; both groups over-represented in the temporary work agency industry.

To sum up, the representation system does not work satisfactory for temporary agency workers. The trade unions are well aware of the shortcomings and there is a discussion involving different unions about what changes in the union organisation that may be needed.

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## Collective agreements

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*Acts*

*SFS, Svensk författningssamling*

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*AFS, Arbetsmiljöföreskrifter*

AFS 2001:1

*Statistics*

SCB 2008 Labour Force Survey 2007.

## **The Netherlands: Agency work at national level**

This chapter is written by Associate professor Els Sol, Hugo Sinzheimer Institute, University of Amsterdam, and Associate professor Mijke Houwerzijl, Radboud Universiteit Nijmegen, the Netherlands.

### **The Articulation of the interests of temporary agency workers in the Netherlands: current trends**

#### *Introduction*

Tendencies of individualisation, decentralisation and emancipation add to the importance of an *active* role of employees in articulating their interests. Before, in more paternalistic times common interests of working people were more or less taken care of. Personalised attention was not yet in the picture. However, taking care of interests can less than before just be a question of *what*, increasingly the question is also *by whom* they are articulated. At the same time commitment seems at first sight to be at odds with the typical temp agency work relationship. How does the articulation of interests of temporary agency workers work in practice?

In order to provide some background on how the articulation of interests is approached in the Dutch context, we will briefly sketch in this introduction some typical characteristics of the Dutch temp agency sector's culture as well as recent developments in temp agency work in the Netherlands.

Temp agency work had an early start in the Netherlands. It has thrived starting in the second half of the sixties when a law on the Provision of Temporary Employment was enacted (1967). The Act regulated a licensing/permit system with an equal pay clause. In order to avoid their deviation from prevailing wages in a sector (either by overbidding or wage cutting practices), temp agencies were obliged to pay the same wage as if the agency worker was directly employed by the user firm. However, the obligation could be deviated from by collective agreement. In practice, trade unions and employer associations have used this option since the first national collective agreement for temp agency workers was established in 1971.

Another factor contributing to the early growth of the sector must be seen in the context of Dutch dismissal law, which was and still is amongst the most stringent in Europe. In contributing to a flourishing temp sector despite the absence of legislation on the exact status of the temp worker – the status of the temp worker remained unclear till the Flexibility and Security Act of 1999 – the trade unions played an exceptional role. While in the 60's and 70's the trade union movement lobbied against the temporary agency sector, ten years later a gradual shift in mindset began. Initially, temporary employment was tolerated as the last resort in catering to the need for flexibility, after all other options to achieve internal flexibility had been exhausted. Subsequently, temp work was recognized in terms of providing long-term solutions for flexibility, provided the sector was well organized and framed in the appropriate labour regulations and collective agreements. Dutch trade unions and employer associations who have structured themselves into a separate temp agency sector, made a gentlemen's agreement not to

compete on wages and to combat social dumping. This ‘silent’ agreement turned out to be decisive for the development of the sector<sup>1</sup>.

Since 1999, temp agencies are seen as regular employers and, following a certain term of service, temporary employees are treated as regular employees. In addition to the growing need for temporary employment agencies as a consequence of the high degree of employment protection of regular employees, the pragmatic stance of the trade union movement has been a crucial factor to the early acceptance of temporary agencies in the Netherlands (Sol, 2003).

Temp agencies supply a relatively great share of employment. The development of the temp agency work is more or less stabilized round 3 percent. For an overview of numerical flexibility and the position of temp agency work in the last ten years see table in Annex X. Risk avoiding behaviour of employers can probably serve as an explanation for the big amount of external numerical flexibility. A general cause behind the flexibilisation is the growing influence of international economic developments on the Dutch labour market. As a more direct, concrete cause for the increase in flexible employment contracts and the supply of work through temp work agencies, the rigidity of Dutch labour law, especially with respect to dismissal, has been identified.

For 2007 the total Dutch temp agencies market was estimated roughly to amount to € 6.2 billion.<sup>6</sup> The largest volume of temp work through agencies includes rather low skilled jobs for manufacturing, transport, cleaning and administrative work, although most large temp work agencies also have specialized departments for outsourcing nurses, secretaries, managers, and other professional medical or technical staff; activities deployed by specialized agencies too (ABU 2000). Given the competitive pressures among temp agencies, for many agencies the trend is to look for new, more differentiated market niches. Another trend is the further internationalization of the sector. Since the accession to the EU of Central and Eastern European countries, Dutch temp agencies are setting up establishments in several of these states, above all in Poland. Motives to expand to Poland include access to mediation for the local labour market (Randstad, Vedio) and also to attract personnel for jobs in the Netherlands, where Dutch workers are supposedly in short supply (*Brouwer Personeel, BN Polen* etc).

In this chapter an overview is given of the main fora of representation of agency workers in the Netherlands and the strategies and challenges in what these days are regarded as the most important topics in the temp agency sector. The chapter is based on literature and empirical data. The main empirical data for this chapter were collected during a workshop on representation of agency workers with core actors in this field, held 27 of February at Amsterdam University in Amsterdam. (for participants see annex I). Section 2 discusses the institutional framework in terms of legislation, fora of representation and the membership support by workers for trade unions. Because of its innovative character the description is relatively extensive. Section three gives an insight in how main topics are approached.

### **Regulatory framework**

The innovative regulatory framework for temporary agency work (TAW) in the Netherlands comprises a structure of legal and contractual measures that have been adopted in

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<sup>1</sup> ABU/IntelleX, ABU-Marktmonitor 2008.

legislation, covenants, and collective labour agreements (CLAs) in the 1990s.<sup>7</sup> This legislation is to be found in the Civil Code (introduced by the Flexibility and Security Act), the Allocation of Workers via Intermediaries Act (WAADI) and the Works Councils Act. The 1998 Act WAADI regulates the temp agency market as allocator on the labour market and has abolished the permit system. The legislator kept the option to return to the old system open depending on the results of an evaluation of the system in 2008. The Flexibility and Security Act has created clarity in the labour relations concerning temp agency work. Two collective agreements are applicable, one of which is extended. Furthermore, there is some case law about the position of the agency worker.

#### *Flexibility and Security Act*

As mentioned above, since 1 January 1999, the rules regulating the temporary agency work sector are changed due to the entering into force of the law on Flexibility and Security (F&S). The basic idea of the F&S is that permanent contracts of the incumbent work force should be relaxed in exchange for increasing the rights of the temporary workforce. Due to this act the legal position of agency employees is enhanced by classifying the relationship between an agency employee and the agency as an employment contract, as stipulated in the Dutch Civil Code (Article 7:690). Nevertheless, there are some exceptions to the general rules pertaining to ordinary employment contracts. The first exception is that parties may agree in writing that the contract of employment will end without notice at the moment that the user firm states that there is no more work, but this exception is limited in time. The second is the exception to the provision in the Civil Code (Article 7:668a) which for ordinary workers states that after three fixed term contracts he automatically is entitled to a permanent contract. This entitlement is postponed for an agency worker. Next to this, it is possible to make further deviations in CLA's. Finally, the Flexibility and Security Act introduced, combined with a revision of the Works Councils Act, agency workers codetermination rights in the agency and in the user firm (Art. 1(3)(a) Works Councils Act) similar to those of the 'regular' Dutch workforce.

#### *Allocation of Workers via Intermediaries Act*

The Allocation of Workers via Intermediaries Act (WAADI), which came into force on 1 July 1998, changed the regulation of the position of intermediaries, including employment agencies. The distinction between secondment and agency work was abolished. Moreover, the WAADI abolished the permit system and the maximum tenure of the agency worker with the user firm. Also abolished were the authorization procedure and most sector restrictions for agency work, but some special regulations remained in force, such as the equal wages clause (Art. 8), the prohibition to demand something in return from agency workers for the placement at the user firm and the prohibition to post agency employees in user firms where a strike is going on (Art. 10). The prohibition on employment agencies to hinder an agency employee from entering into an employment contract with third parties (especially the user firm) and the prohibition of redeployment by third parties were also abolished. As far as sector restrictions are concerned, there is still a ban on agency work in shipping but this stems from an international treaty.

Together, the Flexibility and Security Act and the WAADI had major consequences for the temporary work agencies (TWA) and for those who work for them. They provide

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<sup>7</sup> Because of its innovative character the Dutch regulatory framework has been the subject of international interest before. The description in this report is in fact a compilation of some of these earlier documents, published by EIRO and the Council of Europe, see below under references.

for a gradual increase in the rights of agency workers, proportionate to the length of time they are employed with a particular agency. At the same time the permit system for TWAs is abolished and the limitations on the use (in terms of duration) of temporary agency workers are withdrawn too. The intended result of all these measures was to inject additional flexibility into the labour market by relaxing dismissal laws and the rules to start a temporary work agency on the one hand, while generating a higher level of security for employees in flexible jobs on the other.<sup>8</sup>

Moreover, it should be noted that by means of CLA's it is possible to deviate from a number of these provisions, namely when they are laid down in the Civil Code (most of the measures are) under the condition that they are not of a fully mandatory character.

*CLA's for the temporary work agencies sector: extent and nature*

Employees are mainly organised in three sectoral unions: FNV bondgenoten (FNV Allies, affiliated to the FNV Confederation), De Unie (affiliated to the MHP confederation) and CNV Dienstenbond (CNV services union, affiliated to the CNV confederation). Jointly they organise according to the workshop participants about 7 percent of the agency workers. There are no separate unions for agency workers.

Agencies have structured themselves into a separate sector, the temporary agency sector. Employers are organised in the association of agency workers (Algemene Bond van Uitzendondernemingen ABU) and the Nederlandse Bond van Bemiddeling en Uitzendondernemingen (NBBU). With approximately 280 (mainly) large and medium sized members ABU represents more than 65 per cent of the market in turnover. ABU is by far the largest employers' organisation within the private employment agencies industry. ABU-members realise more than 325 million hours worked by temporary workers a year. NBBU has 315 members, mainly small and medium sized agencies.

Besides two statutory changes, in 1999 two new collective agreements were agreed upon, which were evaluated and renewed in 2004. The main CLA is a result of bargaining between the Algemene Bond Uitzendondernemingen (ABU), representing the employers, and trade unions FNV Bondgenoten, CNV Dienstenbond and De Unie, representing the employees. This ABU-CLA is declared generally binding and covers more than 90% of the temporary agency workers (with the exception of agency workers of the firms covered by the second collective agreement, see further below). The second collective agreement is agreed between employers' organisation NBBU and a union (LBV) and has not been extended.

The CLA's may be seen as a follow-up of the flexicurity package deal: At the same time that the social partners agreed upon the flexibility and security legislation, the employers and trade unions in the temporary agency sector made a gentlemen's agreement (covenant) on how to deal with the new legislation. The employers' organizations supported the new legislation on the condition that they could further flesh out the rules set by law at sector-level. The flexibility and security legislation is therefore 'mandated' law; it leaves room for deviation from a number of stipulations when laid down in collective agreements. The social partners in the TAW sector utilized this room by deviating from almost all stipulations. The contents of the Act were found too restrictive for the TAW sector, and not in line with the 'TAW-formula'.

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<sup>8</sup> The changed regulation of agency work was only one aspect of a package deal on 'flexicurity'. The main aspects of both laws are summarized in box 1 in annex II, listing the flexibility aspects of the legislation in the left column and the security aspects in the right one.

From a technical point of view, the measures do not contribute to a simplification of Dutch labour law.

What are the most important deviations? First of all a deviation from the law stipulating that flexible workers are entitled to a permanent contract after three years or after three consecutive fixed-term contracts (Art. 7: 668a Civil Code). This stipulation was transformed in the ABU-CLA by introducing a so called phases-system that agency workers have to pass through before becoming indefinitely employed by the temp agency. Currently, there are three phases (see box). Another important deviation is the extension of the period that an agency worker is lent out under mere agency work conditions. The law states that this period should be 26 weeks, but it is possible to deviate from this provision in a collective agreement.

The most recent ABU-collective agreement came into force on 1 April 2004. This collective agreement sets out all the rights and obligations of agency workers from 2004 till 2009. In practice, The influx of people in phase C is minimal, but this may differ depending on economic conditions.

**Box 1. Phase system ABU CLA 2004-2009**

As mentioned, the system is currently divided into three phases. The agency employee stays in phase A until he has worked 78 weeks for the agency. In this phase the agency employee may have an unlimited number of contracts. When an interruption of 26 weeks between two contracts occurs, the counting of the 78 weeks starts again. The employee in phase A works under a so-called *agency or employment clause*. This has several consequences. One is that the contract with the agency in principle ends when the contract between agency and user firm ends. After three months of work, the user firm has to give notice before terminating the contract with the agency. This notice period increases with the duration of the work. The employment clause also gives the employee the right to stop working with one day notice.

Phase B starts after the period of 78 weeks and lasts two years (or eight consecutive contracts, whichever comes first). In this period the employee may have a maximum of eight fixed-term contracts. If the agency employment contracts in phase B are interrupted by a period of less than three months, the period of the interruption counts as part of the total duration of phase B. During phase B, the temporary employment contract ends on the agreed expiry date. The employment clause may no longer be included in the employment contract. This means that if the user firm ends the contract with the agency, the temporary employment contract of the employee with the agency does not automatically end and the agency has to find a suitable job for the agency worker and pay for the period in between jobs whilst the contract is not yet ended. The period of notice is also longer for the agency worker. From phase B on the agency worker starts building up pension rights.

After two years or eight consecutive contracts the agency worker reaches phase C. In phase C the agency employee receives a contract for an indefinite period of time with the agency. The period of notice is now one month for both the agency and the worker. However, before giving notice, the temp agency is obliged to look for suitable replacing jobs for a couple of months in case the user firm has ended the contract for a worker in stage C with the agency. Meanwhile, the worker is entitled to continued pay. Moreover, the temp agency, like any regular employer in the Netherlands, needs a permit to fire the worker.

The ABU collective agreement is by far the largest compared to the collective agreement negotiated by the NBBU. Although FNV Allies did participate in the negotiations, the NBBU-collective agreement has not been signed by the large trade unions, but only

by the small LBV union. The 1999-2003 and 2004-2009 ABU collective agreements have been generally extended, meaning that firms that do not wish to be covered by the agreement should file for dispensation with the Ministry of Social Affairs and Employment. NBBU-members and a couple of firms with a company-level agreement were granted dispensation. Before general extension, 74 percent of agency workers (167,288 workers daily, 135,130 FTE) were covered by the ABU collective agreement. After the general extension, this was around 95 percent (232,740 workers daily, 188,000 FTE). The ABU-CLA applies to around 3,000 temporary agency businesses (ABU, 2003).

The ABU and NBBU collective agreements both have similar provisions with regard to holidays (16 hours for each month of work), safety at work, pensions, training etc. Differences between the ABU and the NBBU collective agreement for temporary agency workers include the extension of the waiting-period for a permanent contract: the ABU has extended this waiting-period from one to one-and-a-half years; the NBBU to two years. The number of consecutive contracts in the ABU agreement is eight, for maximum period of 2 years. In the NBBU agreement agency workers can be given up to 4 consecutive contracts, for a maximum period of 1 year. Another issue is that according to the ABU-agreement temporary employees receive payment according to the conditions of the hiring company after 26 weeks. For the NBBU this immediately applies to all employees.

*CLA's for user firms (or - sector):provisions on agency workers*

In some collective agreements, social partners have bargained over the use of agency workers in that specific company or sector. This sometimes leads to restrictions in the amount of agency workers that a company can hire or to provisions stipulating for what reasons an agency worker may be hired or not, etc.

*Work Councils Act (WOR)*

With regard to information/consultation/participation rights of agency workers the Works Councils Act (*Wet op de ondernemingsraden*, WOR) is important. This Act was originally adopted in 1950, with major alterations in 1971, 1979 and 1998. Employers are obliged to establish a works council if they employ 50 or more workers. A personnel delegation (a kind of 'mini-works council') must be set up in companies with between 10 and 50 employees, if required by the majority of workers. According to the law, works councils consist only of employees. Candidates may be nominated by trade unions with a presence in the establishment, or by groups of employees. The size of the works council is between three and 25 members, depending on the size of the workforce. Meetings are held on request of the employer or the works council when deemed necessary. Twice a year, a meeting should be held on the general situation and prospects of the company. The main rights given to works councils by the law are: the right of access to information; advisory powers; the right of consent; and the right to propose initiatives.

Since agency workers are recognized by law as employees, they are also covered by the WOR, which means that they enjoy information, consultation and participation rights in the agency. Moreover, the WOR also contains a provision (introduced by the Flexibility and Security act) that agency workers have information, consultation and participation rights in the user enterprise after 24 months of working in that company. Therefore, for temporary agency workers a clear distinction must be made between representation in the agency (1) and representation in the user firm (2).



In Dutch TWA's two situations exist. In some TWA-firms the work council may consist of both agency workers and staff of the agency. In other TWA-firms separate work councils exist for agency workers and staff members.

(1) Rules for representation of an agency worker in the TWA-firm

Members of the work councils may be elected by all employees with at least six months' service. Candidates are required at least one years' service. Flex workers may have had several consecutive contracts during this period. If the period 'in between the consecutive contracts' does not exceed three months, the interruption counts as part of the service period.

(2) Rules for representation of an agency worker in the user firm

Agency workers will be entitled to elect employees of the work council at the user firm, after two and a half years' service. They may be elected themselves as a member of the work council at the user firm after three years' service. In case a work council is not established yet at the user firm, from two years' service on, agency workers are counted as if they were directly employed by the user firm for the purpose of meeting the threshold of 50 or more workers necessary to oblige the employer to install a works council.

**Enforcement of CLA and legislation: achillesheel**

As for most countries, for the Netherlands non compliance and (lack of) enforcement of regulations is an Achilles heel. The topic resulted in a lively conversation in the workshop of 27 February 2008. In the Netherlands social partners have taken on an active role by creating self regulation for monitoring compliance to the ABU-CLA and on a norm against illegal activities. The norm (NEN 4400-1 see below) regulates for the whole sector on what conditions a temp agency is considered a bonafide enterprise. The *Foundation Compliance CLA for Temp workers (Stichting Naleving CAO Uitzendkrachten, SNCU)* monitors and enforces compliance to the CLA. Since 2005, the SNCU – a cooperation of CLA actors ABU, FNV Bondgenoten, CNV Dienstenbond and De Unie are actively involved in supervising CLA compliance. However, both employees and employers associations agree that because of the power monopoly of the government their self regulation needs to be backed up by the government in order to be effective. Up till now Dutch government is reluctant in sharing its power.

An employer representative sketches the following picture:

'I look at it as a sort of (two-level) marriage cake. The first compliance level is about items such as: do temp agencies pay their taxes, social security contributions, do they have work permits, id-documents. This is the responsibility of the government. If temp agencies comply on this level, the temp sector is fruitful.. On top you can build CLA-compliance and enforcement of pension rights. What currently lacks is the bottom level. We as social partners are willing, we have our instruments, but we need the government to discern between the good and the bad. That has to be arranged first.'

According to a trade union representative:

'We in the SNCU-foundation bring serious matters forward regarding working conditions to the Labour Inspectorate. Up till now the labour Inspectorate does not fulfil the necessary control at the work places. They just don't.'

**Representation structure at all levels**

All in all interests of temp agency workers are articulated at three levels: the national level, the sectoral level and at the company level. Figure 1 gives an overview of the representation structure. Traditionally workers representation is strongest in the Netherlands at the sectoral level (through CLA’s and other forms of self-regulation) and relatively weak at the company level.

**Figur 2. Representation structure by level of articulation**

Level	Formal	Informal
Firm	Work council	Discussions of progress
Sector	CLA Self-regulation(bi-and tripartite)	Union membership groups Selfregulation
National	Legislator SER (tripartite) Stichting van de Arbeid (bipartite)	

At the national level the Dutch Labour Foundation (*Stichting van de Arbeid, STAR*) is a consultation and advisory body at the central level, which was established at the end of the Second World War (1945) (Windmuller, 1969). Its members constitute the largest confederations of employers' and workers' organizations. Unlike the tri-partite Socio-Economic Council (*SER: Sociaal-Economische Raad*), which also advises the government, the Labour Foundation has no members or representatives from the government.

At the national level trade unions and employer associations tend to have a strong lobby towards politics. They have been able to elicit innovative ways of problem solving normally dealt with only by the central government. In companies temp agency workers are mainly only formal represented in work councils.

**Representation and low organizational degree of temp agency workers**

The Netherlands have arranged the representation of trade unions by CLA’s. The representation model a country has chosen is of great importance for possibilities to deviate by collective labour agreements from the law and thereby possibly in future times from arrangements at the European level. In the discussion in the workshop of 27 February 2008 this item is raised by the trade union representative as problematic. Unlike in Scandinavian countries and Belgium where the CLA’s are arranged on a national and tripartite basis and unlike France where representation of temp work is arranged by law, the Dutch temp agency sector is organised by CLA and thus more vulnerable. Any two persons can found an association and conclude a CLA stating in the statutes that they act on behalf of temp agency workers. As a result strange departures from the rule of law are possible.

‘Pinning down representation (and budgets) in CLA arrangements is part of our Dutch labour relations. For the temp work sector the arrangement is problematic - because of the need to remain broadly based - due to the classic low organisational degree of temp agency workers. Neither the old nor the modern trade unions succeed in attracting new members. For trade unions as well as employer associations in the temp sector this is a topic we discuss and look for new solutions as it is of the utmost importance’.

And:

‘Amongst ourselves [amongst members of the trade union] we discuss to what extent we include the interests of temp agency workers in the CLA negotiations of a sector. And, where can we best organise temp employees? Where they work? More and more you have to organise them where they work. Where exactly should you provide for labour conditions? In the user firm CLA or the temp agency work CLA? It is a dilemma. In order to be able to organise workers due to trend of individualisation and made to measure you increasingly have to be present close to them at the work place. At the same time we know that we cannot arrange all through the user firm CLA, because we have to deal with certain aspects (e.g. pension) on a general level with the temp agency as employer. The temp agency has an employment contract with the temp worker who is responsible for his payment etc, except for the legal exceptions, i.e. a shared responsibility for working conditions and pay.’

One of the ideas of the trade unions to solve this problem is to organise temp workers through the temp agency itself. This would entail that trade unions get access to the agency’s work floor.

## Topics

### *Self regulation of irreproachable behaviour and compliance as alternative for licensing system*

In principle, hiring out employees is a service over which a temp agency has to pay the regular rate of value added tax (VAT). Next to this, agency and user firm are both liable for the social security contributions and taxes on wages. Being the formal employer, the agency is responsible for and obliged to pay the contributions and taxes in the first place. However, when an agency for some reason fails to fulfil its obligations, and can be blamed for this, then in the end the user firm will have to pay. However, the taxes and social security contributions due may be deposited into a special blocked account held by the agency, which indemnifies the user firm against the liability up to the sum of the amount deposited.

Social partners developed an alternative to the blocked account system for all agencies to use. In this system the Foundation of Financial Checking twice a year monitors the payment record of the temporary agencies. Furthermore, the Association of Registration Enterprises, in short the Compliance Office, monitors for ABU members whether the agencies comply with the law and regulations. In 2006, the so called *NEN norm 4400-1* was developed (Schram & Sol, 2007). This norm specifies on what conditions a temp agency is considered a bona fide enterprise. The norm is applicable for all the agencies under Dutch law. Currently, ABU and the trade unions are developing an extension to include foreign companies. For the NEN-norm the Foundation uses criteria developed for the ISO standard. The trade unions are active to incorporate provisions in other CLA’s which stipulate that firms only are allowed to work with NEN certified temp agencies. Nonetheless, in the workshop of 27 February, the participants admitted that there are still problems especially with subcontracting to non-certified temp agencies, which is difficult to prevent with strict rules for reasons of level playing field in competition. According to all participants in the workshop, the NEN-norm cannot deliver a watertight guarantee, but then again neither could the licensing system.

In the Netherlands the Labour Inspectorate is responsible for monitoring and controlling illegal employment and activities of temp agencies. It mainly undertakes inspections in so-called risk sectors such as horticulture, construction, hotels and the meat and fish-processing industries. The use of illegal work permits and falsified identity papers has spread widely. In addition to under- or non-declaration of taxes and social security contributions, also social benefit fraud occurs, as well as non-compliance with the Law on Minimum wages.<sup>9</sup> In return for selfregulation in the NEN norm, the employer's association have asked the Inspectorates to focus their enforcement capacities foremost on malafide TWA's and to safeguard the bonafide part of the sector (in possession of a quality label) from too many checks and from chain liability. However, trade union representatives are in favour of maintaining user firm liability, next to the system of self-regulation.

### **Equal pay clause in law and collective agreement**

As mentioned above, the law on temporary work agencies, WAADI, contains an equal pay clause, establishing the principle of equal pay with comparable workers in the user firm (Article 8). According to this provision the agency has to pay the agency worker the same wage as the employees of the user enterprise with the same or a comparable type of job. Thus, in the Netherlands, there is a basic principle of equal treatment between agency workers and workers in the user enterprise regarding pay. However, this rule does not apply if either the collective agreement for workers of temporary agencies provides to the contrary, or if the CLA applicable to the user firm requires remuneration of agency workers to conform with this CLA. These two rules thus allow the social partners to depart from the basic principle of equal treatment between agency workers and comparable workers in the user firm. In this way a balance has been struck between on the one hand the rule of equal treatment for work of equal value and on the other hand the contractual freedom and autonomy of the collective bargaining partners, which is limited by the equal treatment rule.

It is exactly this seeking for a balance between potentially conflicting fundamental rules which has led to the possibility to deviate from the legal equal pay clause by collective agreement. This makes (or better: 'made', since Germany has introduced this method as well, and, quite recently the draft-agency directive is also based on this method) the Dutch system unique. At the collective bargaining table, it is possible for the parties concerned to make a more refined deal concerning equal pay, taking into account all work related factors before the comparable worker can be determined. With respect to agency workers, the comparable worker may either be the colleague agency worker or the user company worker. The representatives of the TWA-employers associations tend to emphasize their role as real employers, which should be a reason to enable them to apply first and foremost their own collective agreements to agency workers. The unions stress the fact that the interest of TWA-employers in collective bargaining is positive only if the agency workers profit from it, meaning their labour conditions should be more favourable under the TWA-CLA. If not, the unions prefer to arrange agreements on pay and other labour conditions for agency workers with their counterparts at the bargaining table in the different sectors where agency workers are performing their jobs in the user-firms.

Thus, behind the innovative 'flexicurity-deal' (see Wilthagen e.o., 2005) at legislative level, in the TWA-employers associations and amongst the unions it is an ongoing de-

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<sup>9</sup> [http://arbeidsinspectie.szw.nl/index.cfm?fuseaction=dsp\\_document&link\\_id=133646&rubriek\\_id=20079](http://arbeidsinspectie.szw.nl/index.cfm?fuseaction=dsp_document&link_id=133646&rubriek_id=20079)

bate whether a temporary agency worker should be remunerated according to the wage of the user firm as laid down in its collective agreement (or according to another agreement on labour conditions applied in the user firm), or according to the wage as laid down in the collective agreement for temporary agency workers. In 2001, this issue was negotiated upon at the level of the national social partners, who, in their October 2001 agreement within the Labour Foundation, made a number of recommendations on the bargaining coverage and on the terms and conditions of temporary agency workers. In order to prevent unfair competition between agency workers and a sector's permanent employees and to deal with the problem of overlap between the collective agreements for temporary agency work and the other sector agreements, the Labour Foundation proposed exact definitions for the scope of economic activity covered by the various collective agreements.

Since this did not take away every potential problem, the Foundation also called for an exact description of what is included under the definition of a temporary work agency's activity. This description was made on the base of a model suggested by the TWA employer's association (ABU) and made a difference between TWA's operating solely (or mainly) in one sector and TWA's who serve in principle all kind of sectors. When a sector CLA is declared generally binding (i.e. extended and made legally applicable to a whole sector by decree) it should also apply to workers from TWAs operating solely (or mainly) in that sector. However, a TWA had the right to pay his workers according to the (generally binding) TWA collective agreement if its primary activity is to provide workers in a number of different sectors.

The 2004-2009 ABU-CLA has taken up more specific regulation on the remuneration of agency workers. During the 1999-2003 period, firms were finding ways to become more flexible using alternatives for agency work, for example by using internal or functional flexibility. The ABU wanted to make the use of temporary agency work more attractive again for user firms by decreasing the complexity of regulations on the use of agency workers. Perhaps the most striking outcome after months of negotiation is that in the current ABU-CLA, the duration of temp work (phase A) is now clear and irrefutable: 78 weeks in exchange for more pay. From 2004 on, after having worked for more than 26 weeks at the same company, temp workers will be paid on the same level as the employees of the hiring company. For the first 26 weeks of employment, it is stipulated that in principle an agency worker is paid according to the remuneration scheme of the temporary agency work collective agreement unless otherwise is stipulated by the parties to the CLA covering the specific sector. Thus, for workers in phase A the wages are in most cases determined by the TWA sector's collective agreements. If an employee has worked 26 weeks for the same user company, the user firm has to pay the agency worker the same wage (and overtime and costs) as the regular employees in the company. In phase A the employee receives only wages for the hours he has worked. In phase B and C he also receives wage for the hours he is not able to work (for example in case of idle time, sickness etc.). In the period between two contracts the employee also receives wage, when it is not his fault that he cannot work.

Pay levels in the ABU-CLA are based on the average of 50 other collective agreements. This means that in practice the wages in the user firms and TWA firms will not necessarily be equal for the same work. For pay purposes, the agreement further stipulates two groups of workers. The first includes school-leavers, holiday workers, persons re-entering the labour market and the long-term unemployed. Workers in this group earn a low starting salary. The idea behind this is their lower productivity because they have to be (re)integrated into the labour market. All other employees earn a higher salary. How-

ever, one may remain for only a maximum of twelve months in the first group (Storrie, 2002).

### **Vocational training**

The ABU-CLA also contains provisions on training. The collective agreement specifies that specific groups of temp workers will be awarded a training budget and that studies into reforming the pension scheme will be finished. Provisions concerning training have been included for employees in phase B and C. A newly introduced element in the ABU 2004-2009 collective agreement is a personal training budget of 1 percent of the annual salary, which is built up after 26 weeks of work through the agency, and free to use once the temporary agency worker is in stage B.

A Dutch study (Goudswaard, Kraan and Dhondt, 2000) provides a greater insight into which kinds of temporary agency workers receive the least training. This study shows that temporary agency workers without a permanent contract, as well as workers on a temporary contract with the prospect of a permanent contract, have less access to training and education paid for by the employer. Workers with other types of temporary contracts such as seasonal workers and standby/substitute workers, also receive less training. The study shows no gender differences regarding training opportunities, but older employees and employees with a low educational background had less chance of receiving training. Being a standby/substitute worker, seasonal worker or temporary agency worker without a permanent contract correlates negatively with the need for training, as perceived by the user firm.

According to the trade unions and employer representatives who took part in the workshop of 27 February 2008, there is a need to come to more differentiated vocational training possibilities and new ways of collecting premiums. A problem are the free riders amongst temp agencies and the lack of enforcement in the sector. As the budget remains in the enterprises there is a lack of national steering possibilities. Union members regard vocational training as a major subject for the trade unions to deal with. Forms of vocational training in Belgium and France are discussed as good practices. However, the available budget in the Netherlands for vocational training is less than in France and Belgium.

### **Occupational health and safety**

A motive for user firms related to their flexibility strategies and to cost advantages is avoiding risks of paying higher sickness and disablement premiums. This sometimes includes outsourcing of high health and safety risk jobs to temporary agency workers in noisy surroundings. Especially the young workers, due to non compliance of health and safety rules, run risks according to FNV Bondgenoten.<sup>10</sup>

In the Netherlands there is a division between responsibilities of the user firm and the temp agency. The user firm is responsible for the content of the job and the compliance to health and safety rules at the workplace (Arbo Act art1, paragraph 1a-2). So, according to the law, the user firm is responsible for health and safety. However, the responsibility is shared, in the sense that a temp agency is obliged before the beginning of the job to inform the temp worker about the health and safety risks and demands of the new workplace (WAADI Act, art 11). Moreover, the temp agency has a 'duty of transfer' of a document containing specific working conditions at the user firms (Arbo Act art 5,

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<sup>10</sup> [http://www.fnvjong.nl/binary/ZwartboekUitzendkrachten\\_tcm9-16077.pdf](http://www.fnvjong.nl/binary/ZwartboekUitzendkrachten_tcm9-16077.pdf)

par.4). Temp agencies and user firms have the possibility to divide the tasks amongst themselves and are both liable in case of occupational diseases or accidents.<sup>11</sup>

Additional to the legal rules, the temp sector is party to a so called Arbo-convenant. This is an instrument to diminish the sickness benefits and disability risks. In order to accomplish this goal four public and private parties (trade unions, ABU, Ministry of Social Affairs, Social Security Benefit Authority UWV) have reached an agreement on collective action and co-finance (the Arbo-Convenant). The last party mentioned joined the Convenant since, after registration of illness, the temp worker (in phase A) no longer is employed and receives sickness benefit directly from the UWV. The four participants decided on new measures for better working conditions and to help the sick and disabled to return to work. The Convenant organised the following activities: 1) better sickness data, 2) better info for agency workers on working conditions, 3) guidance for the phase A agency workers, describing responsibilities of the benefit agency and temp agency during the first 6 weeks of phase A, 4) prevention measures to reduce disability influx and 5) improvement of the contacts between temp agency and user firm on prevention measures. The Convenant lasted from 2003-2006. In order to ensure a continuation of health and safety activities a new Foundation called Stichting Arbo Flex (STAF) has been created by the social partners.<sup>12</sup>

Despite these initiatives, temp agencies and user firms are recently accused by young members of FNV trade union, of not paying enough attention to the fact that the young are not aware of the risks and rules.<sup>13</sup>

### **Cross border supply of agency workers**

Arguably, compared to most other countries, TAW is already for a long time a more or less accepted phenomenon in the Netherlands, and is not considered inferior to so-called normal work. This does not mean that agency workers all have an enviable position in the labour market, but considerable groups of employees actually prefer working through temp agencies. With the Flexibility and Security Act, the rights of agency workers were strengthened and brought closer to the rights of other workers. Both employers and unions are content with this development.

However, since the beginning of this century, the sector has been plagued by a considerable increase in dubious temporary agencies using illegal employees and/or evading the payment of taxes and premiums. This may partly be due to the abolishment of the permit system in the WAADI Act, but that is not the only reason. Other reasons are the more stringent legislation to combat illegal residence and the thriving economy. Part of the problem may also stem from the increased demand for and supply of workers from other EU-member states, in particular from the new Member States, with Poland as the main supplier of 'cheap labour'.

According to a research report by Regioplan in 2005 some 40 % of the total number of illegally employed persons came from the 8 CEE Member States for which the Netherlands still applied the Alien legislation as if they were third country nationals. Since the opening of the borders for this group from May 2007 on (not including workers from the newest Member States Bulgaria and Rumania), the focus of policymakers and public

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<sup>11</sup> <http://www.pppd.nl/download/ardArbomstandigheden.pdf>

<sup>12</sup> <http://uitzendonderneming.arboflexbranche.nl/>

<sup>13</sup> [http://www.fnvjong.nl/binary/ZwartboekUitzendkrachten\\_tcm9-16077.pdf](http://www.fnvjong.nl/binary/ZwartboekUitzendkrachten_tcm9-16077.pdf)

opinion has shifted to unsafe and illegal housing of migrant workers and tackling circumvention of the applicable labour conditions. The social partners in the TAW-sector are currently very active in making agreements with municipalities on the housing of foreign temp agency workers.

Especially for group-based deployment the TAW-sector has developed some supplementary concerning decent accommodation of foreign temporary workers in the Netherlands at a reasonable price. Moreover, TWA's are obliged by (partly self-)regulatory measures to give proper information and where necessary assistance concerning transport from and to the country of origin and on transport to and from the place of employment; concerning possibilities to complete tax refund forms (T-biljet), and guaranteeing that the refund must be credited to a bank account of the temporary worker; next to this, TWA's are obliged to offer health insurance, without the agency worker being obliged to accept the offer. The TWA is also obliged to inform the agency worker of the benefits and necessity of taking out Health Insurance. Finally, some special provisions are included in the ABU-CLA for agency workers not permanently resident in the Netherlands (Article 35), in order to bring the working conditions of this group more in line with their needs as a result of their specific working and living pattern (consisting often of circular migration).

Upon concluding the temporary employment contract, the temporary employment agency is therefore obliged to enter into consultations with each temporary worker who is not permanently resident in the Netherlands about the provisions of this article on the alternative shape given to the working conditions concerned. The financial value of the working conditions for this group is the same as that of the other agency workers. Another special provision in the CLA (Article 35A) concerns the agency workers with a foreign employment contract. For this group of 'cross-border posted' agency workers, it is stipulated which provisions of the ABU-CLA have been decreed to be compulsorily applicable also to agency workers who are deployed from abroad by a foreign TWA to a user firm in the Netherlands, and whose employment contract is governed by the law of a country other than the Netherlands. This provision is in accordance with the Terms of Employment (Cross-border Work) Act (Waga).

If from a certain moment, 1 May 2011 at the latest, all nationals from Middle and Eastern-European Member States will be free to work in the Netherlands without a work permit, one of the sources of undeclared labour will disappear. However, other foreign workers (from non-Member States) might take their place. In their search for more profit and financial gain and under the pressure of fierce global competition, contractors will employ the cheapest labour force available. Therefore, new borders will probably create new sources of illegal employment. At the same time, shielding the labour market from such free movement with rigid entrance rules would only result in an increase in undeclared work.

In their effort to tackle suspect temporary work agencies, the social partners are lobbying for enlargement of enforcement capacities (by strengthening the Labour Inspectorate and by giving their own joint enforcement institute more power). In addition, the employer's associations have asked the Inspectorates to focus foremost on malafide TWA's and to safeguard the bonafide part of the sector (in possession of a quality label, see above under NEN 4400) from too much checks and from chain liability (however the Ministry of Finance is so far not inclined to give in at this point). Next to this, according to the extended collective agreement of ABU for 2004-2009, an independent



Compliance Office has been given the task to monitor compliance to the collective agreement provisions.

With regard to the enforcement of collective agreement provisions social partners have not yet a very active tradition. Until some five years ago, the sense of urgency for a very active approach lacked. Since then undeclared work, especially by illegal migrants, is on the rise and the call for tackling this phenomenon is growing. The Compliance Office of the social partners is established to combat illegal employment and unfair competition by migrant workers. The aim is to actively monitor compliance of the rules by (foreign) TWA's and (foreign) agency workers. The Compliance Office should become a central point of contact and registration for firms and employees. Moreover, the Office is actively searching cooperation with the Labour Inspectorate and other enforcement authorities. The TWA sector is a trendsetter in providing information on working conditions laid down in legislation and collective agreements in other languages than Dutch. Currently, information is made available in English and Polish as well.

The trade unions have set up a campaign to make foreign workers in general more aware of their right to equal pay for work of equal value. As a result of this campaign and meetings for informational purposes, specific questions of migrants concerning all kind of daily practical problems have come up which trade unions together with their counterparts are trying to find solutions for. Moreover, this initiative may be the start of getting migrant workers committed to join the trade union, although costs of membership are currently still a barrier. Another issue which gains momentum is the need to enhance the cross-border cooperation between trade unions in order to serve migrant workers better.

### **Achievements and challenges**

After having discussed the topics referred to above, the participants of the workshop of 27 February 2008 were invited to list what they are proud of to have achieved in terms of participation and which issues still are (more or less urgently) in need to be solved, from an employees or employers point of view. The workshop participants all agreed that a lot has already been achieved in the Netherlands in terms of articulation of interests. Participants mention as the major achievement that temp work legislation in the Netherlands – contrary to other countries - no longer focuses on constraining the sector. Traditional obstacles such as sector constraints, restraints in motives for hiring an agency worker (like only in case of illness or for extra work), and on maximum duration of temp work have been abolished. The allocation function of the sector is recognized (agency work as a stepping stone) and the sector has grown mature. More specifically the participants mentioned the following issues:

#### *Achievements:*

- The legal embedding of both the allocation function of TWA and the role of employer. TWA has the extra facility of the allocation function for external flexibility on the labour market, which gives the agency an advantage above a regular employer. For this stepping stone function, a legal facility is created which enables the agency worker a quick and flexible entry on the labour market, as well as a *gradual* procedure of becoming a regular employer for the TWA (*mentioned by member employer association, trade union representative*).
- The construction of the CLA. The high trust relation between the trade unions (even despite their low penetration grade in the TAW-sector) and employer association made a CLA for the temp sector possible. Because of the CLA they

meet on a regular basis for *focused* negotiations about the sector, the labour conditions of the temp workers and the interest of the sector as such (*mentioned by trade union representative, member employer association*).

- Self-regulation by the social partners and the balance between flexibility and security which leaves discretionary room to the social partners to manoeuvre. Perhaps with too little protection ('still too many holes') for the low skilled. For those the existence of a decent trade union is of the utmost importance, in order to accomplish in practice what in paper is already settled in CLA (*mentioned by the representative of the Ministry of Social Affairs*).
- For occupational health and safety a 'mirror' regulation was set up for user firms and temp agency, creating transparency in responsibilities.

#### Challenges:

- Although the stepping stone function is welcomed by the trade unions, there still is a group entrapped in low paid flex work. For these employees more education and training is necessary. There is much work to be done in this field (*mentioned by trade union representative*)
- Although the recognition of the allocation function of the TWA sector is seen as an achievement, a major challenge is the existence of malafide agencies (*mentioned by trade union representative*)
- Lack of enforcement. Both the government and the sector have their qualities. However, up till now there is too little cooperation, too much fragmented action in enforcement.
- Most important challenge is a strategy of public – private cooperation for the participation of low skilled. In order to serve the lower side of the labour market, temp agencies and public employment services should join forces, like for example Belgium does. The temp sector could offer expertise and network, public employment service can offer facilities. (*mentioned by trade union representative*)
- Temp agencies are excellent intermediaries, but their function of employer is still underdeveloped and needs further 'hrm' investment (*mentioned by trade union representative, representative of one of the temp agencies works councils*)
- Research is needed into the situation of the working poor, for who the stepping stone function does not work. Who are they, where are they? Are they the ones that in other countries do not have work at all? (*mentioned by trade union representative, member employer association*)
- The CLA is too complex. Many temp agency workers are not aware of their rights. They risk being taken advantage of (*mentioned by trade union representative*).
- The lack of commitment of temp workers with CLA. The biggest union is investing in ICT. Currently they are negotiating deals with employers to use websites and intranet in order to enlarge the commitment of the workers with the CLA negotiations (*mentioned by trade union representative*).
- The low degree of representativeness of the trade unions. Only a small part of the 700.000 temp workers are organised workers (*mentioned by trade union representative*).

#### Conclusions

All in all, in the Netherlands the representation of agency workers at sector level through Collective Labour Agreements and other forms of self-regulation is relatively

well developed. This despite the fact that only few agency workers are unionised. Together employer associations and trade unions have come up with sometimes innovative solutions for classical problems like (lack of) vocational training and pension rights, equal treatment, a creative division of responsibilities for health and safety between the user firm and temp work agency, and self-regulation of irreproachable behaviour and compliance as alternative for a licensing system in the fight against fraud and illegal immigrant labour.

Traditionally there is a relatively weak union representation of agency workers at the company level. For example there are no health & safety trade union representatives. Agency worker representation is formally taken care of by the works council, which also has codetermination rights in the field of health and safety. However in practice agency workers are not really represented in the field of health & safety by works councils.

To sum up, the representation system seems to work quite satisfactory at the sectoral level for agency workers. A danger remains the low degree of union density, which in the long run could undermine the sectoral CLA as a successful institution.

Despite promising actions by government, employer associations and trade unions in the battle against illegal immigrant labour and despite regulation of housing and working conditions for immigrant labour, enforcement of CLA, other forms of self-regulation and legislation remains an Achilles heel. There is still a large group of illegal agency workers employed by malafide companies, where trade unions have no or only extremely difficult access to.

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## Poland: Agency work at national level

This chapter is written by Dr Joanna Unterschütz, Solidarnosc, Poland

### Introduction

#### *Historical overview of the phenomenon of agency work in Poland*

First agencies posting workers to another enterprise appeared in Poland in 1994. At the beginning clients of the agencies were foreign companies, having already some experience with this form of work<sup>(14)</sup>. At that time temporary work was not regulated in the Polish labour law and the only existing provision applied as a legal basis for such activity was the article Article 174<sup>1</sup>. of the Labour code, which in the § 1 stipulated that: “Upon a written consent of the employee, the employer may grant him or her unpaid leave for the purpose of working for another employer for the period specified in the agreement made in that respect between employers.” This was certainly not a satisfactory regulation, especially that its original purpose was quite different: dealing with excess of workforce at a particular establishment. At that time Polish employers were rather suspicious of temporary work, believing that such employee will not perform his work diligently enough.

In this first period agencies often combined various areas of activities: offering temporary employment, job counselling as well as outsourcing. Some agencies used to conclude open-ended contracts with user employers, establishing general terms of cooperation, as well as provide guarantee that an employee will not terminate a contract before a stipulated date and will have appropriate qualifications and qualities, otherwise another worker could be directed to the assigned job.

Nevertheless, as the demand for temporary work had been growing, an urgent need to regulate this segment of the labour market appeared. The notion of temporary work agency appeared for the first time in the Polish legal language in 2001, with an amendment to the labour Code introducing the article 298 (3), which entered into force on 1.1. 2002. Paragraph 1 of the article stated that one who intends to use a work of a worker employed by temporary work agency shall be obliged to inform the agency about a job to be entrusted to the worker, requirements as to workers’ qualifications as well as conditions of performing the job. Paragraph 2 stipulated that the user employer shall be obliged to provide for healthy and safe working conditions for temporary worker. This regulation, mainly due to its shortness fragmentary character was not satisfactory either, even though gave much more solid legal ground for temporary work than the previous one. At the same time regulations on posting of temporary agency workers by an agency from another member state were introduced.

Another step in development of the Polish legislation in this area was enacting in July 2003 the Act on employment of temporary workers, in force since 1<sup>st</sup> January 2004. This comprehensive act regulates employment of workers by temporary agencies both on the basis of civil law contracts and employment contracts, describing obligations of an agency and user employer, as well as providing basic definitions of temporary worker, temporary work agency and user employer.

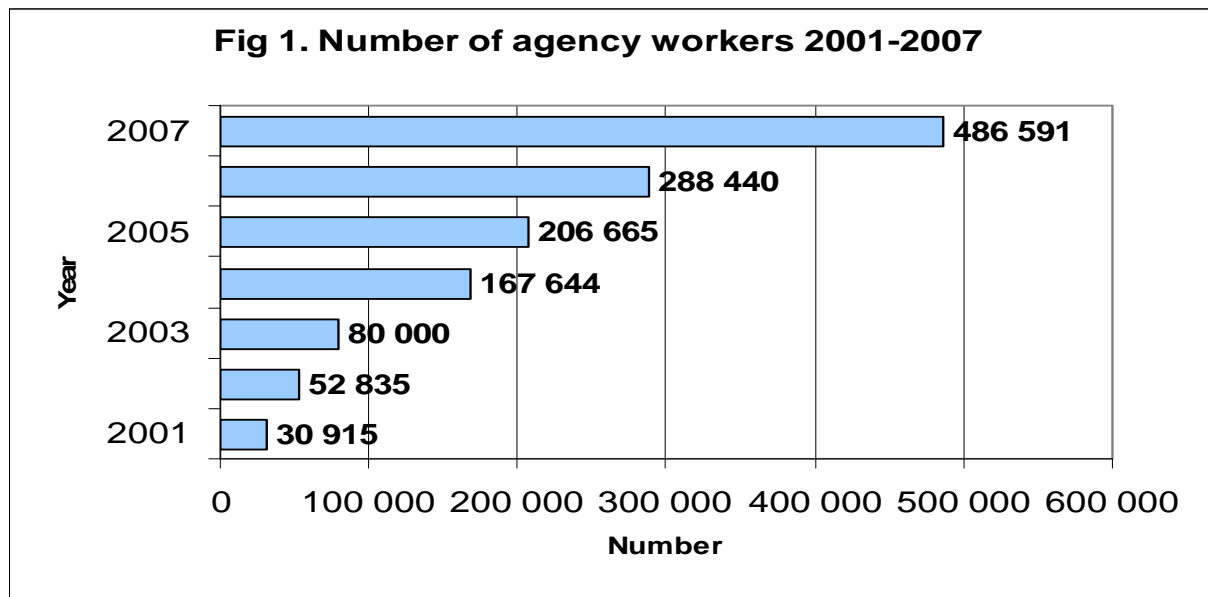
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<sup>14</sup> D. Makowski, *Praca tymczasowa jako nietypowa forma zatrudnienia*. Warsaw 2006, p. 81

In 2002 a employers' organisation called Związek Agencji Pracy Tymczasowej (ZAPT)<sup>15</sup> was established. The ZAPT is member of CIETT and gathers many large international temporary work agencies such as Adecco, Allbecon, Manpower, Randstadt, Trenkwalder, Vedior. In 2005 another organisation – SAZ – Stowarzyszenie Agencji Zatrudnienia<sup>16</sup> was created. In comparison to ZAPT its members are not only temporary work agencies but also other employment agencies. At present both organisations have 55 members, which is only a small percentage of all employment agencies.

### Recent developments

Employment by temporary agencies has increased significantly in the recent years and number of agency workers in 2007 was about 10 times higher than in 2002 (Fig. 1). At the same time number of user employers and temporary agencies is growing rapidly as well (Fig2) . Presently agency workers constitute about 0,5% of the workforce in Poland, which is not a very high rate, comparing to other EU countries, especially Great Britain.

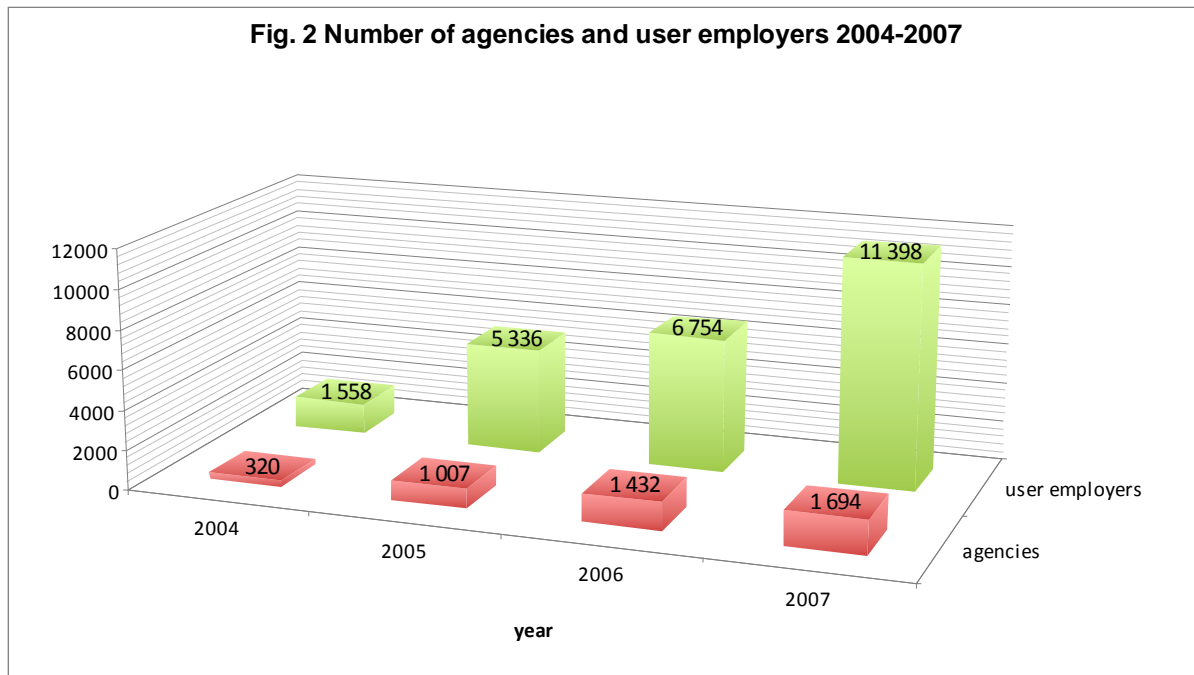


However, according to estimations of SAZ only half of registered agencies actually delivers this kind of services, which is due to very simple process of registration, based only on statement of registering enterprise<sup>17</sup>. The number of user employers is also growing fast every year (fig.2).

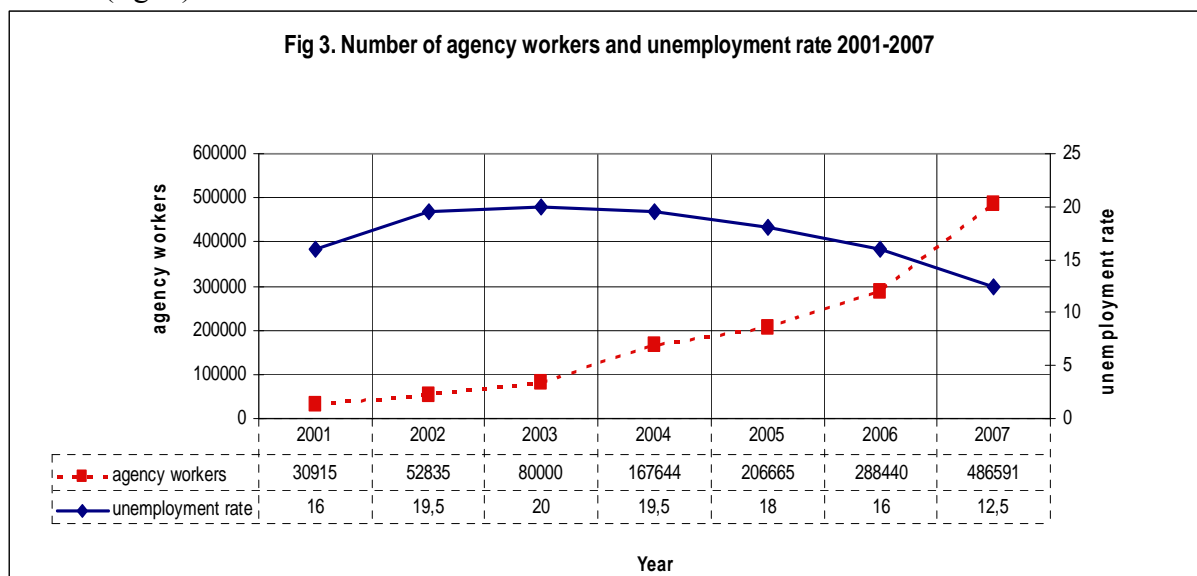
<sup>15</sup> Temporary Work Agencies Union

<sup>16</sup> Assotiation of Employment Agencies

<sup>17</sup> [http:// www.saz.org.pl/?+art&id=252](http://www.saz.org.pl/?+art&id=252)



It can also be observed, that despite of decreasing unemployment rate, every year more workers undertake temporary work, even though this form of work is perceived as precarious (fig. 3).



The profile of an agency worker can be established on the basis of a research made yearly for the Ministry of Labour and Social Policy (<sup>18</sup>). It is known that that more men than women are employed by agencies, and there are also migrant workers among those performing temporary work. Jobs most often performed by temporary workers differ slightly every year. In 2003 among the most temporary workers were employed at simple industrial jobs, as doctors, warehouse keepers, administrative workers and call centre workers. In the following year doctors and salesmen were replaced by salesmen and office workers. In 2005 Two first categories remained the same, while the following

<sup>18</sup> Reports of functioning of employment agencies, prepared for the Ministra of Labour and Social Policy In 2003, 2004, 2005 and 2006.

jobs became more popular: machine operators, office workers and travel office workers. In the last year – 2006 there were more office workers than machine operators, equally popular were ticket sellers, next, salesmen and employees of meat and fish processing industry. In practice temporary employment is applied not only to periphery jobs but mostly in order to circumvent dismissal protection provisions and prolong trial periods which are limited to three months by the law.

It is also interesting to note that the percentage of workers recruited to work abroad is significantly decreasing: from about 10% in 2003 through 5% and 3,5% the following years to 2,7% in 2006. It may be due to the fact that many temporary agencies based in other EU Member states recruit workers directly from Poland also by means of Internet.

Temporary work is currently regulated in the separate act, which bears however many references to the Labour Code. The Codification Commission plans to include agency work into the labour Code and a temporary worker is to be defined as a one that performs work for the benefit of a user - employer.

## **Legal framework**

### *Legislation and regulations*

Functioning of temporary employment agencies as well as employment of workers falls within the scope of four legal acts:

- The act of 9.07.2003 on employment of temporary workers (Journal of Laws 2003.166.1608)- further referred to as the “Temporary Workers Act”
- The Labour Code – further referred to as a “LC”
- The act of 20.04.2004 on promoting employment and labour market institutions (Journal of Laws 04.99.1001) further mentioned as “ Unemployment Act”<sup>(19)</sup>
- Regulation of Minister of Economy and labour of 13.10.2005 concerning registration of employment agencies and information presented by employment agencies (Journal of Laws 2005.212.1770) further referred to as “the Regulation”.

Two first legal acts deal mainly with conditions of employment of agency workers as well as relations between employment agency and a user employer, while the labour Code provisions are applied only in case a specific area was not regulated in the Temporary Workers Act according to interpretation rule *lex specialis derogat legi generali*.

The unemployment act and the Regulation concert conditions of establishment and running of temporary employment agency, including registration and reporting procedures.

The Temporary Workers Act stipulates that a temporary worker is a person employed by temporary work agency only to perform work for the benefit and under supervision of user employer. Temporary work is defined as performing for the benefit of user em-

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<sup>19</sup> Despite its name the act regulates various forms of unemployment benefits and incentives for employers to employ workers registered as unemployed, registering procedures and conditions of granting various benefits and forms of aid. It also concerns several labour market institutions such as employment and temporary employment agencies as well as job counselling. Therefore it is traditionally referred as an “unemployment act”



ployer for a period not longer than stipulated in the act<sup>(20)</sup> the following works: seasonal, periodical works, works that could not be performed by employees of user employer without failing deadlines or a job performed by an absent employee.

This form of employment is an example of three-way relationship between an employer, an employment agency and a user employer. Employees employed by a temporary work agency are assigned to specific positions within the operations of the user company. The temporary work agency employs employees on the basis of fixed-term employment contracts or 'contracts for completion of a specific task', since there is no possibility to employ workers for open ended contracts<sup>(21)</sup>. Some are not employees and work on the basis of civil contracts<sup>(22)</sup>. Temporary workers may not perform a dangerous work in the meaning of the Labour Code, a job performed by an employee who participates in a strike, and a job which was in the period of last 3 months performed by an employee of a user employer dismissed for the reasons not concerning the employee. Most of the rights and obligations of an employer are borne by the agency (including payment of wages) except the following: an obligation to ensure safe and healthy working conditions, register working time of a temporary worker on the same basis that the one applied to all employees. An agency and a user employer conclude on writing an agreement concerning the terms of employment – i.e. duration and time frames, place of work, remuneration, and qualifications required. Next, a worker signs another contract with the agency but unlike in case of regular employment relationship, the work is performed for the benefit and under supervision of the user employer

The combined amount of time worked with a single user company by a temporary agency worker over a 36-month period may not exceed 12 months, however there are no limitations concerning employment by a single agency.

According to the article 15 of the Act of temporary workers employment, a temporary worker in the period of performing work for a user- employer may not be offered less favourable working conditions as well as other conditions of employment than other employees of the user- employer employed on the same or comparable job. A report on compliance with the legal provisions towards agency workers in the years 2004- 2005 confirms, that indeed there are few infringements concerning equal pay regulations (7.3% of user employers)<sup>(23)</sup>. There are, however, many as to conclusion of a work contract (33% of user – employers), work certificates (26% of work agencies), working time (30% of user employers) and remuneration for overtime work (16% of agencies)<sup>(24)</sup>. It is argued by jurisprudence that amendments to the act on temporary employment of workers aiming to pass more competences to user employer could be beneficial for an employee and to a larger extent encourage this form of employment<sup>(25)</sup>.

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<sup>20</sup> 12 month within 36 months for one user employer, or if a temporary worker replaces an absent worker – 36 months.

<sup>21</sup> Article 7 of the Act on employment of temporary workers.

<sup>22</sup> *Report on activity of temporary work agencies in 2005*

<http://www.psz.praca.gov.pl/main.php?do=ShowPage&nPID=867743&pT=details&sP=CONTENT,obje ctID,882410> and 2006 prepared for the Ministry of Labour and Social Affairs

[http://www.zapt.pl/pdf/RAPORT\\_AGENCJE\\_-\\_2006\\_-\\_MPIPS.pdf](http://www.zapt.pl/pdf/RAPORT_AGENCJE_-_2006_-_MPIPS.pdf).

<sup>23</sup> Przestrzeganie przepisów prawa pracy wobec pracowników tymczasowych zatrudnionych w agencjach pracy tymczasowej oraz przez pracodawców użytkowników w latach 2004-2005

<http://www.pip.gov.pl/html/pl/doc/99030009.pdf>

<sup>24</sup> *Raport GIP z działalności PIP 2006* [http://www.pip.gov.pl/html/pl/spr\\_06/spr\\_06\\_05.pdf](http://www.pip.gov.pl/html/pl/spr_06/spr_06_05.pdf)

<sup>25</sup> J. Wratny, *Elastyczność z ludzka twarzą*, Dialog 3/ 2007, p. 28.

*Workers representation structure*

Organisations called to represent rights of employees in the framework of collective and collective dispute bargaining procedure are trade unions. It is their prerogative to negotiate collective agreements and enterprise- level regulations (work regulation and remuneration regulation). Another form of workers' representation are works councils existing in Poland since May 2006, however they have only information and consultation prerogatives and are to be created in companies employing more than 50 employees. It is worth mentioning however that temporary workers performing work at user employer are not included in a number of employees to be calculated for the purpose of creating works council.

Some prerogatives traditionally reserved to trade union organisations were given also to employees' representative within a company where no trade unions operate. This could be seen as a provisional form of personnel representation, although questions were raised about independence of such person from employer, given that such representative does not apply any protection against discrimination or unfair dismissal. Information and consultation rights of workers are exercised also by works councils which are created in enterprises employing at least 50 employees. However temporary employees at user employer are not taken into consideration while calculating the number of workers.

Nevertheless workers not always can benefit from their collective rights. Trade unions may exercise their rights on a company level only if they represent at least 10 employees. Unfortunately trade union representation is not very high. Trade unions are present in about 20% of companies (mostly the large companies, foreign capital and state – owned companies) and trade union representation is about 12% <sup>(26)</sup>.

According to trade union act, only employees and home- workes can be unionised, however according to the statute of “Solidarność” trade union also workers employed on other legal basis may join it <sup>(27)</sup>. Given that such statute has been registered and is legally binding, it is possible that other trade unions may include similar provisions. This is particularly relevant since the trade union act was created in 1990, when atypical forms of work were not at all popular in Poland.

Trade union membership is acquired by joining trade union organisation operation at employer's establishment. Therefore, since for temporary workers an agency plays employers' role in the virtue of the labour law, it is at the agency, that a trade union organisation should be created. However some trade unions create special units for workers employed in an enterprise not covered by activity of any trade union organisation, which could be seen as a way for agency workers to join trade union outside an agency and user employer. Despite existing legal possibilities, there are very few trade union organisations covering agency workers. In practice it is not easy to track all trade union organizations, since according to the Trade Union Act 10 workers at an employer may gather and create trade union organization, by creating a statute and registering it.

*Specific problems of agency workers' representation in Poland*

Increasing number of atypical forms of labour does not have, unfortunately, positive impact on collective rights of workers. It should also be underlined that persons em-

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<sup>26</sup> *Pracujący Polacy* 2006. [http://i.wp.pl/a/f/rtf/9806/pracujacy\\_polacy.rtf](http://i.wp.pl/a/f/rtf/9806/pracujacy_polacy.rtf)

<sup>27</sup> Statute of NSZZ Solidarność, which stipulates in the article 5 that also person employed on the basis of other type of contracts may join the trade union.

ployed on the basis of fixed-term contracts are less willing to join trade unions<sup>(28)</sup>. However, there are no legal obstacles for atypical workers employed on the basis of labour contracts to join trade unions. Although agency workers are not exempted from these provisions, in reality trade unions are very rarely or not at all formed in the agencies. It is caused by the temporary character of employment, the fact, that their real interest are connected with user employer rather than the agency (e.g. remuneration depends on remuneration regulations at user employer)<sup>(29)</sup> and, last but not least, almost 50% of them are employed on the basis of civil contracts<sup>(30)</sup>, which means that no labour law provisions are applicable *vis a vis* this group of workers.. What is more, some workers do not fully perceive the concept of tri-way employment relationship, treating temporary work agency only as an intermediary and a user employer as their factual employer. Perhaps it would be therefore advisable to enable temporary workers to join trade union organisation in the user- employer enterprise and not in the agency – the factual employer<sup>(31)</sup>. It is now rather difficult, as trade union participation is based in trade union organisations at employer's establishment. One possibility allowing trade union membership of agency workers at user employer would be, at present legal state, creating multi- establishment trade union organisations, covering both a agency (or agencies) and user employer (or user employers). This is however problematic, since many agencies co-operate with various user employers, and character of this co-operation may be ephemeral.

Another possible solution is creating a trade union of agency workers, which would not have any enterprise- based structures<sup>(32)</sup>. Such trade union would aim at protection of rights of workers employed by different agencies and performing work at different user-employers. This solution is also judged as unpractical, since trade union with no enterprise based structures at the current legal state in Poland lacks basic prerogatives, which may not be transferred into another level, such as right to consultation in case of negotiation, right to information and consultation in the process of creating work and remuneration regulations. A right to bargain and conclude collective agreements could be executed but mostly in theory. Unfortunately a multi- establishment collective agreement covering many work agencies, given that remuneration of worker depends on user employer is not realistic, also because a trade union for agency workers –party to such agreement should fulfil representativity criteria.

Collective agreements are concluded mostly on company level. Rarely do they enshrine provisions more favourable to workers than basic provisions of the Labour Code<sup>(33)</sup>. Most of them deal with remuneration systems and other employee benefits and working time arrangements as a form of labour flexibility. It can be stated that social partners do not benefit sufficiently from the possibilities offered by the law concerning collective agreements as a useful tool of adapting working conditions to the needs of particular

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<sup>28</sup> J. Wratny, M. Bednarski, *Wpływ prywatyzacji na zbiorowe stosunki pracy. Aspekty prawne i społeczno – ekonomiczne*, Warszawa 2005, p. 175.

<sup>29</sup> J. Wratny, *Elastyczność z ludzka twarzą*, Dialog, 3/2007. p. 28

<sup>30</sup> *Report on activity of temporary work agencies in 2006 (Raport z działalności agencji zatrudnienia w 2006 r.* Ministerstwo Pracy i Polityki Społecznej- Departament Rynku Pracy)  
[http://www.zapt.pl/pdf/RAPORT\\_AGENCJE\\_-\\_2006\\_-\\_MPIPS.pdf](http://www.zapt.pl/pdf/RAPORT_AGENCJE_-_2006_-_MPIPS.pdf)

<sup>31</sup> J. Wratny, *op.cit.* p.28; B. Cudowski presents a contrary view, which cannot be In my opinion sustained (compare: B. Cudowski, *Podstawowe problemy zbiorowych stosunków pracy z udziałem pracowników tymczasowych*, MPP 4/2005, p. 2)

<sup>32</sup> B. Cudowski, *op.cit.*

<sup>33</sup> J. Wratny, *Teoria i praktyka układów zbiorowych*, Dialog, 3/2006 . p. 37.

establishment. Main cause of this is weakness of social partners: trade unions are rarely present in private- owned companies, while employers organisations do not gather many employers, which is especially true in case of agencies (<sup>34</sup>).

Nevertheless, even without agency workers trade unions, it is possible to regulate in a collective agreement for certain rights of agency workers performing work for a given employer. Such provision should refer to agency workers explicitly because they are not covered by already existing collective agreements at user employer *ex lege*. A question remains whether trade unions existing in user employer company would be willing to do so.

Therefore there are two factors that could give beneficiary effects to the social dialogue in Poland: strengthening of social partners including stronger trade union representation as well as providing for more functional right to coalition for certain groups of precarious workers, such as agency workers and also persons employed on the basis of civil contracts and dependent self- employed workers.

### **Institutional arrangements: strategies and state of play on selected topics**

#### *Licensing of agencies*

Temporary employment agency is a regulated form of economic activity according to the unemployment act (art. 18), so it is required to obtain certificate and register.

The entrepreneur willing to establish temporary work agency must fulfil certain conditions, especially he is obliged to:

- pay taxes, health and social security contributions regularly;
- possess an appropriate locum and technical equipment;
- employ persons with minimum secondary level of education

The certificate may not be granted for an entrepreneur who had been punished for one of crimes or misdemeanours against rights of workers, unemployed persons and breach of regulations enshrined in the Unemployment act; or one who is undergoing insolvency or liquidation procedure.

An agency is also obliged to treat equally the jobseekers, without discrimination based on any ground, explicitly inform jobseekers on temporary character of employment.

Services of temporary employment agency are free of charge for jobseekers.

Upon a written request of entrepreneur a local representative of the government (Mar-szalek Wojewodztwa) registers an agency and issues a certificate. For the first year of activity w “preliminary certificate” is issued, and in case of subsequent request a “per-manent certificate”.

An agency can be deleted from the register under certain conditions provided in the unemployment Act, such as, first of all written request of the entrepreneur, lack of ac-tivity in the chosen field, failure to provide requested information(<sup>35</sup>) or providing false information, ongoing insolvency or liquidation proceeding, failure to comply with regu-lations concerning activity of temporary work agency.

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<sup>34</sup> J. Wratny, *op.cit.* p. 36.

<sup>35</sup> The information concern mainly number of persons employed in the character of temporary workers as well as jobs they performed.

Although the number of registered agencies is very high (over 2000 by the end of May 2008) it is estimated that only half of them is actually active.

*Equal pay and equal treatment*

Although the Act guarantees temporary agency workers a status equal to that of the permanent employees of the user company for the duration of their placement, such employees are rarely represented by trade unions and enjoy limited protection against dismissal as well as some other limitations to workers rights.

In the Polish legal system and jurisprudence the term “labour law” relates traditionally to labour relations, defined as performing work on the basis of an employment contracts. The core labour rights are therefore enshrined in the Labour Code which in some, usually more technical matters provides for legal delegation to create another acts or regulations in this area.

The most vital rights of employees are named explicitly in the 2<sup>nd</sup> chapter of the 1<sup>st</sup> section of the Labour Code entitled: “Basic principles of labour law”. Following rights and freedoms are included: Freedom of work, freedom to conclude labour contract; obligation of the State to specify minimum wage; obligation of employer to respect dignity of employee; equal rights for employees performing identical duties; equal treatment of men and women; prohibition of discrimination; right to fair wage; right to safe and healthy working conditions; right to representation for employers and employees; employees participation; right to employer’s assistance in improving employee’s occupational qualifications. Some other are spread between various provisions of the Labour Code, such as right to rest; protection of sustainability of an employment contract, protection of remuneration, limited responsibility of workers for damages; protection of maternity<sup>(36)</sup>. All these basic rights, as well as all the other rights provided for in the LC and other labour – related acts are fully applicable to all forms of employment contracts based on the labour code and to agency workers with some exceptions enshrined in the temporary employment act.

All fixed-term employment contract suffer from weaker protection of sustainability of labour relation: all of them can be terminated upon notice not longer than 2 weeks (while normally period of notice of 2 weeks – 3 months). In case of temporary workers termination periods are even shorter – 3 days in case of agreement for less than 2 weeks and 1 day in case of agreement longer than 2 weeks. There is no obligation to present reason of termination of such contracts, nor must the decision of employer be consulted with trade union organisation. Such workers cannot be reinstated to work<sup>(37)</sup>, they only have right to compensation. There is no obligation to prolong replacement contract, contract for trial period less than 1 month of a pregnant worker until the day of birth (which is the case for regular fixed term contracts which would have been terminated after the third month of pregnancy). Provisions on collective dismissals are not applicable to temporary workers either.

Although a provision of a contract stating that temporary employee may not be subsequently employed by the user employer as a regular worker is nul and void, a period of temporary work is not calculated as employment period for the purpose of establishing

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<sup>36</sup> T. Liszcz, *Prawo pracy*, Warszawa 2006, p. 80.

<sup>37</sup> Except for pregnant women.

some rights (e.g. termination of a contract, which depend on the period of employment at a particular establishment)<sup>(38)</sup>.

Temporary workers have also right to equal remuneration in comparison to regular employees of a user employer performing the same or a similar job (article 15 of the temporary employment act). The remuneration of temporary worker is paid by an agency, but on the basis of information given by a user employer. Provisions of remuneration regulation or collective agreement covering a user employer stipulating that remuneration of temporary workers is lower is unacceptable<sup>(39)</sup>. In practice it may happen that temporary workers perform such jobs, that cannot be compare to any other ones performed by regular workers at an establishment, and therefore obtain lower remuneration, than the one which would have been proposed to a regular employee.

The basic tool to used is a ban of discrimination on the basis of sex, age, disability, race, nationality, religion, political convictions, trade union participation, ethnical origin, confession, sexual orientation. There are also explicit provisions to guarantee equal treatment to workers employed in the form of telework, by temporary agency, part time and fixed term employees. These groups of employees should not suffer from unequal treatment on the basis of their form of employment. It is worth mentioning that in case of discrimination the burden of proof is shifted to an employer. An employee is obliged only to present that an act of discrimination could have taken place, and it is to the employer to prove that the circumstances presented by an employee are not of discriminatory character and are based on objective grounds. In case of discrimination by user employer a temporary worker may demand compensation from employment agency.

Nevertheless, it should be underlined that these rules concern those temporary workers who are employed on the basis of labour law contract and not a civil law contract, which is a case for almost half of temporary workers.

A report on application of labour law in temporary work agencies 2004-2005 has proved that generally temporary workers do not suffer discrimination<sup>(40)</sup>. In 2005 irregularities in this regard were found in 7.3% of controlled employers. User employers also respect the right of temporary workers to access to social rooms and equipment.

### **Vocational training**

According to the article 15.5 of the temporary employment act, provisions concerning equal treatment of temporary workers are not applicable to the right to vocational training of temporary workers employed for a period not exceeding 6 weeks. It concerns only training organized by (or for the benefit of) a user employer, and not other forms of training. Although in practice temporary workers face constantly changes in working conditions, character of performed jobs, as well as a need to get acquaint with different H&S requirements, they are less likely to participate in vocational training<sup>(41)</sup>.

### *Occupational health and safety*

All the core labour rights and principles are without any doubt applicable to all employees employed on the basis of employment contract as defined in the labour Code, in-

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<sup>38</sup> D. Makowski, *Praca tymczasowa...*, p. 126.

<sup>39</sup> A. Sobczyk, *Ustawa o zatrudnianiu pracowników tymczasowych*, Komentarz, Kraków 2005

<sup>40</sup> *Respecting legal provisions in temporary work agencies 2003-2005*, a report presented by Labour Inspectorate in 2006.

<sup>41</sup> M. Moszyński, *Praca tymczasowa – aspekty ekonomiczne i zatrudnieniowe*, PiZS 10/2004 p. 10.

cluding teleworkers, agency workers, fixed term workers. However these groups of workers who are exempted from the labour code, especially workers employed on the basis of civil contracts and self - employed are at the same time not covered by basic labour rights. Nevertheless there is one group of core rights applicable to all groups of workers, even the self - employed: right to healthy and safe working conditions. According to the Article 304 LC employer is obliged to ensure safe and hygienic working conditions not only to his own employees but also to other persons performing work at the establishment especially persons employed on the basis of civil contracts, self-employed, students. This includes complying with both health and safety regulations provided for in the Labour code and other specific acts and regulations, but also health and safety rules, which include also general rules stemming from technical requirements and knowledge and even common sense. Employer is obliged to comply with current technical knowledge and scientific achievements, but only to the extent to which his financial situation allow. If a health and safety representative or health and safety service exist in an enterprise, they are responsible for inspecting the whole enterprise, including work posts occupied by permanent and temporary employees.

H&S issues are especially important for agency workers, who tend to change workplace often and are not able to adapt to the new working conditions, which makes them prone to occupational accidents and influence of unhealthy working conditions. According to the previously quoted report of the Labour Inspection, health and safety regulations were not respected in almost 1/3 of the controlled establishments in 2005, At the same time, regulations on concluding labour contract were not respected at over 60% of controlled agencies. Many the infringements included employing workers without preliminary medical examination and failure to informed them about possible risk for health at a job in most cases an effect of lack of precise provisions in agreements concluded between agencies and user employers<sup>(42)</sup>.

First aspect of protection of agency workers against occupational risk is a prohibition to employ them at “particularly dangerous jobs”. A list of such jobs is created individually be every employer on the basis of more general occupational health and safety regulations. Therefore it is advisable for an agency to get acquainted with such list of dangerous jobs by every user employer it is co-operating with <sup>(43)</sup>. Failure to comply with this regulation by a user employer constitutes a misdemeanour, however there are no sanctions for the agency for contracting temporary worker to a dangerous job.

As to the rule, user employer is obliged to provide for health and safety working conditions for a temporary worker. This obligation includes explicitly: obligation to provide proper clothing and means of personal protection, ensuring profilactic drinks and meals, conducting health and safety training, inquiring on circumstances of an accident at work, assessment of occupational risk at workplace and informing a temporary worker about the risk<sup>(44)</sup>. Other obligations in the sphere of health and safety must be agreed by an agency and a user employer. Provided that according to the article 14 of the Act on

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<sup>42</sup> *Respecting legal provisions In temporary work agencies...*

<sup>43</sup> D. Makowski, *Bezpieczeństwo i higiena pracy w zatrudnieniu tymczasowym – wybrane problemy*, PiZS 4/2006

<sup>44</sup> Provisions explicitly obliging user employer to ensure H&S in this regard were addend in 2007, since the problem of sparing responsibilities concerning health and safety was not clear and often disputed in literature ( e.g. A. Chobot, K. Pachciarek, *Prawa i obowiązki agencji pracy tymczasowej i pracodawcy użytkownika wobec pracownika tymczasowego*, PiZS 1/2005; D. Makowski, *Praca tymczasowa...* 112; D. Makowski, *Bezpieczeństwo i higiena pracy...* p. 27

temporary employment a user employer is obliged to ensure healthy and safe working conditions for a temporary worker in the place where the work is performed, there is not very wide range of obligations in the H&S area to be agreed upon. It seems that there are at least two such issues: medical examination of worker prior to undertaking a work and creating health and safety service, which is a consultation body created by employers with a staff exceeding 100 workers. A worker should be sent by a future employer to medical examination prior to admitting him or her to work, which is especially important in case of physical work. This obligation can be fulfilled both by an agency and a user employer. However, if a result of medical examination done on the cost of user employer proves that a worker is not suitable for a specific job, an agency may be held responsible for indicating a wrong worker<sup>(45)</sup>.

Given that many infringements of H&S regulations were caused by imprecise provisions of agreements between agencies and user-employers, it would be most advisable to promote clearness and accuracy and perhaps model agreements of that kind by employers organisations.

### **Strategies and challenges for workers' organisations**

Trade union approach towards agency work has undergone a significant change in the recent years. When the major regulation on employment of agency workers was enacted, NSZZ Solidarnosc, one of the largest trade unions in Poland, was rather reluctant to development of this new and precarious form of work, even despite the fact that this form of work was at the time meant as a useful tool to fight high unemployment in Poland<sup>(46)</sup>. Gradually this attitude is changing even the former opponents realise, that temporary work agencies constitute a developing branch of industry and it is no longer possible or effective to propose further restrictions imposed on user employers to benefit from it. An interest in good practice in of the Member States concerning both employment and trade union membership of agency workers have appeared. Trade union leaders, especially those responsible for organising workers realise potential of this group, but at the same time see difficulties. Nevertheless it is admitted that no precise strategy of organising agency workers has been created so far<sup>(47)</sup>.

One of the reasons of this state of play is that presently another target groups are perceived as priorities: especially personal security and still supermarket workers. These are two groups of workers which are not well unionised and are prone to abuse from employers.

The most important obstacle from trade union perspective is the very character of agency work. First of all, it is widely known that workers employed for a definite period of time are less interested in joining trade unions. This factor is overlapped by the legal situation in terms of trade union participation described in an earlier chapter. Constant rotation of workers in agencies and the fact, that they do not perform work in one place and time but as many different user employers does not facilitate creating trade union organisations. Besides, as it was also mentioned before, both social environment and most of economic and work- environment interests of agency workers are concen-

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<sup>45</sup> A. Reda, *Nowe rozwiązania ustawowe w zakresie obowiązku pracodawcy użytkownika zapewnienia pracownikowi tymczasowemu bezpiecznych higienicznych warunków pracy*, MPP 11/2007

<sup>46</sup> Interview with Mr Jacek Smagowicz and Mr Krzysztof Zgoda, representatives of the National Commission of NSZZ Solidarnosc, dealing with respectively labour market and trade union organizing issues.

<sup>47</sup> Interview with Krzysztof Zgoda



trated in the establishment of user employer. Furthermore in some cases it is not easy to reconcile interests of permanent and agency workers of a user employer: the latter often occupy worse and less paid jobs, which allows permanent workers to improve their working conditions, including wages.

Last but not least the very legal status of agency workers may be an obstacle, since almost half of them are not even employees but persons co-operating with agencies on the basis of civil law contracts. Such contracts, as any others may be subject to revision in the light of a labour code regulation which bans to replace labour contract with civil contract in a situation when work is performed in the conditions of labour relation (such factors as dependant character of work and its supervised character must be considered). Nevertheless rarely are the “regular” work contracts revised from this perspective, not to mention agency work, mainly because of legal requirement to claim before a labour court establishment of the character of a given relation. This obstacle is very important, given the legal limitations of joining trade unions by persons having different status than an employee (or homeworker).

Therefore trade union membership among agency workers is very low, however there is no precise, accessible data in this regard<sup>(48)</sup>. What is more, agency workers are not counted for the purpose of calculating number of employees sufficient to create works council at user employer. According to the law only employees of a given employer are included, which is not the case of agency workers of user employer.

There are major challenges for trade unions as far as agency work is concern. First and more obvious one is co-operation between trade unions themselves as well as employers organisations (especially ZAPT and SAZ) in order to monitor working conditions of temporary workers and prevent abuses. It is also vital for trade unions to create concise policy towards agency workers as well as a strategy to recruit them. Strong trade union representation would facilitate collective bargaining for this group, even though it seems that presently collective agreements at agencies would be closer in its character to codes of good practice than normative acts.

Trade unions could also seek ways to create connections between user employers and agencies in terms of workers participation e.g. by creating multi-establishment trade union organisations covering both agencies and user employers. It is also possible through adequate adaptation of inner trade union regulations (i.e. statutes) to allow or facilitate for acquiring trade union membership at user employer-based trade union for agency workers in case no trade organisation is operating in a given agency.

Opening possibility for temporary workers to participate in trade union organisation both t an agency and user employer in the present legal state requires amendments in trade union Act.

## **Conclusions**

In the Polish regulatory framework both agency work and functioning of temporary work agencies are regulated. There are certain restrictions concerning application of this form of work by user- employers and formal as well as factual requirements for entrepreneurs wishing to provide services as a temporary work agency.

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<sup>48</sup> It is mentioned that among Solidarność trade union members some are agency workers, although no indication of number was found. There are also other trade unions gathering such workers.

As to the rule agency workers are granted the same rights as those employer in the framework of standard employment agreement, with some exceptions steaming form the agency work Act, as well as the very character of temporary employment, such as defined time of work contract or frequent change of jobs and employers. It is also with mentioning that there has been an improvement in regulation in the scope of health and safety provisions for temporary workers: formerly unclear legal provisions were replaced by more concrete ones, which allow more clearly define obligations of an agency and a user employer in this area.

Unfortunately, one of the basic rights temporary workers do not benefit fully are the rights of coalition and collective bargaining. Although there are no explicit exemptions in the law concerning this group of employees, the actual regulatory framework renders is execution very difficult. Not only rarely do they become trade union members, but also the right to bargain and conclude collective agreement has rather theoretical dimension for them.

It seems that majority of temporary workers in EU countries suffer from certain problems connected to trade union representation, such as the very temporary character of work, difficult access of trade unions to agency workers etc. The situation in Poland in this regard is fairly difficult because of very moderate trade union membership rate and also because of the representation system based on trade union organisations created at the company level.

These problems can be partly dealt with by trade union organisations themselves, but at the same time it could be considered if certain amendments in legislation could result beneficial.

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## The UK: Agency work at national level

This chapter is written by Richard Pond and Dr. Howard Potter, WLRI, London Metropolitan University, UK.

### Introduction

#### *The position of agency workers in the UK*

According to Biggs (2005:4), in the UK 'there has been an exceptional growth of the Employment Agency Industry throughout the 1990s and into the 21<sup>st</sup>. century', with total turnover rising from £3.9 billion in 1992 to £23.4 billion on 2002. At present there are over 10,000 private employment agency companies, which employ a reported 1.2 million workers (CIETT, 2006).

However, determining accurately the total numbers of agency workers in the UK, who they are and how they work, is complicated by how such individuals are defined in terms of being either workers or employees (see Section 2.1). Indeed, as Storrie notes in addressing Labour Force Survey (LFS) figures for 2002 'agency work is a rather unclear concept in the UK and estimating its extent is thus fraught with difficulties' (2002:85). For example, he notes that the total number of temporary agency workers who were classed as employees of an agency business in the UK for 2002 was 254,000, whilst a report from the Department of Trade and Industry (now the Department for Business Enterprise and Regulatory Reform) of the same year suggested that this figure was 557,000 and included self-employed and other categories of workers who were agency workers.

However, there has been some attempt at identifying the agency worker in UK employment. Drawing on the LFS data for 2006, and only with reference to temporary agency workers, the TUC (2007), the UK's only trade union confederation, suggested the following:

<u>Total number</u>	263,000
<u>Percentage of all UK employees</u>	Temporary agency workers constituted 1.1% of the UK workforce, and 17.7% of all temporary workers (including seasonal, fixed task and period contract, casual and other temporary workers).
<u>Age</u>	All temporary agency workers tended to be younger than their permanent worker counterparts
<u>Gender</u>	Male and female workers are equally represented in the industry, although the number of male temporary agency worker decreased with age whilst this was not so for their female counterparts
<u>Ethnicity</u>	The majority of temporary agency workers (86%) classed themselves as 'white'.
<u>Education</u>	A quarter of temporary agency workers had degree-level qualifications whilst a fifth had academic qualifications at 16. Under a tenth had no qualifications.
<u>Sector</u>	The majority of Temporary agency workers worked in business, followed by manufacturing and health and

<u>Occupation</u>	social provision. Over three quarters of all temporary agency workers worked in the private sector. The majority of temporary agency workers are employed in the elementary occupations, followed by those working secretarial and administration work, machine and plant operation, and the personal services occupations. There are few agency workers employed in the higher skills and knowledge occupations (Forde and Slater, 2005).
<u>Permanent employment</u>	Nearly half of temporary agency workers chose to work in the industry because they could not secure a permanent job, and of these, half again worker full time. The majority of temporary agency workers worked for an agency for between 1-12 months.
<u>Hourly rates of pay</u>	Relative to their permanent worker counterparts, temporary agency workers were paid less, with the differentials being 11% for men and 6% for women (Forde and Slater, 2005).

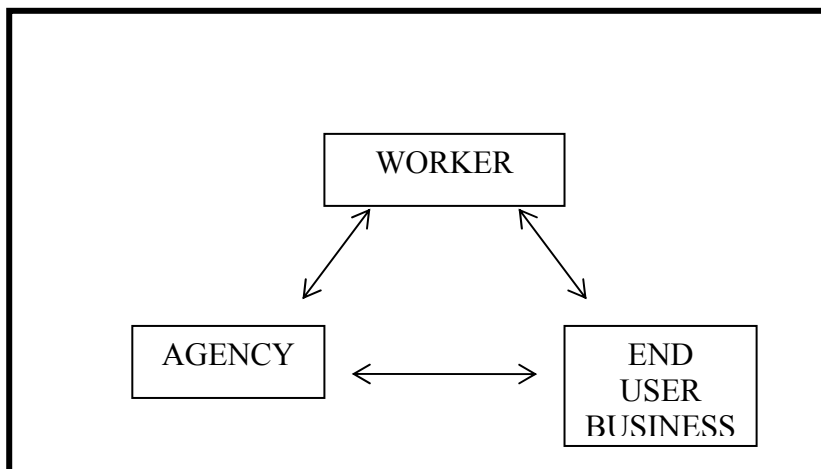
Whilst these figures offer some indication of how agency workers are positioned in UK employment, they do not reveal to what extent they are represented by trade unions or other organisations representing workers, itself a reflection of the 'decentralised' nature of worker representation in the UK (see section 2.2)

**Institutional framework**

*The regulatory regime: legislation and regulation*

*Defining the agency worker*

The agency worker is commonly bound by the effective relationships with two employers, the agency and the end user business. In most UK employment contracts, the basis of exchange is that the worker receives wages from and surrenders authority to one and the same employer. In agency work however, whilst the agency supplies the wages, it is often to the end user business that authority is surrendered in the course of the work (see fig. 1 below).



**Figure 1: the 'ménage a trios' of relationships in agency work**

This has led to the rights of the agency worker potentially always being open to question. As a recent UK Parliamentary Research Paper (PRP) notes (2008: 31):

‘The employment status of agency workers is a complex and uncertain matter...they have a unique status as there is a triangular relationship between the business that supplies them, the company which hires them and the workers themselves’.

For example, whilst Tax and National Insurance (social security) legislation makes specific provision for agency workers whereby the agency that supplies them to the end user is responsible for deducting contributions and Tax through Pay-As-You-Earn. However, just because they are contractually an ‘employee’ of the agency business for National Insurance and Tax purposes, the worker is not necessarily an ‘employee’ of the agency in terms of employment rights legislation. In practice, whilst they may indeed be an ‘employee’ of the agency, they may also be an employee of the end user business, or a ‘worker’ with a contract providing services to the agency or end user business, self employed, or may be even more than one of these, or none at all. These ambiguities have arisen in recent years through various judgements made in case law regarding agency workers bringing cases concerning breaches in their perceived employment rights by agencies and end user businesses.

Ultimately, in terms of defining who is an employee with full rights and who is a worker with more limited rights rests on the issue of who has control over the individuals work: the worker, the agency business or the end user business. This undecided and under-defined issue has led to agency workers not only having fewer rights in theory than directly employed workers, but often in practice being exploited and discriminated against and receiving fewer benefits than their co-workers with little legal ground for redress.

As a general rule though, agency ‘workers’ will be ‘contracted for services’ whilst agency ‘employees’ will be ‘contracted for employment’. The individual is more likely to be an ‘employee’ if:

- They have worked for the agency for an extended period of time and expect to continue to do so
- The day they work and the terms and conditions they have are determined by the agency
- The agency *or* the end user business can dismiss them for misconduct
- They have access to a grievance procedure under their terms and conditions

#### *2.1.2 Agency industry regulations*

The regulation of agencies through the Conduct of Employment Agencies and Employment Businesses Regulations (2003) was ‘designed to govern the conduct of the private recruitment industry, and establish a framework of minimum standards that clients (work-seekers and user enterprises) were entitled to expect’ (TUC, 2007). The regulations include provisions for:

- The unlawful withholding of pay for work done by the agency, even if the worker does not have a pay sheet or whether the agency has not been paid by the end-user business
- Ensuring the agency does not demand additional payments from the worker when being offered a job

- Requiring the agency to obtain information regarding health and safety issues in the end-user business
- Ensuring the agency provides all details relating to pay
- Prescribing the situations whereby agencies can charge 'temp-to-perm' fees
- Determining whether the worker is an employee of the agency or is hired under a contract for services
- Ensuring the agency does not place restrictions on the workers mobility in the labour market

Except for 'Gangmasters' agencies, agencies are not required to be licensed, but the Employment Agency Standards Inspectorate (EAS) does have the power to investigate complaints and undertake random checks of agencies, and ultimately place prohibitions ensuring the agency cease business. Between 1999 and 2004, the EAS prosecuted 24 agencies and banned 7 individuals from operating as employment agencies (TUC, 2007). With regard to Gangmasters' agencies, which are defined as those agencies that provide labour for the agricultural, horticultural and shellfish sectors, and any businesses that specifically process and pack the products of these, following a very public case of worker abuse the Gangmasters Licensing Act (2004) was introduced. This requires any agency involved in supplying labour for these sectors and sub-sectors to be publicly registered and to ensure that the minimum rights noted in the Act are in place. It also provides for the resulting Gangmasters' Licensing Authority to enforce standards and revoke licences where these have not been maintained.

Whilst the industry has accepted the regulation of part of their sector, the prospect of the implementation of the EU's Temporary Agency Worker Directive (TAWD) or the recently proposed UK Temporary and Agency Workers (equal Treatment) Bill (TAWTB) (2008) is another matter. In response to TAWD the Department of Trade and Industry suggested that there were already some protection for agency workers, such as the national Minimum Wage and working time legislation (PRP, 2008). More specifically, the European Industrial Relations Observatory noted that 'the UK government argues that the directive would damage labour market flexibility and lead to job losses'<sup>49</sup>, a position that both the Confederation of British Industry and the national agency industry representatives, the Recruitment and Employment Confederation (REC), generally agrees with<sup>50</sup>. Whilst the present position of the UK Government towards TAWD articulates around arguing for a much longer qualifying period before 'equal employment rights' are available, it has rejected the principal of full equal treatment set out in the failed TAWTB, again a position applauded by the employers groups and decried by the trade unions and the TUC.

#### *Representation by trade unions*

At workplace level agency workers may be recruited into membership by whichever trade union is active at the workplace. In the UK, there is a mixture of industry unions and general unions and in many workplaces there may be a choice of which trade union to join. Many trade unions have been active in campaigning for agency worker rights and will no doubt, where possible, attempt to recruit agency workers into membership. However, the extent to which they can represent them will be limited in as far as the union is unlikely to be recognised by the employment agency. The main exceptions to this are where there are large groups of agency workers together in one workplace or in

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<sup>49</sup> <http://www.eurofound.europa.eu/eiro/2007/12/articles/uk0712029i.ht>

<sup>50</sup> CBI Survey on Temporary Agency Work 2002, and REC Policy Matrix 2007

several workplaces across which a particular trade union is organising (this reflects the situation in BT, for example, see below) and where it has been able to build up a sizeable membership. One of a small number of cases of trade union recognition by an employment agency is at the National Cattle Movement Agency (NCMA - this is a government body) in North West England. Over 90% of the workers at the NCMA are employed by the Adecco employment agency and a recruitment campaign by the PCS civil service union eventually led to a successful application for official recognition.

While the representation structure for agency workers appears rather decentralised and local, it does tend to cohere and become visible around both the TUC and individual union campaigns. Whilst the TUC has lobbied for equal treatment issues nationally and instigated various campaigns such as *Working on the Edge* and *Vulnerable Workers*, trade unions such as UNISON (public services union), GMB (general workers union) and CWU (communication workers union) have made recognition and partnership agreements with agencies and end user businesses (*Manpower*, *British Telecom*) as well as organising local campaigns for equal treatment. In terms of action, CWU has been running the *Euro-trashed: Justice for Agency Workers* campaign to highlight the effective two-tier workforce in sectors employing agency workers and their vulnerability with regard to employment law.

In a different case, UNISON have become involved in the Living Wage campaign in London which involved identifying the often abusive working conditions of low paid workers including agency workers in the hospitality and hotels sector (Evans *et al*, 2005). What is of interest here is how the union worked with a coalition of community groups called *London Citizens* on behalf of the agency workers. Indeed, whilst some of the agency workers who participated were union members, others were also active in the faith groups that constituted in part *London Citizens*. This illustrates how trade unions are not the only representative outlet in this area.

#### *Representation structure for employers*

The agencies, as noted above, are represented by the REC. Formed in 2000, the REC now has some 8,000 agencies who are members. It's stated aim is to 'improve recruitment and the operating environment for recruitment throughout the UK [through] maintaining standards...lobbying and policy work [and]providing information and support to its members'<sup>51</sup>. Unlike other countries, such as Sweden, the REC has no formal collective bargaining activities or a substantive role as a social partner. It does however provide a strong voice for the industry. In addition to lobbying against total equal treatment provisions at EU and national level, it has also been involved in promoting the positive benefits of temporary work (*Workers Want Choice Survey 2005*), national identity cards (to ease checking agency worker details) and visiting job fairs in the A8 countries such as Poland and Slovakia to promote the UK industry. In sum, the REC is active in the fields of industry regulations, data checking and Criminal Records Bureau issues, diversity legislation, immigration policy, EU issues and labour market issues, albeit form a pro-business perspective<sup>52</sup>.

#### *Representation and degree of/lack of organisation temp agency workers*

Reflecting the difficulty in getting general statistics on agency workers, it can only be estimated what percentage of agency workers are trade union members. Where there is already strong trade union organisation then some local trade union activists will try to

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<sup>51</sup> <http://www.rec.uk.com/about-recruitment>

<sup>52</sup> Recruitment and Employment Confederation 2007 *REC Policy Matrix*



recruit agency workers into membership. However, the trade union view on agency workers has shifted significantly over the last 10-15 years. Initially opposed to any use of agency workers and therefore to their organisation, many trade unions now have conceded that

### **Institutional arrangements: Strategies on selected topics**

#### *Overview of present agency workers' rights in UK*

All workers in the UK will have certain rights when they start a job, including<sup>53</sup>:

- The National Minimum wage
- Working time rights including breaks, holidays and holiday pay, a limit on the working week (48 hours)
- Health and safety protection
- Protection against unfair discrimination, including representation, trade union membership

These basic rights, in the case of the agency worker, are extended in specific ways, according to Conduct of Employment Agencies and Employment Businesses Regulations 2003 (see section 2.2 above). As such, additional rights agency workers have in relation to the agency they work for are that:

- The agency is unable to charge the worker for finding them work or for providing work-related services (training, assistance in finding permanent employment)
- The agency cannot withhold pay (where there is no signed time sheet, where the agency has not been paid by the end user business)
- The worker will have a written document providing terms and conditions of employment (including status – whether an `employee` or `worker`, in terms of working for the agency or contracted for services, that the worker will be paid for all the work done, the amount of notice required from both sides to end the employment, the rate of pay the agency will get for the worker, weekly or monthly pay provision, the amount of paid leave)
- Health and safety issues in end-user business identified and addressed and the worker being made aware of these.

If the worker enters the agency as an `employee`, i.e. has a `contract of employment`, then the worker will have the further rights (subject to any qualifying period) of:

- Being able to claim unfair dismissal
- Being eligible for redundancy pay
- Being able to take maternity, paternity and parental leave and request flexible working.
- Being able to receive paid time off for antenatal care.
- Having a written statement of the main terms and conditions of employment.

In terms of seeking advice or assistance in seeking redress from the agency, the individual can approach their trade union, if they are a member, or any of the following:

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<sup>53</sup> TUC/Worksmart *Agency Workers have Rights too.*  
[http://www.worksmart.org.uk/rights/agency\\_workers](http://www.worksmart.org.uk/rights/agency_workers)

- Employment Agency Standards Inspectorate – if the individual is being treated badly, or if they think the agency is breaking the law, then the EAS can be approached
- Recruitment and Employment Confederation – The REC is the voluntary organisation for agencies that regulates standards of practice. If the agency in question is a member, the individual can approach this body.
- Health and Safety Executive – The HSE can provide advice and information on health and safety issues
- National Minimum Wage Helpline
- Advisory, Conciliation and Arbitration Service – ACAS can provide advice and help on employment questions, especially those regarding the rights of workers
- Citizens Advice Bureau
- Employment Tribunal Service – The ETS can provide information on making a claim or on general tribunal procedures
- For issues regarding discrimination – Commission for Racial Equality, Disability Rights Commission, Lesbian and Gay Employment Rights.

### **Strategies and challenges**

Trade unions have made significant changes to their policies on agency workers over the last 10-15 years. From a position of opposition to the use of agency workers and therefore no strategy to recruit them, many unions have switched their focus and realised that there is a very large group of vulnerable workers who need trade union protection. These vulnerable workers include many agency workers who are employed on poorer pay and conditions than the permanent employees alongside whom they work.

The CWU communication workers' union has been one of the most successful in recruiting large numbers of agency workers. The union organises around 90% of BT's permanent staff and around 40% of agency staff who are supplied to the company from several agencies, but particularly Manpower. This is a very high rate of organisation and the CWU's ability to recruit such numbers can be partly traced back to the fact that a substantial number of BT employees became agency workers almost overnight and so created a large union presence in the agencies that could not be ignored.

Similarly in the NCMS case highlighted above, unions are in a better position to organise agency workers where they are employed in significant numbers. The greater challenge is to try to organise the small numbers of agency workers who work in many different workplaces and who may also have very short-term contracts with particular end user companies.

The challenge for UK trade unions is that they have lost large numbers of members over the last 30 years. This has had an impact on their workplace organisation and so simply maintaining membership and organisation among permanent staff has been a major objective for many unions. Trade union density in the UK is now at 29%, down from just over 50% in 1979 but this conceals a big difference between the public sector (around 60%) and the private sector (19%).

Trade unions have also changed their approach in general to non-members by making some of their services – certainly in terms of employment rights information – more widely available. The TUC in particular has produced a range of publications and set up

a website (worksmart) that aim to provide basic information to non-members and agency workers are seen to be part of this group of workers.

Trade unions like the GMB (general workers) and Unite/T&G (general workers) have focused on agency worker recruitment particular where there are concentrations of migrant workers. This is particularly the case in the food processing industry in which both trade unions organise. By providing information on employment rights and getting involved in projects to help provide English language training, these unions have had some successes in recruitment. Public services union Unison has set up a specific project to investigate the unionisation and organisation of migrant workers as considerable numbers are employed by agencies and work in the public services.

While unions have made significant changes to their strategies and tactics in recruiting, organising and representing agency workers, they still have major challenges in sustaining and maintaining their successes.

### **Conclusions**

The industrial relations system in the UK, with only a very recent history of works councils, means that agency worker representation would normally only be carried out by trade unions. However, the low level of trade union organisation, particularly in the private sector, means that most agency workers are not trade union members. There are exceptions to this, particularly in sectors where trade unions are stronger – in the public sector – or where, like at BT, there has been a specific strategy to try to organise agency workers.

Many of the large numbers of migrant workers who have entered the UK in recent years are agency workers and represent some of the most vulnerable workers in the country. A number of union projects and campaigns have attempted to organise among migrant agency workers and report some successes

The new agreement on agency workers in the UK and the final agreement and implementation of the Temporary Agency Workers Directive will go some way towards ending the discrimination against agency workers – at least those employed on the same contract for over 12 weeks. However, it won't ensure that agency workers will be guaranteed representation at work nor will it clear up the some of the continuing legal ambiguities about the status of agency workers and the relationship between the agency employing them and the role of the end user organisation.

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## **4. Representation of temporary agency workers at European cross border level**

This chapter is written by Fabrice Warneck, UNI Europa.

### **Representation of temporary agency workers at the EU level**

During the last few years, the temporary agency sector has grown steadily and employs almost 2% of the European workforce in full time equivalent. Eurociett, the European Confederation of Private Employment Agencies, estimates that in 2007, between 7 and 8 million workers passed through a temporary work agency.

Temporary agency workers are represented at three levels in the European Union:

#### **The interprofessional level**

The interprofessional European social partners, ETUC (European Trade Union Confederation) for the trade union side and BusinessEurope, CEEP (public sector) and UAPME (small and medium companies) for the employers' side, have taken part in all EU debates concerning working conditions of temporary agency workers. ETUC members are national confederations of trade unions, which in many countries represent temporary agency workers. In the new EU member states temporary agency work is a new form of employment that emerged only few years ago, temporary agency workers are represented through trade union confederations too.

The ETUC entered into a negotiation with BusinessEurope, CEEP and UAPME on the basis of a consultation process launched by the EU Commission in 1998. The interprofessional social partners had decided to start focusing on fixed term contracts only and signed a "framework agreement on fixed term work" on the 18 March 1999, which was turned into a European directive by the Council. The negotiation for an agreement on working conditions for temporary agency workers started in 2000 and went on until 2001, beyond the usual 9-month negotiation period provided by the EU Treaty. No agreement was found. The stumbling block was the definition of equal treatment between workers. The EU Commission therefore launched the legislative decision making process based on the co-decision procedure.

On 10 June 2008 the European Council could find a political agreement on the draft directive on working conditions for temporary agency workers. The agreement concerns particularly the equal treatment principle between workers in the user company and temporary agency workers. According to this agreement, derogations could be set up by collective agreement at national level. The text of the draft directive was approved by the European Parliament without amendment, in October in its second reading. Therefore the Council will in principle finally adopt the directive by the end of 2008 without changes.

The draft contains specific provisions related to the representation of temporary agency workers:

*“Article 7: Representation of temporary agency workers*

1. Temporary agency workers shall count, under conditions established by the Member States, for the purposes of calculating the threshold above which bodies representing workers provided for under Community and national law and collective agreements are to be formed **at the temporary agency**.
2. Member States may provide that, under conditions that they define, these workers count for the purposes of calculating the threshold above which bodies representing workers provided for by Community and national law and collective agreements are to be formed **in the user undertaking**, in the same way as if they were workers employed directly for the same period of time by the user undertaking.
3. Those Member States which avail themselves of the option provided for in paragraph 2 shall not be obliged to implement the provisions of paragraph 1 of this article.”

*Article 8: Information of workers’ representatives*

Without prejudice to national and Community provisions on information and consultation which are more stringent and/or more specific and in particular Directive 2002/14/EC, the user undertaking must provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing the workers set up in accordance with national and Community legislation.

These two articles show the dual and ambiguous situation of the temporary agency workers. They can be counted as user company workers and/ or temporary agency workers before setting up a works council for instance. However, the directive is mute about their election as workers’ representatives.

**The branch level**

National branch unions have started devoting more attention to the interests of temporary agency workers since the beginning of the last decade. Before, the trade union movement had tried to stop or avoid the utilisation of temporary agency work by user companies. Temporary agency work was considered and is still considered to a large extent by the trade unions as precarious work. Too often, temporary agency workers were and continue to be used to replace other workers on strike or to cut permanent jobs. In certain countries, a system of control or authorisation could be set up like in Belgium where, under certain conditions, the management of the user company should obtain the agreement of the works council before recruiting through temporary agencies.

Another main reason justifying further activity from the trade union side was the readiness of certain employer organisations representing only temporary agencies to regulate an industry in which competition had no barriers. The negotiation process to regulate the sector started first in The Netherlands and in France where the temporary agency

sector developed in the 70's. The agreements signed define more precise rights for temporary agency workers such as second pillar pension schemes, vocational training, etc. In Sweden negotiations carried out, separately for blue-collar and white-collar workers, cover pay in between assignments and other income guarantees. Naturally, the national branch unions turned towards their umbrella organisation at European level, the European Trade Union Federations (ETUFs) to ensure the continuity of action.

At cross border branch level, each ETUF is autonomous. Informal consultation processes for coordination exist. All ETUFs are member of the ETUC but no precise strategy has been launched yet concerning the recruitment and organising of temporary agency workers.

Each ETUF is free and has the legitimacy to develop its own policy for the sector it represents. Their trade unions are based in the user companies and can assist temporary agency workers, denounce abuse and unfair practices. This representation at the user company level is of particular importance in sectors where the health and safety of workers maybe at risk (chemical, metal, ...) as well as the safety of beneficiaries of services (transport, ...).

UNI-Europa is an ETUF with 320 trade union affiliates and speaks for more than 7 million organized workers in the commerce, banking, insurance, telecommunication, postal, graphical, cleaning, private security, business services, IT, personal services, social protection, leisure, sport, media and entertainment and temporary agency work sectors. UNI-Europa develops a horizontal approach to cross sectoral issues confronting the service sector. UNI-Europa fought for the exclusion of temporary agency work from the directive on services in the internal market and to obtain a directive on temporary agency work.

As the European Confederation of Private Employment Agencies, Eurociett is the authoritative voice representing the common interests of the agency work industry in Europe. Eurociett gathers 26 national federations from EU and EFTA countries, and 6 of the largest international staffing companies as corporate members: Adecco, Allbecon-Olympia, Kelly Services, Manpower, Randstad, and USG People. Vedior used to be a key partner but has recently been taken over by its Dutch competitor Randstad.

The dialogue between Eurociett and UNI-E (previously Euro-Fiet) started in the 90's. The EU Commission has officially set up a European social dialogue committee on temporary agency in 2000. UNI-Europa and Eurociett are recognised by the EU Commission as the representative social partners for the temporary agency sector at European level. The launching of this social dialogue committee reflects the evolution of both the temporary agency industry and the trade union policies.

UNI-Europa and Eurociett have agreed on three joint declarations in 2001, 2007 and 2008<sup>54</sup> that have played an important role in favour of the directive on working conditions for temporary agency workers. During the October 2008 European Parliament plenary session, in second reading, MEP Rapporteur Harlem Désir based to a large ex-

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<sup>54</sup> "Joint Declaration: objectives of the European Directive on Private Agency Work", 8<sup>th</sup> Oct. 2001, "Joint Declaration within the framework of the "Flexicurity debate" as launched and defined by the EU Commission", 28<sup>th</sup> Feb. 2007, and "Joint Declaration on the directive on working conditions for temporary agency workers" 28<sup>th</sup> May 2008 (see <http://www.union-network.org/unitwa.nsf/EnESD?OpenPage>)

tent his recommendations for the adoption the draft directive on the 2008 joint declaration.

These three joint declarations, Eurociett and UNI-Europa clearly state their support to collective bargaining and the recognition of freedom of association as a prerequisite. The 2007 joint declaration states that “ the recognition of temporary agency workers ‘right to freedom of association should be respected at all levels and the right which they have to information, consultation and participation should be respected and facilitated regarding the specificity of the sector”.

In addition, the joint declarations identify the temporary agency as the employer of the temporary agency workers, a difficult point for agencies from the U.K. and Ireland who could not entirely support their organisation Eurociett in this approach. However, it is extremely important for workers to know with certainty who their employers is, because from that information they can draw the rights they are entitled to and unions can establish themselves and recruit members.

The social dialogue committee had been nearly frozen between 2002 and 2006 because a) the debate on the directive on working conditions for temporary agency workers was no longer a topic of social dialogue and b) UNI-Europa and Eurociett took opposite positions during the two year debate on the “services” directive, the former asking for the exclusion of the temporary agency work from the directive and the latter being in favour of lifting sectoral bans and certain administrative barriers.

Since 2007, UNI-Europa and Eurociett could develop a better social dialogue. They adopted the following work program.

*Work Program 2008– 2009:*

I – Labour market policies

- Flexicurity
- Work migration: setting up a European Observatory on cross border activities
- Vocational Training
- Promoting National Social Dialogue

II – TAW regulation

- Range of labour contracts offered by temporary work agencies to agency workers
- Posting of Workers Directive
- ILO Convention 181
- Decent work, non-discrimination and equal treatment

III - Sectoral developments: follow up the developments of the European policies and legislations

**The company level**

Adecco and Randstad are the only two multinational companies that have developed a body of social dialogue at European level.

*The case of Adecco:*

Adecco is a Fortune Global 500 company and the global leader in Human Resources services. Registered in Switzerland, Adecco was created in 1996, following the merger of Adia (Switzerland) and Ecco (France), two leading personnel service firms with complementary geographical profiles. Today Adecco posts 700,000 temporary agency workers everyday in the 60 countries were it is established.



In 1999, Adecco set up a “Platform for Adecco Communication in Europe (PACE) “for the promotion of communication and social dialogue between the Management and colleagues of the Adecco Group companies (and future companies) within the European Union (EU), the European Economic Area (EEA) and the European Free Trade Area (EFTA)”. As such, the company says that the PACE represents about 64% of all Adecco Group colleagues. PACE meetings take place once a year. The meetings are more an exchange of views between management and workers representatives than a genuine information-consultation body. The participants have interpretation means. UNI-Europa representatives have been invited to participate as observer in several meetings. Most of the workers representatives are trade union members affiliated to UNI-Europa.

*The case of Randstad:*

Randstad is a Dutch company. Their services range from regular temporary staffing and permanent placing, to in-house services, professionals, search & selection, and HR Solutions. Since acquiring Vedior in 2008, the Randstad Group is the second largest HR services provider in the world with major positions in Australia, Belgium, Canada, France, Germany, India, Luxembourg, the Netherlands, Spain, Switzerland, Poland, Portugal, and the southeastern United States. Randstad has over 34,000 employees working from 5,400 branches and inhouse locations in 53 countries around the world.

Randstad has a Dutch business culture oriented towards social dialogue. It was therefore not surprising that Randstad became the first temporary agency multinational company to sign a European agreement on workers representation with UNI-Europa in this sector. The agreement sets up a European Platform for social dialogue, EPSD. The EPSD objective is “to promote social dialogue between management and workers representatives at European level. As such it facilitates the Europe wide exchange of transnational information and consultation on the basis of the “knowing”, “serving” and “trusting” cooperation between management and workers within the companies in the Randstad group”.

The EPSD has the same characteristics as an EWC and functions as described in the EWC directive of 1994 although it does not have the name of EWC. Its members meet twice per year; meetings are carried out in English only. A large majority of the EPSD members are not unionised.

In both the Randstad EPSD and Adecco PACE, the vast majority of workers representatives come from the company’s internal staff; they are not temporary agency workers. The internal staff certainly deserves attention too.

The very few temporary agency workers who seat in these European bodies are workers with open-ended contracts. It is obviously the lack of stability of the workforce that undermines the workforce’s capacity to involve itself in bodies of workers representation. A similar assessment can be made concerning the rate of trade union membership that is extremely low except in Scandinavian countries.

The temporary nature of agency work is a barrier for workers to organise and protect their basic rights. The trade union movement will have to show innovation, persistence and strength to find relevant answers to the under representation of temporary agency workers.

## **5. Temporary agency work at workplace level**

### **The use of agency work at workplace level in France, Sweden, the Netherlands, Poland and the UK**

#### **Introduction**

Two case studies were conducted in each country aiming at investigate what the different forms of representation system mean at workplace level. The case studies reveal the regulation of agency work and how it works in practice. This chapter is built on individual workplace country reports from France, Sweden, the Netherlands, the UK and Poland. Each country report deals with the following questions:

Presentation of selected case (user firm and temporary work agency),  
The use of agency workers in practice (work tasks and differences between permanent employees and agency workers);  
Work organisation – how does the use of agency workers affect permanent employees at the user firm, i.e. core periphery, all core/fully integrated, and all periphery/ impoverishment of work tasks for all;  
Work environment and health & safety;  
The representation system at local level, union/works council strategy at workplace level towards agency workers;  
The extent of union membership and participation by agency workers at organisational and workplace level;  
The nature of union and/or representation of agency workers in the user firm;  
The nature of union and/or representation of agency workers in the work agency;  
How individual and collective grievances are expressed;  
Migrant workers;

Analysis of agency workers at workplace level  
How does the representation system work according to social partners at national level and local level. SWOT –analysis (Strengths, Weaknesses, Opportunities and Threats) on the existing system for representation

## France: temporary agency work at workplace level

This chapter is written by Project manager Christophe Teissier, ASTREES, France

### Introduction

In order to get a better view of representation of agency workers in France, we chose to have a closer look at representation of agency workers at workplace level. Aim of this short case study is thus to exemplify the ways agency workers may be represented at company level (both agency and user firm) through the examples of one agency and one user firm usually working together.

To collect informations, we carried out interviews with different actors: Agency management at regional and local level, three employee representatives at the agency, one employee representative at the user firm and two agency workers. Strongest limitation we faced lied on difficulties to carry out all interviews initially planned considering the project schedule. It's especially worth highlighting that we did not manage to interview management of the user firm on time. It's also necessary to pay attention to the limited number of interviews made. In this context, we may only pretend to describe part of the reality related to representation of agency workers at local level.

### The user firm

The user firm is part of an international group. It is one of the group subsidiaries operating in Europe. It is in charge of running a recreation resort in Marne la Vallée, a recent town located in the eastern Paris suburbs (about 40 kilometres from Paris centre). The user firm manages two attractions parks, an entertainment district and seven hotels located in this area. Company thus runs various activities: entertainment, hotel, restaurant and catering, maintenance of equipment (especially attractions) are the most important ones.

The firm was created in 1992 and is one of the most important employers in the Paris region. In 2007, the company employed directly about 13.000 employees. More than 90% of them are employed under full time open ended employment contracts. Overall, the user covers about 500 different trades.

External workforce used includes agency work and subcontracting. Overall, this external workforce represents 3000 jobs. As for subcontracting, it is especially devoted to security activities, cleaning of rooms and parks and maintenance of gardens. As for agency work, this latter represented a budget of 16,3 millions Euro in 2007. Agency work seems to be especially used for hotel, restaurant and catering activities, but also for clients reception in the attractions parks. *Informations collected are especially focused on hotel, restaurant and catering. The two agency workers interviewed have been working for the user as waitresses for several years.*

11 different agencies work for the user. Agency work is used for covering absences and fluctuations in activity. As for the latter, the use of agency work is first related to usual activity: as the user activity is seasonal, agency workers are employed in case of activity peaks (in April/May, in July and from September to December). In addition, agency work is also used to meet the user's needs when the company organizes so called "special events" for its clients (for instance private parties to be held in the attraction parks).

Such special events may require employment of a large number of agency workers (up to 150). Due to the reasons explaining the use of agency work, assignments' duration is short: 3 days on average, but a mission may last 4 hours (as a minimum at the user firm), one or two days.

All in all, agency work allows the user firm to quickly answer to shifts affecting its activity. There's no collective agreement regulating the use of agency work at company level.

Overall, use of agency work is probably only an ancillary strategy for the user firm. This latter has indeed implemented different devices in order to develop internal flexibility through different working time arrangements or organization of permanent employees' mobility within the firm. In addition, agency work does not seem to be sufficient to solve recruitment problems company faces to find out skilled employees in certain sectors (especially catering or maintenance).

### **The temporary work agency**

The temporary work agency is an international company and is one of the biggest agency companies in France and Europe. It has more than 150 offices in the Paris region (and a little less than 1 000 in France). The company covers all sectors of activity. In the Paris region, 32% of its activity is focused on industry, 14 % on the building sector and 54 % on the tertiary sector. In November 2007, the company employed 18 758 agency workers (full time equivalent) in the Paris region. However, one should notice a reduction of the number of agency workers employed in 2008, resulting from the recession (about 17 000 in September 2008).

A specific office, located close to the workplace, is entirely devoted to our user firm. It employs one manager and two permanent employees. This is the sole agency office in France working for only one client. It covers 22 % to 25% of this market. 70% of jobs supplied to the user are in the hotel, restaurant /catering sector. 30% left are very various, covering other user's activities (maintenance, entertainment, drivers, etc.).

Agency workers are employed according to conditions planned by French regulation, even if assignments are generally very short. Agency workers may thus not receive a lower remuneration than the one paid to a permanent employee of the user company (posted to the same job and having an equivalent qualification). No problems can be noticed regarding legal rules related to the use of agency work as well as equality of treatment between permanent employees and agency workers. Advantages granted to user employees are applied to agency workers, even if, in some cases, it supposed a negotiation between the user and the agency.

### **The use of agency workers in practice**

#### *Recruitment of agency workers*

As for the recruitment process, when a team leader at the user firm needs extra staff, he is to ask his unit manager. If the latter agrees with this request, he has to raise the question to a staffing board, set up at company level. Whether the board accepts the request, an order can be sent to agencies. Decision is taken according to budget available. It often happens that the user amends its orders by reducing the number of agency workers requested. In addition, orders can be sent very lately to the agency (sometimes very few hours before the assignment begins). Main problems both agency's regular employees

and agency workers face is thus due to unexpected variations in the user's orders. Generally speaking, number of orders sent to the agency may widely vary over time, depending on fluctuations in the user activity but also on changes affecting its recruitment policy. From one year to another, the user may rather focus on direct employment through fixed term contracts than on agency work and vice versa. For instance, in 2008, number of orders sent to the agency is less important than it was in 2007. These variations are difficult to interpret precisely. However, agency work may act as a stepping stone to get a permanent employment within the user firm. Agency work can thus be used by the user firm as a probation period. In a certain extent, one may assume that the user is willing to promote employees loyalty more than temporary employment, in order to benefit from experienced workers. This explains why the two agency workers interviewed have been working for the user for several years (respectively three and two years). The user regularly asks the agency to supply "well known" agency workers (one may talk about a golden list of workers in respect to this issue) : i.e., workers knowing the company and the work to be done, and having already worked for the user. Moreover, according to both workers and the agency, open ended or/and fixed term employment contracts are often proposed to agency workers. In addition, examples of agency workers having made a career in the company exist. However, according to the agency, only 10% of agency workers finally accept these proposals. How to explain this situation? For some workers, especially students, agency work is only seen as an extra job and they are thus not willing to work permanently for the user. More generally, in financial terms, agency work can be more interesting for workers than a permanent employment at the user firm. In addition, work pace in catering may not be an incentive to conclude a permanent contract or agency workers may consider agency work as a transitional period before entering a permanent employment in another company (it was the case for one of the agency worker interviewed). All seems to depend on the peculiar "profile" of each worker. However, it clearly seems that the user firm tries to retain the "best" workers it may find, whatever their initial employment contract is. Such a strategy may help the user to limit its turn over rate (about 20%) and/or to cope with its recruitment problems (night work or work during the week ends).

#### *Opportunities to competence development*

When a worker enrolls at the agency office, this latter organizes an interview (about one hour and a half long) aiming at presenting the user firm (different activities, different locations, etc.) to the worker. Persons may then be assigned to different jobs at the user firm such as sales, clients' reception, cooking or waiter. However, it's rather clear that once a worker has showed his skills in a specific job, he's then regularly assigned to the latter. For instance, the two agency workers interviewed are regularly employed as waitresses, even if each of them has had the opportunity to experience other jobs. It's worth highlighting that both of them had already worked in catering before working with the agency. One agency worker interviewed expressed her feeling to be trapped in a job as a waitress located in one specific hotel, whereas she'd like to experiment other kind of occupations and locations at the user firm. In that extent, opportunities to competence development may seem to be rather limited.

However, agency workers may benefit from training. In catering activities, trainings seems to be focused on user's "basic skills" (use of user's materials: cash registers / taking of customers' orders) and on health and safety issues. These trainings are proposed by the agency to workers according to their availability: for instance, training will be proposed to an agency worker available for working full time during several months rather than to a student only available during the summer. One day trainings are pro-

vided by the user through a specific department (internal university). However, trainings are paid by the agency according to French regulation in the field (both law and sectoral collective agreements). It means that these trainings are supposed to provide transferable skills and knowledge. That's why trainings content is built in partnership between the agency and the user. Nevertheless, it seems very difficult to us to assess whether this kind of trainings really fosters workers' employability

*Integration to work organisation and social integration*

In catering activities, all workers work in team. Each team is managed by a "team leader" who is often a permanent employee. However, it may happen that head waiters are agency workers in charge of managing groups of agency workers, especially in case of "special events" (see above). Work to be done is presented by team leaders at the user firm. However, logically, the more a person is assigned to the same job the less she receives explanations.

According to agency workers interviewed, it seems that full integration to work organisation is progressive. When entering the user firm for the first times, agency workers are often looked on with scepticism, not by team leaders, but by permanent employees. These latter often see agency workers as low skilled employees or as a second choice workforce. In reaction to this, one worker interviewed stated that she spent time explaining to permanent employees that agency workers are not inferior to them because they finally benefit from the same rights in respect to French labour law. These prejudices may explain that conflicts between permanent employees and agency workers occurred in the past, as agency workers felt insulted by permanent employees. However, according to agency workers we met, situation in respect to this has been improving due to the intervention of the agency towards the user, following claims from agency workers. However, "new" agency workers still seem to be especially appointed to poor work tasks (for instance restaurants cleaning) during what one may call an integration period. Nevertheless, after having achieved several assignments at the user firm, they are fully integrated and thus perform the same work tasks as permanent employees.

All in all, social integration is probably partial. Agency workers and permanent employees benefit from the same breaks. Agency workers may also participate in social events (parties) organised for permanent employees. However, one of the workers interviewed stated that agency workers show solidarity with each other and do not necessarily mix with permanent employees. In the same way, even if they could, agency workers do not necessarily take part in social events. Nevertheless, one may assume the situation could be slightly different considering workers having worked at the user firm for several years.

*Occupational health and safety*

Generally speaking, it seems that no agency worker is assigned to jobs exposed to particular risks, as defined by French regulation, at the user firm. This seems to result from a strong user policy in the field. Some security sheets are regularly updated by the user in cooperation with the agency. According to the agency office manager, occupational accidents are rare (on average, only one accident per year would cause a sick leave).

In catering activities, work environment is the same for agency workers and permanent employees. Work pace may be high and working as a waiter is physically demanding. For these reasons, 15 minutes long breaks are planned every 3 hours and a half. In addition, workers interviewed underline that, in catering activities, "team leaders" often pro-

vide informations and advices on the risks workers are exposed to: for instance, on the ways a waitress can avoid back pains.

All in all, informations collected through our interviews do not reveal specific problems related to occupational health and safety of agency workers. It is probably linked to user's activities. Risks exist (physical, as back pains, or organizational, as work pace and pressure) but are not as important as they may be in other sectors.

### **The representation system at local level**

#### *Representation at the user firm*

At the user firm, all forms of representation planned by French law (double channel for employees' representation) exist: employee delegates, union representatives, works council, health and safety committees. In 2004, the company concluded a collective agreement aiming at organising industrial relations at company level in an efficient way. Due to company's size, system of representation is complex. Permanent employees elect employees delegates in different company units. Each unit corresponds more or less to the different company activities (catering, attraction parks, entertainment, etc.). There are thus more than 100 employee delegates. System is the same for health and safety committees: one may therefore notice several health and safety committees in the different company's units and one central health and safety committee at company level. In addition, there is one works council elected by permanent employees at company level. At last, representative trade unions are entitled to appoint several trade unions delegates at company level. Number of these representatives is regulated by French regulation according to the workforce size (5 for each representative union) but collective agreement above mentioned plans that unions may appoint more representatives, depending on the results they obtained at works council and employee delegates elections. Generally speaking, there are seven unions represented at company level: "Confédération Générale du Travail (CGT)", « Confédération Française Démocratique du Travail (CFDT) », « Confédération Française de l'Encadrement -Confédération Générale des Cadres (CFE-CGC) », « Force Ouvrière (FO) », « Confédération Française des Travailleurs Chrétiens (CFTC) », « Syndicat Indépendant du Personnel (S.I.P.) » and « Union Nationale des Syndicats Autonomes (U.N.S.A.) ».

Even if it's impossible here to describe in more details the representation system at the user firm, one may state a general observations resulting from these brief developments: at the user firm, means for workers representation exist and institutionally speaking, representatives of regular employees are also entitled to represent agency workers. According to French law, employee delegates can indeed receive grievances from agency workers; health and safety committee is responsible for health and safety of agency workers; works council is entitled to be informed and consulted about the use of agency workers. The latter is especially to be informed of the number of agency workers, reasons for using agency workers, number of working days performed by agency workers. It may also ask the company for delivering commercial contracts concluded with temporary work agencies.

However how does the system work in practice?

As mentioned in our introduction, data we managed to collect in respect to this issue are limited. It was especially impossible to interview all unions represented at the user firm. Nevertheless, union representative we met is clearly sensitive to the situation of agency workers and it's probably also the case of other unions (even if it's rather clear that dif-

ferent unions do not necessarily cooperate with each other on this issue). According to our interviewee, agency work is a necessity for the user but agency workers' rights have to be protected. For instance, in the past, our union representative obtained that agency workers are employed for at least four hours at the user firm. However, this kind of initiatives seems to remain isolated. Links between employees' representatives and agency workers thus seem difficult to establish on a daily basis. According to the union representative, agency workers prefer to stay discreet and not to approach representatives because they fear reprisals (such as being black listed by the user). At the same time, agency workers interviewed highlighted that representatives at the user firm do not really approach and support agency workers. In that context, in case of grievances, it seems logical for workers to turn directly to their employer, the temporary work agency. For example, it's the agency which solved conflicts between regular employees and agency workers which occurred in the past (see above). After having received complaints from agency workers, the agency turned directly to the user. According to the agency office manager, agency indeed works in close partnership with the user.

All in all, even if we could not notice major problems with agency work at the user firm, the representation system probably does not work perfectly. One may assume that several reasons explain this situation such as lack of time (and /or interest) of employees' representatives, reluctance of agency workers to get in touch with them and ignorance of employee representatives existence.

#### *Representation at the agency*

There's no specific employee representation at the agency office providing workers to the user firm. This situation is not surprising as it results from legal rules governing employee representation in France. Workers' representation is thus organised at upper levels. Employees are first represented by employees delegates elected at the temporary work agency in Marne la Vallée district. In addition, forms of workers representation exist at the level of the "work agency operational directions" (Directions Opérationnelles in French). The work agency thus includes 6 different operational directions. One of them corresponds more or less to the "Ile de France" region. At this level, one works council and one health and safety committee exist. Moreover, one may notice that trade union delegates (directly appointed by unions) exist at these different levels (district and operational direction). These different structures are to represent both agency workers and permanent employees of the temporary work agency. However, it is worth mentioning that the temporary work agency and unions have concluded national collective agreements ensuring that agency workers and permanent employees are equally represented through employees' representation structures. These agreements are in line with labour law standards (law and sectoral collective agreements) advocating a fair representation of regular employees and agency workers at the agency. It means that some of the employee delegates and members of the works councils are only elected by agency workers. Most of them are agency workers themselves.

Last but not least, a collective agreement concluded at company level in 2006, has set up, at operational directions level, a specific category of trade union representatives which does not exist in French regulation. These representatives, named "Délégués Syndicaux Direction Opérationnelle" may be agency workers and benefit from additional time facilities. These latter allow them to work full time as employee representatives. Each representative trade union at the agency may appoint such representatives. These representatives are supposed to coordinate activities of trade unions delegates appointed at lower levels.



Moreover, at national level, to ensure that agency workers may be effectively informed by unions, informations are to be sent regularly by mail to employees 'home. Costs resulting from these communications are paid by the agency.

### **Analysis**

In accordance with guidelines designed by the project coordinators we present here a brief analysis resulting from informations collected through our case according to the SWOT method. Elements presented are thus limited to our specific example

#### *Strenghts*

Considering our case, it's pretty clear that labour law regulations as well as practices at both agency and user firm provide institutional forms of representation of agency workers. It means that possibilities for taking into account temporary agency workers interests in various fields (pay, health and safety, training) exist.

In addition, unions interviewed are all sensitive to agency workers situation which means that in France, as it is the case in other European countries, attitude towards agency work has changed, from a negative one to acceptance of the phenomena.

#### *Weaknesses*

However, beyond institutional devices, one may highlight many practical difficulties hindering effective representation of agency workers at local level :

- generally speaking, agency workers are not really interested in unionism and therefore do not necessarily turn to their representatives in case of problems. Main counterpart for them is the agency. This situation is probably due to the profile of agency workers who, in our case, are young and consider agency work as a temporary situation before entering a permanent job. In that extent , they do not really take into account informations they receive from unions at the agency. Informations about their rights (for instance in the fields of vocational training or social support) are mainly provided by the agency. They thus may vary from one agency worker to another, depending on the relationships agency worker has with the agency and on the skill level of the temporary work agency staff. According to some of the unions interviewed, from a general perspective, permanent employees do not necessarily benefit from sufficient training to perform their job.
- Links between temporary agency workers and their representatives is weak. Few agency workers take part in elections of their representatives at the agency and few of them stand for election. According to some unions, agency workers indeed fear discrimination. In addition, workers representatives at the agency face many difficulties to get in touch with agency workers (because of the high number of clients and the low number of employee representatives at the agency, no legal rights to get to the user firms). At last, coordination between representatives at the agency and representatives at the user firm is weak: lack of time or/and interest of representatives at the user firm, high number of user firms, weak cooperation, within the same confederation, between union bodies in charge of representing agency workers and sectoral federations in charge of covering user firms. This lack of coordination may hinder possibilities to address concrete issues agency workers may face. Equal treatment is a good example of such difficulties : how to be sure that agency workers assigned at a user firm really benefit from the same remuneration as user's permanent employees if no exchange of informations exist (especially concerning bonuses) ?

### *Threats*

We can not present specific observations with regard to threats on the existing representation system considering our case.

### *Opportunities*

Different kind of opportunities may be presented:

- Unions' strategies: unions at the agency are aware of the necessity to increase their links with agency workers and thus to implement new strategies to reach them. Some representatives we interviewed try to meet agency workers and to propose them various services (advices, support in case of problems) in return for their enrolment .
- Cooperation between employee representatives and temporary work agency management : in our case, in the Ile de France region, agency operational direction and health and safety committee cooperate in order to make sure that temporary work agency offices don't hinder the workers right to leave their job in case of serious and imminent danger. This example shows that, regarding some issues, as health and safety, agencies and employee representatives have common interest to cooperate with each other to improve agency workers situation
- Ways for a better coordination between employee representatives at the user firms and representatives at the agency could be further explored by unions as they are aware of this issue.

### **Conclusion**

Despite positive institutional arrangements, and although situation of agency work in the user firm we selected seems to be rather positive, one may not state that the representation system works perfectly:

- Even if we have no precise data regarding union rate of agency workers, it is probably very low and few agency workers participate in elections of their representatives.
- Unions at the agency try to inform and support agency workers, but it's difficult for them to enroll the latter. Generally speaking, specific features of agency work (workers are rather young, mobile and/or low qualified) impede the creation of links between workers and their representatives.
- Even if employee representatives at the user firm are sensitive to the situation of agency workers, there's no real evidence that they really approach and support these latter: lack of time, reluctance of agency workers to get in touch with the representatives, ignorance of the latter existence
- in case of grievances, it seems logical for workers to turn to their employer, the agency. When they turn to representatives at the agency (which seems to be very rare in our case), it thus does not necessarily result in an affiliation to the union.

It's striking to notice how the legal distinction between the employer (the agency) and the user seems to be significant in practice. As a result, it may seem that problems workers face are mainly solved through direct contacts between the agency and the user. Nevertheless, due to the commercial relationships between the agency and the user, one may assume that all grievances can not be properly addressed this way.

Cooperation between employee representatives at the agency and at the user firm should probably be improved, for instance to ensure that the principle of equal treatment is effective. Problems are then:

- To strengthen the link between workers and their representatives  
To improve concrete ways and means to facilitate collaboration between representatives at the agency and at the user firm.

## **Sweden: temporary agency work at workplace level**

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### **The user firm**

The case study is a plant in the engineering industry, situated in a middle-sized city in the south of Sweden. The company employs 5400 people in Sweden, of which 3200 in the studied plant. The company produces engines on customer demand. The manufacturing is divided in foundry, processing and assembly. The case study is limited to the assembly department with approximately 850 workers.

According to the managers, there is a strong need for flexibility since the demand varies over time and there is no buffer possibilities since the engines are produced on customer order. Personnel turnover is quite low, 2-3 per cent, and the company therefore seeks different kinds of flexibility to manage variation in product volumes. There is also a demand of 25 per cent flexibility from the group executive board. The company and the local union came to the first local agreement on flexibility in the beginning of the 1990's. The first agreement was focusing on flexible working hours, the present local agreement is regulating the use of temporary staff including agency workers. The local agreement stipulates a maximum use of temporary staff (employees on fixed term contracts and temporary agency workers) to 350 people which is equivalent to a little more than 10 per cent. Wages are stipulated according to the national collective agreement. This means that temporary agency workers are entitled to the average wages at the workplace where they are posted. The average wage level at the workplace is jointly calculated by the local union and the local management.

According to the HR manager and the union representative, employees on fixed term contracts are used when the company estimates a long term increase in demand of more than three months. Fixed term contracts are also used as screening; all new recruitments are former fixed term employees. The use of temporary agency workers correspond to a need for short term extra staff, less than three months. All contacts with the work agencies concerning ordering and payments are canalised via an appointed HR person in each of the factories within the premise. The short-term use of temporary agency workers is however not confirmed when interviewing managers and temporary agency workers in the production. In reality, temporary agency workers can be used for one year or sometimes longer. The conception of short-term use may be caused by the notice-time. Temporary agency workers knew one month ahead if they will stay at the user firm the coming month.

### **The temporary work agency**

There are two temporary work agencies providing the user firm with temporary agency workers. Both are international companies. To become an temporary agency worker provider the work agency must have an approval by the company corporation. In this study we have focused on one of the two work agencies providing the user firm with temporary agency workers. The temporary work agency is an international company and is one of the biggest agency companies in Sweden. The temporary work agency

company has offices in 57 cities and employs about 12 000 people in Sweden. The case study office is situated in the same city as the user firm. The office has 10-14 people employed in the office.

The business is divided in Key account customers and Small and medium business customers. Key account customers have large and long-term hiring of temporary agency workers, and the agency tries to get more involved in the whole business for example by insourcing of services. Small and medium business customers have shorter and more unpredictable hiring of personnel. Our case is limited to one business sphere within Key account customers. Most of the temporary agency workers in this unit are assembly workers and a large part of them are hired to the user firm case company.

The employment contract at the temporary work agency is a fixed term contract the first six months. Thereafter the temporary agency worker gets an “until further notice contract”. The agency follows the collective agreement between the union IF Metall and the employer organisation Bemanningföretagen, which stipulates wage, guarantee pay etc. According to this agreement, the temporary agency worker should have the average wage for the same position at the user company. This means that an agency worker has a higher wage than a new employee at the user firm. But while the direct employee at the user firm increases his or her wage as the period of employment increases, the temporary agency worker still get the average. When not on assignment, the temporary agency workers have a guarantee wage of 90 per cent of the average for the three last months provided that he or she is available for work between 7 am to 5 pm.

### **The use of temporary agency workers in practice**

#### *Work tasks - differences between permanent employees and temporary agency workers*

The first line manager at the temporary work agency (*consultant manager*) supervises about 40 temporary agency workers. The role of the consultant manager is to have all contacts with the temporary agency workers and the user firms where they are situated. The consultant manager's experience is that most of her time is devoted to contacts with the user firm, the agency workers work quite independent of the consultant manager. The temporary agency workers themselves, experience the manager at the user firm as the main manager. Agency workers turn first of all to the user firm manager in case of question.

The assembly department is divided in three production lines, assembling three different engines. The workers work in three shifts, constant day shift, constant evening shift and constant night shift. A team consists of all workers in one shift in one production line. The largest production line has 60 people in one team. Temporary agency workers could constitute one fifth of a team.

There is a production manager (first line manager) for each production line. He is responsible for production and staffing. He is also responsible for personal (career) development discussions with all permanent employees in his department. When the production manager needs extra staff (temporary agency workers or employees on fixed term contract), he has to raise the question to a staffing board. First of all, all managers in the assembly department check with each other if there is a surplus of workers in any department. If so, one manager can borrow workers from another department. If not, hiring from agencies is the second alternative. All hiring of temporary agency workers is co-ordinated by the HR business partner for the whole assembly department.

*Work organisation – how does the use of temporary agency workers affect permanent employees at the user firm, i.e. core periphery, all core/fully integrated, and all periphery/ impoverishment of work tasks for all.*

All workers work in teams. In each team there is a team co-ordinator. He or she is an assembly worker and is not a manager. His or her task is to secure manning at all stations in the production line. This is done by putting up a list of who is performing which assembly station every morning. The team co-ordinator has authority to allow a few days leave from work. In each team there is also one person who is not fully occupied with assembly work, but available as an extra resource where needed. This role is called “runner” and is rotating between the permanent employees in the team. There is also a role called “instructor”. He or she is responsible for teaching newcomers the work tasks. The special instructor role is created because the manager wants one standardised way of assembling. There is also a “god father” role to facilitate the social integration (see below).

The assembly time at each station is less than 8 minutes. Some assembly stations are quite heavy, implying lifting heavy things. The introduction time at one station is about one week, one day to learn how to do the work and about five days to reach the assembly speed. In addition to that it takes 6-7 weeks to perform all tasks belonging to the assembly station. Permanent employees at the user firm can master several assembly stations and rotate between different stations within the same production line. A few employees can rotate between the production lines.

Temporary agency workers are included in the teams. As a newcomer, the agency worker is in the first hand placed at assembly stations with short introduction time and stations where a mistake does not lead to serious consequences later in the assembly process. The manager’s intention is to hire the temporary agency worker for less than three months and is therefore unwilling to invest in training for agency workers. In reality, the temporary agency worker often stays much longer than three months and get after the first months training for more assembly stations. The temporary agency workers are therefore included in the rotation after a while, but do generally not learn as many stations as permanent employees. Agency workers do not have the role of co-ordinator or “runner”.

There is no evidence for a core-periphery division since the temporary agency workers often are included in the job rotation after a while. Neither is there any evidence for a fully integration since temporary agency workers have a more limited rotation and are not qualified for the additional roles as “runner” or co-ordinator. Permanent employees are affected by a less extensive job rotation.

Permanent employees at the user firm have personal (career) development discussions yearly. There is a “competence ladder” coupled to the wage system. The more work tasks the employee can perform, the higher wage. This multi-competence is a precondition for job rotation.

According to the consultant manager at the temporary work agency, all temporary agency workers should have a personal (career) development discussion once or twice a year. Possible competence development could be truck-driver licence and education in computer numerical control CNC. This is however not confirmed by the interviewed temporary agency workers. No one of the interviewed temporary agency workers reported any dialogue with the consultant manager about competence development or

career development at the temporary work agency, but a few of them had got truck driver license by the agency.

Temporary agency workers are included in the job rotation in the user firm, but not in the competence ladder. They are only trained to perform sufficient number of worktasks to maintain the job rotation for the team. There is no pay incentive for learning new work tasks for temporary agency workers; they have the same average wage regardless of how many worktasks they can perform.

Management, HR and the union representative all witness that agencies and temporary agency workers were looked on with scepticism among workers a couple of years back in time. Now (in 2008) they mean that this scepticism against temporary agency among workers have changed. The HR representative recalls several petitions among employees with the request to employ temporary agency workers. As a visitor one notice temporary agency workers since they are wearing clothes from their agency. From the management there is an expressed wish to integrate temporary agency workers. Besides the (partly) integration in the work organisation there is an expressed strategy how to integrate and welcome new staff in the department. This is the same for newly employed and temporary agency workers with the exception of the company introduction mentioned above. In practice this means that when an agency worker first arrives to the factory gate the team leader or sometimes the production manager meets the temporary agency worker. On the way to the work place they get a short guiding comprising emergency exits, canteen, locker room and alike.

### **Social integration**

The company uses a system with so called “godfathers”. This function is separated from the instructor role. A godfather is supposed to help temporary agency workers with practical questions at the workplace, such as where the canteen is and how to fill in time cards. Agency workers are included in both department meetings and team meeting. Those are held every fortnight. The meetings follow four headings, which also are the company’s catchwords. A production manager has noticed that temporary agency workers are less interested in meetings concerned with improving the work place. The lower motivation for improvements in the workplace is also witnessed by the temporary agency workers themselves.

Despite the wish from management to integrate temporary agency workers at the workplace there are some decisions taken that gives agency workers a slightly different connection to the company: different clothes, no locker in the locker room since the temporary agency workers are supposed to come to the workplace dressed in the work agency clothes and safety shoes, they do not get Christmas gifts and Christmas dinner from the user firma, and they do not get the two days company introduction.

The noise level is relatively high in the workplace which makes it difficult but not impossible for most workers to talk to their neighbour during working time. Some roles are freer like the so called runners who are supposed to help out when there are disruption in the production. The difficulties in communicating during work make brakes more important for socialising. The temporary agency workers from the investigated work agency usually sit together in the canteen, however also accompanied by workers employed in the user firm. In one of the shifts there is a tradition celebrating the coming weekend; the last weekday the health coach takes up orders from the nearby pizza for a joint last meal. In this tradition temporary agency workers are fully integrated.

It is also worth knowing that several of the temporary agency workers have used the work agency as a stepping stone to get a (permanent) direct employment relation with the user firm. Some of the present temporary agency workers do however not live up to the minimum recruitment criteria set up by the user firm.

The interviews with the workers themselves show that temporary agency workers felt welcome in the group. Agency workers and permanent staff also witnesses that workers help each other and gets help from workmates regardless of their employment relationship (with the user firm or agency). In a second department one of the temporary agency workers feel a division in permanent staff and agency workers among management and some of the permanent staff

*Work environment – differences between permanent employees and temporary agency workers*

Permanent employees and temporary agency workers work together in teams and face the same physical work environment. Agency workers have more monotonous work the first months, but when the team co-ordinator realise that the temporary agency worker will stay, he or she get training for more assembly stations. However, the temporary agency workers do not learn the same number of assembly stations as permanent employees. The main difference between permanent employees and agency workers are the different possibilities to career or development. This is also reflected in the low engagement in meetings concerning development work.

**The representation system at local level**

From the interviews with temporary agency workers, we can notice that none have been approach by the union. Several of them was however union member before entering the temporary work agency business. Another employee refers to family traditions for choosing to be a union member. The knowledge about safety representatives is not profound among temporary agency workers. One of the temporary agency workers thinks that there is an appointed union representative at the user firm with responsibility for agency workers. One temporary agency workers has left the union since the costs increased after the new right wing government, but is still member of the unemployment benefit fund.

*Strategy of the union at workplace level towards temporary agency workers;*

The local union at the user firm used to have a negative attitude to work agencies. One reason for this was a fear that the use of temporary agency workers would affect the development of the work organisation. The union's experience today is that temporary agency workers do not interrupt job rotation, but divide workers in a core and periphery. Agency workers belong to the periphery and a secondary workforce. The local union's attitude today is that temporary agency workers should be treated as any other employees.

*The extent of union membership and participation by temporary agency workers at organisational and workplace level*

We have no information about union membership for all temporary agency workers. We have interviewed four agency workers at this workplace, of which two are union members. None of our interviewees had participated in any union meeting at the work place.



*The nature of union and/or representation of temporary agency workers in the user firm*

The introduction at the user firm differs between fixed term employees and temporary agency workers. Employees on fixed term contracts get a few days introduction with information about the company, policies at the company, information about work environment and information from the local union. Agency workers do not get this general introduction. They get a very short introduction by the first line manager, covering changing room, emergency exits etc. The local union representative at the user firm strives for an introduction of a safety representative for temporary agency workers, but this is not yet realised.

Temporary agency workers can not turn to the local union in case of problems. Agency workers are not invited to the union meetings at the user firm. Agency workers are represented by regional ombudsmen (avdelningsombudsman in Swedish).

*The nature of union and/or representation of temporary agency workers in the work agency*

There is no union organisation at the work agency.

*How individual and collective grievances are expressed*

Temporary agency workers are told to turn to the agency in case of questions or problems. Most questions concern wages and working time. There are no collective grievances expressed. There has been some turnover in the consultant manager position, the temporary agency workers experience a continuous change in managers at the agency, affecting the possibility to personal development discussions. Agency workers address hardly no grievances or critical questions to the user firm. One example can illustrate this: An agency worker was trained to perform a heavy assembly station. This station was not possible to manage to accomplish in time when using lifting tools. The work pace for the temporary agency worker was extremely high but he did not want to complain. – *If I had been a permanent worker, I would have told the manager.* The temporary agency worker does not want to risk the employment or the hiring contract with grievances.

*Any examples of conflict or joint activity between temporary agency workers and the permanent workforce*

There are few conflicts between permanent employees and temporary agency workers. Most interviewees experience that permanent employees and agency workers are treated equally. In some cases, agency workers perceive themselves as the second work force. They are not “genuine” workers. Some agency workers experience differences in helpfulness from others. Permanent employees help each other if there is a problem, but this help is not a matter of course if the agency worker is in trouble.

*How does the representation system work according to agency worker, union/works council and manager at user firm and agency? SWOT –questions (Strengths, Weaknesses, Opportunities and Threats) on the existing system for representation and what improvements they see.*

**Strengths**

There is a strong awareness among the unions of the representation problem and there has been a change in the attitude towards temporary agency work, from a negative attitude to acceptance of the phenomena. This change in attitudes is a prerequisite for better representation.

## **Weaknesses**

The temporary agency worker could be member in one union affiliation, but the collective agreement could be signed by another union affiliation. Workers in the engineering industry are usually members in the metal workers' union but for example Adecco has signed the collective agreement with transport workers' union. The union representative only gets information about members in the own union affiliation and might miss other people who are members in another union affiliation.

The regional ombudsman, who has the formal right to represent temporary agency workers at user firms, has difficulties to get an overview of in which user firms the temporary agency workers are placed.

There is seldom a blue collar union at the temporary work agency, one reason is the difficulties to call for meetings and the high labour turn over. For white collar workers it is easier to organise meetings since office staff and white collar temporary agency workers often join the same union.

The union at the user firm is not always informed about new temporary agency workers coming to the workplace. The union does not inform these temporary agency workers because the representatives do not know they are there. It is not merely an information problem, it is sometimes also connected to a negative attitude to temporary agency workers. The local union at the user firm has not been very keen on engaging the temporary agency workers.

## **Threats**

The main threat is the existence of unreliable agencies, operating with black labour or operating without collective agreement. The reliable agencies cannot compete with these companies on fair conditions. Workers in these unreliable agencies loose their job if they contact the union.

## **Opportunities**

Some solutions are quite easy to realize and concern routines and formulations in agreements. The collective agreement could add a clause that gives the union representative the right to insight in documents. This would facilitate for the representative to contact temporary agency workers independent of which union they belong to or which user firm they work in.

The local union at the user firm can be more active in the introduction of new temporary agency workers and also engage them in union activities. The user firm needs to have routines for informing the local union when new temporary agency workers are coming.

Some solutions concern the structure and working in the union federation LO. There is a conviction between the different union affiliates about the need for co-operation to improve the representation. The affiliates within LO have therefore founded a council at local level. LO has, on a trial basis, decided to start a system with a regional union ombudsman who gets the mandate to represent all temporary agency workers independent of which affiliate they belong to.

Another council is founded by the LO, the employer organisation Almega and representatives from agencies in order to watch over the development in temporary agency work and agree upon interpretations of agreements.

## **Analysis and recommendations**

*SWOT – Strengths, Weaknesses, Opportunities and Threats in the existing representation system from an temporary agency worker perspective*

*Proposed changes to improve the representation for temporary agency workers.*

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Some solutions concern the structure and working in the union federation LO. There is a conviction between the different union affiliates about the need for co-operation to improve the representation. The affiliates within LO have therefore founded a council at local level. LO has also decided to start an experimental work with a regional representative who gets the mandate to represent all temporary agency workers independent of which affiliate they belong to.

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## **The Netherlands: temporary agency work at workplace level**

This chapter is written by Associate professor C.C.A.M. (Els) Sol, Hugo Sinzheimer Institute, University of Amsterdam, the Netherlands

### **Introduction**

During a workshop in 2008 Dutch representatives discussed challenges and strategies regarding works councils, using examples mainly from big temporary work agencies like USG and Randstad/Vedior. These companies have both works councils organised at firm level as well as coordinating central national works councils. Randstad is the only Dutch company that also has a coordinating European works council installed. Temporary agency workers representatives in user firms' works councils are a rare phenomenon. Examples are McDonalds, Nedcar and Dutch governmental organisations.

One of the main challenges for all works councils is finding temporary agency workers, who are prepared to become worker representatives and stay representative for a longer period of time. Works councils suffer from a high turnover rate. In order to lower the threshold for temporary agency workers and set agenda on topics relevant for temporary agency workers next to the existing united works councils for both regular and temporary agency workers, two other models have been created. One model entails separate works councils for flexible workers (including temporary agency workers) and regular workers, the other is one united works council in combination with special commissions ('sounding boards') for temporary agency workers. As a key formula for success of special commissions representatives mention the presence of a committed coordinator, preferably someone that used to be a former flex worker in order to provide guidance.

Recruitment channels for new members for the works councils are trade unions and staffing consultants at the local offices. According to trade unions representatives works councils as form of (passive and active) representation at firm level does not work well for the generally short term employed temporary agency workers, which is 80 % of the workers. This group of temporary agency workers tends to be solely interested in direct advocacy and not in collective forums or topics. In practice this form of employee participation only works well for temporary workers on a permanent temporary work contract (phase C) and for the staffing consultants at the temporary work agency. At European level this applies even more, Randstad works council only works well as a platform for interim professionals, not to voice temporary agency workers.

As examples of topics that works councils deal with are privacy, working conditions, an appointment of a director, reorganisations and vocational training are mentioned. Organisational changes in the temporary work agency can not count on much commitment by temporary agency workers. Difficult topics for temporary agency workers are working conditions and vocational training, as they are working at user firms, so at other places than the temporary work agency. Temporary work agencies do pay and are responsible, but the actual training is on the workplace, which means these are not discussed at the works council at temporary work agency. As a 'good practice', an example of a collective topic secured by the works council representatives is the Randstad rule to provide temporary agency workers who are with the company for 5 or 10 years with a bonus, just like any other regular employee.

In order to provide more practical insight in how formal and informal representation of agency workers works out at the shopfloor, two related cases are presented in this chap-

ter. These will allow us to take a closer look at temporary staffing practices at company level (both agency and user firm) through the examples of one agency, and a user firm. One case is situated in one of the distribution centres for groceries of a large Dutch retail organisation, the second one is a temporary work agency with a contracted for in the distribution centre. In order to get the information needed, ten interviews were carried out with actors both from the user firm to inform from all levels, from management to Dutch as well as migrant temporary agency workers.<sup>55</sup> The interviews were carried out in the summer of 2008.

### **The user firm and the use of agency workers**

The distribution centre of the large Dutch retail organisation provides supermarkets with goods. Most employment in the distribution centre is in production work. In total there are four distribution centres. Each distribution centre handles the storage and shipping of the fresh foods and groceries for more than 150 stores. The distribution centres are comparable in size, performance targets, production systems, labour quality, labour relations, working conditions, remuneration and pay. All of these have been specified by the company's head office. Main labour issues have been harmonised by a CLA, concluded with the major trade unions.

The operational work is unskilled, monotonous and simple. The work performed by employees and temporary works is more or less the same. Their main task is 'order picking' whereby workers drive electric trucks through warehouse stock rows, 'pick' the required orders from stock and stack them on rolling containers. Thereupon they place these containers at prescribed docking stations to be loaded in trucks that supply the supermarkets. The task can be learned in two days, although it takes about a month for new recruits to pick the required production performance standard. The distribution centre works in a three shift system, six days and six nights a week. The retail company uses a 'just in time' logistics concept, whereby supermarkets order each day and are guaranteed delivery the next day in pre-allotted time slots. This results in highly volatile production patterns.

There are four distribution centres of the retail organisation which employ in total 3200 persons, 2100 regular employees and some 1100 temporary work workers, the latter both Dutch and foreign. Three years ago the user firm decided to slow down the recruitment of its own employees. There were three reasons for this. The first was a vacancy stop due to the 2003 crisis. Next the company tried to become less dependent of the labour market by mechanising work processes mechanise for the basic work not requiring any training, like filling containers, without having to cut in their regular workforce. Third was the plan to outsource what is called the 'retour' activity. These motives in combination with problems to recruit adequate personnel, resulted in a staffing with a high percentage of temporary agency workers. Both firm and the trade unions concluded a CLA agreement to fill a maximum of 23% of the hours with temporary work workers. According to the human resource manager at the plant due to the tight labour market at that time the firm had problems to hire personnel and - to the dismay of

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<sup>55</sup> Interviews were carried out by Dr. Bas Koene, Dr. Frank Tros and Dr. Els Sol. The interviewees are from the user firm (the HRM manager, a site manager, Temporary agency workers (one Dutch, one Polish), an Employee on a regular contract) and from the Temporary work agency (Senior account specialist TWA located at user firm, Account manager, Managing director, Member of the TWA-work council for flexible workers, Secretary of the TWA work council, Lawyer/policy advisor)

the trade unions – employed at the time of the interview some 30 % temporary agency workers.

In total the retail organisation has contracts with three different temporary work agencies. One of them has an in-house construction at the plant. For the case study we have interviewed personnel from the latter agency.

### **The agency**

The agency at the plant is part of one of the biggest temporary work agencies in Europe. For the agency the user firm is one of their largest accounts in the Netherlands with a pool of 200 flex workers. Contracts between the user company and the TWA relate to temporary agency workers working at one of the distribution centres of the big green-grocer, mainly performing tasks as warehousemen. The contracts contain agreements on prices for temporary agency workers, rules about recruitment of migrant temporary agency workers, rules on minimum ages and rules on the guidance for temporary works.

### **The use of agency workers in practice: strategies by user firm and temporary work agency**

Temporary agency workers salary is paid according to the user firm CLA from day one, as has been agreed with the trade unions. According to the collective labour agreement, temporary agency workers are allowed to be employed at the user firm for a period of maximum one year. After one year they either get a regular company employment contract or their contract is terminated. After one year the temporary work worker is obliged to leave the company for at least 4 weeks. Afterwards he or she can return to the plant, which some students do. Currently this deviation from the Flexibility and Security Act (see chapter The Netherlands at national level) is in discussion within the user firm.

Off course termination of work at the distribution centre does not necessarily mean loss of their contract with the temporary work agency. The most common reason for temporary agency workers to leave the temporary agency company is when they cannot keep the standard speed. Contrary to the user firm, the temporary work agency does do exit polls to get a better grip on the reasons for leaving and the how to better bind the best temporary works to the agency. However the logistic user firm is not interested in hiring the best temporary agency workers with a permanent contract (fase C), due to the higher rates they have to pay them. According to the account manager of the temporary work agency, a big logistic firm like the user firm is not very much interested in getting temporary works committed to the firm for a longer period of time.

The user firm prefers to recruit Dutch temporary works living in the region. The firm said not to be in favour of hiring Polish workers as these just come for a short period of time and quickly return to their own country. However in the tight labour market it was no longer a question of choice and the user firm had to agree to recruit Polish agency workers. According to the trade unions it is a different story, they accused the user firm to sack Dutch workers after 26 weeks. In the user firm CLA there is an agreement, that after 26 weeks temporary agency workers will receive the same payment as regular employees.

In order to tackle its recruitment problems for the user firm, the temporary work agency created a new label/company specifically for recruitment and selection of people of different languages, like Polish and Portuguese. Currently some hundred flex workers are

employed at the user firm directly through this label. Other foreign temporary works are directly recruited in the Netherlands through relatives and friends already employed in the Netherlands. For these agency workers the temporary work agency applies rules agreed upon in the collective agreement for the temporary work sector (ABU) and in the collective agreement of the user firm on lodging, transportation and job coaches for the guidance of foreign temporary agency workers. There is no mentioning of lack of clarity for the temporary works about responsibilities in the division of responsibilities between the user firm and the temporary work agency. At the work place ultimately the team leader employed by the user firm is in charge of the temporary workers, 'as in general the temporary work workers realise pretty soon'.

### **Better safeguard of guidance and competence development: flex coordinators**

The temporary work agency has created the so called *flex coordinators*, who take care of the flex workers' training and guidance. Flex coordinators provide the temporary works with an introduction course of two hours. After that the newly arrived temporary work workers are working for eight hours under surveillance of these flex coordinators. Both user firm and TWA pay half of the flex coordinators payments, who are employed by the TWA. These flex coordinators form the connection between the user firm team leaders and the temporary works as a safeguard for proper training and guidance. Usually these flex workers are on a permanent contract (phase B). The creation of this function of linking pin, commonly by user firm and temporary work agency, works well for all concerned according to all the interviewed.

### **Health and safety**

The user firm has liability in case of accidents. All flex workers receive a booklet/brochure from the temporary work agency at the distribution centre, which explains the division in responsibilities between TWA and user firm in this respect. The temporary work agency asks his agency workers to sign a document on working conditions, which safeguards the agency from claims from the user firm.

In practice flex workers are not directly involved in regular meetings on working conditions at the user firm, and neither do they seem to get info about how to contact the work council of the temporary work agency in case of complaints, they turn to their direct co workers.

Responsibility for sickness leave lies in the hands of the TWA, from the second day on (90 %). The first day of sickness is to be paid by the flex worker. In case of long term sickness, the temporary work agency is responsible for reintegration and guidance. Especially for these tasks the temporary work agency created a special label, an agency active for temporary work workers at all user firms.

### **The representation system**

At the user firm in the work council the representation is mainly confined to permanent managerial and professional staff. In discussions with the respondents at the distribution centre three mechanisms of 'representation' came up: formal representation through work councils and union organization, local forms of representation organised in site platforms, and representation through work relationships with coordinators and team leaders flex. Within the mother company there is a central works council coordinating separate work councils of firms within the company. Only regular employees from the distribution centre are directly represented. In a separate semi formal platforms topics related to flex workers are discussed, for example safety and health. Equal treatment for

flex workers is regulated in the user firm CLA. Both the Dutch and Polish flex worker could not name any topic related to the platform for flex workers that was discussed as far as they knew. Neither were they aware of any trade union activity apart from the CLA. According to the regular employee who was interviewed hardly any flex worker is organised. And equal rights, f.e. to get a day off when a baby is born were hard to arrange in the CLA. Normally agency workers complain less than regular workers out of fear for repercussions from the temporary work agencies.

Within the temporary work agency the representation of agency workers is regulated in the formal work council. It has chosen the format of one common work council. The work council represents regular as well as flex workers, in a division of 10 regular and 15 flex members, representing resp. 1500 regular and 30.000 flex workers. Flex members of the work council represent temporary work workers (75%) as well as workers on secondment (25%). Flex representatives in the work council are mainly workers on secondment as they work for a longer period of time in the company. On average flex workers are employed for a period of between 12 and 14 weeks. From the start, the temporary work agency has had the experience, that one common work council is more practical. It was said to be less time consuming in terms of meetings, the danger of discontinuity due to flex workers is smaller, there is a combination of different perspectives at the table, and the flex representatives have the possibility to join in with the stronger section of regular employees. According to the respondents, the recruitment of representatives for workers on a regular contract runs rather smoothly. Filling in vacancies with agency workers however turns out to be a real challenge. Currently 5 of the 15 seats are vacant. The work council is searching for new and more appropriate ways to represent agency workers. One of the solutions mentioned was to incorporate agency workers in work council *committees*. In practice these committees function as recruitment channels for representatives for the works council. One of the advantages of the committees is that flex workers can be active committee members before they are entitled to be a representative in the works council (6 months employed by TWA).

According to the employees, a work council with temporary agency worker representatives needs proper management. There is always the risk for agency workers to feel lost. In its agenda setting the work council in practice tends to give priority to matters relevant for the regular workers. Also flex workers do not bond easily as a group because they work for different user firms, there is little mutual consultation. One solution mentioned to this problem in order to come to a more equal footing that the work council has created is a '*flex agenda*'. A *flex agenda* is made every year in order to guarantee for flex topics to appear on the council's agenda. Furthermore a *separate flex committee* has been installed at the temporary work agency to deal with flex work items.

The creation of another committee called 'Bonding with the firm' is about contact management. It should give agency employees the opportunity in evaluations to come up with bottlenecks in communication with flex workers. There does not seem to be a strong link made between these activities and building in more securities for flex workers within the phase system (A,B,C). One of the items that is mentioned frequently is the fact that the staffing consultants at the temporary work office do have a role to play in this respect, but cannot or do not play this role sufficiently due to their too high performance standards. In a better world the *staffing consultants should (have time to) take initiative to properly inform flex workers about facilities and their rights to training*.

One of the managers characterized the style of the work council as informal in character. Both relations with the board of directors as well as contact with the rank and file of



the personnel are said to be relatively close. As an example he mentioned the professional attitude of the work council in the recent merger of the TWA with another company. Major accomplishments mentioned are the proactive support of the work council and its timely contact with the rank and file and their mobilisation at the time of the merger. Organising the contact was discussed for flex workers in the flex committee and led to a new instrument, an *email newsletter* that regularly calls on to keep in contact with *regionally organised contact persons*. Another new instrument mentioned to engage flex workers more than before is an *informal talk* twice a year between personnel on secondment and the director.

Examples of recent topics discussed in the work council are the merger mentioned before ((limited) harmonisation of labour conditions), room for child care arrangements (also for flex workers) and premiums (bonus). These topics are primarily dealt with in the work council by the regular workers. For example in the case of child care it is difficult to come to one general policy for agency workers. Agency workers do naturally feel a stronger link with the user firm. Some interviewed stated to have difficulties to get a clear sight on this 'triangle'.

A topic that is currently being discussed in the work council is how to hold on to flex personnel and keep them enthralled. It is being discussed not in relation to bonuses, but in relation to entries to vocational training as a strategy to bind flex workers. However the room to manoeuvre for the work council is limited, due to the fact that matters relating to payment and duration of stay these days are regulated by the Collective Labour Agreement. In matters of payment the CLA states that only the first 6 months of the flex payment is regulated by the TWA, after that period of time automatically by the CLA of the user firm, while in practice in 60% of the cases and also in the user firm being described already from day one.

There is little contact between trade unions and the temporary work agency apart from CLA consultations. But sometimes there is. One example was when the user firm did not offer Polish agency workers a regular contract after working the proper period, same as Dutch agency workers, an obligation which is stated for all flex workers in the CLA of the user firm. At the request of the trade unions the temporary work agency as an employer did play its role to sort the matter out for the Polish workers with the user firm.

In general the TWA employee representatives state that employee participation is less important when everything is well arranged, but becomes important in case of conflicts. Employer representatives see the employee representatives in this well organised work council as a rich source of information.

In the near future the temporary work agency expects more in general the relationship between de TWA and the flex worker to change and become more close. New relationships with different responsibilities are expected to evolve in relation to user firms (f.e. outsourcing, contract activities), which in turn will influence the relationship between the TWA and its agency workers (liabilities to be accepted). However things are not expected to change for the classic easily replaceable temporary work at the user firm of limited strategic value to the organisation.

## **Analysis**

Temporary agency employee representation at the local level is still underdeveloped. Partly this is due to the Dutch trade union tradition of focusing strongly on collective

labour agreements and not so much on the representation on the work floor. All interviewees demonstrated concern with the limited fit of the current representation at the work floor to the conditions of temporary agency workers and the character of their work. In order to a better adjustment, trade union-, works councils- and company representatives have come up with proposals/solutions for a better fit. Some of these proposals were already put in practice. To conclude this chapter, we sum up the most creative proposals mentioned during the interviews, first one regarding better dialogue between user firms and temporary agency workers, then some regarding the works council and finally those regarding trade union representation at the work place:

- *Create the function of 'flex coordinator's as linking pin between regular and temporary agency workers:* make better communication between these workers by appointing senior temporary agency workers as flex coordinators, paid by both user firm and temporary work agency
- *Lower the threshold for temporary agency workers' representation:* by creating separate work council committees for temporary work agency workers or (easy accessible) temporary work agency panels in addition to the regular work council
- *Agenda setting:* Create a separate 'flexible labour or temporary work agency labour' agenda as part of the work council agenda
- *Dissemination:* Email a work council newsletter linked for example to salary records so all temporary agency workers get informed
- *Feedback from bottom up for the works council:* Create a complaint procedure especially for temporary agency workers, start a procedure for 'mystery guest' research in the temporary work agency as feedback instrument for treatment of temporary agency workers by staffing consultants
- *Make agency workers employability and guidance a core performance element:* introduce 'Guidance and employability of temporary agency worker' as a key performance indicator for staffing consultants, so these items will get proper attention
- *Improve communication channels on collective level:* Arrange regular meetings between works council members and trade union CLA negotiators, so they get mutually better informed and also arrange informal talks between members of the work council and the regional business unit director (twice a year)
- *Improve trade union information channels and access on individual level:* Let trade unions negotiate deals with employers to use their websites and intranet in order to enlarge the commitment of the temporary agency workers during CLA negotiations at the user firm and give trade unions access to the agency work floor to have trade unions organize temporary agency workers through the agency itself

### **Interviews:**

HRM manager user firm

Site manager user firm

Temp worker TWA at user firm

Employee with regular contract at user firm

Polish temp worker at user firm

Senior account specialist TWA at user firm

Account manager Temp Work Agency

Managing director TWA

Member of the TWA-work council for flex workers

Secretary of the TWA work council , ex flex worker

Lawyer /policy advisor TWA

## **Poland: temporary agency work at workplace level**

This chapter is written by Dr. Joanna Unterschüts, Solidarnosc, Poland

### **Introduction – methodology**

The case-study presented below is based on interviews conducted in a user firm (Flextronics International Poland) and two temporary work agencies co-operating on a permanent basis with the user employer. Additionally, given the specificity of Solidarnosc as both Project Partner and a social partner itself, two additional interviews have been made with trade union representatives (both presidents of trade union organisations operating in the company) at two of the user companies: Whirlpool Wrocław and Electrolux in Siewierz in order to broaden trade union perspective and find out what policy is undertaken on the company level in different local trade union organisations.

The interviews in the main user company covered three agency workers working at different departments within the user firm, employed by Adecco, Randstad and Trenkwalder; three permanent workers performing different functions at the departments, where agency work is used and the president of NSZZ Solidarnosc trade union organisation operating in the company.

The interviews in agencies covered the Office manager at Adecco branch in Tczew and the Jobmanager in Trenkwalder on-site office in Tczew.

In order to obtain most comparable results, the interviews were conducted with an ample use of “interview guidelines” provided by the Goteborg University

### **The user firm**

Flextronics International Poland Tczew Ltd. is a European Electronic Manufacturing Services provider, focused on infrastructure production, electrical devices and base stations. The Industrial Park in Tczew is a manufacturing facility which offers complex telecom infrastructure products in one place. Flextronics International Poland began its operation in April 2000, when the company decided to build a modern Industrial Park in Tczew. The PCBA factory is focused on PCBA assemblies, modules and electrical devices. Enclosures main products are metal stampings and base station production. The production is divided into 3 areas: metal fabrication, painting and integration.

The firm employs 3000 regular employees and 300-400 agency workers, depending on current production needs. The interview of trade union organizations and two of four temporary work agencies co-operating with this client has shown that the main motive for using the agency work is numeral flexibility of workforce. Before introducing the agency work since summer 2007 constant fluctuations in the production cycles and changing demand for work caused frequent dismissals of workers, mainly by refusal to prolong fixed term contracts and the need to seek alternatives in organisation of working time by e.g. employment of workers on the part-time basis. This pattern was applied until October 2006, since this date workers were employed in most cases on the full-time basis. For over half a year trade union organisations hindered introducing of temporary workers to the company. The agency workers are employed for the period of one to six months on the basis of employment contract, and many of them later become regular employers of Flextronics. Terms and conditions of employment are subject to

negotiation between the user employer and TWA and the workers enjoy equal working conditions, including remuneration.

### **The agencies**

In the Flextronics company there are four agencies co-operating on the regular basis: Adecco, Manpower, Randstad and Trenkwalder. In the interview participated managers form the two of TAW operating in the company, both ZAPT (association of temporary agencies affiliated at CIETT ) members. Adecco Poland is operating on the Polish labour market since 1994, currently having 50 offices offering both permanent and temporary employment job offers. The office in Tczew recruits about 300 workers per month including blue collar and white collar workers. Flextronics Poland is not their only customer, even though an important one in this area. Employment conditions of workers are negotiated individually and a framework agreement with Flextronics international exists. Workers recruited for this client are production workers. The company is very diligent as far as the legal provisions covering employment issues are concerned. All workers are employed on the basis of employment contracts, wages of agency workers rise parallel to the wages of permanent employees and the workers are offered private medical assistance package, just like the permanent workers of the client. Agency also inspects health and safety conditions on-site and maintains in permanent contact with employees.

Trenkwalder office operates on-site the Flextronics Poland, its only client since February 2008 and is visited by approximately 300 job candidates a month. Workers are employed on the basis of employment contract and the length of a contract may vary from 3 month to a year. Working conditions are based on a framework agreement with the client, but the workers remuneration is equal to the one of permanent workers performing the same or comparable jobs. The agency recruits only production workers for this client. Agencies' employees also inspect the production site and reacts to the employees complaints concerning working conditions.

Both agencies are based in offices in one of the buildings where the production is carried out. This facilitates contacts between employees and agencies, as well as trade union organisation and the latter. Both of the interviewees reported that workers turn to them or other persons in the agency office with some of the difficulties concerning working conditions but also social environment at the workplace and even some personal problems. The Trenkwalder Jobmanager reported, that some of the temporary workers perceive themselves as "second class" employees because of the precarious character of this form of employment. The Adecco employee mentioned that she knows many of their employees' daily problems very well.

The legal provisions on temporary employment do not permit for much flexibility and variety of contracts. It is not permitted to conclude open-ended contracts, therefore the length of a particular contract depends on an agreement between the user employer and an agency. If the user employer wishes to resign from the work of a temporary worker is has to inform about the fact the agency beforehand so that the latter could terminate an agreement with the worker respecting the notice of termination periods. Even though there are no regulations concerning remuneration for worker while not on assignment, in case a worker was dismissed by a user employer before termination period has expired, the agency is obliged to cover the remuneration cost even though the work is not performed.

A works council in Adecco agency represents its permanent workers and there is no trade union organisation in neither of the interviewed agencies. Therefore the consultants neither inform temporary workers about a possibility to join the union, nor do they encourage them to create this form of workers representation. This situation does not come as a surprise, given that only about 20% of Polish employers are covered by trade unions.

### **The use of agency workers in practice**

Production in Flextronics is carried out in two departments located in two neighbouring buildings (Hall 1 and Hall 2). The Enclosures department located in the Hall 1, where most of the mechanical works are carried out include fabrication painting and quality control units. The Hall 2 where PCBA – electronic components are assembled manually and mechanically includes also a quality control unit. Agency workers are employed in the production units of the enterprise. The agency workers are present in the company throughout the year, even though their number may vary, depending on the production needs. Similar pattern is also applied in the Whirpool company, while in Electrolux agency workers are employed to temporarily replace an absent permanent worker or during the “season” (August to February) when the number of agency workers may equal 50% of the permanent staff. In Flextronics both permanent workers and production workers themselves confirm, that the tasks performed within every group do not vary. Many the tasks are performed in groups comprising permanent and agency workers, who are usually in minority. However, one of the interviewed agency workers employed at the painting unit worked on his own and complained that his job was hard, tasks were not diversified enough and he was not given opportunity to learn new ones. The agency workers do not perform supervisory work either. The agency workers are well integrated: they wear the same outfits with “Flextronics” logo, use the same canteen and dressing rooms. In case of Whirpool the agency workers wear different clothes with an agency logo.

The work environment is the same for all workers. There are no major hazards for the workers, although they may suffer e.g. from noise. The factory is modern and a lot is done to improve health and safety conditions. There is a health and safety inspector as well as health and safety service and both of them inspect workplace equally for permanent and temporary workers. The production halls are additionally inspected by the agency representatives. Even though it is the obligation of the user employer to ensure healthy, safe and hygienic working conditions, the agency – as every employer - covers the h&s insurance (a part of social security fee) an accident at work is to be reported to the agency as well as other appropriate institutions.

Before starting their work, all workers undergo 2- or 3- days training including health and safety procedures and job training, which, depending on the job, is sufficient or the workers may require further assistance if the job performed requires additional skills or knowledge (as. e.g. quality control). Some workers find the level of training satisfactory, but there are also some who believe it is not possible to learn everything about a new job during just two days. For this reason working groups are composed in a way, so that permanent workers could provide support for the new agency workers.

The interviewed workers did not complain about any form of discrimination, different treatment or isolation. They were invited for all the meetings organized by the company, regardless of their work (e.g. staff meetings) or leisure character (e.g. staff integration parties or outdoor parties). Some of the interviewed workers did not participate

in the social events because of short time in the company or lack of interest. In the two other enterprises – Whirpool and Electrolux- the interviewed trade union representatives also confirmed, that agency workers are invited to the staff meetings and use the same facilities as the regular employers.

One of the interviewed workers was particularly satisfied with this form of work, since he was planning to take up a new school upon finishing of his contract, and the agency helped him find a job quickly after his military service. Two other agency workers before the present job were unemployed for 2 and 10 years. They can be certainly counted as good examples of re-introduction to the labour market through agency work. The agency managers however indicated, that they may be isolated cases of abuse and some agency workers themselves consider this form of work as precarious.

In Flextronics many the agency workers become consequently permanent employees of the user company - temporary work is used as a form of trial employment contract. It seems that workers look forward to this change, not only because of stability of employment but also because of wider access to training and professional development within the company. At the same time all interviewed actors confirmed, that there are cases of temporary workers abandoning their posts within the first days of their work. There are also isolated cases of disciplinary dismissals for serious breach of work regulation.

### **The representation system at local level**

Flextronics Poland is a large employer and apart from two trade union organizations employees are also represented by the works council. 550 of 3000 permanent workers are trade union members. The trade union presence is visible in the enterprise and many agency workers ask about possibility to join the unions. However, trade union organisation perceives the fact, that temporary workers' employer is an agency and not the user employer as an obstacle to admit them as members. Therefore a strategy has been developed of collecting statements from these workers that they are willing to join trade union organisation, and as soon as they change employer from the agency to the company itself, they are accepted as members.

At Whirpool the trade union officer states that 70% of staff are trade union members and 10% of them – temporary workers. For the period of agency work they are exempted from the obligation to pay trade union fees. This seems to be efficient strategy, especially that also in this company after a maximum period of one year of agency work, temporary workers are employed by the user company for two years. However in the Electrolux company temporary work has strictly seasonal character, and temporary workers are not unionised at all.

In the group of interviewed agency workers some had no intention to join trade unions and one declared that he could consider it “depending on what they have to offer”. However, none of them have heard of the works council. It is worth noticing that in the interviewed companies works councils have much weaker position than trade union organisations. Works councils are seen rather as a body which gives trade union access to more information about the company situation and prospects than a forum of exchange with employer.

Agency workers asked whom they turn to in case of any work- related problems declared that they seek help of their immediate supervisors or their colleagues, especially if their problems concern work organisation or particular tasks, and usually they obtain the help they need. The same pattern can be also found in the two other examined com-

panies. At Whirpool trade union officer also noted that “they (the agency workers) quickly get to know where to find us” Trade unions inform of agency workers who visit them to seek advice or support as well, regardless of whether the temporary workers are trade union members or not. Their problems may concern remuneration – some workers cannot verify if their wages are calculated correctly or work regulation. In case of individual complaints, trade unions intervene at an agency and it is visible that trade union leaders and agency management are acquainted with each other. Also the agencies try to maintain contact with their employees, especially that the offices are situated in the nearest proximity to the production plant.

Trade union organization negotiates with the employer (user firm) working conditions, especially the remuneration of agency workers, however the framework agreements as well as individual working conditions are established between the user employer and the agency directly. Last agreement concluded between trade unions and the management in Flextronics provides for higher minimum wages in the company since 1<sup>st</sup> September 2008 and covers also agency workers. Previous two agreements covering temporary workers concerned additional health insurance, which the agencies are obliged to cover and social benefits, such as gift packages for Christmas.

However, in January 2008, due to worse economic situation and lower production levels in the company, trade union organisation agreed to terminate contracts of temporary employees (or not to prolong them), so that no reductions in permanent staff took place. This example shows that in critical situations permanent employees are better provided for than the temporary ones.

Although none of the interviewees reported any conflict between permanent staff and agency workers, no common initiative beyond co-operation on the every-day basis could be found.

### **SWOT Analysis**

In Poland a dual system of workers’ representation has been accepted, i.e. the one comprising of trade unions as well as works councils. This could in theory allow agency workers to express their needs or grievances at least through one of the bodies. In practice, however, it is not always the case.

It should certainly be counted among the strengths of the existing system that in all of three cases examined trade unions lobby successfully the user employer to improve working conditions and promote inclusion of agency workers. In each enterprise temporary workers received equal remuneration and examples of unequal treatment of unfavourable working conditions for this group of workers are accidental. However, only in one enterprise, the Whirpool an agreement concerning temporary workers exists, which stipulates that after a maximum period of one year of agency work an employee should become a permanent employee of the user employer. In case of Flextronics temporary workers were included in an agreement concerning increase of wages and in any other areas their situation is a matter of informal agreements, which could be perhaps classified as a “company soft-law”, except for the two mentioned above concerning health care services and social benefits.

At the same time there are no open conflicts between permanent and agency workers. Permanent workers seem to understand the need of employer to use external staff, especially that it helps to avoid dismissals. Approach of permanent workers to their tempo-

rary colleagues is far from hostile, both group of workers cooperate and are well integrated at workplace even if their work suits differ.

An apparent weakness of the existing system is the fact that temporary workers are rarely represented by trade union organisations, and it seems only be the case when there is a perspective for them to become permanent employees of the user firm. No trade unions are created in the agencies, neither for the permanent agency staff nor for the temporary workers. What is more, temporary workers are not members of works councils at the user firms, or agencies even though such councils exist. This is primarily due to existing legal provisions: works councils chosen by and among employees of a given employer, and the right to become councils member is reserved to employees with at least one year seniority. Given that the maximum period of employment for one agency may not exceed 12 month, temporary workers are *ex lege* deprived of this right. At the same time low interest, or even ignorance of existing of such representation body as a work council can definitely be counted among threats. The same could be said about the fact that temporary workers are themselves not always interested in joining trade unions, not to mention creating a union for themselves.

In some companies trade unions seek alternative solutions to gain members among agency workers (e.g. by collecting declarations; exempting TAW from the obligation to pay trade union fee), in spite of formal and legal difficulties. At the same time, temporary workers turn to the unions for help in case of problems concerning working conditions. Both of the phenomena can be seen as an opportunity, which should not be wasted. Given the very character of temporary work, short time workers spend in a user company on the one hand, and low trade union membership rate on the other hand, there is still a need of a form of representation for this group of workers in Poland.

### **Recommendations for the national policy**

The cases examined show that basic interests of agency workers, such as working conditions or remuneration are subject to negotiation of trade union organisations even though these workers may not be union members. There seems to be however a limitation: no agreement was concluded in the establishment, where temporary work does have indeed temporary character and not also constitute an alternative form of employment before concluding a contract directly between a user employer and a worker. This may suggest that in case when trade unions perceive temporary workers at their potential member, they tend to formalise negotiation between themselves and an employer in a form of written agreement. The number of examined cases was definitely too low to draw general conclusions, however, it may seem that agency workers could benefit from much better representation by trade unions as their members. The current state of facts is based to the large extent on a good will of trade union organisations operating at a user employer. It could therefore be of benefit to the agency workers if they were offered a possibility by law to become trade union members not only at their factual employer – the agency, but also (perhaps alternatively) at the user employer company. This would however require amendments to the trade union act or at least a wide and favourable to agency workers interpretation thereof. Nevertheless, given that it is at the user employer where a temporary worker performs work and it is there where his working conditions, including remuneration are shaped, representation at the agency level may encounter difficulties in meeting these workers real needs.

It seems that work councils do not play any significant role at representing agency workers, at least such is the case in the examined companies. It does not come as a sur-



prise, given the fact that they could only be elected and participate in election of a works council at the agency and not the user employer. In practice, it is doubtful if they do, especially that the right to be elected is limited to these workers who had worked permanently for an employer for at least one year. Even though there are plans to amend the act on employment of temporary workers so that the maximum period of employment was increased to 18 months in the 36 months period, this may not change the representation of temporary workers in the works council.

It is therefore essential to encourage interest of trade unions in the field of agency work and specific problems of this group of workers.

## The UK: temporary agency work at workplace level

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### Case Study I

**Premier Foods** is a sauce and pickle company that has been operating in the East of England for more than 50 years. It has a workforce of around 450 staff of whom more than a quarter (28 per cent) is agency staff. The agency workforce fluctuates dependent on the seasonal nature of the product. Almost the entire agency workforce is now from Poland and Portugal, although a minority come from Lithuania, Hungary and Iraq. This represents a change from five years ago when it was mostly a native-born agency labour force. Most are in their early to mid 20s, and men and women appear to be in about equal proportions. Most of the A8 nationals who present themselves as agency workers are well educated; some hold post-graduate qualifications and often will arrive with a good knowledge of English.

**Adecco** is a large, internationally known employment agency. The office is located in the premises of Premier Foods Company to whom it almost exclusively supplies workers.

Initially it had difficulty sourcing migrant workers but had established contacts with migrant associations in the area, especially the Polish community. Around 40 per cent of the workers it supplies are Polish; around 30 per cent are Portuguese, with the rest being local workers. But the agency also notes that there are a lot of refugees from Iran and Iraq in the area who have no access to the Internet and therefore have difficulty in accessing information about work. For this reason it uses notice boards to advertise work.

There is no agreement with a trade union; however agency workers who are union members can pay by checkoff allowing the employer to deduct trade union contributions from the trade union member's salary and pay these directly to the trade union.

<b>Agency:</b> Adecco
<b>Location of interview:</b> Their office in the Premier Foods factory, Bury St. Edmunds
<i>Organisation background</i>
<p>The Adecco office in Premier Foods in Bury St. Edmunds was established in July 2006; at that time, Premier Foods took over a big company and needed additional labour, which could not be supplied from the area; Bury St. Edmunds has a very small number of migrant workers compared to other neighbouring areas.</p> <p>The agency almost exclusively supplies workers for Premier Foods (mainly production operators); the peak session for the factory is June-February. The agency office has only one person staff, the manager.</p>

*Agency arrangements*

Initially, the factory struggled to recruit people from the local labour market and then turned to Adecco for help with it.

Last year, when the agency first started operating in the factory, no one knew they were there. They had to put a banner outside showing that they were Adecco (after getting permission from the local authorities); they also established contacts with migrant associations in the area, especially the Polish community; in their recruitment process, they were supported by other Adecco agencies in the area. Nowadays, their key focus is to offer employment to migrant workers who speak good English. “In the past, we’ve experienced a lot of frustration with workers who spoke no English at all.” Candidate workers are tested on their written English as well; they write a test that examines their understanding of industrial structures. Often, workers would be very fluent in spoken English but poor in written English. Writing and reading in English is quite important in understanding written instructions.

Retention is very important for the agency. They are very careful with the recruitment of students as students are limited in the time they can work.

Now they recruit about 110 workers a month; “It is a huge success – he said- last year, we started from zero”.

The agency does not have any agreement with a trade; however, workers who are union members have their memberships processed through the payroll.

The agency has a service agreement with Premier Foods.

Why employers use them?

-In this particular case, Adecco is used by Premier Foods because of factory difficulties to recruit workers from the local labour market.

-Other reasons are cost and flexibility. The agency responds quicker than any HR department when the factory wants to increase or decrease the numbers of its workforce within a short time span. However, he emphasised that the agency goal is to provide permanent employment to its workers.

**Agency workers**

A lot of workers in the area are refugees from Iran & Iraq; they do not have access to Internet, hence, vacancies are announced on notice boards; the rest of the agency workers are East European, mainly Polish.

Their agency workers are 40% Polish, 30% - Portuguese and the rest – English. “At the beginning, there was a lot interest in us from local ‘chavs’, sent to us by unemployment agencies. We did not want them as they were not really interested in the job.”

Now, the agency recruits about 110 people a month.

**Agency workers’ terms and conditions**

“As most jobs are low skilled, requiring very basic qualifications, we can place workers on the jobs with little or no training at all”, he said. Two inductions are organised for the workers, one is on the factory site to test for workers’ understanding of the first induction, which was done at the offices of the agency. Agency staff gets only basic H&S induction (fire alarms, hazards around the factory); the main responsibility with it lies on the client.

The agency pays over the minimum wage. Day shifts for unskilled jobs are paid 5.55 GBP/hour while night shifts – 6.25 GBP/hour. Skilled workers get 6.68 GBP/hour for

a day shift. Overtime is paid after 37 working hours per week. On weekends, a double rate is paid.

Workers are also paid holidays but there is no sick pay. The agency offers its workers an employment contract. 37 hours is the normal work pattern. The pay rates are set up in conjunction with the client.

The agency also provides transport as most workers are coming from Suffolk – bus service runs for 2 shifts;

The client factory has already taken on permanent basis about 20 agency workers; now, they are doing the same job they were doing as agency workers. Thirteen weeks is the agency requirement for workers to be kept as their staff; after this period, workers can be taken on permanent basis by clients, without any fees.

The agency has responsibilities to both its workers and the clients.

To the workers: they pay them the ‘right rate’; help them register with the WRS; inform them about changes in the work arrangements (e.g. remind them when the work is supposed to finish as is the case with Premier Foods; the job ends in February; give them a week notice if a job is about to end as is the case with another factory in Stow market; the agency may arrange a continuation of a job elsewhere.

Agency responsibility to the client is to provide them with the right numbers and quality of people. The agency is very careful about the legal status of their workers; they employ only legal migrants.

Differences in terms and conditions between agency workers and core staff:

Directly employed workers have guaranteed employment while agency staff gets jobs occasionally. On some days, especially Fridays, there may be not enough work for agency staff, so they finish the job earlier and get paid for fewer hours. Agency staff gets paid less; a permanently employed person gets 8.50 GBP/hour.

**Enforcement arrangements**

A lot of it is down to the spirit of partnership with the client. Some clients see the agency as a partner in the human resources management process while others see it as just a supplier. The best experience is when there is a partnership between the agency and the client firm so they can work together for improving workers’ conditions. Once, a shift manager shouted at an agency worker; the agency reported to the HR department of the company and they apologised; the shift manager was also made to apologise to the worker. However, this is not always the case, he said.

**Company:** Premier Foods

**Location of interview:** phone interview, office J3-83; started at Premier Foods in Bury St. Edmunds

*Organisation background*

The company has been operating for over 50 years; it’s based in Bury St. Edmunds. Main activity: production of sauces and pickles. The management staff speaks mainly English. Their workforce numbers 450 people, 100 of them are agency workers (28%); the number of agency staff varies due the seasonal character of the production processes; it is expected to drop significantly from March.

They recruit their direct workforce through word-of-mouth and newspapers. Many of the permanent staff are former agency workers.

GMB is the recognised trade union in the company.

<p><i>Agency arrangements</i></p>
<p>They are currently working with four agencies; one of them, Adecco, is based in the factory. The basic minimum for choosing an agency is to be licensed by GLA; the service agreement between the agency and the company is what matters.</p> <p>Selection criteria:</p> <ul style="list-style-type: none"> <li>- Level of professionalism: how they look after their workers (if they provide them with any benefits) and after their clients. Some agencies did not have an idea about helping their workers; they would not even give them employment status.</li> </ul> <p>She mentioned that the last tender they had organised for selecting agencies, the main question she asked was about the benefits paid to agency workers. Some agency representatives were almost shocked, “What? Benefits to agency workers” was their response. They had recently stopped working with an agency because of signals of exploitation of workers. She said “I can’t employ exploited people. It’s not good for the name of the company. But more importantly, exploited people can’t do a good work”.</p>
<p><b>Agency workers</b></p>
<p>Almost their entire agency workforce is migrant workers coming mainly from Portugal (large Portuguese community in Thetford) and Poland; others are coming from Lithuania, Hungary and Iraq. Most of them are in their early to mid – 20s; men and women are in equal proportion. Most of the A8 nationals are very well educated, some have post-graduate degrees; they have learned some English at home. In the last five years, the agency workforce has been mainly of migrant workers.</p> <p>For health and safety reasons (dangerous environment in the factory), English language competence is very important. Some very good migrant workers had to be turned down because of poor English. Initially, the agency screens workers’ abilities to speak/write English. Once recruited at the factory, the shift manager gives a feedback on their English language competence; if it proves to be inadequate, the worker is replaced.</p> <p><u>Advantages of using agency workers</u></p> <ul style="list-style-type: none"> <li>- Flexibility (can easily respond to ups and downs of the production process). The local area can’t supply with the labour needed. With the agency, all vacancies can be filled.</li> <li>- Immigration status (the company also checks the originals); one of the agencies they are working with cooperates with the Home Office to check for forged immigration documents.</li> </ul>
<p>Disadvantages of using agency workers</p> <ul style="list-style-type: none"> <li>- Lack of control – Agency workers can decide to not come to work the next day; they could have gone home, to Poland even. It’s waste of money spent on their training. It works better for both sides if, from the beginning, a worker informs the company about intentions to return home; then, they could be placed on a job that would not require much training and to which they could return after a long stay at home.</li> </ul>
<p><b>Terms and Conditions</b></p>
<p>The company does not play a part in setting the terms and conditions. They can influence them but this would increase their cost; they have no incentives to do it. However, the company requires being able to audit the contracts of agency workers. Agency workers prefer to be able to work as many hours as possible (they mainly do overtime).</p>

<b>Enforcement arrangements</b>
GLA is a very basic regulation. A lot more legislation is needed to protect migrant workers. “ I am more stringent than GLA”, she said “Some of the agencies that got GLA licences are below minimum standards. I would not want to know them”.

## Case Study II BT

### *User firm*

BT plc (formerly British Telecommunications) is an international telecommunications and IT company that was completely privatised in 1984. It directly employs around 111,000 people worldwide, 103,000 of whom are based in the UK. The company provides networked IT services; local, national and international telecommunications services; as well as broadband and internet products and services. In the year to March 2008 the company had revenues of £20.7 billion and made pre-tax profits of £2.6 billion.

In November 2008 the company announced that, as a result of falling profits in its Global Services division, it planned to reduce its permanent workforce by 4,000 by March 2009 and that a further 6,000 jobs would go from among the 50,000 workers who provide services to BT as agency staff or contractors.

This case study specifically covers BT’s retail division which deals with the company’s UK consumer base – mainly residential customers plus some business customers. It has a workforce of 20,000 and covers all the company’s 30 UK contact centres, plus two in India and one new centre in the Philippines that deals with billing and enquiries. The division employs primarily call centre agents that deal with directory enquiries, sales, complaints, enquiries along with some employees who cover technical issues and management grades.

### *Agency firm*

BT’s use of agency staff has grown significantly since the mid-1990s and it initially used a range of different employment agencies. However, Manpower is now the largest provider of agency staff to BT. The US-based multinational is one of the biggest employment agencies in the world with its three largest markets in France, the USA and UK. In the UK it has 300 offices and 5,000 clients and on average each day provides around 30,000 staff to user firms.

### *Use of agency workers*

BT’s reason for using agency workers is the flexibility they provide as well as avoiding the cost of recruiting new staff whether fixed-term or permanent. The retail division employs around 2,000 agency workers mostly in contact centres and they cover most of the range of jobs in these operations. This varies from basic sales, helpdesk and directory enquiry work to more technical tasks related to BT’s broadband services.

The number of agency workers used by the company has grown significantly since the mid-1990s but is now subject to an agreement between the company and the union that the proportion of agency workers should be limited to no more than 10% of the workforce. The company admits that it has exceeded this figure in response to specific problems such as last year’s launch of the WLR3 broadband system. The launch did not go

according to plan and BT had to taken on more agency staff to try to resolve the situation in the short term.

The company emphasises that the background to the use of agency workers is the highly competitive environment in which it operates, necessitating, it says the need to be as “lean and mean” as it can “but without sacrificing quality.” Cost efficiency is the key factor – the ability to have flexibility in access to resources and in contrast to the processes involved in direct recruitment – including the direct recruitment of fixed-term workers.

The union view is that there has been a shift from the initial use of agency workers to cover absences and peaks and troughs of activity and that many have been brought in to replace permanent workers. The union believes that this is demonstrated by the significant numbers of agency workers that have been with BT for several years.

The company’s view is that everything – the balance between agency and permanent staff and the degree of out- and insourcing – has to be continually assessed to see if it is delivering what the company needs. It does admit that problems like the WLR3 launch forced it to react to problems and that it would be far better to have more proactive planning and testing of new products and services.

The agreement covering the use of agency workers is, from the employer point of view, very detailed but there is some flexibility in its interpretation and the company and trade union manage to have a healthy debate about how the agreement works.

#### *Social integration of agency workers*

The company admits that certain things need to be improved in the way it deals with agency workers with some managers treating agency staff differently from permanent employees and that there is also an issue around the long-term employment of some agency staff. Therefore the challenge involves some changes to management but also changes to how the company uses and integrates agency staff with the possibility of looking at career paths for some agency staff.

There is also a question about relations with agency staff and the initial arrangements for induction and training. BT admits that there could be some improvement in the ways its trainers deal with the many young agency staff that are students and possibly just out of school and who have to be integrated into the BT workforce. While the training overall does the job, the company view is that it could be a bit more flexible in understanding the needs of individual agency staff.

There is also an issue around responsibility and the respective roles of BT and Manpower managers in tackling issues about an agency worker’s performance, for example. The company also admits that there is a grey area about pay and other terms and conditions and the fact that the agency is responsible for establishing these but does so with BT setting the overall costs of the contract.

BT is reviewing its contractual relationship with Manpower with the possibility of moving to more of a partnership arrangement and it is likely that these questions of pay and recruitment will feature in these discussions. The company acknowledges the existence of a two-tier workforce and says there is a need to “balance that out”, although no clear strategy as yet about how to do this.

In terms of recruitment BT is also talking about setting clearer standards and having a much more managed process in the way that Manpower recruits agency staff to work in BT.

Employment conditions for agency workers are determined by the agencies themselves but there is some influence from BT. On health and safety, for example, BT sees the agencies as having a role in covering the main health and safety issues affecting agency staff but when there is a question at workplace level then a BT manager will address this in terms of all workers and then talk to Manpower and the other agencies about how they ensure it is communicated to all agency staff.

The agreement with the CWU also covers integration of agency staff into BT as permanent employees with an estimate that around 2,000 have been taken on in the last two years. This means that in many circumstances the company can use the period of agency work effectively as a probationary period for the recruitment of permanent staff.

#### *Representation system*

Trade union density across the UK is around 29% but the average across the private sector is 17%. There are no official figures for trade union membership among agency workers but it is assumed to be much lower than among directly employed workers. Membership among directly employed workers tends to be higher in the privatised industries and is very high in BT with the CWU representing most engineering and administrative and clerical workers while the Connect trade union, also a member of the TUC, organises managerial and professional staff. The CWU has around 90% membership among the categories of permanent staff that it covers and has managed to achieve a very high level of membership – between 40% and 50% – among agency workers. The main challenge for the union is to maintain this level of membership among a group of workers that has a 100% turnover each year.

The union has a partnership agreement with the BT which means that there is a broad understanding that negotiations and consultations take place on a wide range of issues and this includes not just agency staff but other issues of resources such as the extent of outsourcing and offshoring. The union believes that there are well developed structures and processes for negotiation and consultation throughout the company at national, regional and site level.

In terms of trade union representation the company is aware that CWU officials use their BT facility time to represent agency people and it doesn't question this and is happy to see agency staff treated the same as permanent staff when it comes to things like grievance and disciplinary cases. However, the CWU also has a facilities agreement with Manpower that means that agency staff who become union representatives do get paid time off for their duties. As far as possible the union wants to see its reps in Manpower represent Manpower staff but admits that this is not always possible in terms of resources and expertise and so does rely on BT reps to do this as well.

The company view is that it has a relationship with the CWU that allows for negotiations and discussions over a range of issues affecting agency workers without there necessarily being a formal mechanism that regulates consultation.

#### *Union strategy*

The CWU's strategy towards agency workers has evolved considerably over the last 15 years. Its initial position was one of opposition to the use of agency workers by the com-



pany beyond any minimal, emergency use to cover unforeseen absences. Consequently, the union, like most trade unions in the UK, didn't plan to recruit and represent agency staff. This changed in the mid-1990s as the number of agency staff increased and in one particular case there was a transfer of 3,000 BT workers to Manpower and so the employment agency was suddenly faced with a large block of employees who were still CWU members and it made it much easier for the union to establish a process of consultation with the agency over a number of issues.

The union's approach to agency workers is part of a wider strategy to organise across the IT and telecoms industries but taking in also workers employed by outsourcing companies, including those providing cleaning and catering services.

However, within BT it has meant that the CWU has taken a twin-track approach to agency staff. While trying to protect permanent jobs and maximise the number of permanent employees, the union has also worked to defend and promote the interests of agency staff. While the union says that it can understand the need for flexibility it is concerned about the extent to which agency workers might be taken on to replace permanent staff.

The union was also successful in campaigning for a standardisation of procedures across the growing number of agencies in BT using political contacts – a Labour minister – to back their campaign as making business sense and being an example of good practice. At the time the seven main agencies providing staff to BT had different disciplinary and grievance procedures, different approaches to equal opportunities and different statements on health and safety and so there was a compelling business argument for agreeing on some kind of best practice. The CWU sees this campaign as important for the image of the union both in terms of its relationship with BT and the agencies and of its image as an effective promoter of agency worker rights.

The union has targeted other areas where it could focus on achieving better rights for agency staff with one key issue being annual leave and it successfully campaigned and negotiated to get a change so that agency staff could actually take paid leave during their contract and not have to wait to the end of it to get pay in lieu.

Now the union has good industrial relations with Manpower at national level with full consultation on most issues with the main exception being pay. This covers around 7,000 Manpower agency staff across BT and not just in the retail division. However, recent latest developments have produced a strong response from the CWU. Manpower has put forward a number of changes to attendance, sickness absence, late attendance and probationary period policies and procedures. The trade union has tabled its own counter-proposals, arguing that there are elements of Manpower's policies that are unfair and unreasonable.

At national level the CWU has an agency team that focuses on promoting and progressing issues related to agency workers. It organises a forum of agency worker union reps within BT several times a year with around 40 attending. This is an opportunity to review what the union is doing for agency workers and what problems have been raised with the key issue often coming back to pay. The forum also discusses wider political issues and over the last few years there has been a particular focus on campaigns to establish equal treatment for agency workers in law and putting pressure on the UK government to change its position on the proposed temporary agency workers directive.

The union has launched a “Power up for Agency Pay” campaign that highlightd the fact that permanent workers benefit from the annual pay rise negotiated by the CWU while agency staff are not guaranteed a rise and indeed the union maintains that some agency workers haven’t had pay increases for four years. One key argument in the campaign is that BT is hiding behind the employment agencies and constraining the pay of agency staff.

But the other issue for the union is the pay differentials – with some agencies paying significantly different rates depending on the area of the country so an agency broadband advisor in Thurso in Scotland would be on £6.28 an hour while the BT rate would be a minimum of £10.92. Most agency workers are also on statutory minimum conditions for annual leave, sick pay and maternity leave etc., well below the collectively agreed standards negotiated by the CWU.

The union sees the agency as stuck in the middle, with pressure from the union to increase pay but refusal by BT to agree any increase in the contract price that would cover the pay rise. The CWU will continue to campaign on this knowing that pay negotiations with employment agencies are possible. The union has pay bargaining arrangements with Manpower covering staff at another major telecoms company in the UK, Cable & Wireless and so there is clearly a precedent.

#### **Analysis on strengths, weaknesses, opportunities, threats**

How does the representation system work according to agency worker, union/works council and manager at the user firm and at the agency? SWOT – questions (Strengths, Weaknesses, Opportunities and Threats) on the existing system for representation and what improvements they see.

##### *Strengths*

The CWU has made agency worker representation a major part of its organising and campaigning work and this marks a significant shift from its approach 15 years ago and earlier when, like most other UK trade unions, the CWU would have been opposed to the use of agency workers in all but the most minimal cases of emergency need to cover absence and other unavoidable emergencies. While UK trade unions are still sceptical about the way employers use agency workers, they have taken a wide range of initiatives to support, recruit and organise agency workers and to lobby and campaign at national level. The strength of the CWU at BT means that, where necessary, it can use some of its trade union representatives from among the permanent staff to deal with issues arising among agency workers and with a good industrial relations climate this is something that BT is willing to concede on an informal basis.

##### *Weaknesses*

The strength of trade union organisation at BT is not a reflection of agency worker organisation in most UK workplaces. With 90% membership among permanent staff and a national commitment to recruit agency workers, the CWU has managed to recruit around 40% of agency workers. However, with 100% turnover it requires a considerable effort from the CWU to maintain this level of organisation. In many other workplaces agency workers may be found in ones or twos or small numbers that are more difficult to find and recruit and even more difficult to retain in membership. The UK has a mix of industry-specific and general trade unions and it is possible that an agency worker moving jobs, even if they remained a call centre worker, for example, could still find that moving workplaces could mean a change of trade union. The other problem is

that union organisation is weak in many sectors and so it may be the case there is no trade union organisation at all or that the workplace organisation is weak and so may not make recruitment of agency workers a priority. There is also evidence that even where there is a relatively strong local presence, that the priorities of the local trade union branch are not the same as those at national level and so they simply do not see recruitment of agency workers as important.

A central weakness in terms of agency worker representation is the difficulty for trade unions negotiating on their behalf when the user firm and employment agency fail to agree over responsibility for deciding on and agreeing pay and conditions and improvements to pay and conditions. This is highlighted in the BT case with some agency workers receiving no pay increases for several years. The employment agency's response to trade union demands is that its hands are tied by the contract signed with the user firm and the user firm's reluctance or refusal to negotiate any changes to the contract.

A related weakness in the UK system is the existence of a two-tier workforce in many cases where agency workers are employed. Agency workers may be paid less or receive poorer benefits – holiday, sick pay, pensions – and the union may be too weak to negotiate or simply face the same problem as the CWU does in BT with a user firm refusing to negotiate with the trade union over agency workers' pay.

#### *Threats*

The main threat in terms of UK industrial relations generally is the low level of trade union membership in most workplaces and the fact that most attempts to recruit and organise agency workers require a sustained level of effort and resources from trade unions that are vulnerable to shifts in priorities or a decline in resources as a result of membership loss.

#### *Opportunities*

The CWU at BT demonstrates the opportunities that there are for trade unions if they can target agency workers for recruitment and organisation although this is more relevant for those workplaces where there are significant numbers of agency workers employed in the same or similar departments. The case study also shows the potential value of having an agreement that establishes a framework for the employment of agency workers, with guidelines on numbers and a strategy for taking on agency workers as permanent employees. It also shows that it is possible to co-ordinate the user firm and several employment agencies to try to establish a common approach to a range of employment conditions for agency workers.

The new agency worker legislation will certainly be an opportunity for trade unions to highlight their work for agency workers. Firstly, they can underline the fact that their campaigning has been an important element in getting the UK government to finally agree to support the Temporary Agency Work Directive in Europe. Secondly, they can play an important part in the introduction of the new legislation, ensuring that agency workers know their rights and policing employers to make sure they are complying with the requirements for equal treatment.

## **Analysis**

*SWOT – Strengths, Weaknesses, Opportunities and Threats in the existing representation system from an agency worker perspective*

*Proposed changes to improve the representation for agency workers.*

Trade unions could standardise their practice with agency workers and establish a number of guidelines that could feature in their collective agreements. This means they could clarify with employers that they can recruit agency workers in the same way as any other workers and that the employer should provide them with information on agency worker employment in the same way that it would do about the recruitment of new permanent staff.

Trade unions have been trying to reduce membership turnover by getting members to join and pay their contributions directly to the union rather than through employer deductions. This is particularly important in terms of agency workers. The problem, however, is that a variety of trade unions often compete for members in the same industry, if not the same workplace and the trade unions and the TUC confederation could try to look at what options might ameliorate this situation and make it easier for workers to stay in trade union membership.

## 6. Migrant agency workers

This chapter is written by Richard Pond at WLRI, London Metropolitan University, UK.

The UK has long benefited from the additional labour supplied by immigration and the latest increase in migrant labour has come mainly from Central and Eastern Europe as a result of the enlargement of the European Union (EU) in 2004 and 2007. In contrast to previous large influxes of migrant workers, many of those coming from the new member states of the EU are not only employed by employment agencies in the UK but are often recruited by agencies in their own country and then make their way to the UK with a job and perhaps accommodation provided. The scale of migrant agency work and the particularly vulnerable circumstances of many migrant agency workers, above all those recruited by illegal and/or unscrupulous labour providers, merits some specific comment and analysis within this project.

There are no official statistics on the numbers of migrant agency workers in the UK but a range of surveys gives an indication of the scale of migrant employment and the high proportion of migrant labour employed through agencies. The 2007 report by the TUC, *Migrant agency workers in the UK*, cited Labour Force Survey statistics showing that, as of 2006, 19% of temporary agency workers were from ethnic minorities; in contrast, ethnic minority workers accounted for 13% of temporary workers as a whole, and just 8% of all employees in the UK. In 2004 the government's Department of Food and Rural Affairs estimated that foreign nationals make up 66% of workers in agriculture and horticulture and this is a sector that relies heavily on agency employment or more traditionally labour provided by gangmasters.<sup>56</sup> According to Food Business UK one in three workers in food and drink industry (125,000) are temporary agency workers and 90% of these are migrant workers. As many as one in three employers in the sectors where migrant workers principally work – agriculture, construction, health provision, food processing, hotels and catering, cleaning and manufacturing – employ migrant workers.<sup>57</sup>

The growth in migration from Central and Eastern Europe has led to the expansion or setting up of new agencies specifically to recruit workers from these countries to work in the UK. WLRI research found some positive views of migrant workers to these agencies: "...some migrant workers viewed favourably the service they had obtained from agencies and labour providers, particularly where the temporary work agency had taken care of documentation of had otherwise smoothed their journey from country of origin to the UK."<sup>58</sup> However, the alternative view was of agencies operating in the home

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<sup>56</sup> There is no official or legal difference between gangmasters and employment agencies. A gangmaster is normally seen as an individual supplying casual labour to the agriculture industry but they have become more common across other sectors like food processing and some have grown to become large organisations,

<sup>57</sup> McKay, S and A. Winkelmann-Gleed, *Migrant workers in East of England*, East of England Development Agency 2005

<sup>58</sup> Markova, E. and S. McKay, *Understanding the operation and management of employment agencies*, WLRI for the Commission on Vulnerable Employment, TUC 2008

country that gave workers “false hopes about their likely earnings in the UK” with the result that “most migrant workers now would prefer UK-based agencies rather than agencies at home.”<sup>59</sup> And indeed, according to official statistics covering temporary employment agencies in Poland, only about 3% of workers are recruited to work abroad.

It is also interesting to note that the UK is not the main destination. The five countries, where Polish temporary agencies send their workers are the Netherlands, France, Norway and Germany, while the UK is 7<sup>th</sup>, right after Austria.<sup>60</sup>

Migrant temporary workers’ views about the service they receive at the agencies were subject to an exhaustive study on the food processing industry conducted by the Department of the Environment, Food and Rural Affairs (DEFRA)<sup>61</sup>. Over 50% of workers surveyed expressed their satisfaction with the agency they were hired by. They appreciated friendly and helpful staff and good organisation of work, including regular payment of wages. The workers complained most often about an improper attitude among agency workers, bad work organisation (unknown number of workers needed by user employer; sending workers back home), low wages – non payment of wages during holidays, failure of payment of social security contributions and insufficient information provided for workers.

The Unite trade union has been campaigning for temporary agency worker rights and supporting initiatives to try to ensure that agency workers are not discriminated against. It supplied a dossier<sup>62</sup> to the Labour government in September 2007 with detailed information on several major employers that were using migrant agency labour often on much poorer terms and conditions than directly employed staff. For example, one food processing company in South Wales was reported to use 500-600 Polish migrant agency workers using them to replace many permanent staff. The workers are on zero hours contracts and poorer terms and conditions than directly employed staff. A shipbuilding company in the North East recruits mainly Polish workers through an agency that it part owns. They are paid £5 an hour less than permanent staff and can have contracts terminated with just a day’s notice.

Research by the WLRI for the Health and Safety Executive found that migrant workers are more likely to be working in sectors or occupations where there are health and safety concerns and where their status as new workers, probably with difficulties in fully understanding written and spoken information in English, may place them at risk.<sup>63</sup>

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<sup>59</sup> Markova, E. and S.McKay, *Understanding the operation and management of employment agencies*, WLRI for the Commission on Vulnerable Employment, TUC 2008

<sup>60</sup> *Agencje zatrudnienia 2007; Informacja z działalności agencji zatrudnienia*. Ministerstwo Pracy i Polityki Społecznej 2007

<sup>61</sup> “Secondary Processing in Food Manufacture and Use of Ganglabour – The Gangmasters (Licensing) Act 2004”. – version 4.4 report for DEFRA. Study conducted by Precision Prospecting (2005) The quoted study covered migrant workers in food processing industry. 68% of them were coming from A8 countries. Even though the scale and coverage of the study were limited, the grounds of satisfaction or disappointment with agencies seem to be representative. Quotes after J.R. Carby-Hall, *Sytuacja emigrantów ekonomicznych z Polski i innych krajów A8 w państwach członkowskich UE*; Warszawa 2008

<sup>62</sup> Lawrence, F., “Underpaid, easy to sack: UK’s second class workforce,” *Guardian*, 24 September 2007

<sup>63</sup> McKay, S., M. Craw and D. Chopra, *Migrant workers in England and Wales - An assessment of migrant worker health and safety risks*, WLRI for the Health and Safety Executive

Other research by the WLRI for the East of England Development Agency exposed a number of aspects of the way migrant workers are being exploited by employment agencies and gangmasters.<sup>64</sup> It found that: “many of the migrant workers in the region obtained at least their first employment through agencies, where often they have been made to pay large fees for access to employment. As a result some are deeply in debt and are working in jobs they would leave were it not for those debts.” The report also acknowledged that “...while there are agencies with ethical employment practices, our research has also uncovered very poor practices, with some agencies offering work at well below the National Minimum Wage level, while making significant deductions from workers’ pay for matters like transport to and from work.”

Empirical studies carried out by Samantha Currie have shown some of these practices, which may also include imposing high fees for agency services, extremely high fees for transport to and from the country of origin or accommodation (often in poor, undignified conditions) and last but not least, failure to react on complaints concerning abuses by the user employer.<sup>65</sup> Some *illegitimate* agencies do not declare workers to the social security system or use only one social security number for a group of workers.

The plight of migrant agency workers was highlighted in 2005 when 23 undocumented Chinese workers were drowned in Morecambe Bay in the North West of England. The gangmaster that had supplied the workers to pick shellfish had failed to warn them of the notoriously dangerous tides in the bay.<sup>66</sup> The furore that greeted the deaths created a groundswell of support for legislation to regulate gangmasters and the Gangmaster Licensing Authority (GLA) was set up in 2006. Gangmasters and employment agencies operating in specific sectors – agriculture, forestry, horticulture, shellfish gathering and food and drink processing – have to be registered with the GLA and meet certain minimum standards. The Authority has powers to investigate and prosecute anyone that infringes the gangmaster legislation. For example, the GLA took action against nine gangmasters in February 2008 when it found that they had delayed paying wages, made unlawful deductions from wages, failed to pay the National Minimum Wage, imposed excessive charges for accommodation and transport, provided unfit accommodation and unsafe transport and forced workers to pay for their own protective equipment. The nine gangmasters employed only migrant workers from Poland, Lithuania, Latvia and Bulgaria.<sup>67</sup>

Unfortunately cases of severe abuse can be found in other EU countries. One of them is often referred to as a work camp in Orta Nova in Italy. Polish migrants were working even 15 hours a day, inspected by guards and dogs and fed only with bread and water, not to mention undue deduction from wages, also in case of absence from work due to illness, as a result some of workers fell in debt. A successful joint action of Italian and Polish police put an end to this shameful example of forced labour.<sup>68</sup>

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<sup>64</sup> McKay, S and A. Winkelmann-Gleed, *Migrant workers in East of England*, East of England Development Agency 2005

<sup>65</sup> “*The role played by agencies and employers in facilitating post-accession Polish migration to the U.K.*” (draft version), International conference COMPAS “International Labour Migration. In whose interest?”, 5–6 July, 2006 r., Oxford University

<sup>66</sup> [The Guardian \(2007\) “Going under”, article Jonathan Watts, Wednesday 20 June 2007. <http://www.guardian.co.uk/uk/2007/jun/20/ukcrime.humanrights>.](http://www.guardian.co.uk/uk/2007/jun/20/ukcrime.humanrights)

<sup>67</sup> Gangmasters Licensing Authority (2008) “Gangmaster Investigation - Operation Westport”, Press release 12 February 2008, [http://www.gla.gov.uk/embedded\\_object.asp?id=1013331](http://www.gla.gov.uk/embedded_object.asp?id=1013331)

<sup>68</sup> J.R. Carby-Hall, *Sytuacja emigrantów ekonomicznych z Polski i innych krajów A8 w państwach członkowskich UE*; Warszawa 2008

Many employers and employment agencies are glad that the GLA exists as it is beginning to deal with those agencies that flout the law in order to cut costs and so create unfair competition against the law abiding employment agencies that apply decent standards and good practice. However, research by the WLRI has uncovered a “significant amount of criticism of GLA, in particular from those agencies that felt they were being ‘undercut’ by unscrupulous agencies that were escaping the investigation of the GLA.”<sup>69</sup> There is also a question mark about the standards set by the GLA. One food industry employer interviewed by the WLRI commented: “A lot more legislation is needed to protect migrant workers. I am more stringent than the GLA... Some of the agencies that get GLA licences are below minimum standards. I would not want to know them.” While an employment agency registered with the GLA argued for a tougher approach with “More inspectors who can inspect without notice. Immediate spot checks. Better relationships should be established between the GLA and migrant workers.”

The same research discovered a number of user firms that decided to stop using agencies and gangmasters because of the difficulty in knowing exactly how they treat their workers: “Food company C had been concerned over the agency it had used and a press scandal over the poor treatment of the workers it sourced and this was one of its main reasons for shifting to direct employment.” Some agencies based in Poland, e.g. Adecco, provide language courses to workers going abroad. These are often focussed on specific vocabulary and language competences necessary for a given professional group like welders or nurses, contributing to the satisfaction of both workers and agency’s clients.

The recruitment and organisation of temporary agency workers is a challenge for trade unions but there can be extra difficulties when dealing with a mainly migrant agency workforce. Proper trade union representation is by its nature more or less impossible in the gangmasters and agencies that operate wholly or partly outside the law. In other circumstances, it may pose major difficulties, as in agriculture, simply because of the low level of trade union organisation in the sector, even among permanent, directly employed workers. However, the issue is also about trade union priorities and resources and the extent to which they are geared up to recruit, organise and represent temporary agency workers.

Earlier experiences of trade unions in Great Britain (TUC) and Ireland (SIPTU) with organising Polish migrants confirm that the best effects are achieved if the workers are approached by their compatriots. Such organisers are often perceived as more reliable, since they share similar experiences.<sup>70</sup>

There is also the problem of understanding what trade unions do and the legacy of Communist rule in Central and Eastern Europe is that many migrants from this region associated trade unions with the old regime. In many of those countries trade union membership is relatively low, and many migrant workers often belong to groups with low levels of trade union membership such as young workers who have recently graduated. This means that trade unions in the UK have to explain the role of trade unions in the workplace and emphasise their independence in order to reassure migrant workers.

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<sup>69</sup> Markova, E. and S. McKay, *Understanding the operation and management of employment agencies*, WLRI for the Commission on Vulnerable Employment, TUC 2008

<sup>70</sup> Interview with Kazimierz Anhalt, SIPTU member organising Polish workers in Ireland



There is also the problem of understanding what trade unions do and the legacy of Communist rule in Central and Eastern Europe is that many migrants from this region associated trade unions with the old regime. In many of those countries trade union membership is relatively low, and many migrant workers often belong to groups with low levels of trade union membership such as young workers who have recently graduated. This means that trade unions in the UK have to explain the role of trade unions in the workplace and emphasise their independence in order to reassure migrant workers. This makes it less surprising that in the poultry processing sector the WLRI found that directly employed workers were more likely than temporary agency workers to say that the unions could have a role in representing agency workers.

A trade union official employed specifically to recruit and organise migrant workers said: “Depending on where [the migrant workers] were coming from, they might be very suspicious of trade unions, so we usually need to spend sometime explaining how we are independent and not attached to any employer”. She went on to explain that migrant issues are quite complicated and they often lack the language skills to explain their problems and the process slows down when interpretation is needed. Migrants are also emotional and it’s important to them to express their feelings, which takes time. While local workers want advice over disciplinaries, grievances, accidents, health and safety – the normal stuff of trade union business, migrant workers want help to open bank accounts or help with housing, which trade union representatives do not normally do that, but these are things that now trade unions are trying to help with. The migrant worker officer said that recruitment increased as the union started helping migrants out with their everyday issues. She commented: “I used to explain to people how joining a trade union is really necessary because this is where you can get protection... And, because they respected me, they respected my opinion, and they saw how a trade union like the GMB was effective – so I recruited a good number of members”.

The particular circumstances of migrant workers often conspire against them joining a trade union. Migrants may be in uncertain situations because of their undocumented legal status or with family members back at home they usually have the feeling that they will leave the UK soon so they do not need to join a trade union. Feeling insecure would also mean that they would try to ‘stay out of trouble’ and won’t join any organisation. Some undocumented migrant workers interviewed for WLRI’s Undocumented Worker Transitions project said that they would fear apprehension if going out on the street to meet friends or walk with a big group of migrants, let alone to participate in trade union or other demonstrations. Another factor is that during the first couple of years in the host country, some migrant workers follow a ‘quick-savers’ strategy and work long hours to try to save as much as they can. Trade union membership fees may seem too costly for them. The reality of discrimination can also mean that migrants are often unwilling to be seen talking to a union activist or official in the workplace because they are frightened it might cost them their job.

A number of trade unions in the UK are responding to these challenges by developing new initiatives to recruit and organise migrant agency workers. The GMB general union is working with migrants inside their own communities first, setting up Know Your Rights courses in local community centres and English for Speakers of Other Languages (ESOL) courses outside the workplace. Their migrant worker officer explained: “The main tool is the Know Your Rights courses – that’s what we start with because a lot of migrants work for agencies on temporary contracts or are so called ‘self-employed’ and they have no idea of their rights”. The courses are usually run on a Sat-

urday and cover their specific work problems, employment rights and the benefits of joining the union.

The union recognises that ESOL can be a significant organising tool. These courses are not only teaching migrants English but they are also a way of getting them involved in the union. The union officer said: “We manage to spend more time with people, get a chance to know them a bit and to explain to them about the union. Then they talk to people in their communities and it has a knock-on effect.” The ESOL classes GMB set up for workers at a food company in West London helped recruit hundreds of members and eventually win union recognition.

The withdrawal of government funding for free ESOL classes will make life more difficult for the people the unions have been helping. Few employers are willing to provide some funding and some have other reasons for not supporting these classes: “It’s not just that employers don’t want to pay for ESOL classes. It’s that some of them actively want an ignorant workforce because they are easier to control and do what they like with... And, they particularly don’t want to shell out if it is us (trade union reps) teaching their workers English because not only will they learn the language but they’ll learn about their rights at work as well”.

In organising terms, there’s often nothing more effective than using union’s resources to score significant victories. One such an example was an Employment Tribunal win for a Portuguese woman who was sacked because she got pregnant. This was good as it showed the local Portuguese community that the union has been able to do something concrete to help.

The GMB is has also tried organising social events to build up its relationship with migrant communities. This might involve informal evenings in a local pub or in one case even a fishing day with a local angling club and the Environment Agency. This combined classroom teaching about UK angling laws with a fishing competition between teams of keen anglers from a range of local migrant communities.

Evidence of the working and living conditions of migrant agency workers leads to some key recommendations for policies that can contribute to improve their situation. Where effective trade union representation is difficult or impossible then it is crucial that an enforcement agency like the GLA has the power and the resources to deal with exploitative agencies and gangmasters. In order to tackle the problem of language and lack of knowledge of employment rights, trade unions should be able to work with employers and public authorities to provide information and language training.

## 7. Conclusions

This chapter is written by Associate professor Kristina Håkansson and Dr Tommy Isidorsson, Department of Work Science, University of Gothenburg, Sweden; Richard Pond, WLRI, London Metropolitan University, UK; Associate professor Els Sol, Hugo Sinzheimer Institute, University of Amsterdam, The Netherlands; Project manager Christophe Teissier, ASTREES, France and Dr Joanna Unterschütz, Poland.

The conclusions in this chapter are drawn from the previous chapters on the representation of temporary agency work at national level and workplace level in France, Sweden, Netherlands, Poland and the UK.

### **Comparative analysis of temporary agency work at national level**

#### *Regulation of the temporary agency work industry*

There are both similarities and differences between the regulation of the temporary work agency industry in the countries investigated in this project. France and Poland have quite strong regulations that control when and in what sectors temporary work agencies operate. The UK, the Netherlands and Sweden have relatively weak regulations with the agency industry regarded to a large extent as any other business.

#### *Regulation of working conditions in the temporary work agency industry*

The different national regulatory systems also imply differences in pay and other working conditions for temporary agency workers. The Netherlands was the first country to recognise temporary agency work in regulatory terms and stands out as the country with the longest standing and innovative system of collective agreements at sector level (Arrowsmith 2006).

Due to the differences in regulation and the role and extent of collective agreements, temporary agency workers face different possibilities in terms of representation by trade unions and/or works councils, opportunities for vocational training and health and safety issues.

In Sweden, employees at temporary work agencies get the same type of contract as employees in other industries. The standard form of employment should, according to Swedish law, be permanent employment. However, employers in all industries can use fixed-term contracts for up to two years. This is, however, more strictly regulated in the temporary work industry through the blue-collar collective agreement. This states that a fixed-term contract can only be extended beyond six months on the basis of a local agreement and then only to a maximum of 12 months. Our case studies reveal that employers in the agency work industry use fixed-term contracts as a routine for the first six months. Thereafter, temporary agency workers get a permanent contract at the temporary work agency. Due to the high turnover, the share of fixed-term contracts is probably considerably higher in the agency work sector compared to other sectors. Besides Sweden, temporary agency workers can get a permanent contract in the Netherlands

where this is possible after two years or eight consecutive contracts. In France, Poland and the UK, a temporary contract is the only alternative for the temporary agency worker.

In all countries apart from the UK, temporary agency workers are paid the same as equivalent employees in the user firm. In the Netherlands, there is an exception for the first 26 weeks, according to the sectoral collective agreement.

*Representation of temporary agency workers and right to vote in elections*

Currently temporary agency workers in Europe do have formal forms of representation at national or sectoral level by trade unions and by collective labour agreements. At company level temporary agency workers can be represented by local trade union organisations and by works councils and, for health and safety matters, by the health and safety committee. In general the institutional framework for representation differs from country to country. The Netherlands and France have a dual representation model consisting of a strong sectoral level regulation and sectoral collective labour agreements in combination with representation at company level by works councils. In France, agency work is not considered as a trade but as a form of employment likely to be found in any sector. Agency workers may thus be represented through national trade union confederations or by sectoral federations. There are also works councils in Poland but they only have rights to information and consultation. The representative organisations are trade unions. Collective agreements are concluded mostly at company level. However, in Poland trade unions may exercise their rights at a company level only if they represent at least 10 employees. In the UK, there are very few sectoral agreements and the representation structure for temporary agency workers tends to be at local level and will depend very much on the level of union organisation and whether the union is recognised by the employer. In Sweden, the representation system is characterised by strong union organisations at both local and national level. At a national level, trade unions and employer organisations sign a national collective agreement. The implementation at local level is then ensured by local trade unions

Temporary agency workers in Sweden and Poland can only be represented by workers' organisation at the work agency, in Sweden by trade unions and in Poland by trade unions or work councils. In the Netherlands, France and the UK, temporary agency workers can be represented by workers' organisation at both the agency and the user firm, in the Netherlands and France by works councils or trade unions, in the UK representation is mainly by trade unions although works councils are growing in number following the implementation of European legislation on information and consultation in 2004.

In countries with a works council system a major aspect of representation is the worker's right to vote in elections for work councils or to be eligible to stand in these elections. In general legal regulations require an employment relation of longer duration. For example, in the Netherlands the temporary agency worker has the right to vote in elections to work councils after 6 months, and be eligible to stand after one year. Agency workers are entitled to elect employees of the work council at the user firm after two and a half years' service. They may be elected themselves as a member of the work council at the user firm only after three years service. In Poland every employee has a right to vote but only those who have worked in a company for at least 12 months may be elected. These requirements of longer duration are at odds with the average short periods of the employment of temporary agency workers at one and the same company. That is why works councils in the Netherlands are now in the process of cre-

ating additional flexible forms of representation like “flex panels” and new ways to get access to temporary agency workers.

According to previous research, (see page 13), we can identify four different possibilities for how trade unions respond to temporary agency workers and the temporary work industry: exclusion, regulation, replacement and engagement (Heery 2004). In all countries trade unions definitely act in favour of temporary agency workers and accept the temporary work agency industry and can therefore be classified as pursuing “engagement”. This engagement is also exemplified by the trade union representatives’ work in our national advisory boards. Trade unions have become more conscious of the importance of union membership for temporary agency workers and at the same time, due to the inherent difficulties of getting access to temporary agency workers, they suffer from low levels of union membership. Unions at temporary work agencies try to inform and support temporary agency workers, but find it difficult to recruit them.

As recently as ten years ago Swedish blue-collar unions could be characterised as rejecting the whole temporary work industry. Even though trade unions today accept the industry and we now characterise trade unions as engaged, trade union representatives at our workshops and interviews at workplaces reveal less engagement and even traces of what could, according to Heery’s terminology, be regarded as “regulation” of temporary agency workers. That is where core workers attempt to regulate the use of agency work at workplace level by imposing restrictions on the numbers and functions for which temporary agency workers can be used. This may imply approval of job-dumping by trade unionists at the user firm. In some cases, permanent employees benefit from using temporary agency workers by letting agency workers perform unattractive jobs while permanent employees get more attractive jobs. In four of our five cases the temporary agency workers were typically low skilled. Previous research also indicates that temporary agency workers are over-represented in low skilled jobs (Arrowsmith 2006: 8). Conflicting interests between user firm employees and temporary agency workers can be a problem if the union at the user firm is also the body that represents temporary agency workers.

Explanations for lower levels of union membership among temporary agency workers is the fact that they tend to be younger, where union membership generally is lower, and that they are more mobile than average workers. However, our research points out that the most important explanation for lower trade union membership among agency workers is a trade union organisational structure ill-suited to their recruitment and representation. The triangular relationship between *temporary work agency–user firm–temporary agency workers* poses major challenges for some trade union structures.

#### *Work environment and health & safety*

In all countries, the responsibility for health and safety for temporary agency workers on assignment is shared between the user firm and the agency. This is also in accordance with the EU directive on health and safety (Council Directive 91/383/EEC 1991). The user firm is responsible for the direct work environment and health and safety but the work agency is responsible for informing temporary agency workers about work environment and risks. In France, the agency covers (totally or partly) any costs arising from occupational accidents (by paying contributions to social security bodies) and is responsible for the compliance with national provisions related to health surveillance of agency workers. Also in Poland, the responsibility for health surveillance lies with the

temporary work agency, that is responsible for sending suitable workers who have had a medical examination prior to the employment at the temporary work agency. In the Netherlands, the social partners have established a foundation to ensure sickness benefits for temporary agency workers who are temporary employed. According to Swedish law, the temporary work agency (the employer) is responsible for rehabilitation and for securing the health and safety of temporary agency workers.

In all countries, the safety representative takes part in the risk assessment process by analysing all work posts at the workplace. In all countries except Sweden, the safety representative at the user firm has the right to act on behalf of the agency workers. In Sweden, only the safety representative at the agency has this right, which for blue-collar workers is extremely rare. In France, shop stewards elected at the user firm (“délégués du personnel” in French) have a mandate to represent the temporary agency worker: i.e. agency workers can turn to them in case of individual or collective grievances related to working conditions, including health and safety issues.

According to a report on the practical implementation of national legislation of health and safety at work temporary agency workers do not get the same level of health and safety protection as permanent staff. The report reveals differences between permanent staff and temporary agency workers concerning health and safety in four of the five countries in our project (the report did not include information on Poland) (Labour Asociados 2005).

#### *Vocational training and competence development*

Generally speaking, vocational training is an important issue for both agencies and workers. Thanks to training, temporary work agencies may have at their disposal workers who are better able to meet users’ needs. On their side, temporary agency workers may improve their employability if they benefit from vocational training. The latter considerations are of special importance when noting that a significant proportion of temporary agency workers are assigned to tasks requiring a low level of skills. Moreover, for migrant workers, language training is vital, particularly from an occupational health and safety perspective

At national level, when considering to what extent representation systems may contribute to vocational training for temporary agency workers, collective bargaining is probably, among the different forms of employee representation, the main instrument social partners have at their disposal. National reports show that this varies from country to country. In Poland and in the UK, training is not influenced greatly by collective bargaining. The Polish national report does not refer to a specific role for collective agreements, probably because unions have not adopted real strategies related to temporary agency workers’ training yet. One may think such a situation is partly due to the difficulties Polish unions face in organising agency workers in general. However, the situation in Poland is also due to the fact that collective agreements are mostly concluded at company level and collective agreements at the user firm rarely cover temporary agency workers. In addition, the absence of trade unions at employment agencies makes it impossible to conclude collective agreements for agencies. Finally, an exemption from the general rule of equal treatment exists concerning access to training at a user employer for temporary workers who perform work at this employer for a period not exceeding 6 weeks.

In the UK, unions have tried to push the issue of vocational training up the collective bargaining agenda but it is still rare to find the issue of training covered in any detail in collective agreements. The low level of collective bargaining coverage (35 per cent of employees) is another factor in the scarcity of collective agreements on training.

In France, Sweden and the Netherlands, training is covered by sectoral collective bargaining, even if differences remain. In Sweden, collective agreements for both white and blue-collar workers mention competence development for temporary agency workers. According to the agreements, the employer (that is the agency) is responsible for arranging competence development, but both collective agreements state that this question requires the employee's engagement and willingness to take part in such activities. The agreements are formulated in quite general terms and talk about the need for training as a competitive issue and that the employer should offer training, but there are no specific obligations on the employer. The collective agreement for white-collar workers states that if the employer requires the employee to participate in training then it should be regarded as work and compensated for.

In the Netherlands, collective bargaining in the temporary agency work industry is clearly important. For instance, the ABU 2004-2009 collective agreement contains provisions on training for employees in phases B and C (see page 46). It specifies that specific groups of temporary agency workers should be covered by a training budget. A newly introduced element in the ABU 2004-2009 collective agreement is a personal training budget of 1 percent of the annual salary, which is built up after 26 weeks of work through the agency, and free to use once the temporary agency worker is in stage B. Even if this device is to be replaced by others in the future, it shows that Dutch representation system deals with workers' vocational training because this is a concern for both unions and employers' representatives.

In France, both laws and sectoral collective agreements regulate vocational training which is clearly an important issue for the social partners. One of the major outputs of sectoral social dialogue is the creation (in 1983) of a specific fund jointly run by employers and employees' representatives: the Temporary Work Training Insurance Fund (FAF-TT: Fonds d'Assurance Formation du Travail Temporaire). This fund is financed by contributions from French employment agencies and supports any training undertaken as part of sectoral agreements (training programmes, individual study leaves, etc.). The fund allows for the pooling and sharing of financial contributions paid by agencies as well as the collection of precise information related to temporary agency workers' vocational training. Generally speaking, sectoral collective bargaining has been trying to adjust general provisions related to vocational training to agency workers' specific situation. One may especially mention that workers (fulfilling specific seniority conditions) can benefit from training on their own initiative thanks to various tools such as individual training leave, certification of work-derived experience and an individual right to training.

At workplace level, our case studies show that access to training by temporary agency workers is limited. In all our cases, they are used for simple work tasks. Training is thus limited to what is necessary to perform the job. In addition, temporary agency workers get a short introduction to the workplace in all our cases (even if longer in the Swedish example) and health and safety is more an issue for information rather than training. Two distinct questions thus emerge: how to support temporary agency workers to make sure they can do the job they are assigned to and how to help temporary agency workers to foster their employability?

In response to the first question on how to support temporary agency workers, the Dutch case provides an interesting initiative. Temporary work agencies have created so-called *flex coordinators*, who take care of the temporary agency workers' training and guidance. The coordinators are employed by the temporary work agency and provide temporary agency workers with a two-hour induction course.

For the second question on employability specific tools allowing workers to benefit from training on their own initiative do exist. In respect to this, French individual training leave and the individual right to training may be considered as good initiatives. However, the provision of individual rights is called into question in the Netherlands. The social partners are involved in discussions on changing from individual rights to collective training rights for temporary agency workers. However, the tools and institutional devices are not sufficient to ensure these rights are taken up and there is a need to provide information and guidance to temporary agency workers about them. Here, both agencies and unions have a role to play. Indeed the French case shows that temporary agency workers do not necessarily know the rights they are entitled to in the field of training.

#### *Migrant agency work*

The evidence from the UK is that, while acknowledging the existence of employers and temporary work agencies with good practices, there are also disreputable agencies that repeatedly infringe employment legislation and exploit agency workers (TUC 2007). Migrant workers are often more vulnerable to exploitation by these kinds of agencies because of language difficulties, their lack of knowledge of employment rights and the pressure they may feel in needing to keep their job at all costs in order to remain in the UK.

With substantial numbers of migrant workers provided by temporary employment agencies or gangmasters, (see chapter 6 page 125), that operate partially or completely outside the law, then it is vital that there is a regulatory agency like the Gangmasters Licensing Authority than has the powers and resources to stop and prevent the worst abuses that clearly go on within the sector.

Where migrant agency workers are in a better position to exert their rights then the two crucial elements are knowledge of employment and health and safety rights and language training. Trade unions can work with user firms, employment agencies and public authorities to ensure that basic employment rights information and advice is made available to migrant workers. The language question is more challenging in the light of the decision by the UK government to withdraw funding for free English language courses. If this position can't be reversed then it is up to trade unions, user firms, employment agencies and public authorities to see what can be done at a regional or sectoral level. One way of improving conditions for migrant agency work is greater co-operation between trade unions in the country where they work and their country of origin.

#### *Summary of analysis of temporary agency work at national level*

We have tried to summarise the characteristics of temporary agency work in the table below. Tables always mean simplifications. To get a full picture we refer to chapter 3, Temporary agency work at national level, page 18.



**Table 1. Regulation of temporary agency work according to law and/or collective agreements in France, The Netherlands, The UK, Poland and Sweden.**

	France	The Netherlands	The UK	Poland	Sweden
Regulation of the TWA industry	Strong	Weak	Weak	Strong	Weak
Type of employment contract	Temporary	Temporary, possibility to permanent contract after three years	Temporary (unclear employment relation)	Temporary	Same as labour market. Temporary or permanent
Right to equal pay	Yes	Yes, after 26 weeks	No	Yes	Yes, for blue collar workers
Representation in user firm	Yes	Yes, by work council	Yes, possible if union is recognised, but very limited in practice	No	No
Representation by agency	Yes	Yes, by work council		Yes	Yes
Right to vote to work council or union at agency		Yes, after 6 months		Yes, after 12 months	Yes
Responsibility for health & safety	User firm and agency	User firm and agency	User firm and agency	User firm and agency	User firm and agency
Rights for safety representative at user firm to represent agency worker	Yes	Yes	Yes	Yes	No
Right to vocational training	Yes	Yes	No (same as for permanent staff)	No (yes after 6 weeks at one user firm)	Yes (but no absolute obligations for the employer in CLA)

The national reports reveal some challenges for the unions: Union density has decreased in all countries over the last 20 years or so and is particularly low for temporary agency workers. One main challenge for the unions is therefore to organise temporary agency workers. Another challenge is to improve work content and working conditions for temporary agency workers. Agency workers are over-represented in low skilled jobs. In

some cases, permanent employees benefit from using agency workers by letting temporary agency workers perform unattractive jobs while permanent employees get more attractive jobs. Conflicting interests between user firm employees and temporary agency workers can be a problem if the union at the user firm is also the representing body for temporary agency workers.

Even if the temporary agency worker is represented by the union in both user firm and employment agency according to law and/or collective agreement, there is no guarantee of representation in practice. The first issue is the existence (or non-existence) of a union at local level and its possibilities to influence employment and working conditions. The second issue is the union's attitude towards temporary agency work and its willingness to represent the temporary agency workers. How the representation system works at workplace level is the subject in the next section.

### **Comparative analysis of temporary agency work at workplace level**

Two case studies were conducted in each country aiming at investigating what the different forms of representation system mean at workplace level. The case studies reveal some differences in the regulation of agency work and how it works in reality.

#### *Regulation in theory and practice*

According to the regulations in France, unions at the user firm can represent temporary agency workers through the different structures devoted to employees' representation. In the French case however, there is no real evidence that unions at the user firm really approach and support temporary agency workers. There is a similar pattern with health and safety. In the French case, temporary agency workers are used for covering absences and fluctuations in activity. The duration of an assignment is three days on average. The use of temporary agency workers could therefore be described as discontinuous. From the perspective of the unions at the user firm, a significant proportion of temporary agency workers stay for a very short period and there is high turnover. User firm unions therefore don't have a major incentive to recruit and organise temporary agency workers.

In the Netherlands, trade unions focus strongly on collective agreements and not so much on the representation at the workplace. Works councils represent temporary agency workers at the workplace, but temporary agency workers are not allowed to vote in works council elections at the agency for their first 6 months of employment and have to wait 12 months before being able to vote in works council elections at the user firm. The Dutch case reveals that the works council prioritises matters relevant for permanent employees. Agency workers in their turn do not turn to works councils in case of complaints. It seems to be a self-reinforcing process, temporary agency workers do not turn to the works council and the works council does not deal with matters relevant for temporary agency workers. This gap in support is also reflected in temporary agency workers' behaviour when it comes to questions or grievances. They turn in the first instance to co-workers, rather than to works council representatives.

In Poland, temporary agency workers are excluded from being members of works councils at the temporary work agency for the first 12 months of employment. Given that the maximum period of employment for an agency worker may not exceed 12 months, temporary agency workers are *ex lege* deprived of this right. On the other hand, temporary agency workers show little interest in works councils. According to the law, the union at

the user firm does not have the right to represent temporary agency workers.<sup>71</sup> However, in the Polish cases, the union in the user firm embraces them in its work, keeping temporary agency workers informed and supporting them when they have problems or questions. However, this representation is informal.

In Sweden, temporary agency workers who are members in a trade union should be represented by the union at the temporary work agency or by an ombudsman at regional level. The union at the user firm doesn't have a mandate to represent temporary agency workers. The Swedish cases show several weaknesses with this regulation. As the union at the user firm has no mandate, new temporary agency workers get no union information and the union fails to recruit new temporary agency workers to the union. There are no unions representing blue collar workers at the temporary work agencies in the Swedish cases. We also know that blue collar unions at temporary work agencies are extremely rare. When a temporary agency worker needs union support, he or she has to turn to an ombudsman at regional level. Further more, the regional ombudsman can only represent temporary agency workers who are members in his trade union. It is not unlikely that blue collar workers in one temporary work agency belong to several different trade unions.

The main threat in all countries is the existence of unscrupulous agencies, that operate on the margins of the law or outside the law and that avoid any other form of regulation through employer organisations or collective agreements. Reputable agencies cannot compete with these companies and workers in these rogue agencies risk losing their jobs if they contact the union.

#### *The integration of temporary agency workers at user firms*

Generally temporary agency workers get quite short introductions to the user firm. Firstly, they tend to receive some kind of introduction to the workplace and necessary information on things like emergency procedures etc. This information is usually very brief, at most a couple of hours, meaning that information about health and safety issues might be neglected. Secondly, they are provided with training on how to carry out the work tasks. Temporary agency workers tend to be assigned to tasks that are easy to learn and the training needed is usually only a couple of days (one week in the Swedish case).

Temporary agency workers in our cases were used to carry out quite simple tasks. The Swedish case is an exception in that after three months the agency worker gets training to learn different jobs and joins the job rotation system. In all cases, temporary agency workers were excluded from tasks that could be classified as involving learning and development.

The integration of temporary agency workers into the user firm depends among other things on work organisation and the duration of assignments. The integration issue is important in the discussion on how to improve the representation of temporary agency workers. Temporary agency workers who are integrated and used for long-term assignments may be more involved in the user firm and the unions at the user firm (often) take more of an interest in these workers and try to assist them, however they cannot regard them as union members. This is the situation in the Swedish case; the union at the user

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<sup>71</sup> In Poland trade unions may represent not only members but also those workers who request being covered by trade union protection and the request is accepted. In the researched cases the representation in fact was informal

firm has no legal right to represent the temporary agency workers. When temporary agency workers are used for short-term assignments, the incentive for the union at the user firm to represent the temporary agency workers is much weaker. This is partly illustrated in the French case.

The duration of an assignment is also important in the likelihood of temporary agency workers having access to vocational training and being able to participate in job rotation. This also affects permanent employees. The Swedish case shows how the job rotation system is interrupted when temporary agency workers are stuck with the same tasks. The Swedish case also shows how a manager's intention to use temporary agency workers for short assignments prevents the temporary agency worker learning more tasks and thereby interrupting the job rotation for the permanent staff. As the assignment is prolonged, the temporary agency worker is trained to do different jobs. In the French case, assignments last three days on average and there is probably no incentive for the user firm to contribute to agency workers' training. This case also reveals that the temporary agency workers themselves do not necessarily know the opportunities to vocational training offered in law and sectoral collective agreements. In the British case, there was some acknowledgement that the company could be more flexible towards the provision of training in response to the perceived needs of agency workers with different levels of experience..

In the French case, one may assume that some of the temporary agency workers who get permanent employment at the user firm continue to do the same work as they did as temporary agency workers. This fact indicates that the tasks performed by permanent employees do not necessarily require special skills. Rather, the use of temporary agency workers in the French case looks like the "all periphery" outcome (see page 12), that is when jobs are adjusted so that anyone can perform them with a minimum of training or induction. The same pattern holds true for the British, Polish and the Dutch cases. Temporary agency workers and permanent employees in the user firms perform more or less the same jobs. It is important to note that the cases are limited to low qualified and low paid jobs in these countries. The Swedish case differs from the others, in that there is a division in core and periphery in the short run, with agency workers assigned to jobs requiring a short introduction and these workers don't participate in the job rotation system. Permanent employees rotate between different work tasks and have opportunities to move on to tasks requiring more qualifications and skills; they are the core workers. The temporary agency workers get training to participate in job rotation after a couple of months and might therefore not belong to the periphery. However, they still don't have the opportunities to become team leaders, instructors or "godfathers".

The integration of temporary agency workers in the Swedish case might explain the union's demand for an enlarged mandate for the union representative to act on behalf of the agency workers. A similar demand is not expressed by the unions in the other countries.

#### *Analysis of Strengths, Weaknesses, Opportunities and Threats at local level*

All partners have summarised the representation at workplace level by an analysis of Strengths, Weaknesses, Opportunities and Threats. There are some striking similarities between the countries. The common weakness is the low level of real representation, partly because union density is very low but also because it is very difficult to organise temporary agency workers. There is a gap between representation in theory and practice. Even if the temporary agency workers could be represented by union according to

law or collective agreement, the lack of effective union organisation at local level makes it very difficult to ensure that temporary agency workers are represented.

A strength in the representation issue is the unions' switch to a more constructive attitude towards temporary agency work with unions lobbying to improve working conditions. This is foremost a phenomenon at national level. A weakness might be the discrepancy between unions at national and local level in this regard. The workshops and the cases reveal that the unions are convinced of the need for a constructive attitude towards temporary agency work and many unions make an effort to influence unions at local level in this direction.

The common threat is the existence of unscrupulous agencies, which compete on the basis of lower pay and poor working conditions.

Opportunities to improve the representation of temporary agency workers come under two headings - adapt organisational union structure to the triangular employment relationship in the temporary work industry and more and better information and procedures in the use of agency workers including information to user firm union/work council and temporary agency workers.

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## 8. Policy recommendations

### From Good Practices and Proposals to Policy Recommendations for Representation of Agency Workers

Part I and II of this chapter is compiled and written by Associate professor Els Sol with contributions from Associate professor Kristina Håkansson, Dr Tommy Isidorsson, Richard Pond, Associate professor Els Sol, project manager, Christophe Teissier and Dr Joanna Unterschütz ,

Part III “Policy recommendations” is a joint product by Associate professor Kristina Håkansson, Dr Tommy Isidorsson, Richard Pond, Associate professor Els Sol and project manager Christophe Teissier

#### I Introduction

The policy recommendations presented in this chapter are based on the current analysis of policies and practices of representation of agency workers, both in terms of the *form* representation takes as well as of the *content of representation* (topics under discussion) in five European countries. The diversity of challenges as well as differences in legal and policy conditions among countries implies that different approaches towards representation and co-determination may be required. Since the position of representation is determined by national government policy, different underlying legislative philosophies and different approaches to labour law, not all proposals and good practices may be considered as transferable to other member states of the European Union. For example there are countries with a double representation system of trade unions and works councils, while other countries only have representation by trade unions. Moreover, representation at user firms and temporary employment agencies differs according to size, segment of the market (public or private), motives for use of temporary agency workers for shorter or longer periods of time and company culture. Thus, proposals and good practices presented in this chapter provide decision-makers with a menu of policy and practice options based on available experience and knowledge gathered at the national as well as the local level. Proposals may be relevant for user firms, temporary employment agencies trade unions and their umbrella bodies, as well as for legislation. Only those proposals and good practices that are considered transferable within the European Union have been transformed into more general policy recommendations, which can be found in the third section of this chapter.

The underlying material is primarily based on collection of data and information by the research team members. Team meetings and workshops in Paris, Gothenburg, Amsterdam and London, with representatives from trade unions, user firms, agency associations, public authorities and ministry, were the basis for the creative work of development of recommendations.

Before presenting the seven recommendations, in the last part of this chapter various good practices and proposals will be presented. First, the focus will be on proposals regarding the form of representation, both at the user firm and at the temporary work agency. Next, three types of proposals will be distinguished which deal with the content, i.e. vocational training, health and safety, and migrant labour. The last proposal regards the implementation of the directive on agency work. Per country, those propos-

als and good practices are described which the authors believe are worth following in their own country. Each good practice/proposal indicates the relevant organisations that should act on that specific proposal. In order to guide the further development of representation of agency workers, this research concludes with seven recommendations, based on the common denominators abstracted from the main proposals.

## II Proposals and good practices: learning form each other

### Proposals on form of representation of agency workers

Three countries involved, feel the need to strengthen and better articulate representation at the temporary work agency (TWA) and the user firm. Their proposals cover both representation within the user firm, within the temporary work agency as well as the improvement of the coordination between the two.

#### *II.1. The temp agency: Improvement of work floor representation at the temporary work agency*

<i>Country</i>	<i>Good practice / proposal</i>	<i>Actor</i>
France	<ul style="list-style-type: none"> <li>• Deepen the collaboration between the different sectoral federations of each union (the one covering the agencies and the others covering the user firms).</li> <li>• Create a new category of temporary agency workers' representative who is able to be the link between the agency and the user firm. Such a representative could visit the user firm and attend regularly the user firm works council and health and safety committee meetings (to ensure that temporary agency workers' interests are taken into account).</li> </ul>	Trade unions + works council  TWA +Peak body +User firm + peak body +trade unions
The Netherlands	<ul style="list-style-type: none"> <li>• Create separate work council committees for temporary agency workers or (easily accessible) temporary agency worker panels in addition to works council to lower the threshold for temporary agency workers' representation</li> <li>• Appoint 'temporary agency worker coordinators' who take care of their induction, training and guidance. These would be employed by the agency but paid by both user firm and agency in order to provide better coordination between temporary agency workers and regular employees at the user firm</li> <li>• Create a separate 'flex or law' agenda for the works council</li> <li>• Email a works council newsletter linked for example to salary records so all temporary agency workers are kept informed</li> <li>• Create an email postbox for the works council, so council members can get better grass root support</li> <li>• Create a complaints procedure especially for temporary agency workers</li> <li>• Start a procedure for 'mystery customer' research in</li> </ul>	TWA + work council  TWA + User Firm  Work council  Work council  Work council  TWA  TWA

	<p>temporary work agencies to provide feedback on the treatment of temporary agency workers by staffing consultants</p> <ul style="list-style-type: none"> <li>• Introduce ‘Guidance and employability of temporary agency worker’ as a key performance indicator for staffing consultants, so these items get proper attention</li> <li>• Arrange informal talks between members of the works council and the regional business unit director (twice a year)</li> <li>• Arrange regular meetings between works council members and trade union collective labour agreement negotiators, so they can keep mutually informed</li> <li>• Let trade unions negotiate deals with employers to use their websites and intranet in order to raise the profile of collective labour agreements among temporary agency workers</li> <li>• Make the ABU collective labour agreement less complex and more transparent, so temporary agency workers become more aware of their rights and are less vulnerable to exploitation</li> <li>• Give trade unions access to agency workers at the agency itself so that they have the opportunity to recruit and organise them</li> </ul>	<p>+ Work council</p> <p>TWA</p> <p>TWA+ work council</p> <p>Work council+ trade unions</p> <p>Trade unions</p> <p>Trade union + TWA + peak body</p> <p>TWA</p>
Poland	<ul style="list-style-type: none"> <li>• Increase the interest of trade unions in organising temporary agency workers</li> <li>• Build awareness among works councils at the agencies of problems and concerns of temporary agency workers as employees of the agency</li> <li>• Adapt the existing provisions concerning information and consultation in order to enable temporary agency workers to participate in practice in works councils (e.g. by shortening the required period of employment at a company to 6 month workers to become works councils members)</li> </ul>	<p>Trade unions</p> <p>Works councils</p> <p>Legislation</p>

*II.2. The User Firm: Proposals on representation at the user firm*

<i>Country</i>	<i>Recommendation</i>	<i>Actor</i>
France	<ul style="list-style-type: none"> <li>• Create links between representation at sectoral level and representation at workplace level to improve temporary agency workers’ knowledge of their rights</li> <li>• Deepen the collaboration between the different sectoral federations of each union (the one covering the agencies and the others covering the user firms)</li> <li>• Create a new category of temporary agency workers’ representative who could be the link between</li> </ul>	<p>Trade unions + works councils</p> <p>Trade unions</p> <p>TWA Peak body</p>



	the agency and the user firm. Such a representative could visit the user firm and regularly attend meetings of the user firm works council and health and safety committee (to ensure that temporary agency workers interests are taken into account).	+ User firm Associations + Unions
The Netherlands	<ul style="list-style-type: none"> <li>▪ Install temporary agency worker coordinators at the shop floor as go between between temporary agency workers and regular workers</li> <li>▪ Create easy accessibility in-house construction for TWA to ensure fine tuning between temporary work agency and user firm for the benefit of both user firm, agency and agency workers</li> <li>▪ Publish flyers covering topics relevant to temporary agency workers and distribute them on a monthly basis at the user firm</li> <li>▪ Organise regular meetings between works council members and trade union collective labour agreement (CLA) negotiators to inform each other on topics relevant for CLA consultations</li> <li>▪ Create a special flex or TAW committee for the works council in order to lower the threshold for temporary agency workers to participate</li> </ul>	TWA  User firm Trade unions  Work council twa + Trade union  User firm+ work-council  User firm+ TWA
Poland	<ul style="list-style-type: none"> <li>• Increase interest of trade unions in organising temporary workers at the user firm e.g. by creating a special trade union organisations or seeking other solutions to represent this group of workers</li> <li>• Grant temporary agency workers the right to join the trade union at the user firm as an alternative to joining the union at the agency. This would require changes in the trade union act</li> <li>• Build awareness among works councils at the user employer of problems and concerns of temporary agency workers regardless of the fact that they are not by law employees of the given company and formally are not covered by the activities of the works council there</li> </ul>	Trade unions  Legislation  Works councils
Sweden	<ul style="list-style-type: none"> <li>▪ Create routines at the user firm for informing the local union when new agency workers are coming to the workplace in order to facilitate traditional union activities (beyond MBL act § 38 negotiations)</li> <li>▪ Use (some sort of) checklist to ensure that information and the responsibilities of the work agency, the user firm and the temporary agency worker are clear for all concerned.</li> <li>▪ Increase the cooperation between different trade unions to ensure that agency workers do not fall between stools. This might imply a wider representation mandate exceeding the traditional borders between different union affiliations.</li> <li>▪ Take, as local union at the user firm, a more active part in the introduction of new agency workers and</li> </ul>	User Firm  TWA  Trade unions  Trade unions

	inform them about their legal rights, collective agreements and the role of the union.	
United Kingdom	<ul style="list-style-type: none"> <li>• Encourage user firm/trade union agreements on use of agency workers and agency work transition to permanent employment (following the example of British Telecom)</li> <li>• Clarify user firm/agency responsibility for pay and conditions and open up the possibility of trade union negotiations on pay with agencies (Cable and Wireless could be example of good practice)</li> <li>• Propose that employer and trade union umbrella bodies (REC, CBI, TUC) could develop code of good practice on employment of agency staff</li> </ul>	<p>User Firm + Trade unions</p> <p>User Firm + Trade unions</p> <p>Peak bodies Employers + Trade unions</p>

**Proposals on content of representation:**

*II.3 Competence development of temporary agency workers (vocational training rights)*

<i>Country</i>	<i>Proposals/good practice</i>	<i>Actor</i>
France	<ul style="list-style-type: none"> <li>• Promote bodies to finance and organize vocational training of agency workers in the European Union based on the French joint body, that includes employee and employer representatives: the Temporary Work Training Insurance Fund (Fonds d'Assurance Formation du Travail Temporaire, FAF-TT).</li> <li>• Finance bodies as in France by contributions from temporary work agencies which support any training undertaken as part of sector-level agreements (training programmes, individual study leave, and periods of alternating work experience and training courses for young people) trying to adjust general provisions related to vocational training to the specific situation of agency workers.</li> <li>• Deepen exchanges of information between different countries about ways of funding and monitoring vocational training for temporary agency workers</li> <li>• Promote an individual right to vocational training at the European level, as in France where temporary agency workers, like any other employees, may, under various conditions, take up to 120 hours for vocational training.</li> <li>• Explore better ways to ensure that employees actually make use of their individual right to training</li> </ul>	<p>Employer associations + Trade unions + Government</p>
The Netherlands	<ul style="list-style-type: none"> <li>• Create a bipartite training fund by CLA such as in the Netherlands for agency workers who are trapped in low paid temporary agency work</li> </ul>	<p>Trade union + peak body TWA</p>

*II.4 Health & safety*

<i>Country</i>	<i>Proposal/good practice</i>	<i>Actor</i>
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The Netherlands	<ul style="list-style-type: none"> <li>• Create a division of responsibilities between user firm and temporary work agencies to fit the triangular employment relationship (see for good example section the Netherlands)</li> </ul>	Peak bodies TWA + Trade union
Sweden	<ul style="list-style-type: none"> <li>• Change the Work Environment Act so that safety representatives can act on behalf of all people working in the workplace including temporary agency workers</li> </ul>	Legislation
Poland	<ul style="list-style-type: none"> <li>• Take advantage of existing legal provisions that allow the agency and the user firm to create some form of joint representation in order to provide healthy and safe working conditions (art.208 LC)</li> <li>• Given the fact that temporary agency workers may often change workplaces, make the body responsible for inspecting a workplace from the health and safety perspective particularly sensitive to the needs of these workers and especially vigilant as to observing health and safety rules in jobs carried out by these workers</li> </ul>	TWA + User firm
France	<ul style="list-style-type: none"> <li>• Set up equal contributions from user firms and TWAs to social security bodies (“URSSAF” in French) for all costs resulting from accidents, for which in France now TWAs are mainly responsible</li> <li>• better promote workers’ legal right to leave their jobs in case of serious and imminent danger, considering the sometimes dangerous sectors agency workers work in, .</li> </ul>	Legislation  TWAs
United Kingdom	<ul style="list-style-type: none"> <li>• Improve language training for migrant agency workers and availability of basic health and safety information in other languages</li> </ul>	TWA+ User Firm + Trade Unions

### II.5 Migrant agency workers

Country	Proposal/good practice	Actor
The Netherlands	<ul style="list-style-type: none"> <li>• Enhance cross-border cooperation between trade unions in order to serve migrant workers better</li> <li>• Include special provisions in collective labour agreements, as in the ABU CLA art 35, for agency workers not permanently resident in the country in order to make it possible to bring the working conditions for this group more in line with their needs due to specific working patterns</li> <li>• Create for agency workers with a foreign employment contract provisions for functional equivalent working conditions</li> </ul>	Trade unions  Trade unions + TWA peak bodies  Trade unions + TWA peak bodies
Poland	<ul style="list-style-type: none"> <li>• If possible provide language training for workers who are recruited to work abroad</li> <li>• Provide (or check on site) not only for decent working conditions for mobile temporary agency workers but also decent accommodation</li> </ul>	TWA  TWA

	<ul style="list-style-type: none"> <li>• Vigilantly check if prohibited practices occur at the agencies sending workers abroad (unjustified fees or deductions from wages, poor quality accommodation conditions etc) and if the mobile temporary agency workers are subject to equal treatment.</li> </ul>	Labour inspection (also as a liaison office) or other competent bodies
Sweden	<ul style="list-style-type: none"> <li>• Enhance cross-border cooperation between trade unions in order to serve migrant agency workers better</li> </ul>	Trade unions
United Kingdom	<ul style="list-style-type: none"> <li>• statutory agencies (government department – Department for Business Enterprise and Regulatory Reform) should supply basic employment rights and health and safety rights information in range of languages</li> <li>• reinstate financial support for language training</li> <li>• tighten and extend regulation of Gangmasters Licensing Authority</li> <li>• Increase resources for state bodies to inspect agencies and labour providers and enforce employment rights (look at model of National Minimum Wage enforcement)</li> </ul>	Ministry  Ministry  Legislation  Legislation

*II.6 Implementation directive on working conditions for temporary agency work*

<i>Country</i>	<i>Good practice/proposal</i>	<i>Actor</i>
Netherlands	<ul style="list-style-type: none"> <li>• facilitate the implementation of equal pay and by allowing every consultant to check a database of CLA payments</li> </ul>	Peak bodies TWA + Trade unions
Sweden	<ul style="list-style-type: none"> <li>• When implementing the directive, provide the option for concluding national collective agreements that can replace the legislation.</li> </ul>	Government + Employer organisations + Trade Unions
United Kingdom	<ul style="list-style-type: none"> <li>• Employer organisations and trade unions should agree a policy on the implementation of UK agreement on implementing Agency Work Directive and in particular impact of 12-week rule</li> </ul>	Peak bodies TWA + Trade Unions

### **III Policy recommendations on the representation of temporary agency work**

In looking at the current state of agency worker representation in (five countries in) Europe, there are positive conclusions to be drawn in terms of a growing awareness of the importance of the issue. However, the overall assessment is negative because of the lack of representation in practice.

Considering these developments from a European perspective in relation to both trade union and works council representation, this research results in the following seven recommendations :

- 1. Unions should put more effort into organising temporary agency workers. In response to the difficulties involved in organising temporary agency workers it is important to actively recruit them and include agency workers' perspectives in trade union activities.**
- 2. Unions should, for the purpose of facilitating representation of temporary agency workers, be prepared to adapt their structures and try to overcome any conflicts of interests between and within unions that result from unions organising along sectoral or industrial lines. This might imply a wider representation mandate exceeding the traditional borders between different union affiliations.**
- 3. Improve information to temporary agency workers and the communication between the workers at the user firm and the agency and of the trade union and the works council with the aim of providing better information and guidance to agency workers.**
- 4. Trade unions, legitimate employment agencies, employer organisations and governments must take action to eradicate unscrupulous and exploitative temporary work agencies since they prevent trade unions from providing proper representation to agency workers and undermine fair competition in the temporary work agency industry.**
- 5. Temporary agency workers should have opportunities for competence development and vocational training. This could be achieved by sectoral training funds if there are sectoral funds (France, Belgium, Spain, Italy, Netherlands), or by assuring vocational training in collective agreements or by employers' liability.**
- 6. Ensure a good working environment and health and safety for temporary agency workers by clarifying the shared responsibility between agency and user firm.**
- 7. Migrant agency workers tend to be more vulnerable to some of the worst practices in the employment agency sector and should therefore have access to better information, guidance and provisions and wherever possible in their own language.**