

European Trade Union Institute (ETUI)

**SURVEY OF LEGISLATION  
ON TEMPORARY AGENCY WORK**

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## Introduction

Temporary work is on the increase throughout the EU. According to a study conducted for the International Confederation of Temporary Work Businesses<sup>1</sup>, 6.5 million persons gain work experience through temporary work agencies each year. This is a daily average of 1.7 million persons a day. On a country by country basis, the UK leads the EU market followed by France, The Netherlands and Germany. These four countries together account for 90% of all temporary workers assigned through temporary work agencies in the EU.

The present survey endeavours to give an overview of the legislative situation in the EU Member States, Norway and the Czech Republic in relation to temporary agency work (*travail intérimaire*), which is characterized by the triangular relationship between temporary work agency, temporary worker and user enterprise. A distinction must be made between this employment relationship and other forms of atypical work, which are often dealt with under the broad term of temporary work such as: fixed-term contracts, placement of workers, casual work, sub-contracting, and situations whereby an employer lends out some of his workers to another employer. It also must be mentioned that this survey does not deal with the activities of public employment services (so-called “non-profit agency work”), nor does it cover a description of the working conditions of the workers engaged as fixed-term or permanent staff to work in the agency itself. As far as possible, this survey also contains information on the content of so-called “self-regulation”, i.e. codes established by federations organizing the employment agencies in the country concerned.

The present survey has been conducted mainly in the light of the social dialogue on fixed term contracts between ETUC, UNICE and CEEP and will form an essential background paper for any forthcoming negotiations between those partners on this specific issue.

The information contained in the survey has been drawn from two major sources. Firstly, relevant literature (for a full list see the bibliography in the annex) and, secondly, the replies to the ETUC questionnaire on temporary work, which was sent to all of the ETUC affiliated organizations and to the ETUC trade union legal experts network, NETLEX in November 1997.<sup>2</sup> Thirdly, the author would like to thank the European Metalworkers’ Federation of the ETUC for allowing him insight into the results of their own inquiry on this issue amongst their affiliates.

In order to check the available information, a copy of this survey was sent to all ETUC organizations for verification.

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<sup>1</sup> Bakkenist Management Consultants, “Temporary Work Businesses in the Countries of the European Union”, Report submitted to the International Confederation of Temporary Work Businesses, May 1998

<sup>2</sup> Two replies to the questionnaire, namely from Solidarność (Poland) and NZZS (Slovenia) were not incorporated, since the replies were not at all in line with the structure of the questionnaire and contained less information.

## Summary of the main research findings

### 1. General aspects

As mentioned in the Bakkenist Management Consultants report<sup>1</sup>, submitted to the International Confederation of Temporary Work Businesses, the various legislative provisions of the countries can be divided roughly into five main categories :

- Liberal : countries in which there are few restrictions or where these restrictions are based mainly on collective agreements (e.g. Austria, Denmark, Finland, Ireland, The Netherlands, Sweden and the UK)
- Time-restricted : countries in which the limitations are mainly time-based (e.g. Germany)
- Reason and time-restricted : countries in which the main basis of limitation consists of user companies having to state reasons for using temporary agency work (e.g. Belgium, France, Italy, Luxembourg, Portugal and Spain)
- Sector-restricted : some countries ( e.g. Belgium, Germany, Italy and The Netherlands) provide that agency work is not allowed in certain sectors (e.g. building sector, agriculture, public sector and administration, harbours). Norway was a special case as temporary work was officially prohibited in that country until the end of 1999 with the exception of office work, but since there are no further restrictions or administrative procedures, Norway is actually closer to a liberal regime.
- Prohibited : in Greece temporary work is still prohibited. A new law was adopted at the end of 1998, which allows for the establishment of Private Job Counselling Agencies who mediate between employee and employer for only a limited list of jobs.

In a number of countries collective bargaining, in particular at the sectoral level, also plays an important role (e.g. Belgium, France, The Netherlands, Spain, Finland and Sweden). Codes of conduct elaborated by the representative organizations for the sector of temporary agencies are also sometimes of significance.

As regards other intermediary activities (outplacement, recruitment and selection), some countries provide that the activity of an agency is limited to placing employees at the disposal of users (Belgium, Germany, Austria, Luxemburg, France and Spain).

Several member states also do not allow the employment of temporary workers in user enterprises where industrial action is taking place.

### 2. The temporary work agency

#### 2.1. Its status as employer and the obligations deriving from it

As far as mentioned, in almost all countries (except Ireland and the UK), the agency is considered to be the employer of the temporary worker and must fulfill all labour and social security law obligations. The temporary work agency does of course delegate managerial

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<sup>1</sup> Bakkenist Management Consultants; “Temporary Work Businesses in the Countries of the European Union”, Report submitted to the International Confederation of Temporary Work Businesses (CIETT), May 1998

power to the user company. In many countries the burden of complying with the health and safety regulations is shared between the agency and the user company. In several countries, the agency must even pay an additional contribution for vocational training funds directed towards temporary workers.

It is often the case that when a temporary worker is placed at the disposal of a user in violation of the existing legislation the user company is then considered to be the employer. (e.g. Belgium) The latter often carries a shared responsibility to pay the wages and social security contributions if the agency has failed to do so.

## **2.2. The recognition procedure or the role of Government**

Except in the case of Denmark, Finland, The Netherlands, Sweden (although new legislation is in the pipeline for the latter country) and the United Kingdom, authorization to act as a private employment agency is required.

The procedures and requirements for obtaining, revoking and withdrawing the authorization differ widely from one country to another but can in general be described as very detailed rules. The duration of the licence also differs widely from one country to another: for a limited period (of up to 5 years but renewable), first issued for a limited period and then indefinitely, or issued indefinitely.

Each country makes provision for penal and or administrative sanctions for the event that activities are conducted without any licence or authorization. In the latter case, the user is also held liable for employing illegal workers and will have to pay fines and penalties.

It is quite common for the agency to be required to pay a financial guarantee to the competent authority for the event of insolvency or bankruptcy; some countries have established special social funds for such situations. And strict rules on regular reports to be submitted by the agency to the competent authority or the Labour Inspectorate are also common.

## **3. The temporary worker**

### **3.1. The contract with the agency**

Although in most of the countries the contract is considered to be a **labour contract**, there are some exceptions (e.g. Ireland, the UK) where the contract is considered as a contract *sui generis* or a contract of services.

Although few reports mentioned it, it is presumed that in most cases the contract is a **fixed-term contract**. Only in Germany is the contract with the agency open-ended. In two other countries (Italy and Spain), there is a choice between concluding either an open-ended or a fixed-term contract. In Italy it is thereby specified that during periods of inactivity the worker receives a certain amount of compensation.

In most countries the contract between the worker and the agency must be **in writing**. It often must also contain certain obligatory provisions such as: the reason for the temporary contract, the agency's licence number, its fiscal and social security registration number, the place of work, the period of work, health and safety information, etc. In some countries, if this is violated the contract is considered to be an open-ended one.

As for the **reasons** for which temporary work can be used, again the situation differs widely. In some countries there are no limitations (Austria, Ireland, the UK). The most common grounds are, however: the replacement of an absent worker, the performance of a specific task, and the performance of work of a temporary nature. Several countries also stipulate in their legislation that temporary work cannot be used in certain situations or sectors. The most frequent restrictions here are: not to replace workers on strike; not in an enterprise where collective dismissal has taken place over a certain period in the past. The sector most often excluded is the building sector.

The regulations on **maximum duration and the number of renewals** also differ very widely. There are countries with no restrictions at all (Austria, Ireland, Spain and the UK). Others stipulate a maximum duration (from several months to several years) in general or in specific situations.

In most countries the general rules for dismissal (in the case of fixed-term or open-ended contracts, depending on the situation in the country - see above) apply. This means that the fixed-term contract cannot in principle be terminated before the end of the term. If this occurs, compensation is often stipulated. This also means, however, that any thresholds prescribed (such as in Ireland and the UK) also apply and often lead to the situation where temporary workers are excluded from such protection.

It was mentioned in several reports that if the worker continues to work after the expiry of the period of the assignment, the contract is converted into an open-ended contract with the user and/or provision is made for compensation (e.g. Luxembourg, Italy).

### **3.2. Individual rights of the worker**

Almost all reports mention that **equal treatment** is guaranteed **in principle**. However, there are many de facto and de jure exceptions.

Regarding **wages**, the principle of equal treatment has been introduced everywhere, but the reference point differs from country to country. In most countries the law and collective agreements try to guarantee that the agency worker receives the same wage as the comparable worker in the user enterprise (whether or not with some exceptions as in the The Netherlands). Only one country, France, reported that this includes also the wage increases which are granted during the period of the assignment and in Italy it includes granted productivity bonuses as well as the 20% daily compensation for each day that the worker continues to work after the expiry of the period (up to a maximum of 10 days). In Austria the worker must be guaranteed appropriate remuneration, the minimum wage set by the collective agreement applicable to the user enterprise thereby being taken into account. In Belgium temporary workers must be paid at a rate which is not lower than the collectively agreed rate for the workers whom they are replacing or working alongside, but since permanent workers often receive pay which is above this level there is discrimination. In Denmark, according to ethical rules adopted by the Association of Temporary Work Agencies, the wage is the usual wage for the sector in which the agency worker works in, whenever the basic collective agreement only refers to the same minimum wage. Recent figures issued in Germany by the Federal Employment Service show that temporary agency workers receive only 63.4% of the wage earned by comparable workers in other sectors.



With regard to **working time**, it is the rules of the user enterprise which apply in all aspects. So in Belgium, for instance, a reduction of working time introduced during the period of assignment must also apply to agency workers.

With regard to **social security rights**, the situation differs from one country to another. In most countries the temporary worker is granted the same statutory social security rights as all other permanent workers. In other countries however, the range of rights to which the temporary worker is entitled is limited and often linked to seniority thresholds (the most significant example being, of course, the UK). The latter often lead to a situation where the temporary worker is excluded from enjoying these rights. As for complementary social security benefits in general, a great deal depends on the collective agreement in effect in the user enterprise and/or on the goodwill of the user. In some countries the temporary worker is even entitled to supplementary bonuses, such as an end-of-year bonus and/or productivity bonuses. In Belgium there is even a special social fund which grants social loans to temporary workers under certain conditions.

As regards **access to social services**, again there is in principle equal treatment in certain countries. In others, access depends on the contract between the agency and the user (Denmark), objective reasons (Germany), membership in a certain union (Italy) or seniority (Italy).

Only one country (Germany) mentioned that the temporary worker has the right to be **informed of job opportunities** in the user enterprise, but in practice this apparently only applies to enterprises where a works council has been established.

### **3.3. Collective rights of the temporary worker**

Since the temporary worker is in most countries considered to be the employee of the agency, he/she only has collective rights in relation to the agency. Luxembourg is apparently an exception: there the temporary worker has no collective rights either in the agency or in the user enterprise.

The collective rights mentioned are: information and consultation rights, the right to vote and eligibility in the elections for the workers' representation bodies in the agency (but seniority thresholds are often provided), the right to strike.

In some countries (e.g. Germany, Luxembourg) the temporary worker can consult the works council of the user enterprise or even file complaints before that body (e.g. Spain).

## **4. The user enterprise**

### **4.1. The relationship between the user enterprise and the agency**

In most cases the contract signed is a commercial contract or a contract *sui generis*, which must be in writing in all countries, except Ireland.

The contract must in general contain certain obligatory provisions such as : the licence number of the agency, its fiscal and social security registration number, the headquarters of the user enterprise, the reason why the contract is being concluded, the job description, the place of work, the required qualifications, the remuneration paid to other permanent workers in the user's enterprise, health and safety risks, etc.

As already mentioned, in several countries the user enterprise is liable for the payment of wages and social security contributions if the agency fails to do so. The financial guarantee which the agency is required to pay in order to obtain a licence is of course also used for this purpose.

As far as mentioned, any clause in this contract which prevents the user from engaging the temporary worker on an open-ended contract after the expiry of the assignment is considered null and void.

#### **4.2. The relationship between user and temporary worker**

This relationship boils down to two important aspects. Firstly, managerial power and, secondly, health and safety regulations.

Although in almost all cases the user is not considered to be the employer of the temporary worker, the agency delegates its managerial power to the user. As a result, the user is also often required to ensure that regulations concerning working conditions, and more specifically working hours, are observed in the case of the temporary worker.

Secondly, in all countries, the user is obliged, first, to inform the temporary worker of all health and safety risks related to the job, and, secondly, to ensure that all preventive health and safety measures are also guaranteed to temporary workers. This is of course a direct effect of the Directive of 25 June 1991.<sup>2</sup>

#### **4.3. The relationship between the user enterprise and its workers representation bodies**

Here again the situation in the various member states varies widely. It can be stated that in all countries, except Ireland and possibly the UK, the user is required to inform his workers' representation bodies of the use of temporary workers, the reason for using them and the number of workers involved.

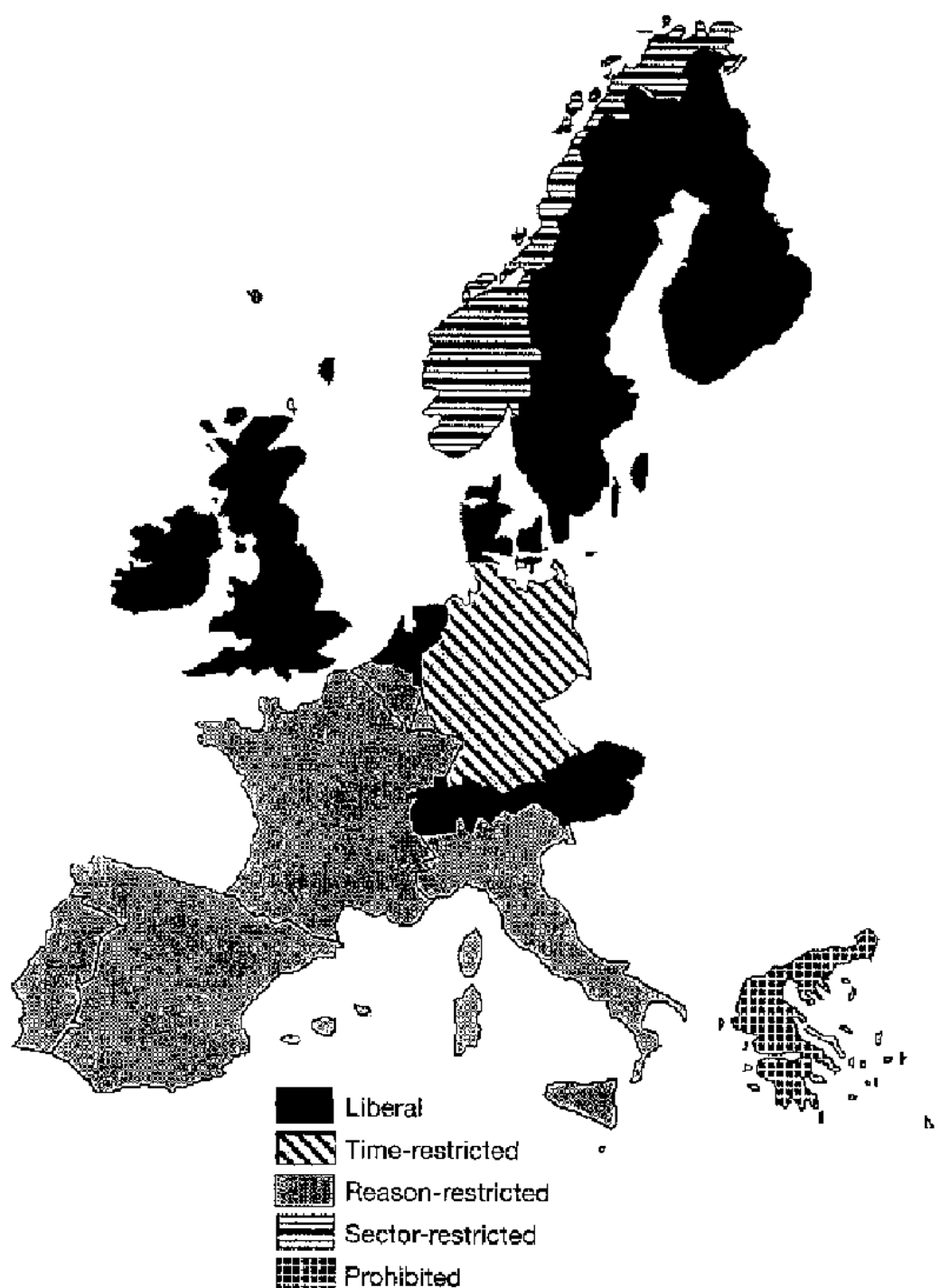
Some countries go even further, providing a consultation obligation, and two countries (Germany and Sweden) even reported that the works council can reject or veto the use of temporary workers.

In Germany, the works council must also be consulted when the user wants to engage the temporary worker as a permanent employee after the completion of the assignment.

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<sup>2</sup> Directive 91/383/EC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, OJ L 206, 29/07/91, p.9

## The legal situation in Europe



*Degree and nature of TWB regulation in Europe*

Source : Bakkenist Management Consultants, "Temporary Work Businesses in the Countries of the European Union", Report submitted to the Confédération Internationale des Entreprises de Travail Temporaire (CIETT), May 1998

### Daily average of agency workers in the 15 Member States

<b>Country</b>	<b>Daily Average 1996</b>	<b>Daily Average 1997</b>	<b>Daily Average 1998</b>
Austria	15,000	15,000	16,000
Belgium	44,100	51,000	59,300
Denmark	5,000	6,000	6,500
Finland	9,000	9,000	9,000
France	338,000	415,000	437,000
Germany	149,000	179,000	190,000
Ireland	3,000	4,000	4,000
Italy	Not available	Not available	Not available
Luxembourg	2,000	2,000	2,400
Portugal	25,000	30,000	33,000
Spain	60,000	90,000	110,000
Sweden	8,000	11,000	11,000
The Netherlands	225,000	250,000	300,000
United Kingdom	880,000	1,000,000	878,000 <sup>3</sup>

Source: CIETT Activity Report 1998

<sup>3</sup> The decrease in number is due to the application of revised methodology since 1998.

## Austria

### 1. General aspects

- Temporary work through agencies (Leiharbeit) is regulated by the Labour Placement Act of 1988 (Arbeitskräfteüberlassungsgesetz). The wording of the Act is broad enough to cover and thus also protect so-called “persons similar to workers” (“arbeitnehmerähnlich”). The provision of temporary labour within the meaning of this law is understood to mean any activity which places labour at the disposal of third persons for the performance of work. The declared purpose of the Act on the Provision of Temporary Labour is to protect the temporary workers place at the disposal of a user enterprise (in particular in matters concerning the employment contract, worker protection and statutory social insurance provision), to avoid adverse developments on the employment market and to guarantee that the use of temporary workers does not result in any disadvantage for the workers of the user enterprises engaging that labour in terms of pay and working conditions and that the jobs of those workers are not jeopardized.
- No authorization is required to conclude a temporary employment contract.
- In terms of equal treatment the temporary workers are protected by the above-mentioned act and must be treated in the same way as permanent workers.
- No agency worker can be placed at the disposal of a user enterprise where a strike or lockout is taking place.

### 2. The temporary work business/agency

#### 2.1. The status of the agency as employer and the ensuing obligations

- Although the worker performs the work agreed by contract in the user enterprise, the agency with whom that worker has concluded an employment contract remains the employer. The typical obligations concerning social security and equal treatment obviously also apply to the user enterprise. The Act on the Provision of Temporary Labour provides specifically, for example, that throughout the period during which the worker is placed at the disposal of the user enterprise, the latter is required to fulfil the obligations imposed on employers by the legislative provisions on worker protection. This, however, does not exonerate the agency from its obligation as employer to ensure that the legislative provisions on worker protection are complied with. Furthermore, the statutory provisions concerning social insurances that are typically imposed on employers also apply to the agency.
- In the event that the agency learns that the user enterprise is not prepared to fulfill the obligations concerning worker protection and/or social security, it is required to terminate the provision of labour immediately.
- As has already been stated, the employment relationship is established between the agency and the worker. It is mandatory that the contract establishing this relationship include conditions such as : the level of remuneration, payment dates, entitlement to holidays, extent of working time, reasons for any restriction of the term of the contract, term of notice, probable type of work to be performed and the Länder or States in which the temporary worker is to be engaged. Certain contractual arrangements - essentially those which would enable the agency to shift the risk borne by the employer to the worker - are

inadmissible from the outset. In order to establish absolute clarity, the agency is required to issue a so-called employment sheet, for which a certain minimum content is prescribed as mandatory. This employment sheet must contain in particular those essential conditions of the employment relationship that must be explicitly agreed. If the agency refuses to issue the worker with an employment sheet, or if the employment sheet does not tally with the arrangement that has been agreed on, there is no obligation for the worker to accept the job for which labour is to be provided.

- Before being engaged in a firm other than that in which the worker has been engaged hitherto, the worker must be informed by the agency of the essential circumstances concerning the forthcoming provision of labour. This information must be provided in writing. Who the new user enterprise is, what the probable working time will be as well as the remuneration due for the duration of the assignment are essential data which must be communicated.
- It is also by the agency that the employment relationship is cancelled on the employer side, and the agency must of course thereby comply with the statutory and/or contractual terms of notice.
- In the event that the agency's trading permit is terminated, the agency must communicate this immediately in writing to each temporary worker and to each user enterprise.

## **2.2. Recognition and control of the agency and the role of Government (Federal or regional)**

- The operation of a temporary employment agency as a commercial activity is subject to the 1994 Trading Regulations, which identify the activity as a restricted trade subject to authorization. The authorization granted by the authorities to operate an employment agency is subject to the fulfillment of very specific conditions, which the agency must comply with throughout the entire period in which it exercises that trade. The essential criterion here is the reliability of the agency, which is not considered to be reliable in particular if it has contravened the provisions of the Act on the Provision of Temporary Labour, has conducted unlawful procurement of work or has failed to a considerable extent to fulfil its obligations as an employer. The permit is withdrawn whenever any one of the conditions is no longer being met to the full.
- The authorization procedure is intended to ensure that the activity is only carried out in a manner which guarantees the protection and the rights of the workers involved.
- It is the head of the provincial government ("Landeshauptmann") who is competent in the first instance to issue the permit and, in the second instance, the Federal Minister of Economic Affairs, who must act in agreement with the Federal Minister of Labour, Health and Social Affairs.
- Before issuing the permit the authority must call on the competent Chamber of Commerce, the competent Chamber of Blue-Collar and White-Collar workers and the competent Federal Office for Social Affairs and the Handicapped to submit a report within a period of 6 weeks assessing whether the conditions are fulfilled for a permit to be issued. Each of these authorities is then entitled to appeal against the decision to issue the permit for operating a temporary employment agency, if it has not been heard at all or if the decision contradicts the report it has submitted within the appointed time. Furthermore, each of the authorities is entitled to apply for the permit for operating a temporary employment agency to be withdrawn.

- In certain circumstances, after hearing the statutory bodies representing interests and the employer and worker associations authorized to conclude collective agreements, the Federal Minister of Labour, Health and Social Affairs can stipulate by ordinance in agreement with the Federal Minister of Economic Affairs that in the field of certain statutory bodies representing user enterprise interests or in the case of certain professional groups either the assignment of temporary workers in the business of a user enterprise is only permitted up to a certain proportion of the workforce of that business or that the permissible duration of the assignment of temporary labour in the business of a user enterprise is limited or that the supplying of labour from Austria to certain States is permissible.
- Supplying labour from Austria to other countries is only allowed when a relevant ordinance has been issued or, as an exception, when a special permit is issued. A special permit is also required for supplying labour from foreign countries to Austria.
- As has already been stated, it is essentially only the provision of labour as a commercial activity that is subject to the provisions and thus the control of the 1994 Trading Regulations. However, agencies who are not bound by the obligation to obtain a permit as provided in the Trading Regulations must notify the competent Federal Office for Social Affairs and the Handicapped of the agency's activity not later than by the end of the month following the first provision of labour. The provision of labour can then only be prohibited if the agency has failed to a considerable extent or repeatedly to meet the obligations devolving upon it by virtue of the Employment Agency Act, particularly with regard to the worker, and continues to do so despite having been warned in writing that its activity will be prohibited.

### **3. The temporary worker**

#### **The contract between the worker and the agency**

- As already mentioned, the employment relationship is established between the worker and the agency. An agency is not allowed to supply labour without the explicit agreement of the worker concerned.
- In order to protect the interests of temporary workers it is prohibited from the outset to lay down certain conditions in the contract. These are in particular conditions which : either restrict the right to remuneration to the duration of the assignment in the business of the user enterprise or lay down working time well below the average of the anticipated extent of the assignment and/or lay down a lower amount of working time for periods where no labour is supplied or, in the case of agreed part-time employment, grant the right to arrange regular overtime or restrict the term of the employment relationship without pertinent justification or bring forward the date on which the relationship expires or lapses or place restrictions on temporary workers in their gainful employment in particular by means of penalties or forfeits or recruitment bans for the period after the termination of the contract relationship with the agency. Agreements which make provision for other penalties or forfeits are only permissible inasmuch as they do not entail an unreasonable financial burden for the worker in terms of object, time and location and with regard to the agency's commercial interest in meeting the respective contractual obligations.
- Furthermore, the worker is entitled to have an employment sheet issued, in which it is mandatory to set out the essential contractual conditions such as : the level of remuneration, payment dates, entitlement to holidays, extent of working time, reasons for any limitation of the term of the employment relationship, term of notice, probable type of

work to be performed and the Länder or States in which the temporary worker is to be employed. If the agency refuses to issue the worker with an employment sheet, or if the content of that sheet does not tally with the arrangement that has actually been agreed, the worker is under no obligation to accept the job for which the agency is to provide labour.

- Before each assignment in an establishment other than that in which the worker has been engaged hitherto, the worker is entitled to be informed in writing as to who the new user enterprise is, what working time has been planned as well as the remuneration due for the duration of the assignment.
- The worker may terminate the employment contract provided that the terms of notice provided are complied with; the relevant declaration of intent must be communicated to the agency.
- From the point of view of the employment contract, it is the agency who is the employer, and not the user enterprise in whose business the worker performs the work. In general, no separate contract is concluded between the worker and the user enterprise, but in order to protect the temporary worker the user enterprise is nevertheless also regarded as the employer within the meaning of the worker protection provisions and of the social insurance obligations which typically devolve upon the employer for the duration of the period for which the labour is supplied. If the user enterprise fails to fulfil its obligations in this field despite incitement to do so, the agency is required to terminate the provision of labour immediately.
- There are no limits on maximum duration and no limits on the number of renewals.

### **3.1. The individual rights of the temporary worker**

- In addition to the rights relating to the termination of the contract, the issuing of an employment sheet as well as the safeguarding of worker protection and the fulfillment of social security obligations discussed under Point 3.1., the Act on the Provision of Temporary Labour endeavours in particular to safeguard temporary workers' right to remuneration and to establish clarity with regard to the hours they have to work.
- The fundamental principle is that temporary workers should not be placed at a disadvantage in relation to the workers of the user enterprise that engages them. The Act on the Provision of Temporary Labour therefore endeavours to link employment-contract rights of temporary workers to the collective agreement that covers the workers of the user enterprise that engages them.
- With regard to working time, the Act on the Provision of Temporary Labour lays down the rule that throughout the period of assignment the provisions concerning working time laid down in the collective agreement to be applied to comparable workers in the engaging user enterprise are also to be applied to temporary workers. The question of when workers are to be considered comparable is determined according to the type of activity involved, the duration of the assignment, and the workers' qualifications. More favourable in-company arrangements must also be applied to temporary workers.
- With regard to rights to remuneration, on the other hand, the provisions of the collective agreement in effect in the user enterprise do not apply directly to temporary workers. Rather, the Act on the Provision of Temporary Labour grants temporary workers the right to appropriate remuneration in keeping with local standards - irrespective of the remuneration agreed in the contract. The collective agreement in effect in the user enterprise and the minimum wage laid down in that agreement must be taken into account in the assessment of appropriate remuneration. It is quite possible that different collective



agreements apply to the agency and the user enterprise. As a fundamental principle, the existence of a collective agreement applying to the agency does not affect the applicability of the collective agreement in effect in the engaging firm. It can be presumed that the collective agreement in effect in the engaging firm will essentially be of decisive importance; it is applied directly in the case of the provisions concerning working time and indirectly in the case of the worker's right to remuneration. In questions concerning the remuneration due, the collective agreement in effect in the agency is of particular importance if the collective agreement covering the engaging firm provides for a lower pay level. Furthermore, the collective agreement in effect in the agency is applicable in periods when the worker is not supplied to a third party.

- Where no collective agreement is applied either in the agency or in the user enterprise, the remuneration due to the temporary worker must be determined on the basis of the mandatory criteria provided in the Act on the Provision of Temporary Labour, i.e. it must be appropriate and in keeping with local standards. As regards local standards, the jurisdiction refers to a large extent to the circumstances in the field of the agency - a criterion which has been much criticized, since the level of wages in the agency can sometimes be much lower than the level in the engaging firm, so that the workers who are hired out do not have equal status with the workers of the firm in which they are engaged. The mandatory criterion of appropriateness can be taken here as a basis, however, in order to eliminate disadvantages of that nature.
- Other provisions of the Act on the Provision of Temporary Labour, some of which have already been discussed in other contexts, also serve to protect temporary workers' rights regarding remuneration. Any arrangement restricting the right to remuneration to the duration of assignment in the business of a user enterprise, for example, is thus null and void. Furthermore, the user enterprise engaging the temporary worker is liable as guarantor of all remuneration rights. Where the temporary worker is demonstrably available for work but cannot be engaged or can only be engaged for less than the agreed working time, the remuneration is nevertheless due on the basis of the agreed working time. However, if the time worked by the temporary worker during the last 13 weeks has generally exceeded the agreed working time, the remuneration due for 14 days is calculated on the basis of the average of the last 13 weeks and not on the lower remuneration agreed.
- And finally, the Act on the Adjustment of Employment Contract Law standardizes the provision that foreign employers whose registered headquarters are not located in Austria and who send labour to Austria and supply that labour to clients in Austria must pay those workers at least the remuneration that is due to comparable workers employed locally by comparable employers. The employer and his client are liable as joint debtors for the relevant rights of the worker. This rule does not, however, apply to work performed in connection with the assembly, repair and placing into operation of plant and machinery, if the duration of this work in Austria does not exceed 3 months.
- Furthermore, the restrictions of the workers' liability for damages pursuant to the Worker Liability Act apply both in the relationship between the agency and the worker and in the relationship between the engaging firm and the worker.
- The legislation also includes provisions guaranteeing rights of pay for temporary workers. For example, if a temporary worker is available for work but is not needed for the whole of the initially contracted period, the employer must pay that worker for the entire contracted period of employment.

- The legislation also states that if the actual number of hours worked is higher than anticipated over a 13-week period and is followed by a slack period of at least 14 days, the temporary worker must be paid the average amount earned during the previous 13 weeks and not the actual lower level of pay initially agreed.
- Temporary workers are covered by the general labour legislation as regards paid holidays, sick pay, maternity leave and social security benefits, except for pension benefits.

### **3.2. The collective rights of the temporary worker**

- Taken as a whole - as has already been mentioned several times - the temporary worker must not be placed at a disadvantage in relation to comparable workers in the engaging firm in terms of remuneration and other working conditions.
- From the point of view of business constitution law a temporary worker is entitled to worker capacity both in relation to the agency (by virtue of the employment contract) and in relation to the user enterprise (by virtue of the assignment). It thus follows that temporary workers are also entitled to vote and to be elected in the works council elections in both the agency and the enterprise in which they are engaged. This means that as a fundamental principle two workforce representation bodies are competent, a factor which can lead to competition between the workforce representation bodies.
- The question of which works council is competent in which affair must be resolved according to the form of worker participation and the field of influence. According to the prevailing jurisdiction on general protection against dismissal, it is the works council in the agency that is competent as a fundamental principle.
- In all questions concerning the daily work routine and/or the organization of work in the engaging firm, it is of course that firm's works council which is competent. Furthermore, the works council of the engaging firm is entitled to be informed and consulted whenever workers from agencies are to be engaged.
- And finally, the Act on the Provision of Temporary Labour provides that it is prohibited to supply labour to firms that are affected by strike or lockout.
- Temporary workers are included in the user's company workforce for the purpose of calculating thresholds relating to worker representation, but only if they are employed full-time.

## **4. The enterprise using temporary workers**

### **4.1. The relationship between the user and the temporary work agency**

- The relationship between the agency and the firm engaging temporary labour is regulated by an "Überlassungsvertrag" or "Dienstverschaffungsvertrag" (labour supply contract), which generally lays down the conditions under which the agency makes the labour he employs available to the engaging firm. As a rule, a fee is charged for that provision of labour.

### **4.2. The relationship between the user and the temporary worker**

- The relationship between the worker and the enterprise that engages that worker is not normally organized by a contract concluded separately. In order to protect the temporary worker the Act on the Provision of Temporary Labour contains a number of mandatory provisions that impose the typical employer obligations on the user enterprise for the duration of the assignment in respect of the worker who has been hired out. As has already

been stated, the user enterprise is regarded as the employer for the duration of the assignment - in particular with regard to the typical social insurance obligations and worker protection provisions. The user enterprise is thus, as a fundamental principle, required to arrange the production of the services in such a way that the life, health and morality of the temporary worker are protected. The typical industrial hazards are to be borne in mind in particular in this context. The user enterprise must furthermore ensure that the numerous worker protection provisions are complied with in its business.

- In addition, the user enterprise is liable as guarantor for all of the remuneration to which the temporary worker is entitled for his activity in the firm and for the employer and worker contributions to the social insurance scheme. This liability is restricted inasmuch as the Act on the Provision of Temporary Labour provides that, if it has already fulfilled the obligations deriving from the provision of labour in respect of the agency, the user enterprise is then only liable as default guarantor. In the event of insolvency of the agency, the user enterprise's liability even lapses entirely inasmuch as the temporary worker is entitled to an insolvency indemnity and it is thus guaranteed that his claims will be met.
- Furthermore, the restrictions of the worker's liability for damages pursuant to the Worker Liability Act also apply in the relationship between the user enterprise and the worker.
- Of course the typical diligence obligations imposed on workers in connection with the performance of their activity and the protection of the interests of their employer also apply to temporary workers.

#### **4.3. The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The user enterprise is required to inform the works council established in its firm of any plans to take on temporary workers in that enterprise and must hold a consultation on the subject if the works council so requests.
- The user enterprise must furthermore inform the works council established in the enterprise as soon as temporary workers are actually used in that enterprise. The works council must thereby be told what arrangements have been agreed with the agency with regard to the length of time for which the temporary labour is to be used and to the remuneration for the provision of that labour.
- The works council's right to monitor and intervene and its right to be informed and consulted, which are granted by the Works Constitution Act, also apply to the temporary workers who have been integrated into the firm. The works council can thus represent the interests of the temporary workers in respect of the user enterprise; it has the right, for example, to inspect and monitor the documents necessary for calculating the temporary workers' earnings as well as the records of the hours they have worked, it can put forward proposals for improving their work situation or apply for measures for compliance with and implementation of worker protection provisions, and it can insist on being consulted on the organization of the relations between the user enterprise and the temporary workers.
- As has already been discussed in another section, from the point of view of works constitution law temporary workers are also workers of the user enterprise that engages them and must thus be represented by the body representing the workforce in that enterprise.

- Temporary workers are included in the user's company workforce for the purpose of calculating thresholds relating to worker representation, but only if they are employed full-time.

### **5. Other legal problems connected with this form of contract**

- Problems can arise in day-to-day working life in particular if an attempt is made to formulate employment contracts in such a way as to circumvent the mandatory provisions of the Act on the Provision of Temporary Labour. In these cases, the facts must be examined conscientiously and, in the efforts to determine whether the Act on the Provision of Temporary Labour applies, the concrete facts must be taken into account rather than any formulations in the underlying employment contract between the agency and the worker. In the final analysis this examination falls within the jurisdiction of the law courts.

### **6. The general point of view of the Austrian trade unions on the use of this form of employment contract/relationship**

- Back in the 1960s, in the absence of specific statutory regulations, the provision of labour by temporary employment agencies already became an increasing popular instrument amongst employers, who managed to circumvent relatively substantive worker protection provided through binding statutory and collectively agreed provisions in the field of labour and social legislation and to move towards the unrestricted disposal of the labour of workers by wording contracts accordingly. There was a marked increase in temporary employment agency activities in the late seventies and early eighties. The main criticism of the bodies representing workers was that temporary agency work was a social and societal step backwards in industrial relations and was causing both individual and collective disadvantages for workers. In the triangular agency-user enterprise-worker relationship the worker was confronted with not one, but two, economically stronger employers and consequently often had little choice but to tolerate unfavourable terms of employment.
- The Austrian Trade Union Confederation (ÖGB) has always pointed to the drawbacks and dangers of temporary agency work. A satisfactory level of labour law protection of temporary workers has been achieved in part through the Act on the Provision of Temporary Labour. In addition, negotiations are currently under way on the conclusion of a collective agreement for temporary workers, which is intended to provide further protection.

### **7. Trends**

- A collective agreement covering wage-earning temporary agency workers whilst not actually hired out to user companies was under negotiation. The meetings which already started in 1997, were resumed in May 1999. The salary earners amongst the agency workers are already covered by a collective agreement, but the wage earners are not. Unfortunately the social partners were unable to reach agreement.

### **8. Additional information (figures, statistics)**

- In 1996, 0,7% of the workforce were temporary agency workers; 75% of all agency workers are employed in the metal sector.

## Belgium

### 1. General aspects

- The general law which applies is the Act of 24 July 1987, which is to a large extent complemented by national, sectoral and enterprise level collective agreements. The first two categories can be extended by Royal Decree and become penally sanctioned norms. The 1987 Act is a matter of public policy and thus mandatory, and certain provisions are sanctioned by penal measures; it supersedes numerous nationally binding collective agreements which were adopted in 1981, but in order to be as complete as possible reference is often made to those collective agreements of 1981. A law of 30 March 1994 opened up the possibility of introducing agency work also in the public sector.
- The Act applies to both the public and the private sector. The problem is, however, that for the implementation of some provisions it requires a nationally binding collective agreement, but such agreements are only binding in the private sector; however, the collective agreement or parts of it can be extended to the public sector through a certain procedure.
- Agency work is not allowed in the construction sector, and in some other sectors, such as the graphical sector, agency work is prohibited for certain activities, or, as in the textile sector, quotas are laid down for the use of temporary agency workers.
- Temporary work cannot be undertaken in event of strike or lockout in the user enterprise (implemented by Collective agreement n° 47 of 18 December 1990). On the basis of a 1997 collective agreement, it is prohibited to replace a permanent worker who is in technical or economic unemployment by a temporary worker.
- The act also applies to foreign firms operating in Belgium and to activities in a foreign country by a temporary work agency based in Belgium. In the latter case, as regards working conditions, the law of the country where the work is performed applies.
- Within the scope of the 1987 Act temporary employment contracts can only be concluded for: (1) to replace a permanent worker, (2) to cope with a temporary increase in the workload,<sup>1</sup> or (3) to make it possible to carry out exceptional work. If a contract is concluded for other reasons, penal sanctions are foreseen and the recognition licence of the agency can be suspended or withdrawn.
- If the contract between the agency and the worker is concluded for any other reason, it will be re-qualified as an open-ended contract with the user enterprise.
- (1) Replacement of a permanent worker is understood to mean: (a) the replacement of a worker whose contract has been suspended, except when this is due to lack of work for economic reasons or because of bad weather conditions, (b) the temporary replacement of a worker whose contract has been terminated with notice or “on serious grounds”, and (c) replacement of a worker whose contract has been terminated for a reason other than dismissal with notice or “on serious grounds”. In the latter two cases the duration is unlimited, and in the latter case the maximum duration is 6 months and only possible with the agreement of the workers’ representation body or, where this is not available, the social fund. An extension of six months can be authorized. If the contract is terminated for any other reason the same rules apply.

<sup>1</sup> A law of 1996 and a collective agreement (n°58) have replaced the former concept of “extraordinary increase in the workload” by “temporary increase in the workload”. This has meant that the possibilities for recourse to temporary agency work have increased considerably.

- (2) Temporary work in the situation of temporary increase in workload is only possible under very specific conditions and procedures (see below). The maximum duration is agreed between the user and the workers' representation body. If there is no workers' representation body, the maximum period is 6 months and can be extended for another 6 months with the authorization of the social fund.
- (3) "Exceptional work" is specified in Royal Decrees and cannot continue for more than 3 months, but this term can be extended by Royal Decree. The following activities – *inter alia* – have been considered exceptional work to date: work connected with the preparation, running and winding up of trade fairs, congresses, workshops, etc.; secretarial work for businessmen staying in Belgium temporarily; work for embassies, consulates and international bodies; the performance of short and specialized tasks which require special professional qualifications; the performance of new functions; work in urgent cases; or stocktaking or drawing up balance sheets (the latter for a maximum of 7 days and the workers' representation body must be informed).
- If a temporary contract is concluded for a reason other than replacement, temporary increase of work or performance of exceptional work, the contract is considered to be open-ended.
- For the moment temporary work is not authorized : (1) in the case of manual workers in undertakings whose business is removals, furniture warehousing, and related activities falling within the competence of the joint committee for the transport industry and (2) in undertakings of the construction industry (negotiations are currently under way for the latter industry to allow temporary work for certain functions). In the printing industry a collective agreement prohibits the use of temporary workers in low-grade jobs, and in the confectionery sector temporary work may only represent 10% of the total number of hours worked by workers.
- The 1987 act contains several civil and penal sanctions. The civil sanctions apply: (1) nullity of all clauses insofar as they tend to reduce the rights of workers or to increase their obligations; (2) a contract of temporary work concluded in violation of the Act is null and void from the commencement of the employment; (3) a contractual clause prohibiting temporary workers from signing on with the user is null and void; (4) any stipulation agreed upon between the temporary agency and the user that a compensation shall be payable to the agency if the temporary worker is recruited by the user, shall be null and void; etc. The nullities are absolute, which means that all parties can invoke them before court at any time during a period of 30 years.
- Penal sanctions (imprisonment of 8 days up to 1 month and a fine of up to 100.000 BEF) are provided: (1) when a contract is drawn up without the legally required content; (2) when a salary is paid that is less than what the temporary worker would have earned if he had been engaged by the user as a permanent worker; (3) when the contract between the agency and the user does not have the legally required content.
- In principle, equal treatment is guaranteed but practice is often different because of the nature of the contract. Problems arise in particular in the area of health and safety. This discrimination in practice is often more or less resolved through the conclusion of collective agreements. Since many of the temporary workers are migrant workers in certain sectors, a collective agreement concerning the prevention of racial discrimination has been concluded. It prohibits any discrimination based on colour, race, religion and national or ethnic origin. This prohibition applies to both the selection as the hiring of the temporary worker. As for other discrimination, for example based on sex, the general legislation applies also to the temporary agency sector.

## **2. The temporary work business/agency**

### **2.1. The status of the agency as employer and the ensuing obligations**

- The agency is the employer of the temporary worker, with all of the obligations of labour law and social security law, which this comprises. But when a temporary agency places a worker at the disposal of a user contrary to the stipulations of the 1987 Act, the user is considered to be the employer. The agency nevertheless remains responsible, together with the user, for paying the wages, indemnities and social security contributions.
- The law prohibits the agency from conducting any other activity parallel to placing workers at the disposal of user enterprises.
- Agencies can only contract workers, and not self-employed persons to perform temporary work.
- The Executive may determine a maximum by Royal Decree for the rate of commission or any other fee which the temporary work agency may charge the user.

### **2.2. Recognition and control of the agency and the role of Government (Federal or regional)**

- Since the special act of 8 August 1980, the recognition of temporary work agencies falls within the field of competence of the Regions. For each of the regions (the Flemish, Walloon and Brussels Regions) an advisory committee has been established on which the trade unions and employers have several representatives and on which they have an advisory capacity on the recognition, suspension or withdrawal of an agency's licence.
- The conditions for recognition are to a large extent similar for the three regions, but there are some differences. At all events, the agency must have the legal form of a commercial organization.
- The duration of recognition is 4 years in the Flemish region, but is renewable. After 8 years a permanent licence can be issued. In the Walloon region the duration of the licence is 2 years and renewable for a second period of 2 years or indefinitely; for the Brussels region it is 1 year, but is renewable.
- As regards the suspension or withdrawal of recognition, conditions also differ from one region to another, but in each of the three regions the agency must have been heard before the recognition can be suspended or withdrawn.
- In accordance with the Act of 5 December 1968 a joint committee for temporary work was to be set up with the task of establishing wages and working conditions for temporary workers by way of collective agreements. Until now this joint committee has not been established but several collective agreements have meanwhile been adopted (see below).
- The 1987 Act refers on numerous occasions to the National Labour Council (on which trade unions and employers are represented) for the implementation of the act. Quite a number of nationally binding collective agreements have been concluded by this Council (e.g. procedure and duration of temporary work, guaranteed pay in the event of incapacity for work because of illness or accident, meal vouchers for temporary workers, end-of-year bonus, Livelihood Guarantee Fund, standard contracts for temporary work, etc).
- Since the special act of 1980 the regional employment and placement services (which are public services) have received the authority to run full-fledged temporary work agencies. They must abide by the same provisions and rules as private agencies as laid down in the 1987 Act and collective agreements.

- For SMEs without any workers' representation body the recognition procedure has been replaced by a procedure of notification of the Livelihood Guarantee Fund and the trade unions. The latter can object to the prolongation of the activities. In SMEs with a union delegation the agreement of the delegation must be obtained, except in the case of replacement.

### **3. The temporary worker**

#### **3.1. The contract between the worker and the agency**

- The 1987 Act requires two written contracts. The first indicates the intention of the parties to conclude a labour contract for temporary work. This contract must be concluded before the commencement of the first spell of employment and does not have to be renewed each time the temporary worker is placed at the disposal of another user. The second contract is the labour contract, which must be confirmed within a maximum of 2 working days from the date when the worker commences work. The latter contract must be renewed every time the temporary worker accepts a new assignment. Within the first 2 working days, the worker must also receive a copy of the commercial contract between the user enterprise and the agency.
- The contract can be concluded for a definite period, for a specified job of work, or for the replacement of a permanent worker. The contract can be for a full-time or part-time job.
- If the contracts are not in writing or if there is no contract at all, the agency and the worker are considered to be bound by an open-ended contract and the worker may terminate the contract without notice or compensation.
- The written labour contract must contain : 1) the name of the user, 2) the place of work, 3) the reason for concluding the contract ( replacement, temporary increase of work, or to perform exceptional work), 4) the duration of the contract, 5) the required professional qualification and a description of the job, 6) the average weekly working time, 7) the real weekly working time, 8) working time arrangements, 9) the number of the "Commission Paritaire" of the user enterprise, 10) the gross salary, 11) other benefits and premiums to which the worker is entitled, 12) reimbursement of travel costs, 13) how the salary will be paid, 14) the job specifications.
- Unless otherwise stated, the first 3 working days are considered to be a trial period during which each party may end the contract without notice or compensation. Collective agreements provide that if there are successive contracts with the same temporary worker only one trial period may be stipulated.
- Successive contracts can be concluded for specific purposes as described by the 1987 Act and collective agreements n° 36, 47 and 47 bis. The labour contract must contain several items of obligatory information including: (1) the name of the user, (2) the reason for the contract and if possible the duration, (3) the place of employment, (4) the agreed remuneration and other benefits, (5) a description of the job to be performed, (6) the weekly working time, (7) the registration and recognition numbers of the agency, (8) the qualifications required, etc. All of this is regulated by collective agreement n°36 sexies of 1981.
- If any of the required information is missing, the labour contract becomes null and void and is converted into an open-ended contract.



### 3.2. The individual rights of the temporary worker

- See also point 7. Trends
- Temporary workers have the statutory right to be paid at a level not lower than the collectively agreed level for the workers they are replacing or working alongside. This means in practice however that permanent workers may receive higher rates, since they are often paid above the collectively agreed rate.
- A Livelihood Guarantee Fund for temporary workers was set up by collective agreement n°36 bis of 1981. In the event that a temporary work agency fails to meet its financial obligations towards the temporary worker, the fund is responsible for paying the remuneration payable under individual contracts or collective agreements and for paying the allowances and benefits payable by law or collective agreement.
- Collective agreement n°36 ter of 1981 determines the social benefits to which the temporary workers are entitled from the Livelihood Guarantee Fund such as: compensation for dismissal or the closure of undertakings, remuneration for a certain period, allowances and benefits for a certain period, additional benefits for certain older workers on dismissal, end-of-year bonuses.
- Temporary workers enjoy the same rights as permanent workers regarding social security (pension, sickness benefits, unemployment, family allowances, annual paid vacations, industrial accidents, occupational diseases, maternity leave)
- The temporary worker has the right to access to vocational training and the relevant leave periods.
- They are entitled to an end-of-year bonus equal to 7.66% of the gross earnings received throughout the contract. Thresholds are provided namely that the temporary worker must have worked 65 days within a certain reference period. Temporary workers who belong to a trade union also receive a “trade union” premium of 2.100 BEF (= 52 Euro).
- As for the working time arrangements, the temporary worker must abide by the arrangements in effect in the user enterprise. If a reduction of working time is introduced in that enterprise, the temporary worker must also benefit from it. If the reduction of working time is arranged in the form of days of recuperation, the temporary worker is also entitled to them. If these recuperation days are scheduled outside the period of assignment, the contract can be extended or the worker receives an equivalent daily wage.
- The worker has access to the social services in the undertaking of the user.
- In principle the temporary worker is not entitled to be informed of job vacancies, but some collective agreements provide that right.
- The general rules for termination apply. If the contract is terminated without compelling reasons before it expires, compensation must be paid.
- The temporary worker has the possibility to end the contract prematurely subject to a period of notice of 7 days and provided that he/she already has another job.
- Temporary workers are also entitled to payments for public holidays which fall within a period of 30 days after the expiry of the contract, unless they are already engaged under a new contract.
- Under certain conditions the livelihood guarantee fund: (1) will pay the temporary worker 150 BEF (3.71 Euro) for a period of 30 days in the event of unemployment for technical or economic reasons (the condition being that he/she has worked at least 3 months over a period of 1 year); (2) will pay the temporary worker 40% of the gross income during a

period of 3 months in the event of long-term illness (i.e. more than 1 month), (3) can provide a bank guarantee of 150.00 BEF (3718.4 Euro) if the worker needs money for social reasons (the condition being that he/she has worked 260 days in the course of 2 years and has been employed with the same user for at least half of the 260 days).

- This Livelihood Fund also supports financial initiatives for vocational training for young people, older unemployed workers, etc.
- As for the training of temporary workers, the agencies can obtain subsidies from the Social Fund for the organization of training, which can be organized by the agency, an external organization or the user enterprise. Special financial resources can be allocated for the training of specific groups of workers, such as the long-term unemployed, low-skilled unemployed workers under 26 years of age, and unemployed workers over 44 years of age.

### **3.3. The collective rights of the temporary worker**

- There is a collective agreement relating to the status of the trade union delegation in the agencies, but in reality it is not functional.
- Temporary workers can take part in the trade union elections in the temporary agency.
- Temporary workers are included in the user's company workforce for the purpose of calculating thresholds relating to worker representation. (Collective agreement n° 36).
- In theory they have the right to strike.
- There is a Commission of "Good Services" which deals with individual and collective complaints between the worker and the agency.

## **4. The enterprise using temporary workers**

### **4.1. The relationship between the user and the temporary work agency**

- The contract between the two parties must be drawn up in writing within 7 working days of the date on which the employment commences.
- The contract must include inter alia: (1) the recognition number of the agency, (2) the National Social Security Service registration number of the agency, (3) the reasons for using temporary labour, (4) the place and duration of the employment, (5) working time arrangements, (6) the occupational qualifications of the worker, (7) the remuneration of a permanent worker with the same qualifications in the user's enterprise, (8) the way in which remuneration will be paid, (9) information on the holiday and family allowance schemes, etc.
- The temporary worker will receive a written communication of this within 2 days or, at the latest, on the day on which the employment commences. He/she must also be informed of any changes in the contract.

### **4.2. Relationship between the user and the temporary worker**

- Although the agency is the employer, the user enterprise has the necessary authority to direct and control the job to be done in its undertaking. So the user has the actual managerial authority and is thus liable for all damage, as regards civil injuries caused by the temporary worker during the performance of his contract.
- For the duration of the employment the user is responsible for the observance of certain labour regulation provisions and protection (i.e. working time, public holidays, Sunday

rest, female labour, work by young people, night work, health and safety, the salubrity of the work and workplace).

- In accordance with a collective agreement, the agency will supply working clothes and the user will supply protective clothes.
- The user and the temporary worker are considered to be bound by an open-ended contract of employment if the user continues to employ the worker after the duration of the contract and/or if the user employs the worker in breach of the 1987 Act.
- See also point 7. Trends.

#### **4.3. The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- Once a year the works council must be informed of the number of temporary workers, the reasons for their employment, the average duration and the section of the enterprise in which they have been employed. (Collective agreement n° 9 of 1972)
- Collective agreement n° 47 of 1990 lays down the procedure in the case of a replacement of a permanent worker whose contract is terminated and in the event of a temporary increase in the workload as follows. The agreement of the workers' representation body in the firm, or, in absence of such a body, the trade unions must be obtained in advance for the replacement of a worker whose contract has been terminated. If they disagree, a reconciliation procedure is initiated with the labour inspectorate, and if this fails the employer is not allowed to engage a temporary worker. If there is no union delegation, the employer may replace the worker provisionally for a maximum of 15 days, but here again this is subject to labour inspectorate approval. The procedure is more or less similar with regard to the extraordinary increase in the workload. Exceptions to this procedure are possible.
- Temporary workers are included for the purposes of calculating company size thresholds relating to worker representation (health and safety committee and union delegation) This does not apply to temporary workers who replace a permanent worker whose contract has been suspended.
- Special rules apply regarding the calculation of the number of temporary workers for the trade union elections and regarding the legislation concerning the closure of undertakings.

#### **5. Other legal problems connected with this form of contract**

- One problem is that of achieving equal treatment in actual practice.
- The status of "selection bureaus"; and the relation between recruitment and placement on the one hand and agency work on the other. This is likely to become a subject of animated debate in view of the new ILO Convention 96.
- Placement in certain functions through a fixed-term contract with the agency.

#### **6. The general point of view of the Belgian trade unions on the use of this form of employment contract/relationship**

- At the beginning of the 70's the unions were quite hostile to agency work, but they have now accepted the use of these forms of contract. This in particular because they have quite an important role to play in the elaboration of legislation and/or collective agreements covering the working conditions of temporary workers, which allow for the development of agency work in socially favourable conditions. However, their acceptance of this form

of contract does not mean that they see it as an alternative or equivalent to permanent contracts.

- It could be envisaged that agency work becomes preferable before overtime and sub-contracting.
- A framework regulation should be provided at the EU level.

## **7. Trends**

- According to statistics, 1/3 of temporary workers receive a permanent job offer from the user enterprise.
- Within the framework of a sectoral agreement for the 1997-1998 period, it has been requested (1) that the 1994 framework law be implemented in particular with regard to the aspect of temporary work in the public sector, (2) that a study be conducted on the prohibition of temporary work in the construction industry, (3) that the problem of temporary work and the right to strike be investigated, and (4) that the concept of so-called concealed temporary work (i.e. sub-contracting) be analyzed.
- In future it will be possible to replace a worker who takes a career break by a temporary worker.
- The latter agreement contains the following measures: 1) the cost of sickness benefits paid to workers in the event of unfitness for work, which are to be provided for a maximum of 30 days, must be borne by the agency in addition to the social security sick pay. If the incapacity due to sickness occurs after the end of a contract, workers are entitled to 5 days' sickness benefit from the agency in addition to social security sick pay, provided that the worker in question has been employed in the sector for at least 65 days. If incapacity for work due to sickness is long-term, the sector's social fund must provide sick pay provided that workers have been registered with an agency for at least 3 months; 2) the payment of unemployment benefits in the event of lay-off by the user company provided that the worker has worked in the sector for at least 65 days; 3) the use of the sectoral social fund as guarantor against bank loans for social needs such as childcare costs, medical expenses and domestic help. A loan of up to approx. 160,000 BEF will be guaranteed as long as the worker has been employed in the sector for a minimum of 260 days; 4) the promotion of vocational training, whereby the agency must pay 0.3% of the wage bill into the social fund for this purpose; 5) the boosting of employment by training the long-term unemployed, disabled persons and unemployed persons over 44 years of age; and 6) an end-of-year bonus, financed by the social fund, will be granted to workers who have been employed in the sector for at least 65 days between 1 April and 31 March of the following year, irrespective of the number of user companies for which the worker has been employed.
- A new collective agreement covering the period 1999-2000 has recently been concluded. The key points are: 1) the recommendation that the use of daily contracts be limited, 2) more employment and training initiatives for specific groups of unemployed with a particular focus on migrants and disabled workers, 3) an additional allowance from the social fund in the event of long-term illness on the condition that the worker has 2 months of seniority in a reference period of 12 months, 4) an additional allowance from the social fund in the event of unemployment for economic and technical reasons, 5) an addition allowance in the event of sickness which started immediately after the end of the assignment, 6) extension of the list of "exceptional tasks" for which temporary agency work is allowed, 7) the recommendation of concluding an additional sectoral collective agreement involving an allowance for transport costs irrespective of the means of

transport used, 8) the right for temporary workers to benefit in the same way as permanent workers from the reorganization of working time, 9) an agreement on the conclusion of an additional sectoral agreement on training which will provide for a fee of 0.30 % of the income to be paid into the sectoral social fund by the agency, 10) an increase of the trade union affiliation premium from 2.100 BEF (52 Euro) to 3.500 BEF (86.7 Euro).

- Furthermore, two Royal Decrees amending a 1993 collective agreement were issued in 1997. Under the terms of these Royal Decrees, the user companies must provide the agencies and the workers with an accurate description of the job offered and the qualification level required. Furthermore, the sector has established a medical service for better monitoring, especially of persons in high-risk occupations. In order to reduce the number of industrial accidents, a service aimed at preventing occupational injury (through campaigns, exchange of information and training) has also been established. Each agency is obliged to become a member of that service, in which the trade unions are represented.

### 8. Additional information (figures, statistics)

- In 1991, 0.7% of the labour force were temporary workers (31.000 per day); 51.3% were under 25 years of age; 70% were blue-collar workers (20% female) and 30 % white-collar workers (20% female).
- In 1997, 210,000 per year and 45,000 persons per day engaged in temporary work. For 1998 the figures were 280,000 and 60,000 respectively. This amounts to about 1.5% of the total working population. 70% of the workers were under 30 years of age, and 7% were over 45. 60% of temporary workers were male. Some 36% of temporary workers were offered a permanent contract by the user after their assignment.
- The “Boerenbond” (interest association for the agricultural sector) has recently decided to set up specific agencies for the sector.
- In 1997, about 120,000 contracts of a total of 371,000 fixed-term contracts concluded by students performing jobs during summer holidays were concluded through an agency. In 1992, the figure was only 13,000 out of 190,000 contracts. The reason why employers no longer recruit them directly is mainly to save the time and work which the selection and employment of these students entails. In a sense this is a positive development, since in previous times most of these students were recruited directly by the employer without any contract or had to work in unsatisfactory working conditions.
- A recent newspaper article in *De Morgen* (22 May 1998) stated that there is nevertheless a great deal of fraud in the sector amounting to about 3 billion Belgian francs a year. This is possible because of the grey areas in the existing legislation and the inadequate control mechanisms. The most significant form of fraud is that workers are offered a contract for one working week and are then obliged to continue to work during the weekend. The salary paid for the weekend is then not declared by the employer to the social security and fiscal administration. To put an end to this fraud, more intensive control by the labour inspection is planned, although the Minister admitted that this will be very difficult, given the numerous contracts concluded daily in this sector. As of 1 January 1999, agencies must also report every contract they conclude immediately as well as the early termination and/or extension of the contract, instead of the 2-day notice period applying hitherto.
- About one-third more industrial accidents occur with temporary workers than with permanent workers. The main reasons for this are: lack of experience, unfamiliarity with the constantly changing work environment, and lack of training.

## Denmark

### 1. General aspects

- Until 1990, temporary agency work was regulated by the Act on the Placement of Workers and Insurance against Unemployment, and in an administrative decree of 1970 which regulated the activities of temporary agencies in the retail and office sector. The establishment and operation of temporary work agencies was prohibited in all other sectors. In 1990 the Act was amended and all restrictions were abolished, so that according to Danish law there is now free entitlement to establish and operate temporary work agencies.
- Until now no collective agreements with specific coverage of the working conditions for temporary agencies have been concluded. Some special agreements have been concluded for the temporary agency workers between DHS (Danish Commerce and Service) and HK (the National Union of Commercial and Clerical Employees). It is furthermore stipulated in section 7 of the national agreement between DA/DHS and HK that temporary agency workers are to be paid the same minimum pay as all other workers with less than 1 year of seniority.

### 2. The temporary work business/agency

#### 2.1. The status of the agency as employer and the ensuing obligations

- The temporary work agency is considered to be the employer of the temporary worker. The latter has no rights in respect of the user, nor has the user any obligations towards these workers other than those pursuant to the Act on the Working Environment.
- In general terms, the fact that the agency is the employer entails that it has the obligation to pay the remuneration and to pay contributions to the social security schemes established by legislation.
- The Association of Temporary Work Agencies, which is not an employers' association but a trade organization, has adopted a set of ethical rules, which the members of the association are obliged to observe when they engage temporary workers. If an agency does not comply with these rules it can be expelled from the Association. However these rules in fact constitute merely moral obligations.

#### 2.2. Recognition and control of the agency and the role of Government (Federal or regional)

- There are no limitations or other stipulations in Danish legislation regarding the establishment and operation of temporary agencies.

### 3. The temporary worker

#### 3.1. The contract between the worker and the agency

- In the ethical rules established by the Association of Temporary Work Agencies it is stipulated that the contract must be in writing and must contain express stipulations on the remuneration and other conditions of work.
- The contract must also mention the duration of employment and information on the rights of the worker in the event of illness or termination of employment, concerning holidays, etc.

- There is no restriction on the maximum period. The contract can be renewed on condition that a certain period between the two contracts has elapsed.

### **1.1 The individual rights of the temporary worker**

- In principle temporary workers enjoy the same rights as permanent workers.
- Since there is no legislation on the operation of agencies, there are no general rules on temporary workers employed by such agencies.
- The only act that could be of importance to temporary workers is the Act on White-Collar Workers, but in a recent award by a trade arbitration board, it was stated that a temporary agency worker cannot be considered to be covered by the Act. The main reason was that the Board considered that such a worker cannot fulfil the condition stipulated in § 1 of the Act that there is a “service condition” between the worker and the employer. Such a condition only exists when the worker has the obligation to perform work. However, the typical relation between the agency and the temporary worker is characterized by the worker’s right to refuse a temporary job.
- As regards remuneration, it is stated in the ethical rules that if the temporary work agency is not covered by a collective agreement the worker must be guaranteed remuneration which is at least equal to the usual remuneration in the sector in question.
- It is also stated in the ethical rules that no clauses may be put in the contract which limit the possibilities of the temporary worker to look for employment when the employment in the temporary work agency is terminated. (This includes accepting a permanent job with the user.)
- It is also stated that it is an obligation for the agency to insure the temporary worker against the economic consequences of damage caused by the temporary worker in connection with the work performed in the user’s enterprise.
- It is stated furthermore that an agency cannot place a temporary worker at the disposal of a user if a strike taking place in the user’s enterprise.
- According to the Report of the Nordic Council, temporary workers enjoy the same collectively agreed benefits as permanent workers. Some temporary employment agencies have concluded collective agreements which include provisions relating to the right to a written contract and the right to refuse to be employed at a workplace where industrial action is taking place.
- Since the agency is the employer, temporary workers are not covered by the collective agreements concluded in the user’s enterprise.
- The temporary agency worker has no access to the social services normally made available in the user’s enterprise, unless this is stated in the contract between the agency and the user. Legislation is thus required on this point.
- Temporary workers also are not entitled to be informed of permanent job opportunities in the user’s enterprise.
- The legislation protecting workers’ wages in the event of employer insolvency also applies to temporary work agencies and their workers.

### **3.3 The collective rights of the temporary worker**

- Since the agency is the employer and temporary workers are not covered by the collective agreements adopted in the user's enterprise, this means that the temporary workers are not included in the calculation of the number of workers in the user's enterprise (including the calculation of the thresholds for the establishment of workers' representative bodies).
- The latter also means that temporary workers are not entitled to participate in the elections of shop stewards and representatives on the cooperation committee in the user's enterprise.

## **4 The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- Since there is no general legislation, there are also no rules on the specific content of the contract between the user and the agency.

### **4.2 The relationship between the user and the temporary worker**

- The user has no obligations towards the temporary workers other than the obligations pursuant to the Working Environment Act (which implements Directive 91/383). The user has the right to manage and direct the work.

### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- Issues relating to the recruitment of temporary workers are usually dealt with in the works council of the user company. In these cases, the provisions of the national collective agreement on cooperation apply; but that agreement is limited to the private sector and regulates issues such as company personnel policy and company production strategy.

## **5. Other legal problems connected with this form of contract**

- No comment

## **6. The general point of view of the Danish trade unions on the use of this form of work contract/relationship**

- No comment

## **7. Trends**

- No information available

## **8. Additional information (figures, statistics)**

- Temporary agency work constitutes 0.2 % of total employment.



## **Finland**

### **1. General aspects**

- In the early 1980s, the hiring out of workers was prohibited, but it has since become lawful through the amendment of the Employment Exchange Act.
- The Confederation of Finnish Industry and Employers (TT) and the SAK have concluded an agreement, which includes provisions that limit the hiring out of workers. It is only possible in cases of temporary increases of work, for tasks which are of a temporary nature, and for tasks which cannot be carried out by the permanent staff of the user. Several sectoral agreements have been concluded in line with this agreement, except in the services sector, where there is no agreement. The latter situation poses a problem since a great deal of temporary employment takes place in that sector.

### **2. The temporary work business/agency**

#### **2.1 The status of the agency as employer and the ensuing obligations**

- The agency is normally the employer.

#### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- Until 1993, a licence from the Ministry of Labour was required, which was only granted to a solvent registered Finnish corporation or to a solvent Finnish private individual. A requirement was that the agency conduct activities as provided in the licence and that a full-time manager be engaged whom the Ministry of Labour also approved.
- The licence could be granted for an indefinite period or, in special circumstances, for a maximum duration of 5 years.
- The licence could be revoked.
- The supervisory authority could require an auditor's report approved by the Central Chamber of Commerce confirming that the agency was solvent.
- HOWEVER, in 1993, an Employment Services Act was passed which no longer required a licence for operating as an agency. The agency or employer need only declare in writing to the labour inspectorate that he is hiring out labour.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- The most common form of relationship in the hiring out of workers is the fixed-term contract. For more details see the survey on fixed-term workers by the same author.<sup>1</sup>
- The contract ends when the task has been fulfilled or the specified term has expired.
- The agency has the right to reduce the salary of the worker in the event that the worker has caused damage in the user's enterprise as the result of negligence on his/her part.
- The maximum duration is 6 months; exceptions are possible.

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<sup>1</sup> S. Clauwaert, "Survey on fixed-term contracts", ETUI Report, June 1998

**3.2 The individual rights of the temporary worker**

- Maximum weekly working time is the statutory weekly working time of 40 hours.

**3.3 The collective rights of the temporary worker**

- No information available

**4. The enterprise using temporary workers****4.1. The relationship between the user and the temporary work agency**

- No information available

**4.2. The relationship between the user and the temporary worker**

- The Cooperation within Undertakings Act, which applies to companies with more than 30 workers, provides that temporary workers and seasonal workers are not considered to be regular staff of the enterprise and thus are not included in the number of workers. This means that the user often is not obliged to fulfil the obligations stipulated in this Act, even if the temporary worker is employed for many years in his enterprise.
- The user can terminate the contract at any time. The agency will then try to find another assignment for the worker, unless the termination is due to the worker's conduct.
- If the task is fulfilled earlier than the specified term, the agency can try to find another assignment; if not, the contract simply comes to an end.

**4.3. The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- No information available

**5. Other legal problems connected with this form of contract**

- No comment

**6. The general point of view of the Finnish trade unions on the use of this form of work contract/relationship**

- The SAK urges that the licensing procedure should be re-introduced and that the statutory situation of temporary workers with regard to their employment rights should be improved.
- Proposals for improvement include: 1) that the engagement of a temporary worker by the user enterprise should not be impeded, 2) that the maximum duration should be limited to 6 months, 3) that temporary workers should not be hired out to a user enterprise involved in an industrial dispute such as a strike, 4) that the user should not be allowed to lend the temporary worker to anybody else, 5) that the salary and other working conditions of temporary workers should be the same as those enjoyed by permanent workers in the user's enterprise.

## **7. Trends**

- For other significant changes in relation to temporary work, which is in most cases performed under a fixed-term contract, see the survey on fixed-term contracts by the same author.<sup>2</sup>

## **8. Additional information (figures, statistics)**

- Until now, the use of temporary agency work in Finland has been relatively marginal. According to the Temporary Employment Agencies Employers' Association, the agencies currently offer work to about 13,000 employees and temporary agency work constitutes only 0.5 % of total employment. Temporary agency work is used mostly in restaurants - where, according to the employers' association, agency workers account for about 2.5% of the total hours worked.
- 78 % of temporary workers are female.

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<sup>2</sup> S. Clauwaert, "Survey on fixed-term contracts", ETUI Report, June 1998

## France

### 1. General aspects

- Temporary work is regulated by the Labour Code and the law on fixed-term contracts of July 1990. The latter implements the provisions of a national wide agreement reached in March 1990 to a large extent. On the basis of the Auroux Legislative Ordinance of 5 February 1982,<sup>1</sup> several sectoral collective agreements have been concluded on a wide range of issues such as sickness benefits, vocational training, health care at work, holidays, cross-border agency work, trade union rights, complementary pension rights, etc.
- Temporary agency work cannot be used to fill a vacancy connected with the normal continuous activity of the user undertaking on a permanent basis.
- Reasons for recourse to temporary work are: (1) replacement of a worker who is absent or whose contract has been suspended or if the worker has left and the position is due to be done away with (in the latter case prior consultation of worker representatives is required). The temporary worker then does not necessarily have to do the same work. He/she can be assigned before the worker to be replaced actually leaves the enterprise in order to be initiated to the job; (2) temporary increase in work (larger order placed by a customer, launch of new activity or product, seasonal work situations such as around Christmas), (3) performance of work that is temporary by nature (e.g. seasonal work or in sectors where it is traditionally customary not to hire workers on open-ended contracts<sup>2</sup>.) In all three cases, the use of temporary workers is not allowed for certain dangerous activities.
- Article L 124.1 of the Labour Code stipulates that the temporary contract must not concern a job connected with the normal and permanent activity of the user enterprise.
- It is also prohibited to use temporary workers to replace a worker on strike, to perform particularly dangerous work, or after a dismissal for economic reasons within a period of 6 months following the dismissal. The latter does not apply if the temporary contract has a duration of less than 3 months (not renewable) or if the recruitment is connected with filling an exceptional export order (in the latter case prior consultation of worker representatives is required).
- Since an Act passed in 1990, temporary work is included within the matters which must be examined by the social partners to a collective agreement at sectoral level during the annual obligation to bargain on wages. Since 1984, joint occupational commissions have been set up by the parties signatory to a sectoral agreement regulating temporary work. These commissions have the function of interpreting the laws and collective agreements governing temporary agency work.
- The interests of the employment agencies are defended by two main organizations (UNETT – Union Nationale des Entreprises de Travail Temporaire and PROMATT – Syndicat des Professionnels du Travail Temporaire). The two together cover the entire temporary agency market.

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<sup>1</sup> This legislative ordinance restricts the use of agency work, regulates the individual and collective rights of temporary workers and reinforce the means of controlling and sanctioning the use of this form of work.

<sup>2</sup> Some examples : forestry, ship repairing, hotels, restaurants, cultural activities, teaching, polling activities, leisure and holiday centres, professional sport, building and civil engineering on foreign sites, scientific research within the scope of an international agreement.

## **2. The temporary work business/agency**

### **2.1 The status of the agency as employer and the ensuing obligations**

- As the employer of the temporary worker, the agency is required to fulfil all of the obligations provided by labour and social security legislation.
- The agency is not responsible for damages caused by the temporary worker while performing his task in the user's enterprise, because it has delegated its managerial power to the user - and this is established by case law.
- The law prohibits the agency from conducting any other activity parallel to placing workers at the disposal of user enterprises (Article L 124-1 of the Labour Code).

### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- Pursuant to an Act of 2 January 1979, before starting any operation the agency must submit a declaration to the Labour Inspectorate within whose geographical field of competence the agency headquarters is located. This compulsory declaration applies both to the creation of an agency and to cases where the agency opens a subsidiary, moves its headquarters or ceases its activities.
- The declaration must contain the name of the headquarters, the location and legal form of the enterprise, the date when it started operating, the name(s), address(es) and nationality of the director(s) of the enterprise, the name of the body which will receive the social security contributions and the number of permanent workers employed to operate the agency.
- The agency cannot begin activities before either receiving in return an acknowledged copy of its declaration or before a period of 15 days has elapsed.
- Operating without authorization constitutes a criminal offense, which is penalized with fines and/or imprisonment. The court may also prohibit the director(s) of the enterprise from carrying out the same activities for a period of 2 to 10 years. Finally, because of the potential damages to the temporary workers, the President of the Civil Court, before which the Labour Inspector brings a case after issuing a warning to the employer, may order the closure of the agency for up to 3 months.
- Since 1979, agencies must also furnish proof that they enjoy a financial guarantee ensuring that, in the event of insolvency, wages, severance pay and the employer's social contributions due will be paid to, and/or on behalf of, the temporary workers. The guarantee must be renewed within 6 months of each fiscal year. For information purposes, the name and address of the body providing the guarantee must be printed on all documents used by the agency, in particular on the contract of assignment and the contracts with the temporary workers.
- It is important to note that, in the event of insufficient guarantee to cover in full the sums due, the user remains responsible in the second instance for the remainder outstanding. The law therefore provides that the user may require the agency to present a certificate of payment issued by the bodies collecting the Social Security contributions before entering into any contract.
- The agencies must also provide the Labour Inspector with information each month on: 1) all of the contracts concluded, 2) the user enterprises and 3) certain particulars concerning the temporary workers placed at the disposal of a user (name, sex, nationality). They must also inform the competent authority of any changes in the headquarters of the agency and the establishment of new offices. Furthermore, they must also provide that authority with certificates of payment of the social security contributions every quarter.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- The contract of assignment between the agency and the temporary worker has the nature of a labour contract.
- This contract must be in writing and must contain the following: (1) all of the provisions which have to be included in the contract with the user (see point 4.1), (2) the worker's qualifications, (3) the pay (which must not be lower than that of a worker with the same qualifications in the same occupation), (4) the length of the trial period if any (a maximum of 2 days for contracts concluded for less than 1 month, a maximum of 3 days for contracts concluded for less than 2 months, and a maximum of 5 days for contracts concluded for more than 2 months), (5) a provision for the return home if the worker is sent abroad, (6) a provision stating that the temporary worker may be engaged by the user under a permanent contract once the temporary period has elapsed. If these content rules are breached, the contract is considered null and void and re-qualified as an open-ended contract between the user enterprise and the temporary worker.
- The contract must be handed over to the worker within 2 days of the commencement of the assignment. If this rule is breached, the contract becomes an open-ended contract. In the event of violation, this constitutes a criminal offence liable to fines and/or imprisonment.
- At the end of the contract, the agency must issue a certificate of employment.
- The reasons for using temporary agency work are the same as those for using fixed-term contracts<sup>3</sup>
- The maximum duration is 18 months. However, in the two cases of urgent work for safety reasons and the replacement of a worker under a permanent contract who has already been engaged but is not yet available, the maximum duration is 9 months. In the case of (1) an assignment performed in another country, (2) the replacement of a worker whose job has been eliminated but who has quit before that point in time, and (3) in the event of an exceptional order for transport, the maximum duration can be 24 months.
- A contract with a temporary worker can at all events only be renewed once, but the second period may be longer than the initial period as long as the above-mentioned maximum duration periods are respected. The conditions for renewal must be stipulated in the initial contract or in a modification of that contract. In this case, it is no longer possible to bring forward or delay the commencement of the contract.
- In case the exact duration cannot be foreseen (e.g. replacement of a sick worker) a minimum duration must be stipulated during which the contract cannot be terminated, but it can be extended.
- Where the period is specified, the end of the contract may be brought forward or delayed within certain limits if this possibility is expressly provided in the contract. It can be delayed or brought forward by 1 day for every 5 days of the assignment. However the maximum duration (see above) must still be observed. If the end of the contract is brought forward or delayed without explicit provision, the agency is liable to fines and/or imprisonment.
- Successive contracts with different temporary workers for the same assignment are not allowed. A period of at least one third of the period of the initial contract (renewal

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<sup>3</sup> For further details see : S. Clauwaert, "Survey on fixed-term contracts", May 1998

included) must elapse before another temporary worker can be hired for the same assignment. There are exceptions to this rule, however. Sanctions are provided for the event of violation.

- A trial period can be stipulated in the contract. For contracts of less than 1 month the trial period is 2 working days. Where a contract is concluded for between 1 and 2 months, the trial period is 3 days. If the contract is for a period of more than 2 months, the trial period is 5 days. The remuneration during the trial period must be the same as that fixed for the entire assignment.
- The user cannot terminate the temporary contract before the end of the term, since he is not the employer.
- In the event that the contract is terminated by the agency before the end of the term, the consequences vary depending on the reasons. In the case of misconduct or gross negligence or in the event of force majeure, the agency has no further obligations with regard to the worker. In all other cases, the agency must offer the temporary worker a new contract of assignment within the next 3 days, during which the worker continues to be paid by the agency. This new contract must provide conditions similar to those provided in the contract which has been terminated, in particular regarding pay. If the enterprise fails to do so, it must pay a sum equivalent to the pay that the worker would have accrued if the contract had run to full term.
- If the worker terminates the contract before the end of term, he/she may be obliged to pay damages if sued by the agency.
- If the user enterprise continues to employ the temporary worker after the end of the assignment without entering into an employment contract with that worker or without a new service contract with the agency, the worker is deemed to be a permanent worker of the user enterprise. In such a case, the length of service of the worker is calculated as of the first day of the assignment with the user.
- In certain cases (e.g. temporary work beyond the term, no contract in writing, contracting of the worker outside the authorized cases, etc.) the worker may choose to instigate a special procedure before the “Conseil de Prud’hommes” (a conciliation body) to have his/her contract converted into an open-ended contract. The trade unions may institute proceedings, even if they have not been asked to do so by the worker.

### **3.2 The individual rights of the temporary worker**

- The temporary worker must enjoy the same wage as a permanent worker with the same qualifications and performing the same job in the user’s enterprise. He/she has also the same rights to bad weather premiums.
- If a general wage increase is granted while the temporary worker is performing his assignment, he/she must benefit from it.
- The temporary worker also benefits from the paid holidays granted in the user’s enterprise as well as pay for “bridging days”.
- Temporary workers must be paid at least twice a month, with a maximum interval of 16 days.
- The user is responsible for the conditions under which the work is performed. Applicable statutes, administrative regulations and collective agreements apply to the temporary worker just as they do to permanent workers (e.g. working time, work schedule, night work, shift work, health and safety, etc.).

- Temporary workers must have the same access to social services as permanent workers in the user enterprise.
- They are also entitled to complementary sickness and industrial injury benefits if they fulfil certain minimum conditions.
- As regards vocational training, a collective agreement of 1983 prescribes that, first, an amount of at least 50% of the available funds for vocational training should be allocated for the training of temporary workers. Secondly, a special vocational training fund was established with the objective of defining a general vocational training policy for temporary workers. The regulation of vocational training rights was further improved by subsequent collective agreements in 1991.
- Through an agreement of June 1992, a special fund was set up to help temporary workers seek housing, since the precarious nature of their contract often led to serious problems. This fund issues “housing passports” which constitute a virtual guarantee for landlords that the worker or the social fund will pay the rent.
- If a temporary worker is not engaged by the user on a permanent contract at the end of the term, the worker is entitled to compensation because of the precarious nature of his/her situation. This compensation is taxable and supports social security contributions. The amount is 10 % of the total wage payable to the temporary worker. In some cases the compensation does not have to be paid (e.g. termination of contract by the worker, in the case of seasonal work, if the contract is terminated because the temporary worker is guilty of “gross negligence”).
- The temporary worker has pro rata rights to paid holidays.
- The temporary worker is also entitled to the same health and safety rights, including the compulsory theoretical and practical training in health and safety that all employers are required to organize. Where applicable, special protective clothing must be provided by the employer.
- In the event of sickness, the contract is suspended for the duration of the illness. The duration of the contract is however not extended by the period of suspension. The temporary worker is entitled to the same daily compensation allowances as all other workers.
- The general rules for maternity and adoption are applicable to temporary workers.
- They also benefit from the compulsory pension schemes.
- The collective agreement of 1990 improves the right of workers under temporary employment contracts in the area of unemployment insurance. The waiting period for claiming benefits after a short period of work (less than 6 months) is reduced from 2 years to 6 months.
- They also benefit from profit-sharing if certain minimum conditions are fulfilled.
- Specific provisions are provided for the case of posting temporary workers abroad.
- In 1996 the agency sector created a special professional fund (FPE-TT) which is financed by a contribution of 0.1% of the wage bill paid by the agencies. It focuses mainly on training through a specific fund, the FAF-TT. Another fund, the FASTT, endeavours to guarantee social protection for agency work - a mutual insurance scheme, a guarantee fund for housing, help for organizing holidays for the children and a general information service.
- If the agency worker is employed by the user after the term of the assignment, the last 3 months of employment under a temporary agency work contract with that user are taken into account for the calculation of seniority.



### 3.3 The collective rights of the temporary worker

- In principle, temporary workers enjoy the same collective rights as permanent workers.
- Article 422-1 of the Labour Code authorizes the temporary workers to submit individual or collective claims regarding their salary, working conditions, etc. to the workers' representation body in the user enterprise.
- Pursuant to Article 236-2 of the Labour Code, temporary workers come under the authority of the health and safety committee established in the user enterprise.
- As is the case with all other enterprises, agencies must also set up workers' representation bodies (works councils, staff committees, health and safety committees).
- For the purposes of calculating company size thresholds in the agency in connection with worker representation, temporary workers are included on condition that they have been employed for more than 3 months in a reference period of 12 months.
- Temporary workers can exercise a representation mandate in the agency on condition that they have at least 6 months' seniority.
- Temporary workers can vote in the elections of worker representatives if they have an assignment for at least 3 months or have worked a minimum of 507 hours over a period of 3 months within the 12 months preceding the elections.
- In order to stand as a candidate they must have an assignment of at least 6 months or have been on assignment for a minimum of 1014 hours over a period of 3 months within the 18 months preceding the election.
- The guarantee of the trade union rights of temporary workers elected for the worker representation bodies in the agency is provided in the collective agreements of November 1984 (on trade union rights) and October 1988 (on worker representation). A temporary worker's capacity as a trade union representative must not lead to any discrimination in the offering of assignments in user enterprises, nor do such workers enjoy any assignment privileges because of their status as trade union representative.
- A special commission, the "Commission paritaire professionnelle nationale du travail temporaire" (CPPN-TT), was set up in 1982 in order to enforce the trade union rights. It has three main areas of competence: 1) the implementation and interpretation of legislation and collective agreements on temporary agency work (advisory capacity), 2) conciliatory role in individual and/or collective disputes and 3) the establishment of regional and local committees that also have a conciliatory role in individual and/or collective disputes.

## 4. The enterprise using temporary workers

### 4.1 The relationship between the user and the temporary work agency

- The contract of placing temporary workers at the disposal of the user is a commercial contract for the provision of services.
- The contract must be in writing for each temporary worker placed at the disposal of a user enterprise and it must be handed over to the worker within 2 days of the commencement of the assignment.
- The written contract must contain: (1) the exact and specific reason for which temporary work is to be used, (2) the term of assignment, or, in cases where this is not foreseeable, a minimum duration, (3) provisions for possible modification of the term within the legal possibilities, (4) an exact description of the function to be fulfilled including information

on the health and safety hazards, (5) the occupational qualification required, (6) the nature of the protective equipment to be used, (7) the amount and elements of pay which would be received by a worker of equal qualification in the same occupation.

- The absence of a written contract constitutes a penal offense liable to fines and/or imprisonment. The court may also decide that the temporary workers concerned are to be considered permanent workers.
- As the employer of the temporary worker, the agency is not responsible for damages caused by the temporary worker while performing his task in the user's enterprise, because it has delegated its managerial power to the user - and this has been established by case law.
- The agency has however the contractual responsibility towards the user to provide a worker with the qualifications as stipulated in the contract between them. The temporary workers must also be without fault (e.g. no temporary driver who is known to be an alcoholic).
- Since 1990, the user has also been required to pay part of the contributions to the national occupational disease and work-related accidents system.

#### **4.2 The relationship between the user and the temporary worker**

- The user has no employment relationship with the temporary worker.
- The user is nevertheless responsible for working conditions as established by measures applying to the workplace in legislation, regulations, and collective agreements: working conditions regarding matters connected with working hours, night work, weekly rest day and public holidays, health and safety, employment of women and young persons.
- Obligations with regard to occupational medicine are in principle the responsibility of the temporary work agency. However, should the activity to be performed by the temporary worker require special medical supervision within the meaning of the industrial medicine regulations, the relevant obligations are incumbent upon the user enterprise.

#### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- Under certain conditions, temporary workers are included in the calculation of thresholds for the workers' representation bodies.
- The works council must be consulted before the user has recourse to temporary workers in the following cases: (1) for replacing a worker whose job is to be abolished within 24 months but who has already left the enterprise; (2) for meeting an exceptional export order when this occurs 6 months after a dismissal for economic reasons or if the user foresees that this assignment will take up to 24 months, (3) assignments for temporary workers for durations of less than 3 months when this occurs within 6 months of a dismissal for economic reasons. It is purely a matter of consultation, and the user is not obliged to follow the recommendations of the works council.
- The user must provide the works council with information on the use of temporary workers every quarter in enterprises with more than 300 workers and every 6 months in all others. This information includes the month-by-month variations in number, the skills, grade and sex of such workers, the reasons for temporary worker assignments and the number of days of assignment. All assignment contracts must be submitted to the works council for information and consultation. If there is a considerable increase in the number

of temporary workers in the enterprise in the intervening period between two meetings, this matter must be added to the agenda of the next meeting.

- The works council is also consulted on the programme and actual operation of health and safety training for temporary workers who are assigned dangerous work. The health and safety committee must also be provided with this information.

## **5. Other legal problems connected with this form of contract**

- According to a newspaper article in *Libération* of 15/5/98, the regulations on temporary work are violated every day. Situations where temporary workers work under such contracts for 5 to 7 years are frequent. There has even been a case where a temporary worker was employed for a period of over 14 years in the same job.

## **6. The general point of view of the French trade unions on the use of this form of work contract/relationship**

- FO is and will always be against the use of temporary work, since it is merely an instrument of flexibility
- No position or point of view received from CFDT or CFTC.

## **7. Trends**

- At the end of 1998, the Labour Minister started consultation with the social partners, following hints that she was going to propose levying a “tax” on employers who demonstrate abuse of fixed-term contracts and agency work contracts. The proposals come in the wake of statistical reports revealing that up to 90% of new job offers are “atypical”, and that the use of fixed-term contracts has doubled in 10 years to its present level of 10% of total employment. With this measure, the Minister is aiming to curb the “systematic and recurrent” use of temporary contracts by imposing a scale of employer contributions which would be calculable in proportion to the annual percentage of workers taken on without permanent contracts. Contributions would be payable to UNEDIC, the national unemployment insurance fund. The employers’ association, MEDEF, has criticized the initiative, observing that, in many cases, atypical work provides a point of entry into permanent employment. The proposed tax is accompanied by further measures aimed at reducing job instability. The lump-sum payment made by the employer to the worker upon completion of a fixed-term contract may be raised from 6% to 8% of the gross total salary for the period of the contract. In addition, the Government wants to extend the statutory “waiting period” between the end of one temporary contract and the beginning of another. Currently, the minimum period of one third of the duration of the contract may include weekends and thereby allows for the continual renewal of weekly contracts with the weekend fulfilling the requirements of the waiting period.

## **8. Additional information (figures, statistics)**

- The interim sector employs 5.6% of the active population in France. In 1998 almost 1.800 000 persons took up at least one assignment (an increase of 28 % compared to 1996). A total of almost 10,400,000 contracts were signed.
- Two-thirds of the net 190,000 new jobs created in France in 1997 came from temporary staff agencies. The agencies now employ nearly 410,000 people, and together concluded 8.4 million mission contracts in 1997. The biggest increase of temporary work in 1997 was in the automobile industry.

- According to provisional figures of the unemployment records of February 98, the temporary agency sector employed nearly 437,000 persons, which constitutes an increase of about 40 % compared to February 1997. The largest employer is the service industry. There was an increase of 106.8% in the automobile industry and 62.9% in the education, health and social work sectors. Temporary agency work only accounts for 1.8% of total employment.
- 74 % of temporary workers are male. 35% are under 25 years of age, 79% are under 40 years of age.
- According to a press article in *Libération* of 15/5/98, 75 % of employers consider that temporary staff are better protected than permanent workers.

## Germany

### 1. General aspects

- The main regulation is the Temporary Employment Act of 1972 (TEA - Arbeitnehmerüberlassungsgesetz) as amended in 1988 and 1997. Before 1972 the hiring out of workers was banned since it was seen as an offence against the monopoly of employment exchange which was held by the Federal Employment Service (Bundesanstalt für Arbeit). The Law of 1972 came as a reaction to the 1967 and 1970 Federal Constitutional Court judgments, which allowed agencies for freedom of enterprise reasons. The court found that the relationship between the agency and the temporary worker was of a permanent nature. The ban was mainly lifted because the Federal Constitutional Court ruled that it violated the free choice of occupation which is guaranteed by the German Constitution.
- The TEA is applicable to both the private and the public sector with the exception of the building industry, where temporary work has been banned since 1982. However, the ban on the building sector was significantly weakened in 1994 and it is now possible for companies in the building industry which are covered by the same collective agreement to hire out blue-collar workers to one another temporarily.
- In Germany the prohibition to replace a worker on strike by a temporary worker is not laid down by law but by a Code of Conduct adopted by the Federal Association of Temporary Work. The law only provides that a temporary worker may refuse to fulfill an assignment at a user enterprise where a collective dispute is taking place.
- Collective agreements on temporary work are rarely concluded, since German trade unions reject this form of employment for several reasons, but there are several collective agreements on temporary work in the mining sector. However, discussions are continuing within the trade unions on limiting the use of temporary work by stipulating a maximum quota of temporary workers per enterprise.
- There is a Federal Association of Temporary Work (FTAW – Bundesverband Zeitarbeit (BZA)), which represents about 300 temporary work agencies. In addition to the general regulations, this Association has adopted its own declaration, which provides inter alia that (1) remuneration must be paid in accordance with the applicable collective agreements, (2) temporary workers are entitled to bonus payments of at least 2% of the annual gross income, (3) they are entitled to take 28 of the 30 working days of paid annual leave and (4) that it is prohibited to employ temporary workers in enterprises where there is a strike.

### 2. The temporary work business/agency

#### 2.1 The status of the agency as employer and the ensuing obligations

- The agency is considered to be the employer of the temporary worker.
- Control measures are provided to ensure that the agency fulfils its obligations with respect to the payment of wages and social security contributions. The user is liable if the agency does not pay social insurance contributions.
- The law allows the agency to conduct other activities parallel to placing workers at the disposal of user enterprises

## 2.2 Recognition and control of the agency and the role of Government (Federal or regional)

- The Federal Employment Office (FEO) monitors temporary agency work. It is a combination of a state agency and a tripartite organization, which insures that the social partners are also involved in this monitoring process.
- There is also a fund to guarantee the payment of temporary workers in the event of bankruptcy of the agency.
- In accordance with the TEA, persons and legal entities under public law or private law can apply in writing to establish an agency. The agency must in any case be established in line with German law.
- A licence can be refused for several reasons such as the following cases : (1) if the applicant fails to observe the provisions of social security legislation and labour law, (2) if, due to the organization of the establishment, the applicant is unable to properly fulfil the usual employer's obligations, (3) if a fixed-term contract is concluded with a temporary worker, unless the worker himself justifies the limitation, (4) if the agency concludes an open-ended contract with the temporary worker or dismisses and re-engages him/her within 3 months, (5) if the agency limits the duration of the employment relationship to the period of the first assignment, and (6) if the agency hires the worker out for a period longer than the maximum duration of 12 months. Applicants of EU member states can obtain licences under the same conditions as German nationals.
- The licence is issued under certain conditions and requirements, or it can be issued with the reservation of the right to be revoked. Or it can be a licence which is issued for a fixed term (3 years maximum), but which can be extended through a special procedure. In the latter case, if the agency operates lawfully for 3 years then it can obtain an open-ended licence.
- The licence can of course be withdrawn or revoked. In the event of withdrawal, the public authority withdrawing the licence may, under certain conditions, be required to cover the financial loss of the agency, which trusted that its licence would not be withdrawn.
- Most licences are issued for a limited period and expire at the end of the term. The licence automatically expires if for any reason it is not used for a period of 3 years.
- If the agency has no licence or if the licence has been suspended or withdrawn, the user is assumed to be the contractual partner of the worker for the time he/she works for him.
- In order to guarantee the temporary workers social protection, the agency must report frequently to the FEO or at the request of the FEO. The FEO also has the authority to enter the agency and carry out investigations on its activities.
- In addition, the agency must submit reports every 6 months on : (1) the number of workers hired out, broken down according to sex, nationality, occupational groups and the nature of their employment situation before entering into the contract, (2) the number of assignments, broken down according to branches of industry, (3) the number and duration of the employment relationships into which each temporary worker was assigned, and (5) the number of days on which each temporary worker was hired-out broken down according to assignments. A fine is provided for the event of failure to report.
- In principle the same rules apply to agencies from other EU/EEA member states, but in reality their position is more favourable.

- In principle the agency can charge fees only to the user enterprise. There are several exceptions, however, where the agency can also charge the worker a fee. This is the case for artists, fashion models, photo models, stunt men, disc jockeys, sports professionals and au-pair workers, in which case very stringent restrictions apply. The contract concerning the fee must be in writing, the fee is only to be paid in the event of a successful labour exchange, and the maximum amount may not exceed 300 German Marks (about 153 Euro) per case. If the employment relationship is intended to last only up to 7 days, the maximum fee is 15% of the worker's pay. If the employment relationship is to last longer, the maximum is only 12%.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- The contract is considered by the Federal Constitutional Court to be a fixed-term contract and this is how it was laid down in the 1972 Act. The law is also characterized by a ban on synchronization. In fact it requires that the duration of the contract be made independent of the duration of the hiring-out. In this way the agency that supplies temporary workers is required to guarantee those workers permanent employment. Fixed-term contracts are therefore, in principle, null and void. They are only allowed on specific grounds, which must be stated; these grounds must not relate to the nature of the work or its duration, but must pertain to the worker.
- The contract must contain: (1) the name and address of the agency and the issuing authority, (2) the date and place of issue of the licence, (3) the name, address, date and place of birth of the worker, (4) the nature of the work to be performed, (5) the beginning and end of the employment relationship and the reasons for the limitation of its duration, (6) the periods of notice, (7) the amount of remuneration and method of payment, (8) any benefits in the event of illness and temporary non-employment, (9) the date and place of the establishment of the employment relationship.
- The contract must be handed over to the temporary worker before he/she begins to perform the work as contractually agreed. If this rule is violated, a fine is provided by the law.
- Clauses in the contract where the user is prohibited from engaging the temporary worker at the end of the term are void.
- The maximum duration of the assignment is one year but it can be renewed after an interval equivalent to 25% of the length of the preceding contract. Provided this break is observed, the same worker may be employed on an unlimited number of temporary contracts. If the temporary worker continues to work beyond the term of his contract, it is converted into a fixed-term contract.

#### **3.2 The individual rights of the temporary worker**

- The temporary worker is protected by all existing labour laws.
- Recent figures issued by the Federal Employment Service for the category of full-time temporary agency workers between 25 and 35 years of age working in the industrial sector show that these temporary agency workers are paid only 63.4% of the wages earned by comparable workers in other sectors.
- It is the responsibility of the user to inform the worker of the duties that he/she will be required to perform and in particular of the health and safety situation at the workplace.

- As far as statutory social security rights are concerned (pensions, continued payment in the event of sickness, unemployment and family allowances), the temporary worker enjoys the same benefits as all other workers.
- With regard to entitlement to paid leave, which is often regulated in collective agreements, the temporary worker has to bargain individually, except in the case of workers who are employed by a member of the FATW. In the latter case they are entitled to 28 days' leave. The minimum period of leave laid down by law is 20 working days.
- As regards occupational pension schemes, the employer is in principle free to choose whether he wants to exclude certain categories or not. A European Court of Justice case (Bilka/Kaufhaus) ruled that since these schemes have to be considered as elements of pay, they must not lead to direct or indirect discrimination against women. But only 20 % of temporary workers are female. However, the exclusion of temporary workers may violate the principle of equal treatment. But the fact remains that temporary workers can be legally excluded from occupational pension schemes both in the agency and in the user company.
- Temporary workers have to negotiate the duration of their weekly working time with the agency individually.
- As regards the beginning and end of daily working hours, the situation for the temporary worker depends on the consultations between the user and its works council, which has a co-determination right in this matter.
- All workers, including temporary workers, are entitled to claim industrial injury benefits in the event of industrial accidents and occupational diseases.
- Temporary workers must have access within the undertaking to the social services normally made available to the other workers. But since it is left to the employer's discretion to decide who is to be entitled to these services, temporary workers do not always have access to them. The user can also exclude temporary workers from the social services in his undertaking on objective grounds (e.g. childcare facilities, etc.).
- Temporary workers are entitled to be informed of full-time job opportunities within the undertaking. This has only been the practice hitherto in the case of enterprises with works councils.
- Since in Germany temporary workers have open-ended contracts with the agencies, the normal termination rules apply. The contract can be terminated by (1) mutual consent, (2) ordinary dismissal, and (3) extraordinary dismissal.
- There is a special arrangement for the dismissal of temporary workers for economic reasons, again because the temporary worker is not considered to be an employee of the user. The dismissal of a temporary worker for economic reasons is invalid if the agency re-employs the worker within 3 months after the dismissal. As a result, the employment relationship continues even during the time between dismissal and re-employment.

### **3.3 The collective rights of the temporary worker**

- Temporary workers can take part in the elections for a workers' representation body in the agency but not in the user's enterprise, since they are not considered to be employees of the latter. Given the loose relationship between worker and agency, a works council in the agency is extremely rare. Temporary workers can consult the works council in the user's enterprise, but they have no right to vote or to stand as candidates for the works council in that enterprise. It has been established by case law that the works council co-



determination rights in social matters must also cover temporary workers inasmuch as these subjects are an effect of the actual integration of those temporary workers into the user enterprise.

- The temporary worker is not obliged to work for a user firm which is directly affected by an industrial dispute (strike or lockout) The FATW goes even further by stating that employment by temporary workers in an enterprise on strike is inadmissible. But temporary workers can be employed in enterprises which are only indirectly involved in a strike or lockout (sales difficulties, lack of energy or equipment).
- Temporary workers are included for the calculation of thresholds for the election of workers' representation bodies in the agencies but not in the user's enterprise.

#### **4. The enterprise using temporary workers**

##### **4.1 The relationship between the user and the temporary work agency**

- These two parties are bound by a contractual relationship sui generis, which is called an "assignment contract".
- The contract must be concluded in writing.
- The agency must inform the users immediately of the date on which the licence ceases to be valid, or if it is withdrawn or extension is refused.

##### **4.2 The relationship between the user and the temporary worker**

- The user has no contractual relationship whatever with the temporary worker. His rights and duties are stipulated in the assignment contract. In this regard he has the right to specify the contractual obligations of the worker by issuing instructions concerning the amount and content of the work to be performed.
- If the contract between the agency and the worker is declared void for any reason, an employment relationship between the user and the temporary worker is implied.
- Clauses preventing the temporary worker from entering into an employment relationship with the user at the end of the assignment are invalid, because this is considered to be a violation of the constitutionally guaranteed right for every individual to choose a place of work freely.
- The Industrial Code contains provisions on the employer's responsibility to organize and maintain installations and machinery as well as to guarantee all aspects of health and safety.
- In order to ensure that the right staff is made available and thus to avoid user liability with regard to health and safety matters, the user must provide the agency with the following information: (1) a description of the work to be performed and the qualifications required, (2) a description of the place where the temporary worker will fulfil his tasks, including any dangers this might entail, (3) if and which personal safety equipment is necessary, (4) the extent to which the user provides first aid on the shop floor, (5) which medical measures are necessary as a precaution and (6) to what extent the user will bring the dangerous situations at the workplace to the attention of the worker. The agency is entitled to send a representative to the workplace to ensure that all of these measures are put in practice.

#### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The user firm is obliged to inform its works council in good time of the intention to have recourse to temporary workers; this must be done at the beginning of the assignment. The works council can reject the employer's request to engage temporary workers, in which case the user can apply to the labour tribunal for a final decision.
- When the user wants to engage a temporary worker after the end of the term, the works council must be consulted.

#### **5. Other legal problems connected with this form of contract**

- No comment

#### **6. The general point of view of the German trade unions on the use of this form of work contract/relationship**

- The DGB is in favour of limiting the use of this form of employment. Apart from that, the Confederation endeavours to safeguard the rights of temporary workers. This is necessary given the fact that more than 50% of these contracts are signed for less than 6 months, which means that there is tremendous fluctuation in this form of employment.
- Until now trade unions have refused to negotiate any collective agreement on temporary agency work. In 1970, the white-collar trade union, DAG, and the employers' confederation in the agency sector, BZA, agreed on a wage and a framework agreement. Due to different positions on the reduction of working time and flexible working time, the parties failed to renew the agreement in 1989. However, it still applies to the signatory parties since, according to German law, collective agreements continue to apply until they are replaced. The agreement was not, however, declared binding for all employees since the white-collar workers' union is not entitled to conclude agreements for blue-collar workers and also because the employers' confederation did not have the required minimum quota of members. What also exists are agreements sui generis such as in the mining sector, where the user enterprise agrees to apply the rules of the respective collective agreement also to temporary workers.
- It can be said in general that the German trade unions are still very much against this form of employment. In 1995 the metal workers' union, IG Metall, even voted for a total ban on temporary agency work. The IG Metall has meanwhile adopted a resolution which calls on trade union leaders to negotiate collective agreements covering temporary agency workers. The IG Metall concluded a wage and conditions agreement with a temporary staff agency for the first time in mid 1999. In addition to wage rates and structures, it covers working time, holidays and pension arrangements.
- As has been announced in trade union circles, a milestone for future developments could be to conclude an agreement which would cover all temporary agency workers employed in the context of the preparation of EXPO 2000 in Hanover.

#### **7. Trends**

- In the past few years, the trend has been to extend the maximum duration of temporary employment contracts (from 9 months to 1 year in 1997).

## 8. Additional information (figures, statistics)

- In 1996, 10.8% of the temporary contracts concluded through an agency were for a period of less than 1 week, 56.9% for a period between 1 week and 3 months and 32.3% for a period of more than 3 months.<sup>1</sup>
- Agency work increased by approx. 370 % between 1972 and 1995, rising from 0.17% to 0.72% of total employment covered by social security contributions.
- 80% of temporary workers are male.
- Between 1975 and 1993 temporary workers of foreign nationality accounted for an average of 13.3% of all temporary workers.
- Between 60 and 70% of all temporary workers are to be situated in the 20-35 age group. Only 15% are over than 45 years of age.
- About 25% of the temporary workers are low-skilled workers.
- Only 0.3% of the men and 5% of the women were employed part-time in the agency sector between 1980 and 1995.
- In 1997, there were about 6.940 licence holders accounting for about 8,700 agency offices; 38% of them now hold a licence for an indefinite period.
- 90% of the employment relationships between agencies and the workers lasted for up to 1 year (i.e. the maximum duration). About 1% lasted for more than 3 years. Temporary work generally does not lead to permanent employment relationships with the temporary work agencies as intended by law. The extension of the maximum utilization period allowed (12 months) has not made any significant change with regard to instability.

<sup>1</sup> Source : “DGB fordert stärkere Kontrolle und Begrenzung der Leiharbeit”, Handelsblatt, 3 November 1997

## Greece

### 1. General aspects

- Until September 1998 temporary work through agencies was prohibited in Greece because it was considered to be a contradiction to the fundamental principle that labour is not a commodity. Greece has not yet ratified ILO Convention n° 96 to date. Since Act no. 2639 on the Regulation of Industrial Relations, the establishment of the Council of Labour Inspectors and other issues, the creation of private job-counselling agencies (PJCA) has been allowed. These agencies act as intermediaries in placement services, especially for artists, persons who hold supervisory, executive or confidential jobs, accountants and tax accountants, cleaning personnel, building and technical construction workers, tourist guides, models, etc. A presidential decree deals with several terms and conditions in more detail. This presidential decree is dealt with below.

### 2. The temporary work business/agency

#### 2.1 The status of the agency as employer and the ensuing obligations

#### 2.2 Recognition and control of the agency and the role of Government (Federal or regional)

- Individuals or legal entities may form PJCAs whose sole objective is to act as intermediary in placement services between employers and certain categories of labour amongst nationals and foreigners residing permanently in Greece.
- PJCAs must provide the following services for the individual:
  - an assessment of his/her qualifications and abilities, through private interviews;
  - accurate information on the work he/she will be required to perform as well as the qualifications required for the job;
  - full and detailed information on the exact content and terms of the job-counselling agreement;
  - all information concerning the finding of a position of employment.
- The conditions for establishing a PJCA are as follows:
  - The applicant must be a Greek citizen or a citizen of a member state of the European Union or a person of Greek descent who is legally residing in Greece or a citizen of a member state of the EEA.
  - The applicant must not have been convicted of fraud, embezzlement, theft, forgery, trade/possession/use of drugs, slave-trafficking, smuggling or base crimes.
  - The placement services must be provided free of charge for the employee.
- The applicant must thereby submit the following documents: the application, a certificate of the competent Tax Office for the commencement of trade, a tax observance certificate and an insurance observance certificate.
- The managing executives of the PJCA must hold a duly acknowledged degree from a domestic or foreign university or Technological-Professional Institution in a field relevant to labour market issues and the human resource management. It must have at least one person for managerial support.

- A licence is required and a fee of 50,000 drachme must therefore be paid. The licence can be withdrawn by a decision of the Minister of Labour and Social Security.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

Job-counselling is only allowed the following categories: performing artists, supervisors or managers, (tax) accountants, cleaning personnel, persons employed on construction sites and in technical works, tourist guides, models, private nurses, personnel for the care of the elderly.

### **4. The enterprise using temporary workers**

#### **4.1 The relationship between the user and the temporary work agency**

- The user is obliged to pay the PJCA a placement fee for every worker for which it successfully acts as intermediary. This fee amounts to up to 10% of the annual salary in the case of an open-ended contract, and up to 10% of the total salary in the case of a fixed-term contract.

## **Ireland <sup>1</sup>**

### **1. General aspects**

- In recent times, the demand for temporary work has been increasing. Specialized agencies such as those dealing with accountancy have experienced a growing demand. In general, temporary workers tend to be employed on the periphery of various industries such as catering and cleaning, the retail trade, textiles, insurance and finance. The majority of applicants are women. Other groups to be mentioned are : persons waiting to take up permanent positions, persons seeking permanent positions, students during vacation periods and persons made redundant.
- In Ireland there is no consistent legislative code dealing with temporary work. Various aspects of temporary work are covered in statute and in case law. Employment agencies are regulated by statute.
- Ireland has ratified ILO Convention n°96 and the control of fee-charging employment agencies is regulated by the Employment Agency Act of 1971.
- The individual labour contract is also of major importance. There are very few collective agreements dealing with temporary work (including collective agreements between trade unions and temporary work agencies)<sup>2</sup>. The trade unions try to ensure by Labour Court proceedings that temporary workers are covered in the same way as permanent workers.
- In 1977 a duty not to discriminate on the basis of sex or marital status in relation to employment equality was imposed, inter alia, on employment agencies by the Employment Equality Act. This act has its own definition of employment agency which means “any person who, whether for profit or otherwise, provides services related to the finding of employment for prospective workers or the supplying of workers to employers”.
- About 80 % of the employment agencies are member of the Irish Foundation of Personnel Services which was established with a threefold objective : (1) to regulate relations between its members for their joint and individual protection, (2) to ensure honourable dealings between them and the general public, and (3) to maintain their rights and uphold their prestige. The members are subject to a Code of Conduct.

### **2. The temporary work business/agency**

#### **2.1 The status of the agency as employer and the ensuing obligations**

- It is questionable whether they are employees of the agency or of the user enterprise or whether they are self-employed.

#### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- Private employment agencies are regulated by the Employment Agency Act of 1971. Under this Act the business of an employment agency means the business of seeking, whether for a reward or otherwise, on behalf of others, persons who will give or accept

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<sup>1</sup> No answers to the ETUC questionnaire received.

<sup>2</sup> Collective agreements have been drawn up relating to one particular form of temporary employment, namely, seasonal work.

employment, and include the obtaining or supplying for reward of persons who will accept employment from or render service to others.

- The Act prohibits the carrying on of the business of an employment agency except under and in accordance with a licence. The Minister of Labour may grant exemptions from the Act. This has been done so far for (1) organizations which have a special responsibility for physically or mentally handicapped persons, (2) educational or training establishments which as part of their operation helps to place their pupils, graduates or trainees in employment, and (3) organizations which are primarily engaged in charitable or social work.
- A person proposing to carry on the business of an employment agency must apply to the Minister of Labour for a licence, which will only be granted if the person satisfies certain conditions (e.g. the premises must conform to the prescribed standards of accommodation, the applicant must conform to the standards of suitability and fitness and the applicant must not have been convicted of certain offences in the period of 5 years ending on the date of the application).
- The licence is renewed annually. Before it is renewed Health and Safety Inspectors will carry out an investigation and the records will be analyzed by the General Inspectorate of the Department of Labour. The licence can be withdrawn in the event of violation of the regulations.
- Once the licence is issued it is for an indefinite period of time, but it can be withdrawn under certain conditions. The holder of a licence which has been withdrawn can appeal to the High Court against the Minister's decision.
- Employment agencies may not charge any fees which exceed a scale approved by the Minister of Labour. The agency must keep a record showing the fees charged in respect of each person placed in employment and any charges in respect of expenses for the services rendered.
- The agency must also keep records of (1) the number of persons who apply to them and the type of employment sought, (2) the number of persons placed and the type of employment they are placed in, and (3) the number of persons placed outside the State, the countries in which they are placed, and their occupation.
- Special rules apply to the placement of workers outside the state.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- The contract is considered to be a contract *sui generis* and need not even be in writing. Pursuant to case law, the agency is not considered to be the employer of the temporary worker. The Irish High Court has also decided that no contract of employment exists between the temporary worker and the user.
- There are no restrictions on the use of this form of employment. Neither is there a maximum duration, and temporary work assignments can be renewed indefinitely.

#### **3.2 The individual rights of the temporary worker**

- Temporary workers are now covered by dismissal law on the condition that they have an assignment for at least 1 year.
- There are no seniority requirements in relation to dismissals for trade union membership or activities, pregnancy, maternity leave or time off.

- A worker, including a temporary worker, may waive his rights to unfair dismissal.
- It is quite common for a temporary worker to be engaged to replace a worker on maternity leave. The Maternity Protection Act of 1981 considers that this form of fixed-term contract does not constitute unfair dismissal when the employer informs the worker in writing at the commencement of the employment that the employment will terminate on the return to work of the worker who is being replaced.
- Two years of continuous service is required to be entitled to statutory redundancy pay.
- Temporary workers have the same rights as other workers to minimum notice under the Minimum Notice and Terms of Employment Act of 1973, provided that they have been in continuous service for 13 weeks or more and provided that they are normally expected to work for the same employer for not less than 18 hours a week.
- Temporary workers may file claims under the Anti-Discrimination Act of 1974 and the 1977 Employment Equality Act.
- Temporary workers are also covered by the Payment of Wages Act of 1979 and the Conditions of Employment Acts of 1936 and 1944 (the latter deals with day work, shift work and overtime).
- Temporary full-time workers have the same social security rights as permanent workers; the position of temporary part-time workers is different
- **HOWEVER, most of these employment protection rules are not applicable to temporary agency workers since they do not work under a contract of service as required by many of these regulations (unfair dismissal, redundancy, minimum notice and equality legislation).**

### **3.3 The collective rights of the temporary worker**

- Temporary workers are eligible to join the Irish trade unions, and most unions accord the same voting rights to temporary as to permanent workers.
- There are seniority thresholds in relation to the right to vote (minimum 18 years old and 1 year's seniority) and eligibility (minimum 18 of age and maximum 60 years of age and not less than 3 years' continuous service) in the elections for workers' representation bodies. This implies that temporary workers are often excluded from these rights.

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- There is no need for a written contract between the user and the agency.

### **4.2 The relationship between the user and the temporary worker**

- The Irish High Court has decided that no contract of employment exists between the temporary worker and the user. However, the user assumes all the rights and obligations of an ordinary employer.
- Apart from health and safety legislation, there is very little statutory protection for the temporary worker vis-à-vis the user. Some examples are : (1) no requirement to have investigated the labour needs of the user, (2) no requirement to inform the user of the procedure to be followed if the user finds the worker unsatisfactory, (3) no requirement to inform the user as to the status of the worker to be employed, (4) no details to be supplied



in advance about the fees, (5) no legal guarantee that temporary workers will not be used to influence industrial disputes and (6) no protection where an agency's licence is revoked during the continuance of a contract with the agency.

- The employer is liable for the torts or wrongs committed by the workers in the course of their employment.

#### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The user is not obliged to inform workers' representative bodies about the recourse to this form of employment, nor does he have to state the reason why he has recourse to temporary employment.
- Temporary workers may be counted with permanent staff for purposes of an employer's duties under the 1977 Protection of Employment Act to consult before effecting collective redundancies.

#### **5. Other legal problems connected with this form of contract**

- No comment

#### **6. The general point of view of the Irish trade unions on the use of this form of employment contract/ relationship**

- No information available

#### **7. Trends**

- No information available

#### **8. Additional information (figures, statistics)**

- Temporary agency work accounts for 0.3% of total employment.

## Italy

### 1. General aspects

- Until the labour market reforms of June 1997, temporary work through agencies (“lavoro interinale”) was prohibited in Italy. In 1993 agency work was quoted for the first time in a joint document by the social partners and the Government. It was stated that agency work was relevant for the efficiency of the labour market and should be allowed and regulated by law. In 1996 the same demand was reiterated. One year later, Act n° 196 was passed on 24 June 1997, providing for provisional legislation on temporary work to be reviewed after two years. The fact that the legislation was only provisional was due to the fact that Parliament and the trade unions were unable to approve anything more radical. The legislation on agency work is only one of the measures of the so-called “Treu Package” aimed at stimulating the labour market. Other measures concerned the reduction of the statutory working week from 48 to 40 hours and the promotion of part-time employment.
- Although the law of 24 June 1997 forms the basic law, there are other laws which must also be taken into account, and in particular Act n° 230/96 on fixed-term contracts.
- According to the Act n° 196, agency work is only admitted: 1) if a company needs to employ persons temporarily with skills that are not normally present in the company, 2) if absent workers are to be replaced and 3) in other cases specified in national collective agreements. Agency work is not allowed : 1) for the employment of low-skilled workers, 2) for the replacement of permanent workers on strike, 3) in companies which in the last 12 months have dismissed persons with the same skills or working in the same occupation as the one in which the temporary worker would be employed, and 4) for the performance of dangerous work as defined by the Ministry of Labour.
- It must also be mentioned that for the implementation of the law there is still a need for: 1) several Decrees, 2) a set of rules to be elaborated in a nationwide collective agreement applicable to all user enterprises irrespective of the sector, 3) a nationwide collective agreement concerning temporary agency workers. A nationwide collective agreement concerning the staff working in temporary agencies was adopted in December 1997.
- Article 1 of Act n°196/97 describes agency work as: “the contract following which the temporary agency, which is registered, places one or more temporary workers, engaged on a written contract for a fixed term or indefinite period, at the disposal of an enterprise which uses these workers to fulfil specific temporary work demands”.
- The law applies to both the public and the private sector, including non-profit associations. In the building and agricultural sector, agency work can only be carried out on an experimental basis pursuant to a collective agreement.
- See also point 7 Trends.

### 2. The temporary work business/agency

#### 2.1 The status of the agency as employer and the ensuing obligations

- The agency is considered to be the employer and must pay social security contributions and take out an occupational health insurance.

- The agency also has managerial/disciplinary authority over the worker. However, if the worker fails to perform duties as defined by the user, the user enterprise will report to the agency for possible disciplinary sanctions.
- The activity of agency work can only be conducted by bodies which have the legal status of a company, including cooperative companies. They can also be companies directly or indirectly controlled by the State whose sole aim is to stimulate and promote employment.
- In a collective agreement concluded in May 1998 between the agencies' association Assointerim and the temporary workers' unions created by the three main trade unions, it is specified that the agencies must pay a training levy on behalf of the temporary workers which is equivalent to 5% of their pay. The funds will be used for meeting the training needs of workers involved in the work of temporary work agencies.

## **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- The conditions for recognition as a temporary work agency by the Ministry of Labour and Social Security are the following : 1) the company must be a "société de capitaux" or a "société cooperative" (so it must be a legal person and not an individual) , 2) it must have the nationality of one of the EU member states, 3) it must be financially stable (1 billion lira), 4) it must have its legal headquarters or a subsidiary in Italy<sup>1</sup>, 5) the activity of placing temporary workers at the disposal of users must be its exclusive activity, 6) it must run its activities in at least 4 regions of Italy, 7) it must produce a financial guarantee for covering salaries and social contributions in the event of insolvency (around 350,000 Euro), 8) the managerial staff must not have been convicted of certain crimes (organized crime, violation of health and safety regulations, etc.); 9) the agency must submit all of the above-mentioned information to the Ministry of Labour and the Chamber of Commerce and must also communicate any changes relating to the location of the headquarters or subsidiaries or when it terminates its activities.
- The agency must be registered in a specific register for temporary work agencies.
- The licence is valid for an initial period of 2 years, following which it will be made permanent if the activity has been conducted correctly.
- The Ministry of Labour can suspend or revoke the recognition if the agency no longer fulfils any of the above-mentioned conditions.
- The Provincial Office of Employment must receive a copy of the contract between the agency and the user company.
- It is the provincial Labour Inspectorates which are responsible for checking whether the activities are being conducted in line with all of the regulations.
- The sanctions provided are of civil and penal nature and vary depending on how serious the violation is.
- As already mentioned, the social partners, which have no role in this recognition process, must still conclude a number of collective agreements in order to implement the legislation.

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<sup>1</sup> The European Commission has notified the Italian government in a reasoned opinion that this condition contravenes European law on freedom of services and that it discriminates against agencies located in other EU member states. The obligatory financial guarantee of about 350,000 Euro to be made with an Italian bank is also deemed disproportionately high for foreign-owned agencies.

### 3. The temporary worker

#### 3.1 The contract between the worker and the agency

- The contract can be a fixed-term contract or an open-ended contract. In the latter case, the worker remains at the disposal of the agency, and the contract between them must make provision for an income guarantee for periods in which no work is performed (the so-called “availability bonus”).
- The contract must be in writing and must be submitted to the worker within 5 days following the commencement of the work.
- After only a first reading of the law and without any collective agreements adopted so far, the contract must be considered to be a fixed-term contract, which can only be renewed once for the same length of time as the initial contract. Where successive fixed-term contracts are concluded, the contract becomes an open-ended contract.
- A trial period can be stipulated in the contract.
- Obligatory clauses in the contract are: 1) the reason why there is recourse to temporary work, 2) identification of the user enterprise, 3) registration number of the agency and proof that it has paid the financial guarantee, 4) the tasks of the temporary worker, 5) the trial period, if any, 6) the place of work and the working time arrangements<sup>2</sup>, 7) the starting date and the date of expiry, 8) where necessary, information on the health and safety conditions relating to the job, 9) the amount of the “insecurity bonus” the worker will receive if he is not engaged permanently by the user.
- According to a collective agreement of 16 April 1998, the following conditions have been laid down : 1) temporary workers may only be recruited when production peaks, resulting from seasonal demand or the launch of new products cannot be met by the company’s permanent workforce, 2) companies may only recruit temporary workers to undertake work of a duration which is fixed before the beginning of the contract, 3) temporary workers may be used to carry out specific tasks which require particular skills or educational qualifications which are different from those normally used in the company and which are needed only for a temporary period, 4) the number of temporary workers recruited over a period of 3 months must average out at no more than 8% of the user company’s workforce on open-ended contracts, 5) small and medium-sized enterprises may recruit up to 5 temporary workers, 6) temporary workers should not be used to fill vacancies for positions requiring workers with a low level of skill, and 7) the user company must inform the company RSU (“Rappresentanze sindacali unitarie”) of the number of temporary workers it wants to recruit and its reasons for doing so.
- No minimum period is fixed, unless otherwise stipulated in collective agreements.
- The maximum period is the time that it takes to accomplish the task for which the temporary worker is being employed. This period can be extended with the consent of the worker and in accordance with the conditions stipulated in national collective agreements. In a collective agreement concluded in May 1998 between the agencies’ association Assointerim and the temporary workers’ unions created by the three main trade unions, it is specified that individuals may accept up to 4 assignments with the same company, lasting not more than 24 months altogether. Trial periods of between 2 and 10 days are permissible, and a temporary worker may serve for up to 20 days alongside the person he or she is replacing.

<sup>2</sup> If the contract concerns temporary part-time work, a decision of the Constitutional Court (n°210/92) has ruled that it must be expressly mentioned how the working time will be spread over the day, week, month and year.

- That same agreement stipulates that user enterprises in the commercial sector may take on temporary workers up to a level of 15 % of their regular staff each month. The relevant limit in industry is 8%.
- Where the agency employs the worker for a temporary period, the rules relating to minimum and maximum periods concerning fixed-term contracts must be respected.<sup>3</sup>
- The contract between the agency and the worker is converted into an open-ended contract if: 1) the worker continues to work after the stipulated period of the initial or renewed contract for more than 10 days, 2) if the contract between the agency and worker is not in writing or does not mention one of the obligatory clauses, 3) if the contract between the agency and user is not in writing, 4) if the starting and expiry date are not respected. These conversions do not apply to contracts with users who are administrative authorities.
- If the worker continues to work after the contract expires, he/she is entitled to compensation of 20 % of the daily wage for each day but for a maximum of 10 days.
- Temporary work contracts can only be concluded in the following cases : 1) the cases provided in the national collective agreement covering the user enterprise, 2) where the user needs a special skill not normally provided by the regular workforce, and 3) to replace an absent worker (except workers on strike).
- Temporary work is not allowed in the following cases : 1) for low-grade work as defined by the appropriate national collective agreement, 2) to replace workers on strike, 3) to replace workers who have been collectively dismissed during the previous year, 4) to replace workers whose contracts have been temporarily suspended, 5) in enterprises which cannot prove to the provincial Employment Office that they meet legal health and safety requirements, 6) for activities in enterprises where the production requires medical supervision or where the process is particularly dangerous, 7) in enterprises where the maximum quota of temporary workers as settled by national collective agreement has already been reached, and 8) in production units in which, during the previous 12 months, there have been collective dismissals involving workers assigned to the tasks to which the temporary assignment refers.
- Any clause prohibiting the user enterprise from employing the temporary worker after the expiry of the assignment is prohibited.

### **3.2 The individual rights of the temporary worker**

- The salary of temporary workers should be equal and definitely must not be lower than that of the permanent workforce in the user company doing the same job.
- This includes eventual “productivity bonuses” to which the worker is entitled according to collective agreements.
- The salary also includes the 20% daily compensation for each day that the worker continues to work after the expiry of the contract. (up to 10 days maximum).
- It also includes the compensation which the agency must pay to the workers which it has engaged on an indefinite basis for the periods of inactivity.
- The salary must be paid by the agency or by the user enterprise in the event of insolvency of the agency.
- See point 4.2 below for working time arrangements.

<sup>3</sup> For more details see : S. Clauwaert, “Survey on fixed-term contracts”, May 1998

- The temporary worker has the same right of access to social services in the user enterprise, unless one must be member of a certain trade union to have entitlement or if a certain period of seniority is required.
- The temporary worker enjoys the same social security rights and social protection rights as permanent workers. The law on temporary agency work provides in particular: that social security contributions must be paid by the agency and that the agency is also obliged to take out an occupational health insurance.
- The social security rights for temporary agency workers which are recognized are: statutory pensions, complementary pensions, unemployment benefits (if he/she paid at least 90 days' contributions over a period of 1 year) registration on the placement lists (except for contracts of 4 months), health care, economic compensation in case of sickness, economic compensation during periods where the workers are unable to work as the result of industrial accidents or occupational diseases, compensation during maternity leave.
- In the collective agreement concluded in May 1998 between the agencies' association Assointerim and the temporary workers' unions created by the three main trade unions, the temporary workers are guaranteed the same treatment and employment rights as regular workers in the company. The 2-year agreement also guarantees a minimum monthly wage of about 400\$ between missions, including contributions to severance awards. Bonuses, holiday pay and the like are calculated proportionate to the hours worked.

### **3.3 The collective rights of the temporary worker**

- Temporary workers enjoy all statutory trade union rights

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- The contract, which is a commercial contract, must be in writing and must stipulate : 1) the number of workers required, 2) their job and grade, 3) the place and hours of work, 4) appropriate information on pay and working conditions, 5) the starting date and duration of the contract, and 6) the registration number of the agency.
- Any clause in this contract that prevents the permanent recruitment of the temporary worker following the expiry of the temporary assignment is null and void.
- In this contract the user must inform the agency of the wage rates paid in his enterprise.
- A copy of this contract must be sent to the provincial Employment Office within 10 days of being drawn up.
- The user must guarantee to pay the worker's remuneration and social security contributions if the agency fails to comply with this obligation.

### **4.2 The relationship between the user and the temporary worker**

- Working time arrangements must be mentioned in the contract. It is the working time arrangements of the user enterprise which apply. The worker must work according to the instructions of the user, the law and the national collective agreements which apply to the user company;

- After the expiry of the temporary contract the user may recruit the temporary worker on an open-ended contract.
- The number of temporary workers in the user enterprise may not exceed the number of permanent workers.
- The user must inform the worker of all health and safety risks and provide appropriate protection.
- If the user extends the length of the employment contract without a written agreement, the contract is deemed to be permanent.
- Temporary workers are not included in the workforce headcount in the user enterprise. This has implications for the regulations on collective dismissals and the fulfillment of the employment quota for disabled workers.

#### **4.2 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The user company must inform the company RSU ("Rappresentanze sindacali unitarie") of the number of temporary workers it wants to recruit and its reasons for doing so. The RSU is a company-level structure which represents all workers, whether unionized or not, and has recognized bargaining, information and consultation rights.

#### **5. Other legal problems connected with this form of contract**

- No comment

#### **6. The general point of view of the Italian trade unions on the use of this form of employment contract/relationship**

- No comment

#### **7. Trends**

- Since the law is very recent, the social partners still have the duty to adopt several (national) collective agreements, which will implement the law.
- To quote several examples: they have to conclude a national collective agreement for the user companies which specifies a) in which cases agency work is allowed, b) the duration and possible renewals of the contracts, c) for which low-skilled jobs temporary work cannot be used, d) the maximum quota of temporary workers for each enterprise or production unit, e) whether or not these workers are entitled to productivity bonuses and f) the vocational training programmes for temporary workers in their sector. They also must conclude collective agreements for the staff working in the agencies. Furthermore, collective agreements must be concluded concerning the temporary workers in particular with regard to 1) entitlement to and the amount of holiday pay, 2) the monthly compensation for periods of inactivity for temporary workers who are employed by the agency on a permanent contract, 3) the contribution to the vocational training fund, and 4) the right of assembly as recognized for the other workers working in the same enterprise. The unions must also conclude experimental agreements for the agricultural sector and the construction industry.
- Only recently, employers and trade unions in the manufacturing industry signed the first national agreement regulating the use of temporary workers. The agreement limits the use of temporary workers to 8% of the permanent full-time workforce, calculated quarterly. If

the full quota cannot be taken up in one quarter, the balance can be carried forward, subject to a cumulative maximum of 24%. For smaller firms, there is a numerical ceiling of 5 temporary workers. Employers hiring temporary workers must immediately inform their works councils or union representatives of the reasons and the projected numbers. The use of temporary workers to fill unskilled or low-skilled posts remains prohibited. On the other hand, agency work in that sector is admitted for: 1) periods of peak activity relating to new orders or the launch of new products, 2) finalizing work that has to be performed by a certain date and cannot be achieved with the normal workforce, and 3) performing work which requires specific skills which are hard to find on the labour market.

- In the commercial sector the quota of temporary staff that user companies of that sector may use each month was set in August 1998 at 13% of the workforce. Before that date it was 15%. As compensation for this reduction, employers will be able to deploy temporary workers in posts which require lower skills.
- A framework agreement detailing the restrictions on user companies when recruiting workers from temporary employment agencies was concluded in April 1998. For further details see points 3.1 and 4.3.
- The Cgil, Cisl and Uil trade union confederations and the Confindustria employers' organization signed an agreement on 16 April 1998 defining the rules and the procedures to be applied in order for enterprises to use temporary agency work (*lavoro interinale*) - with the participation of the Minister of Labour, Tiziano Treu. Temporary agency work is a new phenomenon in Italy, having been introduced by law for the first time in 1997.

Temporary work is allowed in 3 cases:

1. for periods of intensive production - for example, due to large orders or to the launch of new products;
2. for the implementation of a project, the provision of a service or the execution of a contract within a fixed period of time that cannot be accomplished by the existing personnel of the enterprise; or
3. for the production of a particular order or of a special product which requires the employment of workers with special skills who have abilities different to those of the workers available in the enterprise.

Temporary agency workers must not in any quarter exceed an average of 8% of the total number of a firm's workers with open-ended contracts. In small enterprises, there must be no more than 5 temporary agency workers and they must not in any event exceed the total number of workers with open-ended contracts.

Temporary employment is allowed only where skills are required which are not found within the "intermediate" category of skilled workers (it is possible to hire young people on work/training contracts to fill the latter category of jobs). Any training activities organized by an enterprise for its workers must also be provided for temporary agency workers. Agency workers' pay must be determined through company-level bargaining.

Two procedures are provided for the use of temporary agency workers by employers:

- under the "normal" procedure, the employer must communicate in advance to the plant-level trade union representation structure (*Rappresentanza sindacale unitaria*, *Rsu*) or, in the absence of that body, to the regional union organizations, the number of temporary agency workers to be used and the reasons they are required; and



- in urgent cases, the communication to the Rsu or unions is to be made within 3 days after the temporary agency workers have been employed.

Once a year the enterprise must communicate to the employers' association to which it belongs the number of contracts which have been signed and the reasons why temporary workers have been required, also specifying the length of time covered by these contracts, the number of workers involved and their qualifications.

- A national collective agreement was concluded for the commercial sector in May 1998. For details see inter alia points 2.1, 3.1 and 3.2.
- The Ministry of Labour issued a decree in May 1998 outlining the conditions under which agencies can operate. Among other things, they are only allowed to charge the user a commission and not the worker, and they must furnish details of every job-seeker on their books to the SIL computerized register operated by the Ministry. The employers are also required to supply details of all hirings and firings to the labour authorities within 5 days.
- The temporary workers' organizations affiliated to the Cgil, Cisl and Uil trade union confederations - Nidil-Cgil, Alai-Cisl and Uil-Cpo respectively - and Confindustria, the employers' body for temporary work agencies, signed a national collective agreement for the temporary agency work sector and subsequently decided to negotiate on modifying some aspects of the regulation of temporary agency work (lavoro interinale). The negotiations ended on 22 November 1999 with the signing of an agreement which provides for some fundamental innovations in the temporary agency work relationship, as set out below.

**1. Training fund.** A joint body will be entrusted with the management of the fund for temporary agency worker training established by Article 5 of Law 196/97. This joint body will be set up by the sectoral social partners and will be responsible for defining the management and monitoring procedures of training activities. The partners also propose that training activities can be carried out during temporary work assignments.

**2. Activities and qualifications.** The partners want the current law to be amended so as to extend the use of temporary agency work to cover low-skilled and unskilled workers. The activities and the level of qualifications for which it will be possible to have recourse to the use of temporary agency workers will be defined by national collective agreement.

**3. Sectors.** The partners decided to extend the use of temporary agency work to the agriculture and building sectors, as an experimental. Decentralized collective bargaining is the procedure for defining the specific activities and the relevant qualifications for which it will be possible to have recourse to temporary work in these sectors.

Furthermore, the employers wanted to negotiate a reduction of the percentage of the workers' pay allocated for training (at present 5% of the pay) and the possibility for temporary work agencies to carry out other activities on the labour market (such as placement services). These companies are currently obliged by law to provide only temporary work services. The temporary workers' union organizations did not approve the two proposals put forward by the employers, preferring to postpone the final decision until after experimentation with the new regulations.

## **8. Additional information (figures, statistics)**

- Studies show that the recent legislation on temporary agency work is beginning to bear fruit. Figures for the period from January to October 1998 show that 40.000 workers were employed in this way, engineering companies being the biggest users followed by the service industries. The average duration of an assignment is 4.6 weeks with average hourly pay set at about 3.85 Euro. The survey undertaken by Confinterim (the confederation of companies supplying temporary labour) also showed that the use of temporary workers was far greater in the North and Centre of the country than in the South.
- The first half of 1999 saw a substantial increase in the use of temporary agency work in Italy. It is estimated that by the end of the year the number of temporary agency workers will stand at 200,000. Agency work is on the agenda of the social dialogue between the government and social partners in autumn 1999.

A survey carried out by the Association of Temporary Work Agencies (Assointerim) has found that 75,524 people worked as temporary agency workers in the first half of 1999 - a substantial increase from the figure of 52,312 for the whole of 1998. Each worker worked an average of 167 hours during the first half of 1999, and the total turnover of the agencies stood at ITL 395 billion (compared with ITL 268 billion in 1998). According to Assointerim projections, some 200,000 workers will be involved in such work by the end of 1999. Temporary agency workers are mainly young people (the average age is below 30 years), predominantly male (60% of the workers in 1999 are men) and employed in the mechanical and metal-working industries. Very often they are formerly unemployed persons for whom the temporary employment relationship represents a first step towards a more secure place in the labour market. Some projections made by the trade union confederations which have established temporary workers' associations indicate that about 20% of these workers are hired by the companies involved after one or more temporary contracts. Temporary agency work is used mainly in the northern regions of Lombardy (33% of all agency work), Piedmont (13%-14%), Veneto (12%) and Emilia Romagna (10%). Among the southern regions, Puglia is the region where temporary employment is most frequent.

## **Luxembourg**

### **1. General aspects**

- Temporary work through agencies is regulated by the law of 19 May 1994.
- Two collective agreements covering the temporary agency work sector have been signed by ULEDI (the employers confederation of temporary agencies in Luxembourg) – and two nationally representative trade unions, OGB-L and LCGB. The agreements were concluded on 13 May 1998. One deals with the working conditions of temporary agency workers and the other covers the permanent direct staff of temporary work agencies. By mutual agreement between the two signatory unions, the Minister of Labour was asked to issue a declaration that the agreements are generally binding on all employers and workers in the sector. The provisions of the two agreements scarcely go any further than the statutory minima, but the fact that they were signed at all is a sign that the final stage of approval has at last been given to this form of employment.

### **2. The temporary work business/agency**

#### **2.1 The status of the agency as employer and the ensuing obligations**

- The agency (“entrepreneur de travail intérimaire”) is defined as “any physical or moral person of which the commercial activity consists of employing and paying workers with the objective of placing them at the temporary disposal of a user to accomplish a specific and temporary task, the so-called ‘mission’”.
- The agency is considered to be the employer of the temporary worker and is responsible for paying the wages and the tax and social security contributions.
- The law prohibits the agency from conducting any other activity parallel to placing workers at the disposal of user enterprises.

#### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- The agency must have the authorization of the Ministry of Labour. One condition for obtaining such authorization is that the agency must pay a certain sum to guarantee the payment of the salaries and social and fiscal contributions in the event of bankruptcy. The agency must also obtain an establishment permit.
- The authorization is refused in the case of agencies which are established on the territory of Luxembourg but whose headquarters are based outside the European Union.
- The authorization can of course be withdrawn.
- The authorization is granted for a maximum period of 12 months, but an application for renewal can be submitted at least 3 months before the expiry of the authorization. The renewal is granted for a period of 24 months.
- The authorization can be granted for an indefinite period if the agency has conducted its activities in line with all legislation over a period of 3 consecutive years.
- If an authorization is revoked or not renewed, the contracts with the workers continue to exist until their date of expiry.
- The authorization ceases to have effect if the agency does not make use of it during a period of 12 months.

- The agency must submit a report to the Ministry of Labour within the first 8 days of each month, which contains information on the number of contracts concluded in the previous months. Further obligatory information: the name, address, sex, date of birth and nationality of the worker; the function he/she will fulfil; the economic activity of the user enterprise; the number of days worked and the salary to be paid.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- The contract must be in writing and submitted to the worker no later than 2 days of the commencement of employment. This contract is considered to be an employment contract. If the contract is not in written form, the worker is entitled to a certain amount of compensation to be paid by the agency.
- The contract must contain: (1) all of the provisions which must be contained in the contract between the agency and the user (see point 4.1), (2) the date of expiry of the contract, (3) if the expiry date cannot be determined, a minimum duration must be stipulated, (4) if it is concluded for the replacement of an absent worker, the name of that worker must be mentioned, (5) the trial period, if any (6) where relevant, the conditions for renewal. It must also mention that the engagement of the temporary worker by the user after the assignment has been concluded is not prohibited.
- The contract must thus contain a fixed term and the date of expiry must be specified. This is not necessary in the case of the following contracts: 1) a contract to replace a worker who is absent or whose contract is suspended for another reason than a collective dispute, 2) a contract to replace a worker whose job has become vacant before his/her successor enters into service, 3) contracts for seasonal work, 4) contracts in certain sectors where it is normal to conclude temporary contracts because of the nature of the work or because of the temporary nature of the work<sup>1</sup>.
- The maximum duration is 12 months (renewals included) for the same worker in the same function. The Ministry of Labour can extend this maximum duration in certain cases. A contract concluded in breach of this provision becomes an open-ended contract.
- The contract can be renewed twice for a limited period within the maximum period of 12 months. The right to renew the contract must be stipulated in the initial contract or in a letter of confirmation in writing.
- If the contract is concluded for a reason other than those stipulated by law, it is considered null and void and is re-qualified as an open-ended contract with the agency.
- Any clause prohibiting the temporary worker from taking up employment with the user after the spell of temporary employment is null and void.
- Regarding the trial period, the 1998 collective agreement stipulates that when a user wants to re-hire the worker again after the first assignment no new trial period can be stipulated. For contracts of less than a month, the trial period can be up to 3 days. For contracts for between 1 and 6 months, the maximum is 5 days. And for contracts signed for more than 6 months, the trial period can be a maximum of 8 days. Within the trial period both parties can end the contract without notice or payment of compensation.

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<sup>1</sup> In the 1998 Collective Agreement the following sectors and related activities are mentioned : audio-visual sector (for presenters, editorial staff, facilitators, producers, etc.), banking sector (e.g. consultants), information and education sector, professional sports sector, construction sector, etc.

- If the agency terminates the employment contract prematurely, the worker may seek damages equal to the amount of money he/she would have been entitled to had the contract run its full course. If the worker terminates the contract, the agency can claim damages not exceeding an amount corresponding to payment for the notice period which the worker should have observed.
- If at the end of the term, the user continues to employ the temporary worker without concluding a contract with him/her or without concluding a new contract with the agency, the temporary worker is considered to be a permanent employee of the user. In that case the period of the assignment is taken into consideration as of the first day for the calculation of seniority.
- After the expiry of the temporary contract, the user cannot employ the same worker or another worker on a fixed term or temporary contract unless a period of one- third of the initial contract (including renewal) has elapsed. This does not apply in cases where : 1) the replaced worker is absent again, 2) urgent work has to be performed, 3) a seasonal work contract is involved, 4) it is normal to have recourse to temporary work contracts, 5) the temporary contract is terminated before the end of the term by the worker and 6) the renewal is planned but the worker refuses the renewal.

### **3.2 The individual rights of the temporary worker**

- The basic pay and working conditions of the temporary worker should be the same as those for the permanent workers with the same qualifications of the user company. If there is no worker with the same qualifications employed in the user's enterprise, the salary must not be lower than the remuneration provided in the sectoral collective agreements applicable to temporary workers.
- In the 1998 collective agreement, the daily working time is fixed at 8 hours and the weekly working time at 40 hours. It also contains a provision relating to overtime and work on Sundays.
- The temporary worker has the same access to the social services available in the users' enterprise (such as the cafeteria).
- The temporary worker is also entitled to annual leave and to the recognized public holidays.
- The temporary worker is not entitled to be informed of any vacancies in the users' enterprise for which he/she qualifies.
- The user is responsible for ensuring the health and safety conditions and all other legal, administrative and contractual obligations. The agency is responsible for paying the salary and the fiscal and social contributions.

### **3.3 The collective rights of the temporary worker**

- Temporary workers are included for the purposes of calculating company size thresholds in the agency in connection with worker representation, on condition that they have been employed for more than 10 months over a period of 12 months.
- In the user enterprise temporary worker are neither entitled to vote or to be elected in elections concerning the workers' representation bodies. But they are entitled to consult those bodies when necessary. Temporary workers also have the right of access to their personal files.

#### **4. The enterprise using temporary workers**

##### **4.1 The relationship between the user and the temporary work agency**

- The contract between the two parties must be in writing and must be concluded no later than 3 days after the commencement of employment.
- The contract can only be concluded for a precise and temporary task and must not be connected with an activity which lies in the normal field of activities of the enterprise.
- The contract must contain the following information: (1) the reason for recourse to a temporary worker, (2) in case of replacement of an absent worker, the name of that worker, (3) the duration, (4) the specific aspects of the job, (5) the qualifications required, (6) the place where the work will be performed, (7) the normal working arrangements, and (8) the salary of a worker with the same qualifications in the users' enterprise.
- Any clause prohibiting the user from recruiting the temporary worker after the termination of the temporary employment is null and void.
- If the agency places a temporary worker at the disposal of the user in violation of the legislation, the contract between the agency and worker is null and void and the user and temporary worker are considered to be bound by an open-ended contract.
- The agency must inform the user immediately if the authorization is withdrawn or if an application for the renewal of the authorization is refused.

##### **4.2 The relationship between the user and the temporary worker**

- A temporary worker may continue to work for the user company on a permanent basis after the original assignment has been completed.
- The user is responsible for ensuring the health and safety conditions and all other legal, administrative and contractual obligations.

##### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The user is obliged to consult the works council or personnel delegation in advance if he wants to have recourse to temporary agency workers. At that point he must, at the request of those bodies, submit the contract between his firm and the agency. The law does not, however, prescribe how and in which form this information or consultation must take place. Nor are any sanctions provided for failure to fulfil the information obligation.

#### **5. Other legal problems connected with this form of contract**

- No comment

#### **6. The general point of view of the Luxembourgian trade unions on the use of this form of employment contract/relationship**

- The use of this form of employment must remain limited.

#### **7. Trends**

- No legislative developments since 1994.
- In 1994, temporary employment agencies operating in Luxembourg set up an umbrella body, the ULEDI, which now groups 17 of the 26 existing agencies. An initial stage in the integration of these agencies in Luxembourg was the "Cooperation contract" to help

unemployed people return to the labour market, signed in December 1997 by ULEDI and ADEM. Now, ULEDI and two nationally representative trade unions, OGB-L and LCGB have signed two collective agreements covering the temporary agency work sector (see point 1). These new collective agreements must be regarded as a positive development in the process of protecting the rights and working conditions of workers engaged in the sector through collective agreements.

**8. Additional information (figures, statistics)**

- In June 1996, there were 3,580 temporary agency workers; this constitutes an increase of 100% compared to January 1995.
- In 1996, temporary agency work accounted for 1.5 % of total employment.
- 77% of temporary workers are male.

## Netherlands

### 1. General aspects

- This form of employment used to be regulated by the Temporary Work Act of 1965, which made it possible for the activities of a temporary work agency to become subject to licensing, which has been obligatory since 1970. In 1998, two new laws were adopted which changed the system of temporary agency work quite considerably. One, the W.A.A.D.I. Act on labour market intermediaries entered into force on 1 July 1998. The other, known as the Flexibility and Security Act, on changes in civil and labour law, entered into force on 1 January 1999.
- Most issues mentioned in the new ILO Convention 181 (see annex) such as the protection of discrimination, special protection for migrant workers, the prohibition of child labour, the freedom of association, collective bargaining, the minimum wage, etc., are not explicitly laid down in these new bills. The Dutch government is in fact convinced that all of these subjects are properly regulated in other sources of Dutch labour law. Other relevant provisions which are kept outside the bill are: the Act on Privacy, the Works Councils Act (giving works councils the right to be informed and consulted on the employment of temporary workers) and various collective agreements which contain provisions limiting the use of temporary workers.
- The 1965 Act brought temporary workers within the scope of social security law, notably the Unemployment Act and the Sickness and Disability Acts.
- There is also a generally binding Collective Agreement on temporary agency work, which regulates the relationship between the temporary worker and the agency. The most recent one was concluded in April 1998 for the 1999-2003 period and which entered into force on 1 January 1999.
- The hiring-out of workers is prohibited in some sectors (e.g. ocean-going shipping). The ban in the construction sector was abolished on 1 July 1998 when the W.A.A.D.I Act came into force. It is also prohibited for an agency to supply services and temporary workers to workplaces affected by strike, but also by lockout or occupation. This is remarkable, since the legality of lockouts and occupation is not clarified under Dutch law.

### 2. The temporary work business/agency

#### 2.1 The status of the agency as employer and the ensuing obligations

- Since the new legislation of 1998, the agency is considered to be the employer of the temporary worker.
- The agency is liable to pay the social security contributions
- The Code of Conduct for temporary work agencies and the Code for the prevention of discrimination bind agencies which are members of an organization known as the ABU. A study conducted in 1991 showed that the provisions of the latter Code are not as effective as anticipated. Complaints about violation of these two codes of conduct may be filed with the clerk of the Court of Arbitration.



## **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- The new W.A.A.D.I. Act of 1998 abolished the licensing system. However, the government realized that in specific circumstances it may be necessary to intervene again to ban large-scale “undesirable” situations, such as “black wages”, infringements of legal and conventional rules, etc. To that end the Act provides the possibility for the Government to review its current course of liberalizing the activities of temporary agency work in specific sectors of the economy. It can issue special rules by Decree for temporary work agencies in specific sectors and, in particular, reintroduce a licensing system. The latter can, however, only be done if it is “in the interest of good relations on the labour market or the interests of the personnel concerned”.
- Several other elements of control have been introduced.

## **3. The temporary worker**

### **3.1 The contract between the worker and the agency**

- The contract between the two parties is a labour contract. This was a matter of dispute, which has now been resolved by the new “Flexibility and Security Act”, which makes this contract subject to all provisions of the law on employment contracts except for two points : 1) during the first 26 weeks of such a contract it is permissible to agree with the worker that the contract will end automatically when the hiring period ends and that 2) successive fixed-term contracts are more generally allowed than in other contracts of employment.
- The legislation does not require an objective reason for employing a temporary agency worker. However, some collective agreements may require objective reasons.
- The maximum duration of a temporary contract used to be 6 months, and in certain well-defined cases it could be extended to 12 months. The new law of 1998 abolishes the maximum duration of 6 months.
- A worker who has been working on a fixed-term contract, should not, when the fixed term has elapsed, be hired out again to the same employer within 1 month .
- According to the new collective agreement of April 1998, the temporary work contract can be terminated before the expiry of the fixed term both by the worker and the agency subject to the prescribed periods of notice and unless otherwise stipulated in the contract. (This waiver clause can only occur in contracts of at least 3 months’ duration). The notice period for the agency is 1 month regardless of the length of the contract. For termination by the worker, the period of notice is 1 week (for contracts of less than 3 months), 2 weeks (for contracts between 3 and 6 months) and 1 month (for contracts of more than 6 months).
- The following provisions have also been introduced by the new collective agreement on temporary agency work: 1) as soon as a temporary worker has worked for more than 12 months for the same agency, he/she will be contracted for a fixed duration of at least 3 months and will be paid during the entire period irrespective of whether he/she has been hired out or not, and 2) as soon as a temporary worker has worked for more than 18 months for the same user enterprise or 36 months for the same agency, the contract of employment between the agency and the worker is regarded as a fixed-term contract.

### **3.2 The individual rights of the temporary worker**

- The position of the temporary worker is ruled by the generally binding collective agreement for temporary workers.
- Before a labour relation between the agency and the worker is concluded, the agency must provide the worker with a copy of the collective agreement.
- The agency should pay the worker wages equal to those earned by workers in the user's enterprise. This rule does not apply if : 1) the wage and other benefits are prescribed by any rule of statutory law, 2) if the collective agreement for workers of temporary work agencies provides the contrary and 3) if the collective agreement applicable to the user enterprise requires remuneration of the workers of the agency in conformity with that collective agreement. The two latter rules in fact allow the social partners to depart from the basic equal treatment rule, and this reflects the tendency in Dutch law to give priority to self-regulation by the social partners.
- It has been established by case law that if the user engages the temporary worker after the term on a permanent basis, no trial period can be provided if the permanent job requires the same abilities and responsibilities as the temporary job.
- A Royal Decree has added temporary workers to the list of workers who are entitled to sickness and unemployment benefits.
- Temporary workers can benefit from family allowances if they meet the requirements which apply to all workers.
- Pursuant to statutory law (which defines them as "workers) and to the generally binding collective agreement, temporary workers are entitled to paid annual holidays, and the agreement awards 8% of the gross income as a holiday bonus.
- The collective agreement for temporary workers also states that the daily working time must in principle be the same as the customary working time in the user enterprise and must not exceed the statutory working time.
- The user is obliged to inform the temporary worker of the nature of the job and the dangers it entails and of the measures taken in that respect. He must ensure that the worker is efficiently trained for his tasks in as far as health and safety are concerned.
- The general rules apply to the termination of the contract. With regard to the periods of notice, the agency must observe a period of 1 month for the first 5 years of employment, 2 months for the next 5 years and so on up to a maximum of 4 months. If the terms of notice are not observed, the agency is required to pay compensation equal to the wages which the temporary worker would have earned if the term of notice had been respected.
- The temporary worker can terminate the relationship with the agency at any time between two assignments or even during an assignment, but he/she must inform the agency of his intention to terminate in the course of an assignment so that the agency can send a replacement.
- The rules of unfair dismissal have applied since 1 January 1999, since the relationship is now considered to be a labour contract.
- The new sectoral collective agreement for the 1999-2003 period provides pension rights for temporary workers for the first time. The pension premium is fixed at 3.5% of the gross salary. The concept of salary does not include payments for overtime, travel reimbursements or other reimbursements of costs.

- With the new law of 1998 it is now the case that supplementary pensions are built up as soon as the temporary worker has been working for more than 6 consecutive months for the same agency, but he/she retains entitlement as long as he works for an agency without leaving the sector for more than 1 year.

### **3.3 The collective rights of the temporary worker**

- Since the new sectoral collective agreement for 1999-2003 was adopted, temporary workers have the right to vote in elections for representatives if he/she has been employed for 26 weeks. They can themselves be elected if they have 1 year's seniority. The text also provides some rights for the representative trade unions in the temporary agency firm (e.g. a place to advertise relevant information for the temporary workers, the right to have a meeting room available for meetings of the workers' representation body, etc.).
- Moreover, the new legislation on works councils stipulates that temporary workers can qualify for representation on the works council of the user enterprise after 2 years of assignment to the user enterprise.

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- This is a commercial contract.

### **4.2 The relationship between the user and the temporary worker**

- This relation is considered to be a purely de facto relationship. It is not a labour contract.
- Some rules of labour law are however applicable to this relationship (e.g. Equal Treatment Act, health and safety regulations, rules regarding maximum working hours and overtime).

### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The Works Council Act prescribes that the works council should be consulted before the employer has recourse to temporary workers.
- The new amendments to the Works Councils Act provide that temporary workers can qualify for representation in the works council of the user enterprise after 2 years of assignment to the user enterprise.

## **5. Other legal problems connected with this form of contract**

- No comment

## **6. The general point of view of the Dutch trade unions on the use of this form of employment contract/relationship**

- The present policy of the trade unions is no longer to fight temporary agency work but to try to improve the situation of temporary workers as established by law, collective agreement and practice as far as possible. They hope that this will narrow the gap in legal status between temporary workers and permanent workers and will thus make it less attractive for employers to switch from permanent workers to temporary workers purely for reasons of cost.

- The unions are complaining that the new legislation is being used by the agencies to dismiss temporary workers who would be entitled to open-ended contracts with the agency. Indeed, according to the ABU, some 1500 temporary workers were dismissed by agencies at the end of 1998 for that very reason.

## **7. Trends**

- The former system of recognition and control by government has been abolished under the new law of March 1998 and the maximum duration of 6 months has also been abolished.
- A new 5-year collective agreement was concluded between the agency employers' organization ABU and the relevant unions in April 1998. The agreement, which covers some 800.000 workers on a yearly basis, came into force in January 1999 coinciding with the new "Flexibility and Security Act", also adopted in April 1998. Workers received a 3.5 % pay rise on 1 July to cover 1998 and acquired improved pension rights.
- According to the new collective agreement, a worker is entitled to training and pension provision after 6 months' continuous service with the same agency.

## **8. Additional information (figures, statistics)**

- In 1996, temporary agency work accounted for 3.7% of total employment (some 800,000 persons per year).
- 52% of temporary workers are male.
- A 1998 study showed that about 32% of temporary workers are employed as permanent staff after the term of temporary employment.

## Portugal

### 1. General aspects

- Temporary agency work was regulated by DL n° 358 of 1989. This Act was also discussed in the Permanent Council of Social Dialogue (tripartite consultative body). In these discussions it was agreed by all parties that temporary work had to be regulated. However, the trade unions considered the project unacceptable because, in their opinion, temporary work was not regarded as an exception and the project did not actually protect the interests of temporary workers. The employers, on the other hand, found the project too severe, since they regard temporary agency work as an instrument of labour market flexibilization. The Act of 1989 is now amended by a new Act n° 146 of September 1999. The main features of this new law are explained in paragraph 7 Trends.
- There are very few collective agreements dealing with the issue of temporary agency work. In 1989 a Collective Agreement for Temporary Work was signed between the Portuguese Association of Temporary Work and the Federation of Clerical and Service Workers' Unions. This agreement determines a series of obligations that must be accomplished by the agencies aiming to protect the temporary worker with regard to remuneration, social security, industrial accidents, vocational training, control of working time arrangements, etc.
- It is only possible to hire out temporary workers in the following cases: 1) to replace an absent worker, 2) to temporarily fill in vacancies for which a recruitment procedure is under way (maximum duration 6 months), 3) a temporary or exceptional increase in work (maximum duration 12 months), 4) precisely defined and temporary activities (maximum duration 12 months), 5) seasonal activities (maximum duration 6 months), 6) intermittent need for manual work because of fluctuations in work during the day or part of the day (maximum 6 months but renewals can be allowed by the Labour Inspectorate), 7) for the accomplishment of temporary projects which do not belong to the normal activities of the enterprise (maximum duration 6 months but renewals can be allowed by the Labour Inspectorate).
- If the contract is concluded for any other reasons, it will be considered null and void and it will be assumed that there is an open-ended contract between the user and the worker (Act n°39/96). The same applies in the event of infringement of the maximum durations.

### 2. The temporary work business/agency

#### 2.1 The status of the agency as employer and the ensuing obligations

- According to legislation, an agency is any individual or collective entity whose activity consists of the temporary transfer of the use of workers (whom it engages and remunerates) to a third party. Temporary work agencies may only develop activities of selection, vocational guidance and vocational training.
- The agency is considered to be the employer of the temporary worker and the worker is thus covered by all labour laws through the agency (except health and safety, for which the user is responsible).

## **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- The trade unions have no role in the agency licensing process, and Portuguese legislation explicitly prevents collective agreements from regulating the exercise of agency and user.
- Agencies must obtain authorization from the Ministry of Employment and Social Security. This will only be granted once it has been ascertained that: 1) the applicants are suitable, 2) they are up-to-date with social security contributions, 3) they have not been declared bankrupt or insolvent, 4) and there are no outstanding sanctions against them which would prevent them from operating in the sector. Applicants must pay a guarantee sum equivalent to 150 times the national minimum wage. If the application is successful, a licence is issued and the company is registered with the Ministry.
- The conditions for obtaining a licence are: 1) the suitability of the applicant, 2) the compatibility of the activities with the final aim, 3) proof of payment of social security contributions, 4) proof that the applicant has not been declared insolvent or bankrupt, 5) the payment of a guarantee sum. The latter sum aims to guarantee the responsibilities concerning the payment of remuneration and other charges and amounts to 150 times the minimum monthly salary.
- The application for authorization must include the following information: 1) the name of the applicant, 2) the registered office of the headquarters, 3) the addresses of any subsidiaries, 4) information on the managerial staff, 5) information on the activities planned.
- The applicant must also submit a report to the Institute of Employment and Professional Training (IEFP), which may request the Labour Inspectorate to intervene to check that the legal obligations have been fulfilled.
- Every 6 months, the agency must send the IEFP a list of the workers it has hired out.
- A system of fines is provided if these rules are violated.
- The licence is issued for a limited period.
- The establishment of a fund to guarantee the payment of temporary workers in the event of bankruptcy of the agency was not yet provided at the beginning of the 90's.

## **3. The temporary worker**

### **3.1 The contract between the worker and the agency**

- The contract is considered to be a labour contract and must be in writing. If the form of the contract is not respected, the contract is considered to be null and void and re-qualified as an open-ended contract between the user enterprise and the temporary worker.
- The contract must contain information concerning : 1) the reasons for the contract, 2) the occupational category, 3) the place of work and working time arrangements, 4) the minimum remuneration of a permanent worker occupying the same post, 5) the beginning and end of the contract, 6) the name and headquarters of the agency and the user enterprise, 7) the social security number of the agency, and 8) the date the contract between agency and user enterprise is signed.
- See Point 4.1 for the reasons for which such a contract can be concluded.
- The general principle is that the duration must not exceed the period needed to fulfil the task in question. In some circumstances, maximum duration periods of 6 or 12 months are stipulated (see Point 4.1 below).
- Successive contracts for the same job are inadmissible. In some cases renewals can be allowed (see below).

### **3.2 The individual rights of the temporary worker**

- The law tries to guarantee that the temporary worker receives remuneration that is at least equal to that received by the other workers in the user's enterprise. At all events, he/she receives the minimum salary guaranteed by law or by the collective agreement applicable to the user's enterprise, unless a higher pay rate is laid down in a collective agreement covering the temporary agency sector.
- Other benefits guaranteed by law are: holiday and Christmas bonuses, any other benefit that the user grants to its own workers who have the same function as the temporary worker.
- Temporary workers are covered by the general rules on social security benefits.
- The temporary worker has the right of access to the social services in the user's enterprise.
- There are no special rules regarding working time; temporary workers are thus subject to the same rules as other workers with regard to maximum daily and weekly working time, rest periods, overtime, etc.
- Since the contract with the agency is a contract for a limited period, the dismissal rules for fixed-term contracts apply.

### **3.3 The collective rights of the temporary worker**

- The law explicitly reserves the right to vote and eligibility in works council elections for permanent workers only.
- Temporary workers have in principle the right to strike but since they have no labour contract with the user their strike will be considered as a sympathetic strike (which is legal under Portuguese law).

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- The contract between the two parties is a contract of services.
- If the agency has no authorization and the user concludes a contract with it, the user will be liable. In this case, the contract of the temporary worker will be considered to be a fixed-term contract with the user. In addition, the law also prescribes joint responsibility for the payment of remuneration, holidays, indemnities and social contributions.
- For contracts posting temporary workers abroad, the user enterprise must have its headquarters in Portugal or be associated to another enterprise which has its headquarters in Portugal. And the contract with the agency must be signed by the representative of the user enterprise or by the user and the associated enterprise with headquarters in Portugal.
- The contract between the agency and the user must contain: 1) the name and headquarters of the agency and of the user enterprise, 2) their respective social security number, 3) the number and date of the permit, 4) a description of the reason for recourse to a temporary work contract, 5) the characteristics of the work to be performed, 6) the minimum remuneration that the user must pay his own staff in the same position, 7) the fee that the user must pay the agency, 8) the beginning, duration and expiry date of the contract.

### **4.2 The relationship between the user and the temporary worker**

- Temporary workers are not included in the effective personnel of the user enterprise for determining the obligations concerning the number of workers.

- Since the user has “management authority” during the term of the contract, the temporary worker is subject to the regime that is applied in the user enterprise with regard to the place, method and duration of work, health and safety and access to social facilities.
- Since there is no employment contract between the user and the worker, a trial period is not valid. This has been resolved by stipulating that the user may ask for the replacement of a temporary worker sent to him within 15 days of the beginning of the contract.
- The user is responsible for observing all health and safety regulations in respect of the temporary worker. It is the agency, on the other hand, which is obliged to take out insurance covering occupational accidents.

#### **4.3 The relationship between the user and the workers’ representation bodies in that enterprise**

- The workers’ representation body has the right to request information on the use of temporary workers within 5 days.

#### **5. Other legal problems connected with this form of contract**

- A recent communication issued in July 1998 by the “Associação de Empresa de Trabalho Temporário” (the association representing temporary work agencies) has revealed that temporary agencies have been found to be involved in illegal practices such as non-payment of social security contributions and taxes. Some 200 companies have also been found to be operating without the proper licence. It has also transpired that some companies have been falsifying pay slips. This is done by either paying wages without providing any documentary evidence of the amount paid, or by providing social security services with documentation showing a lower pay rate than the rate actually paid. In addition, some companies have not been paying employees the compensation to which they are entitled when an employment contract lapses and have been evading payment of social security contributions on holiday pay, the 13<sup>th</sup> month salary bonus and overtime pay. The regulatory framework that requires the agency to have a licence is thus not effective enough. The General Labour Inspectorate has announced that it intends to thoroughly investigate the practices of companies operating in the temporary employment sector.

#### **6. The general point of view of your organization on the use of this form of employment contract/relationship**

- No comment

#### **7. Trends**

- The 1996 social pact aims to review measures regarding temporary work in order to eliminate illegal practices. One result of this is Act n°39/96, which restricts the use of temporary agency workers by laying down strict conditions and sanctions regarding the contract between the agency and the user company.
- The changes introduced by Act no. 146/99 cover nearly all matters covered in the legal framework for temporary agency work. They were designed to improve the text of the law and make it more systematic, as well as to substantially modify regulations in certain areas.

With regard to the process of establishing and licensing temporary work agencies, their operation and the monitoring to be carried out by the Labour Administration, the law seeks to make the system more sound, particularly by including standards and rules in the



legal framework, which was previously strictly regulatory in nature (although, on some points, it may be arguable whether it really was only regulatory). In addition, the law will require temporary work agencies to spend at least the equivalent of 1% of their turnover arising from temporary work on occupational training for the temporary agency workers. The law brings about a number of significant changes, the most important of which are the following:

- the new law no longer makes a distinction between profit and non-profit user entities in terms of the applicable legal regime;
- some changes have been made regarding the conditions under which temporary agency work contracts may be entered into;
- the user will now be required to ask the temporary work agency to provide a copy of the industrial accident insurance policy which will cover the worker while on the job and a description of the type of work the worker will be expected to do under the terms of the contract. If this is not presented at the time the temporary agency work contract is signed, the user becomes responsible for providing insurance coverage;
- with regard to the admissibility of contracts for using temporary agency workers abroad, Act 146/99 makes matters much clearer than before. This type of contract is allowed in general, but certain requirements must be met. A specific deposit must be paid and an insurance policy must be taken out which will guarantee payment, up to a specified amount, of medical and hospital care and medication expenses. Repatriation of workers must be guaranteed at the end of the work contract, or when the contract is cancelled, or in the event that wages are not paid on a timely basis. In addition, the General Labour Inspectorate must be kept informed about which workers are posted abroad, the identity of the user, the job location, and the dates of the beginning and end of the work contract;
- one of the most obvious innovations in the new legal regime is that it makes it possible for the temporary work agency to send employees who are under regular permanent employment contracts with the agency to work in an outside company. In order to do this, there must be a specific provision to this effect in a written contract between the employee and the temporary work agency. The contract should also specify that, during periods when the employee is not being sent to work temporarily in an outside company, he or she is entitled to the compensation provided for in the relevant collective agreement or, in the absence of such an agreement, to a sum no less than two-thirds of the highest applicable monthly guaranteed minimum wage. Before the new law came into effect, only workers who had temporary contracts with the agency could be sent to work outside the agency itself - regular contract employees could not;
- in the regulations relating to the supply of temporary services, the worker is now better protected against health and safety risks. The user is required to provide the worker with information about the risks inherent in the job, and it is expressly forbidden to use temporary agency workers for jobs that are particularly hazardous for worker safety and health; and
- the system of penalties for infringements has been substantially altered to articulate with recent changes to legislation on violations of labour law.

## **7. Additional information (figures, statistics)**

- Illegal agencies multiplied during the 1980s because of the lack of legislation.
- In 1996, 0.8% of the workforce were temporary agency workers.
- 50% of temporary workers are male.

## Spain

### 1. General aspects

- Before 1994, Article 43 of the 1980 Workers' Statute had expressly prohibited temporary work agencies and the State had the exclusive right to regulate the supply of workers on the labour market.
- Temporary work agencies were legalized in June 1994 (Act n°14/1994 of 1 June 1994 and complemented by Royal Decree n°4/95) as part of the Government's labour market reform. Since then the sector has grown and in 1996 there were 399 registered agencies concluding a total of 620,000 contracts.
- The second collective agreement for temporary workers was concluded in January 1997, under which a wage convergence process is established for reaching the wage level provided in the sectoral collective agreement of the user enterprise within 3 years. The sectoral agreement usually provides lower wages than those provided in company agreements and lower than real wages. The agreement is being hailed as a first step towards eradicating wage differentials between temporary and permanent workers, since it was reckoned that the latter earned between 20% and 40% more.
- The law only excludes workers with an apprenticeship contract from performing temporary agency work. Other categories can be excluded by collective agreement.
- The legislation applies to both the private and the public sector.
- Equal treatment is in general guaranteed by the constitution and several laws pertaining to the staff of the agency and to temporary workers in relation to the permanent workers in the user's enterprise. A collective agreement for 1997-1999 on temporary work agencies guarantees equal remuneration and working conditions.

### 2. The temporary work business/agency

#### 2.1 The status of the agency as employer and the ensuing obligations

- The law prohibits the agency from conducting any other activity parallel to placing workers at the disposal of user enterprises (Article 2(b) of the Act of 1 June 1994).
- The agency is responsible for paying the salary as provided in the sectoral collective agreement or the agreement applicable to the agency concerned. (See point 3.2 below). The agency must of course also ensure that all social security contributions are paid.
- The agency must pay the temporary workers compensation at the termination of their contract equivalent to the salary for 12 days' work.
- The agency must provide health and safety training and safeguard the health of the worker
- Each year the agency must also contribute 1% of the gross income for the vocational training of the temporary workers.

#### 2.2 Recognition and control of the agency and the role of Government (Federal or regional)

- All physical or moral persons/entities wishing to conduct the activity of running a temporary work agency must obtain authorization from the authorities of the Autonomous Community (region) where the activity is to be carried out, or from the Department of

Employment and Social Affairs if the activities are going to be carried out in more than one Autonomous Community.

- On the basis of this authorization, the agency can only engage in placing workers at the disposal of user enterprises; it is not authorized to conduct other activities such as selection, sub-contracting, etc.
- The application for the authorization must mention: 1) the identity of the applicant, 2) the name of the agency, 3) the headquarters of the agency, 4) the tax and social security registration number, 5) the territorial and occupational scope of the activities. Various other documents must also be submitted together with this official form, as stipulated by Royal Decree. In addition, the applicant is free to add any other information which he/she considers relevant for the authority granting the authorization.
- The law also demands that a financial guarantee be paid, which – for the first authorization – is equivalent to 25 times the current annual national minimum wage or 10 % of the total payroll of the workers assigned during the previous year (147,712 Euro). The financial guarantee can be established through one of the following instruments: a mutually binding guarantee agreed with any financial institution licensed to operate in Spain or in the form of a deposit in cash or in Government bonds in the Treasury of the Ministry of Economic and Financial Affairs.
- The first licence is issued for a period of 1 year and can be renewed twice. When the agency has conducted its activities legally for 3 years, an licence can be issued indefinitely. Once the authorization has been issued for an indefinite period, the agency must bring its financial guarantee in line with the real figures each year, i.e. if there have been changes in the inter-trade minimum wage.
- In the event of serious violations (e.g. the financial guarantee is not upgraded to the new inter-trade minimum wage) the authorization can be suspended for 1 year.
- The licence can only be withdrawn in very specific cases where the health and safety of the workers are jeopardized.
- Other civil, administrative and penal sanctions are provided.
- Each month the agency must inform the competent authority of: 1) the (number of) contracts concluded and the reasons why they have been concluded, and 2) the identity of the user enterprises. It must also inform that authority of any change in the activities of the agency (e.g. change of name, change of address, changes in the management, the establishment of new offices).
- The Spanish Department for Employment and Social Affairs as well as the relevant authorities of the Autonomous Communities have established a register of agencies, in which the following information is kept: the authorization granted, the stage of the authorization process, the geographical area of operations, the financial guarantee paid, the name of the director or directors of the company, the social agents, any sanctions or suspension of the activities.
- The trade unions do not play any role in this authorization process.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- The contract is considered to be an employment contract and can be concluded for a fixed or indefinite period.

- The contract must be in writing and registered in the Employment Agency within 10 days of the date on which it is signed.
- A trial period of between 2 and 6 months (depending on the qualification of the worker) can be stipulated in the contract. The minimum and maximum duration of these trial periods can be altered by collective agreements.
- The fixed-term contract must contain the following information: 1) information on the contracting parties (including the tax and social security number of the agency, and the registration number and duration of the authorization), 2) information on the user enterprise (fiscal and social security registration number), 3) the reason for the contract, 4) the content of the work to be performed, 5) information on health and safety risks related to the job, 6) the estimated duration of the contract, 7) the place and hours of work, and 8) the agreed salary.
- If the worker is engaged on a permanent contract with the agency, then for each assignment the worker must be informed of the user enterprise, the reason for the contract, the content of the work to be performed, any health and safety risks related to the job, and the place and hours of work.
- There is no minimum or maximum duration. But the duration can be limited to a maximum of 6 months in cases where the contract is concluded to overcome market fluctuations - to respond to a sudden increase in work or orders. The contract can be concluded for a maximum of 3 months where a post has to be filled temporarily because a worker has already left the user enterprise and the recruitment procedure for finding a replacement has not yet been finalized.
- Successive temporary employment contracts can be concluded whenever there is a lawful reason.
- The temporary contract is converted into an open-ended contract if the worker continues to work in the user's enterprise after the task has been accomplished.
- Any clause preventing the user from engaging the temporary worker on a permanent basis after the expiry of the assignment is null and void.
- Any clause stipulating that the temporary worker must pay a certain fee for the services rendered by the agency is also null and void.
- Agencies may only supply personnel in the following cases: 1) to provide a specific limited service, 2) in the event of an extraordinary increase in work and/or orders (for a maximum of 6 months), 3) to replace absent workers, and 4) to fill vacancies where the former worker has already left and the recruitment procedure for finding a replacement is still continuing (for maximum of 3 months).
- Temporary workers may not be used 1) to replace workers on strike, 2) to perform dangerous or unhealthy work, or 3) to work for employers who have carried out unfair dismissals, individual dismissals for economic reasons or collective dismissals in the course of the past year (except in cases of *force majeure* or "*hand of God*"), or 4) to transfer workers to another temporary work agency.

### 3.2 The individual rights of the temporary worker

- Temporary workers are entitled to wage rates as established in the sectoral collective agreement applicable to the user enterprise. In the collective agreement for 1997-1999, the principle of so-called wage convergence was established. This means that for 1998 it was provided that the temporary worker should be paid at least 80% of the wage as laid down

in the sectoral agreement applicable to the user enterprise. For 1999, the rate is set at 90%, and 100% equality must be implemented by the year 2000.

- As for working time arrangements, the collective agreements applicable in the user's enterprise apply. According to Spanish legislation a worker can work a maximum of 1826 hours a year.
- As for access to social services in the user's enterprise, this depends again on the new collective agreement, though the workers are entitled to use the transport and collective facilities of the user enterprise.
- The general rules in relation to social security apply to all workers, including temporary workers. It is the agency that has to pay the social security contributions. If the agency fails to do so, the user is responsible in second instance for the payment of salary and social security contributions.
- The agency must provide health and safety training and must safeguard the health of the worker. At the beginning of 1999, the Cabinet approved a decree on the prevention of occupational hazards for temporary workers. The decree outlaws the use of temporary workers for so-called dangerous tasks in the mining industry, in the construction sector and in the manufacturing of explosives. There are no details so far as to what may constitute a dangerous task. The decree also stipulates that temporary workers sent from an agency should enjoy the same level of health and safety protection at the workplace as the permanent workers in the user enterprise. This means that the user enterprise must inform the agency of any potential risks and the training requirements for temporary staff before the contract is signed.
- If the temporary worker is engaged on a fixed-term contract and the contract expires, the worker is entitled to a minimum of 12 days' salary per year of seniority. If the worker is dismissed without any objective reason, he/she receives compensation of 45 days' salary per year of seniority.
- Only recently the Supreme Court established the precedent that an agency cannot terminate the contract if the assignment has ended before the date of expiry.
- The temporary worker has the right to prematurely end the contract subject to 8 days' notice (15 days for technicians).

### **3.2 The collective rights of the temporary worker**

- In the agency, all temporary workers are entitled to be represented, informed and consulted by the works council or the health and safety committee.
- In the user enterprise, the temporary workers are entitled to submit complaints about their working conditions to the works council in the enterprise.
- The Spanish constitution guarantees temporary workers the right to work.

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- This contract is of a commercial nature and must be in writing.
- The contract must contain the following: 1) information about the agency (authorization number, duration of authorization, tax and social security registration number), 2) information about the user enterprise (tax and social security registration number), 3) the reason for which the contract is being concluded, 4) the content of the work to be

performed and the qualifications required, 5) information on health and safety risks related to the job, 6) the estimated duration of the contract, 7) the place and hours of work, and 8) the agreed salary.

- Such a contract can be concluded in the following cases : 1) to carry out a particular project or service within a limited, although in principle uncertain, term, 2) to replace company workers whose job is protected, 3) to cover a permanent job on a temporary basis during the staff selection or promotion process. See Point 3.1 for the reasons for which the contract may not be concluded. and 4) to cover market demand - accumulation of work or excess of orders.
- The duration of the contract must coincide with the duration of the reason for which it is concluded. The maximum duration is at all events 6 months.
- If the user employs a temporary worker from an unauthorized agency, penal sanctions are provided, since this is considered illegal work.

#### **4.2 The relationship between the user and the temporary worker**

- Before the commencement of the job, the user must inform the worker of the health and safety risks related to the job and the prevention measures implemented in the enterprise.
- The user is also responsible in second instance for paying the salary and social security contributions in the event that the agency fails to do so, and, on a basis of solidarity, when a contract is concluded in cases where it is not allowed by law.
- The user is not obliged by law to inform the temporary worker of any vacancies in the enterprise. However, some collective agreements make provision for this right.

#### **4.3 The relationship between the user and the workers' representation bodies in that enterprise**

- The user must inform the workers' representation bodies of every temporary agency work contract within 10 days. If this rule is violated, administrative sanctions are provided.

#### **5. Other legal problems connected with this form of contract**

- The trade unions consider that the legislation is extremely permissive (i.e. non-restrictive) and that it allows a great deal of abuse and even discrimination against the temporary workers.
- A further problem is the wage gap between temporary workers and permanent workers in the user enterprise.

#### **6. The general point of view of the Spanish trade unions on the use of this form of employment contract/relationship**

- The legalization of TEAs in 1994 was resolutely opposed by the trade unions, which claimed that the TEA model which was being introduced encouraged insecure employment and poorly-paid work. In other European countries, there are two basic models of temporary employment. The first is secure employment with relatively low wages (workers with permanent contracts with the TEAs and wages determined by the collective agreement applying to the TEA). The second is insecure work with relatively high wages (workers with temporary contracts with the TEAs but wages determined by the agreement applying to the user company, and usually with a bonus for insecurity). In both cases, workers are usually specialized and carry out strictly temporary tasks in the user companies. According to the unions, the Spanish model is the worst possible

combination: temporary contracts with the TEA and wages determined by the TEA agreement. Since 1994 the unions have been trying to improve the working conditions of TEA employees through collective bargaining, but they have also been continuing to demand new regulations governing TEAs. An example of this is a recent proposal by CC.OO's Catalonia region for a new law to regulate TEAs. This proposal contains the confederation's basic demands regarding TEA reform, which are as follows:

- TEAs should cover only the strictly temporary work requirements of user companies. Restrictions should be placed on the use of TEAs, especially with respect to the prevention of occupational risks;
- TEAs should give their workers permanent contracts. A new type of special permanent contract is necessary for TEAs in order to regulate interruptions in the worker's activity (the periods of time during which the employee is not working in a user company) and to establish minimum guarantees; and
- TEA workers should enjoy greater protection in the event of non-compliance with the law. The use of TEAs to cover non-temporary work requirements should be considered fraud. It should also be laid down that in such cases the workers involved will be entitled to choose between receiving a permanent contract in the TEA or in the user company.

The UGT also supports these demands, although it recently made its own proposal that places more emphasis on wages and representation and leaves greater flexibility in contractual conditions. Some of its main demands are as follows:

- equal wages: a guarantee by law that the wages of workers hired through TEAs are governed by the agreement which applies to the user company;
  - union representation: creation of "regional delegates" for each Autonomous Community. These delegates would reinforce the TEA workers' rights to information, representation and consultation, which are currently the responsibility of the workers' committees of the user companies. They would be appointed by the most representative trade unions in the region; and
  - job security: measures to promote a greater degree of job security, establishing minimum proportions of the TEA workforce which must have permanent contracts and maximum proportions of the workforce of user companies that can be hired through TEAs.
- Both the UGT and the CC.OOs already accused a number of companies in 1996 which had set up their own temporary work agency specifically to take on staff outside the scope of collectively agreed terms. In 1996 some 200 of these agencies were registered which contracted about 3,000 people daily. Such workers then are not covered by the terms of the collective agreement of the user enterprise. Both the UGT and the CC.OOs demand that the workers of temporary work agencies be guaranteed the same wages as those of the workers of the user enterprise.

## 7. Trends

- A tripartite group has been set up to analyze how to improve the functioning of the agency sector.
- A nation-wide binding agreement was concluded at the end of 1998 between the Government and the CC.OOs concerning the use of temporary work. This agreement relates in particular to the use of fixed-term contracts but also entails several new provisions applicable to temporary agency work. For instance the social security

contributions for unemployment protection will increase by 1.5% in the case of temporary contracts concluded through an agency. An examination of the statistical patterns of the evolution of this type of contract is also planned. The other main trade union UGT and the CEOE (employer's organization) have not signed the agreement for various reasons. The business association representing temporary work agencies announced that it intends to look into the legality of the agreement.

- On 1 July 1999, a reform of Spanish legislation on temporary employment agencies was passed. Amongst other provisions, this reform gives temporary agency workers the same pay as employees of the user companies in which they work, and has elicited severe criticism from the sector's employers' association. Since the installation of temporary employment agencies (*empresas de trabajo temporal*, ETT) in Spain in 1994, trade unions have demanded a reform of legislation in order to improve working conditions in this type of company, which tend to be characterized by very low wages and little job security. Negotiations on reform continued between the government, the employers' associations and the trade unions for over 2 years without any agreement being reached. The government stated some months ago that it intended to reform the law without the consensus of the temporary agency sector's employers, which were totally against one of the main chapters of the proposed reform – equal pay between temporary agency workers and the employees of the user companies in which they work. However, the government's position was also contradictory on several points: in the legislative procedure it attempted to moderate the initial standpoint and make concessions to the employers right up to the last minute. There were two main questions at stake: whether to use the user company's own collective agreement or the sectoral agreement covering that company to establish the pay of agency workers; and whether to award them pay parity immediately or to establish a transition period. Due to pressure from trade unions and political opposition parties, the formula that was finally adopted in the legislative reform approved by Parliament on 1 July 1999 was the most favourable to temporary agency workers. The new legal text – which came into effect on 6 August, 20 days after its publication in the Official Gazette (*Boletín Oficial del Estado*) – thus establishes that agency workers must receive the same pay as that laid down in the user company's collective agreement immediately on starting work. The pay rates in company agreements are usually higher than those in sectoral agreements. As well as pay, the reform also introduces another series of provisions, such as: the obligation for temporary employment agencies to employ a minimum of 12 permanent workers in their workforce for every 1,000 workers they supply to user companies; some limitations on the continuous use of temporary agency workers; greater safety guarantees at work; and greater control over recruitment through agencies by company trade union representatives. The reaction of the sectoral employers' association, the Spanish Association of Temporary Employment Agencies (*Asociación Española de Empresas de Trabajo Temporal*, AETT) was not long in coming. In the AETT's opinion, the reform threatens the autonomy of the social partners, because in the current national collective agreement for temporary employment agencies (which is valid until 2000), the reference wages are those agreed in the sectoral agreement for the industry to which the user company belongs (rather than in the user company's agreement). However, the employers' most serious claim is that the new legislation threatens the viability of many agencies, especially the smaller ones, which will not be able to cope with such a drastic increase in labour costs. Sources within the sector estimate that the wages paid by temporary agencies are around 10%-15% lower than those of the user companies, although in some cases the difference is as high as 40%. The employers state that the only way to guarantee the viability of the sector is by cutting other costs. The law also



eliminates the current social security contributions differential (temporary employment agencies pay a contribution of 1.5% of pay for unemployment insurance, compared to 0.5% for other companies) and provides a bonus upon the expiry of the contract which is equivalent to 12 days' pay per year of service; furthermore the user companies must dedicate a sum of 1% of the wage bill to training. AETT has received the support of the Spanish Confederation of Employers' Organizations (Confederación Española de Organizaciones Empresariales, CEOE) which has expressed its concern about the increase in labour costs and the future development of the sector, and of the International Confederation of Temporary Work Businesses (CIETT), which severely criticized this reform at its recent conference. The reform has fulfilled one of the main demands of the trade unions, pay parity with employees of user companies, for which they had to fight right to the very end. However, they claim that pay will not in fact be equal, because in many cases company agreements in user companies do not regulate the entire wage that is finally received. Moreover, the unions consider that the reform is clearly insufficient in several areas. In their opinion, improvements should be made in the measures to promote employment stability in temporary agencies, because they see the new law's rate of 12 permanent workers for every 1,000 as very low. This figure is calculated not on the basis of an agency's number of contracts to provide workers, but on the total number of days worked by those workers: in practice, a great number of agencies already fulfil this criterion. The unions also feel that there should be greater transparency and trade union control in the use of temporary agency work and that workers should have a greater degree of legal protection in the event of non-fulfilment of a contract. This has been one of the most criticized aspects of the new regulations, which are seen as still being very permissive with regard to infringements and sanctions.

- The use of temporary agency work is also restricted by the Royal Decree of 2 September 1999, which has brought: 1) prohibition of such work in about 10 sectors of the labour market, including the construction sector, because of the dangerous, toxic or arduous nature of the activities, 2) the impossibility to supply workers to service sector companies, 3) the fact that the reduction of social security contributions would not apply in the case of the replacement of women on maternity leave by an agency worker (which implies discrimination), 4) the very restricted use of agency work by government administration departments and public sector companies.

## **8 Additional information (figures, statistics)**

- Temporary work agencies were legalized in June 1994 as part of the Government's labour market reform. Since then, the sector has grown and in 1996 there were 399 registered agencies concluding a total of 620,000 contracts. In 1997 there were 342, 98 being established nationally and grouped into associations, of which GEESTA is the biggest. The largest agency, ADECCO, has 200 offices countrywide and processed 18,000 vacancies per day in 1997.
- According to a study carried out by the main employers' organization, the CEOE, only 2.5% of the agreements negotiated in 1997 contain concrete commitments to convert temporary contracts, including fixed-term contracts, into open-ended contracts. Temporary contracts are still the most popular form of contract for employers, with 69% of agreements at sectoral level providing for temporary forms of recruitment and 29% of this type of agreement providing for recruitment on part-time contracts. These findings are thus contrary to the reports that the labour market reforms of spring 1997 have been successful in stimulating more open-ended contracts. In this light, the UGT urged that the

Government should increase employer social security contributions in the case of temporary contracts in order to deter their use, in addition to carefully monitoring the incidence of temporary contracts with a view to curbing abuses.

- In 1998 temporary employment contracts represented no less than 93% of the new contracts issued, which is a matter of grave concern to the trade unions. In that year, the agencies, which are mostly foreign organizations, arranged 1,850,000 contracts and had a total turnover of 1.2 billion Euro (compared to 30 billion in 1994). Only 156 of the 459 agencies operating in Spain, but which control 80% of the agency business, are grouped in the association AETT. The AETT is governed by a national sectoral collective agreement designed to protect agency workers against low-wage exploitation. This has led to a guaranteed pay level of 80% of collectively agreed rates for the relevant sector in 1998, 90% in 1999 and 100% in 2000.
- The sectors in which temporary work is most often used are: the service sector (51.7%), industry (35.8%), the construction sector (6%) and the agricultural sector (4.5%).
- 40% of the temporary workers are under 25 years of age, and 91.2 % are under 40. 59% are male workers.
- 31% of the contracts last less than 5 days; 56.7% are for a period shorter than 1 month.
- 0.7% of the total workforce are temporary agency workers.
- 62% of temporary workers are male.

## **Sweden**

### **1. General aspects**

- A law on private employment agencies was adopted in 1993 thereby removing the monopoly from the state placement service, the Labour Market Administration, and putting an end to the existing restrictions on temporary agency work laid down in the law of 1991. The only remaining restriction is that agencies are not allowed to charge job-seekers any kind of fee for their services.
- The legislation applies to all kinds of workers and job-seekers, blue-collar and white collar workers, private and public sector, Swedish and foreign workers (but non EEA-citizens need a work permit).
- In the reply to the ETUC questionnaire, a distinction has been made between “labour leasing”, contracted work, and employment agency services. “Labour leasing refers to the legal relationship between a client and an employer, which means that the employer, in return for payment, makes workers available to the client to perform work relating to the client’s operations. Labour leasing is thus very close to two other areas of operations such as employment agency services and contract work. Contract work refers to a situation in which a person accepts a commission to perform a specific task under their own supervision, usually using their own equipment. The term “employment agency services” refers to a situation in which a private agency, for a fee or free of charge, procures labour for a user.
- In addition to the law and collective agreements, one also must take into consideration the ethical rules established by the Swedish Association of Temporary Work Business and Staffing Service (SPUR). The latter is not an employer organization; it is a trade organization and thus has no collective bargaining competencies.

### **2. The temporary work business/agency**

#### **2.1 The status of the agency as employer and the ensuing obligations**

- The agency is the employer of the temporary worker, but it is the user who must abide by health and safety regulations.
- The agency is not allowed to charge the applicant temporary worker any fees.

#### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- There are no restrictions regarding licensing. No authorization is required but a new law requiring this is in the pipeline.
- Temporary work agencies are thus treated as any other enterprise and fall under the obligations of the legislation on associations.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- This is a normal labour contract.
- In practice, and in particular in large agencies, it is the rule that the contract is concluded for an indefinite period. This principle has also been confirmed by case law. However,

since there are no specific regulations covering this relationship, the agency can also conclude a fixed-term contract with the temporary worker.

- The general labour and social security legislation applying to the normal relationship between employer and worker (and more specifically the regulations on fixed-term contracts)<sup>1</sup> also applies to the relationship between the agency and the temporary worker. There are, however, two specific rules in the 1993 Act. First, the worker must not be prevented from accepting employment in the user enterprise. Secondly, a worker who has terminated an employment relationship with an employer and accepted employment with an agency must not be hired out to the previous employer earlier than 6 months after the employment relationship has ended. This is in particular to prevent circumvention of labour law regulations.

### **3.2 The individual rights of the temporary worker**

- Temporary agency workers are covered by the collective agreements in the clerical and services sector and enjoy the same basic working conditions as permanent workers. In addition, they are covered by the collective agreements applicable to the agency. But in practice various labour protection rules do not apply because of the nature of the contract.
- There are no regulations prohibiting employers from dismissing their own workers in order to engage temporary agency workers. Case law dictates that it is not a violation of the law if an employer recruits a temporary agency worker to a position that was formerly occupied by a permanent worker.
- Temporary agency workers are entitled to take up permanent employment in the user company once the temporary assignment has been completed.

### **3.3 The collective rights of the temporary worker**

- Collective rights apply in principle, but in practice it is very difficult to make them operational.

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- The contract is a commercial contract. There are no requirements for a written contract or any particular provisions that must be put in a contract.
- The temporary worker is subject to the managerial authority of the user.
- The user has the same obligations in relation to health and safety towards the temporary workers as he has towards his permanent workers. A representative of the agency has the right to check this on the premises of the user and, should the user impede the inspection work of that representative, he is liable to damages.
- The agency must cover damages caused by the worker in the user enterprise.

### **4.2 The relationship between the user and the temporary worker**

- There is no restriction preventing the user enterprise from placing the temporary worker at the disposal of a sub-user.

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<sup>1</sup> For further information see : S. Clauwaert, "Survey on fixed-term contracts", May 1998

#### **4.3 The relationship between the user and the workers' representation bodies in that enterprise**

- The user must open negotiations with the trade unions with which he has concluded a collective agreement if he wants to have recourse to temporary agency workers. These unions have a right to veto the demand in the event that the user wants to conclude a contract with an unreliable agency. In practice, the efficiency of these rules is negligible.
- Collective agreements in the building, electrical installation engineering and airline industries regulate and simplify the consultation procedures between unions and employers when companies want to recruit temporary agency workers.

#### **5. Other legal problems connected with this form of contract**

- Problems arise regarding persons working in leasing companies. Several examples are mentioned below.
- Working for a leasing company involves being called by the employer to perform work in the user company. In practice, it is the user company that is considered to be the employer with regard to working hours, job content, management, equipment and health and safety. Legally, however, this is not the case.
- Persons working for a leasing company find it difficult to plan their family life because they never know in advance when they will be employed or not.
- Other problems occur in obtaining bank loans, purchasing on credit or renting accommodation.
- It is possible that the employer who hires out the worker calls the leasing company and informs him that it wants to replace the worker without giving any reasonable grounds. This leads to (job) insecurity and can involve discrimination on grounds of sex or nationality.
- Social dumping exists, because lower wages are paid.
- More occupational accidents occur because of the lack of training of the temporary worker.

#### **6. The general point of view of the Swedish trade unions on the use of this form of employment contract/relationship**

- LO (blue-collar workers' union) and TCO (white-collar workers' union) have traditionally opposed temporary work because in their view deregulation would lead to a segregated market. They are both against the 1993 changes and want to keep the licensing system.
- There is a great need for clear regulation at both the European and the national level.
- This regulation should provide: 1) that authorization is required, 2) that the possibility of recruiting workers on a temporary basis must be limited, 3) that the employer and the user company inform workers about their position and offer training, 4) it would not be forbidden for the user to recruit workers who worked for him on a temporary basis, 5) control mechanisms and sanctions (financial compensation to the workers and the trade unions) are provided, 6) minimum salary and working hours are guaranteed (via collective agreements) and 7) that temporary employment agencies do not act against the workers' right to organize, collective bargaining and industrial action.

**7. Trends**

- In 1997 the Government published a report on “labour leasing”. This report did not propose any new regulation for private employment agencies. However, it did recognize the need to regulate the situation of agency services for performing artists. In the case of leasing companies the report proposes that they should be registered and that the form of employment in the leasing companies should be permanent employment. LO and TCO have largely supported the proposals made in that report.

**8. Additional information (figures, statistics)**

- In 1996, temporary agency workers accounted for 0.2% of the total labour force.
- 89 % of temporary agency workers are female.

## United Kingdom

### 1. General aspects

- The term temporary work has a very wide scope in the UK. Temporary work as defined for this survey is often referred to as agency work which differs from the definition of temporary work provided in Directive 91/383.
- The Employment Agencies Act of 1973, which controls the activities of fee-charging employment services, applies both to the *employment agency* which supplies workers to employers, and to the *employment business* which supplies persons in the employment of the employment business to act for, and under the control of, the user undertaking. It is the latter which fits in the most for the scope of this survey. Thus the supply of temporary staff should be conducted on an employment business basis. This presumption underlies the Act and the existing Conduct Regulations. At the time the legislation was drafted, employment agency activity was viewed as involving only the permanent placement of work-seekers with employers for a one-off fee. In practice, most agencies must be licensed both as an agency and as an employment business, although their operations are virtually identical.
- The principle regulations which implement the 1973 Act and govern the industry are the Conduct of Employment Agencies and Employment Business Regulations of 1976. As for the supply of nurses and midwives, this is specifically regulated by the Nurses Agencies Act of 1957.
- Applying the 91/383 definition would thus create problems in the UK. It would only cover those workers who are employed by the temporary employment business. But even then the nature of the legal relation between the worker and the supplier, and between the worker and the user, becomes ambiguous. In particular, it will usually be difficult to establish the existence of a contract of employment or service (and hence employment rights) between the agency or employment business and the worker. The determination of this question will depend on case law. In 1970, a court already expressed that a supplier who employed building workers and provided their services to hirers did not have contracts of employment with those workers, but a contract *sui generis*. In a more recent case of 1994, temporary workers were not considered workers of the agency because the latter had no obligation to accept offers by the agency and the agency had no obligation to find them work. The Federation of Recruitment and Employment Services (FRES) is therefore advised to mention expressly in all documents given to the temporary worker that the relationship they have is not an employment relationship.
- In addition, a distinction also must be made with casual workers who in the UK are also considered to be temporary workers.
- The UK has not ratified ILO convention n° 96 because the convention requires that the fees charged by agencies should be fixed or approved by the State. The law however forbids asking fees from the temporary worker (penal sanctions are provided in the event of violation) but the fee between the agency and the user is fixed between the parties (often a certain percentage of the wages earned by the worker hired out). The 1973 Act even expressly prohibits any regulation or restriction on the fees charged to the user which is not in conformity with Article 10 of the Convention.
- There are no national or sectoral collective agreements relating to agency workers.
- There is thus no comprehensive legislation. Specific provisions relating to temporary agency workers can be found in specific laws.

## **2. The temporary work business/agency**

### **2.1 The status of the agency as employer and the ensuing obligations**

- It is not clear whether the temporary worker can be regarded as a worker of the agency. There is some recent case law, even before Appeal Courts, which confirm this principle, but it cannot be considered a general rule.
- As already mentioned, a distinction must be made between an agency and a business (see Point 1 above). Most agencies are licensed both as an agency and as a business. They provide employment for both temporary and permanent staff. In 1990, there were about 18,000 holders of licences, only 800 of which dealt with temporary employment and about 12,000 dealt with both temporary and permanent employment.
- Agencies arranging employment for young people under 18, foreign workers or workers to be employed abroad have special duties.
- The law allows the agency to conduct other activities parallel to placing workers at the disposal of user enterprises.
- It is also forbidden to charge a fee to the temporary worker for the services rendered., with the exception of the placement of performers, photo and fashion models, au-pairs, etc.
- It is prohibited to replace a worker on strike by a temporary worker.

### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- There is a State Employment Service and an Employment Agency (within the Department of Employment Group). The latter provides a network of offices throughout Britain to arrange the placements for direct employment (permanent or temporary). Registration with these offices is necessary in order to obtain unemployment benefits.
- The licensing system has been abolished since 1995, and agencies are no longer required to register. The Industrial Tribunals have the power to close down agencies, but they very seldom use this competence. There is, however, a continuing debate, supported by the trade unions, on reintroducing the licensing system or some kind of other registration scheme. In the light of that debate, the Government is prepared to receive representations as to whether a licensing scheme should be established in the longer term (!). The government believes however that there may be a good case for voluntary registration schemes operated by the industry itself, through which agencies could sign up to higher standards than those required by the Regulations.
- The government in its latest consultation document on the regulation of the private recruitment industry also expressed that it would welcome views on whether it is necessary to prescribe qualifications for persons carrying on employment agencies or businesses.

## **3. The temporary worker**

### **3.1 The contract between the worker and the agency**

- As already mentioned, the contract is considered in principle to be a contract sui generis, but depending on the facts, it can be considered a contract of employment. The temporary worker can even be considered to be self-employed.
- In 1997, the following case was brought before the Court of Appeal. A worker had been on a series of temporary contracts which described him as “self-employed and not under a



contract of service”. He was not obliged to accept any particular assignment, but if he did he agreed to comply with the duties of fidelity, confidentiality and obedience. He had no entitlement to holidays or sick pay and no definite hours of work. The agency paid him a weekly wage when he worked for a user. The employment agency became insolvent. The Court of Appeal held that, despite the express description of his general status as one of “self-employment” the worker was an “employee” of the employment business for the purpose of each specific assignment to a particular user. This case law, however, cannot be considered to be generally applicable.

- The Employment Protection Act of 1978, which requires employers to provide workers with a written statement of their main terms of employment as well as a note of the grievance and disciplinary procedures applicable to the worker, does not apply to temporary workers for various reasons. Firstly, the temporary worker is not always considered to be a worker of the agency. Secondly, the obligation to provide a statement arises only 13 weeks after the commencement of the employment. And thirdly, the note of grievances need only be given where there are less than 20 workers.
- There are, however, special obligations for the agency to give the worker a written statement containing full details of the terms and conditions of his/her employment including 1) whether he will be employed under a contract of service or be self-employed, 2) the kind of work he/she is expected to conduct, and 3) the minimum rates of pay applicable to such work. It must also give as much information as possible on the nature of the user enterprise, the kind of work and the hours and rates of pay applicable, and must make appropriate inquiries as to whether the worker has any qualification required by law and whether performance of the work is legal.
- The agency may not prohibit or restrict the temporary worker in any way from entering into direct employment with the user.
- There is no maximum duration or any limit on the number of times the contract may be renewed.
- The agency must not make payment of its workers conditional on the receipt of the payment of fees from the user.

### **3.2 The individual rights of the temporary worker**

- The main rights and obligations of the worker will be found in the contract between the agency and the worker. Wages, hours of work, holidays and holiday pay, sick pay (above a statutory minimum), terms of notice, and occupational pensions are generally matters dealt with in the individual contract.
- With regard to equal treatment, there is general legislation outlawing discrimination on grounds of sex and marital status, on racial grounds, and on grounds of disability. There are specific provisions making discrimination on these grounds by employment agencies unlawful.
- The National Minimum Wage Act of 1998 and the Working Time Regulations also apply to agency workers (Article 34 and Article 36 respectively).
- Most employment rights are subject to a condition of a threshold of continuous employment so that they often do not apply to temporary workers.
- An employment business may incur responsibilities towards the workers with regard to social security contributions. But in many cases it is the worker himself who pays the contributions.

- A temporary worker who has been employed for 3 months or more by an employment business and who is an “employed earner” for the purposes of social security legislation, may be entitled to receive statutory sick pay from the employment business. Temporary workers who do not fulfil the conditions may claim statutory sick pay if they have paid contributions for it.
- Holiday pay is a matter for the individual contract.
- In order to benefit from maternity leave, continuous employment of 2 years is required, which means that almost all temporary workers are excluded. In order to have maternity pay, employment of at least 26 weeks ending within the 15th week before the expected week of confinement, is required.
- Working time is a matter for the individual contract.

### **3.3 The collective rights of the temporary worker**

- Since there is no statutory system of works councils or workers’ representation in the UK, no question arises of statutory entitlements of temporary workers to representation. Where the employer recognizes a trade union de facto, everything will depend on the rules of individual trade unions as to whether or not this class of workers is eligible for membership. In recent times, several large unions have made efforts to recruit temporary workers with limited success.
- Temporary workers have the same rights to strike as other workers. A temporary worker may not be hired out to a user enterprise that is involved in an industrial dispute in order to replace staff on strike.
- Temporary workers cannot claim unfair dismissal or redundancy payment unless there has been a continuous period of employment of 2 years exists.

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- Employment businesses must take all such steps as are reasonably practicable to obtain from the user enterprise as much information about the work for which the worker is supplied as is necessary for the purpose of selecting a suitable worker to do that work.
- Before entering into a contract with the user, it must inform the user in a clearly legible written statement of its current terms of business including the procedure to be followed if a worker supplied is unsatisfactory, any fee payable if the user takes the worker into his or direct employment, and whether workers supplied are workers of the agency or self-employed.
- Furthermore, the agency must not supply to the user enterprise a worker who has been employed directly by the user within the previous 6 months, unless the user consents in writing.
- These terms of business must be sent in writing not later than 24 hours after the first worker supplied has commenced work in the user enterprise.

### **4.2 The relationship between the user and the temporary worker**

- There is no legislation determining the legal rights and obligations of the user in relation to the temporary worker.

- The Health and Safety at Work Act of 1974 obliges the user to ensure health and safety rights for every person on his premises, including temporary workers, and states that “he has the duty to conduct in such a way as to ensure, as far as reasonable practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and safety”.

#### **4.3 The relationship between the user enterprise and the workers’ representation bodies in that enterprise**

- No information available

#### **5. Other legal problems connected with this form of contract**

- No comment

#### **6. The general point of view of your organization in general on the use of this form of work contract/ relationship ?**

- The TUC considers that the registration procedure should be reintroduced and that there is a need for better statutory protection of employment rights in general.

#### **7. Trends**

- The government will soon be undertaking a review of the regulations governing business and employment agencies. Some concrete measures were introduced in the Employment Relations Bill of February 1998. The changes consist of the following.
  - The proposals amend the Employment Agencies Act 1973 (“the 1973 Act”) and provide slightly amended definitions of employment agency<sup>1</sup>, employment business and employment<sup>2</sup>.
  - The proposals also clarify and extend the power for the Secretary of State to make regulations. It does so by amending and extending the list of matters in respect of which such regulations may in particular make provision, and by repealing the proviso which prevents the regulation of charges to employers. These amendments make it clear that that the Secretary of State may regulate the provision of services covered by the 1973 Act to employers and those who are seeking work generally rather than specifically the persons presently identified in the 1973 Act. The amendment also provides that regulations may be made restricting the services provided by operators. Examples of matters on which regulations might be made include:
    - measures to make the provision of services conditional upon the purchase of other services offered by the agency or someone else;
    - measures restricting the practice where an agency offers or gives, directly or indirectly, financial benefit or benefit in kind to a work-seeker in order to induce, or seek to induce, the worker to engage it to provide work-finding services (this will only be allowed under very strict conditions);

<sup>1</sup> For the purposes of this Act "employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding **persons** employment with employers or of supplying employers with **persons** for employment by them. The former definition used the term “worker” instead of “persons”.

<sup>2</sup> Employment includes “including employment by way of professional engagement or otherwise under a contract for services, and au pair arrangements”.

- measures restricting the ability of employment agencies and employment businesses to vary unilaterally the terms of their contracts or other arrangements with workers or hirers;
  - measures restricting the ability of employment agencies and businesses to make payment to a worker for work done by him conditional upon his doing other work;
  - preventing employment agencies from purporting to enter into contracts on behalf of workers unless they are permitted to charge such workers for finding them work and have binding contracts with them authorizing them to enter into such contracts; and
  - measures restricting the ability of employment businesses and employment agencies to impose terms on employers which seek to prevent or discourage them from dealing, whether directly or through another employment business or agency, with workers supplied to them or from referring such workers to other persons who might employ them. Where businesses seek to impose charges in any of these circumstances, regulations might limit the size of those charges and/or the duration of their application, or prohibit them altogether.
- Also to be amended is the section that makes it unlawful, except where the Secretary of State prescribes otherwise, for employment agencies or businesses to charge workers for the service of finding or seeking to find them work<sup>3</sup>. Exceptions to the prohibition might include fees relating to:
    - the provision of employment agency services to entertainers, models and certain other limited groups where it is the norm for an agent to be engaged to represent the worker, except where the agent charges the person who hires the worker;
    - the inclusion of information about workers in publications made available to employers or potential employers; and
    - the provision of information about work opportunities to workers where no other services are offered, and where the charge for such information is within prescribed limits.
  - The proposals also make provision for inserting a new section into the 1973 Act, which increases the time in which an information laid before a Magistrates Court or a Sheriff's Court in Scotland is triable for any offence under the 1973 Act (from 6 months to either 3 years from the date the offence was committed or 6 months from the date on which the Secretary of State comes to know of evidence sufficient to justify the prosecution, whichever is the earlier).
  - In May 1999, the Government submitted its consultation document on "Regulation of the Private Recruitment Industry – A consultation document". The objectives of the new proposed regulation is fourfold: to increase clarity, to promote labour market

<sup>3</sup> Except in such cases or classes of case as the Secretary of State may prescribe (a) a person carrying on an employment agency shall not request or directly or indirectly receive any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment; (b) a person carrying on an employment business shall not request or directly or indirectly receive any fee from an employee for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find another person with a view to the employee acting for and under the control of that other person; (c) a person carrying on an employment business shall not request or directly or indirectly receive any fee from a second person for providing services (whether by the provision of information or otherwise) for the purpose of finding or seeking to find a third person with a view to the second person becoming employed by the first person and acting for and under the control of the third person.

flexibility, to give proper protection to the clients and general public, to curb payment abuses and to safeguard clients' money. The most important changes are :

- Placing employees at the disposal of a user enterprise will now only be possible through an employment business and no longer through an employment agency. The difference between both is that in employment agency situations the worker has a contract with the hirer and in employment business situations the worker has a contract with the employment business.
  - The proposed Regulation broadens the existing requirements by making it unlawful for any contract with a work-seeker to include any term designed to deter the work-seeker from either terminating the contract or taking up (or continuing) employment with the user enterprise.
  - A change in the charges: an employment business can charge fees to the user enterprises.
- The TUC welcomes the Government' proposals to better regulate the operation of the private recruitment industry. In particular, the TUC welcomes the proposals to:
    - enforce the distinction between an employment business and an employment agency, so that agency workers know who their employer is;
    - ban introducers' fees;
    - ensure that agency workers are paid on time;
    - provide more clarity over contractual terms;
    - ensure that agency workers are not being supplied to do jobs for which they are not qualified, or where there are health and safety hazards – with the caveat that separate measures must be taken to deal with any employer whose workplace does not comply with health and safety laws;
    - enforce the general prohibition on charging a fee for finding work;
    - tighten up protection for workers in the entertainment industry.
  - In addition, the TUC urges the Government to:
    - re-introduce a licensing system for agencies, with minimal criteria for registration and a 3-yearly re-application system;
    - produce more detailed guidelines for agencies on compliance with the Working Time Regulations, in particular in relation to record-keeping obligations;
    - give workers in the entertainment industry the right to inspect their client account;
    - limit the extent of charging to clients in the entertainment industry, so that fees are limited to the work actually negotiated by the agent;
    - ensure that performers are paid on the day or night of their performance and remove the opt-out clause (Regulation 25(10));
    - set up a working group covering relevant Government departments to solve the problem of bogus self-employment, contracts “for” services, tax problems for freelancers and other areas where workers fall outside employment protection;
    - provide better resources for the DTI enforcement operation.

## **7. Additional information (figures, statistics)**

- In 1998, temporary agency workers represented almost 8% of the total active labour force (about 500,000 persons).

## Other countries

### Norway

#### 1. General aspects

- The Norwegian parliament (Stortinget) approved in December 1999 new regulations on private employment agencies and the leasing of labour, which liberalize existing rules (Government proposes easing ban on private employment agencies - NO9904128N). The ban on private employment agencies is abolished, while there are significant alterations to the provisions regulating the "leasing" of labour. The date from which the new provisions will come into force has been left to the government to decide. Exclusions will be introduced for some groups within the health and social sector. As recommended by the public committee, parallel restrictions on the hiring-in of such labour will be introduced, by placing it under the jurisdiction of the provisions regulating temporary employment in the Working Environment Act. The main reason for introducing new provisions is that the existing legal system is no longer in tune with the present labour market situation. There has been a growth in new recruitment services and in alternative channels of communication between job-seekers and employers, which fall outside the scope of the present legal framework. The new regulations draw a distinction between the leasing of staff from professional agencies (e.g. temporary work agencies) and the leasing of labour from manufacturing enterprises, meaning enterprises whose main purpose is not to hire out labour. There are currently significant restrictions on the type of work which stand-ins from temporary work agencies may perform, but the new provisions will mean that agencies are free to hire out any category of staff. The new rules stipulate that the hiring in of manpower from temporary work agencies should be allowed to the same degree as it is permissible to use temporary employment generally. The existing regulations concerning temporary employment are relatively strict, and were indeed further tightened in 1996. Temporary employment is regulated by the Act relating to Workers' Protection and Working Environment (AWPWE), which permits temporary employment in the event of an apparent need for stand-ins (e.g. owing to absence in relation to holidays/leave/illness etc), and in the case of seasonal cycles and unpredictable, short-term stoppages in labour activity. The new regulations also allow the social partners to agree on extended utilization of leased labour. Local trade unions and employers bound by local collective agreements may enter into agreements on the use of leased labour beyond those cases stipulated in the AWPWE. The new proposal will also allow the Directorate of Labour (Arbeidsmarkedsetaten), which is a public service, to introduce fee-based employment services, and to create a state-owned temporary work agency. It is still not clear how such a company is to be organized and for which type of services the Directorate may introduce charges.

#### 2. The temporary work business/agency

##### 2.1 The status of the agency as employer and the ensuing obligations

- No information available

## **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- Derogations from the prohibition on the use of hired out personnel can be granted by the Hiring out of Manpower Board, which is a tripartite body.
- It is the trade union point of view that authorizations to conclude such contracts are given too easily.
- There is no system of permanent recognition of the agency. Problems therefore arise mainly in relation to enterprises who hire out temporary workers on an ad hoc basis and who seek official approval for each individual project. There is almost no control by Government and adequate civil and penal sanctions are lacking.
- Another problem is that social partners, and in particular trade unions, have no adequate remedies when they are confronted by illegal triangle relationships.

## **3. The temporary worker**

### **3.1 The contract between the worker and the agency**

- According to LO Norway no legal problems occur in this area.

### **3.2 The individual rights of the temporary worker**

- Temporary workers have often poorer working conditions regarding remuneration and working hours. Temporary employment often leads to social dumping and in some sector the use of temporary workers constitutes a alternative and even threat to the use of unionized workers.
- There are also problems in relation to health and safety as temporary workers do often not have health and safety delegates of their own.
- Lack of vocational training constitutes another problem in particular in the construction and engineering sector.

### **3.3 The collective rights of the temporary worker**

- In practice, temporary workers fall outside the rules on representation, information and consultation within the user's enterprise

## **4. The enterprise using temporary workers**

### **4.1 The relationship between the user and the temporary work agency**

- No information available

### **4.2 The relationship between the user and the temporary worker**

- No information available

### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- Before engaging temporary workers the user must consult the workers representation bodies in his enterprise as early as possible and at least once a month. But no sanctions were provided for the event of violation; however, a new basic agreement which came into effect on 1 January 1998 now provides sanctions.

**5. Other legal problems connected with this form of contract**

- No comment.

**6. The general point of view of the Norwegian trade unions on the use of this form of work contract/relationship**

- The Norwegian Confederation of Trade Unions (Landsorganisasjonen i Norge, LO) has expressed its support for the main propositions of the proposals by the public committee but emphasizes that the new proposals should be accompanied by a recommendation that public labour market initiatives should not be scaled down. LO's view is supported by the Federation of Norwegian Professional Associations (Akademikernes Fellesorganisasjon, AF) and the Confederation of Vocational Unions (Yrkesorganisasjonenes Sentralforbund, YS).

**7. Trends**

- The use of temporary work has increased since the parliament restricted the use of fixed-term contracts in 1995.

**8. Additional information (figures, statistics)**

- No information available



## **Czech Republic**

### **1. General aspects**

- There is no specific legal definition of temporary work. An employer (or agency) may conclude a written agreement with a worker by which the worker is temporarily assigned to perform work for another natural or legal person.
- Private employment agencies have been allowed pursuant to the Employment Act n°1/1991, as amended.
- The Czech Republic has ratified ILO Convention n°34 concerning fee-charging employment agencies.

### **2. The temporary work business/agency**

#### **2.1 The status of the agency as employer and the ensuing obligations**

- The agency is considered to be the employer.

#### **2.2 Recognition and control of the agency and the role of Government (Federal or regional)**

- The agency requires a permit. If operations are conducted without a permit, penal sanctions are provided.
- The agency can only charge a reasonable fee which compensates for the actual costs incurred in assigning the worker to a user.

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- This is a fixed-term contract.

#### **3.2 The individual rights of the temporary worker**

- Temporary workers are subject to the same provisions as permanent workers with regard to working time arrangements, access to social services in the user enterprise, entitlement to social insurance, occupational health and safety, vocational training and individual dismissal.
- Since temporary workers do not have a relationship with the user, they are excluded from the benefits and rights stipulated in the collective agreement applying to that enterprise.

#### **3.3 The collective rights of the temporary worker**

- The law regulates these collective rights, but in practice they are rarely applied in the user enterprise, because temporary workers have a relationship with the agency and not the user.
- So they only have collective rights if a trade union is established or elected in the agency. But so far none have been established or elected.
- They have the right to strike, since this is constitutionally guaranteed to all workers, but a strike can only take place in connection with a dispute relating to the existing collective agreement. It also presupposes the existence of a trade union in the agency, since only

trade unions can call a strike. Temporary workers would not be allowed to participate in a strike in the user's enterprise because they are not considered to be employees of the user. The only possibility for them to join the strike would be to go out on a sympathetic strike. This has not yet happened to date.

#### **4. The enterprise using temporary workers**

##### **4.1 The relationship between the user and the temporary work agency**

- This is a contract governed by the Commercial Code. This contract must be concluded before the temporary worker begins to work for the user. The content of the contract is left to the contracting parties.

##### **4.2 The relationship between the user and the temporary worker**

- No information available

##### **4.2 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- As is the case with workers on fixed-term contracts, the employer is obliged to inform the works council of his intention to have recourse to temporary workers. But the right of trade unions in the user enterprise to be informed concerning the hiring of temporary workers is not covered by law or collective agreements.

#### **5. Other legal problems connected with this form of contract**

- No comment

#### **6. The general point of view of the Czech trade unions on the use of this form of work contract/relationship**

- The CMKOS considers it necessary to develop an efficient set of rules governing this form of employment.

#### **7. Trends**

- No legal changes in the past 5 years and no specific political discussions at the present time.

#### **8. Additional information (figures, statistics)**

- No information available

## Annexes

### Questionnaires on fixed-term contracts and temporary work

#### Introduction

In June 1997, the European Social Partners concluded a European framework agreement on part-time work. Part-time work was, however, only one of the atypical forms of work that were mentioned in the consultation documents issued by the Commission in this framework. Two other major forms are the use of fixed-term contracts (“contrats à durée déterminée”) and temporary work relationships (“travail intérimaire”).

In the framework agreement on part-time, it is stipulated that “it is the intention of the parties to consider the need for similar agreements relating to other forms of flexible work”. In the light of these forthcoming negotiations between the European Social Partners, the ETUC considers it of crucial importance to be fully informed of the legislative state of play in the Member States regarding the use of fixed-term contracts and temporary work.

The ETUC therefore wishes to call on the assistance of its legal network NETLEX to provide the Confederation with the necessary information on the basis of the enclosed questionnaires.

#### Definitions, objectives and structure

##### Definitions

To avoid any confusion, the definitions which served as the background for drawing up these questionnaires are the definitions used in Directive 91/383 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-term employment relationship or a temporary employment relationship. The following definitions are given in that Directive:

- fixed duration contracts of employment: “*contracts concluded directly between the employer and the worker, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a special event*” (two-party relationship)
- temporary employment: “*relationships between a temporary employment business (agency) which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services*” (triangle relationship).

##### Objectives

**The primary objective of the two questionnaires is to identify which legal problems currently arise in the Member States in connection with the two forms of work on the basis of the structure of key words and questions provided.**

The objective is thus not to ask the experts to provide us with a large amount of information on how all this is regulated in their country. Since the latter can easily be found in the existing literature, it is our intention to elaborate a document that contains this more detailed information in order then to submit it to the experts for further clarification and up-dating.

It was decided that the survey should deal with both forms of atypical work, at least as far as the background research is concerned, since there are many similarities between the two forms, which are closely related. To mention but a few:

- Both the literature and reality prove that the percentages which these forms of work represent in statistics on total employment are interrelated. Countries with relatively low percentages of fixed-term workers, on the other hand, often have very high percentages of temporary work workers and vice versa. This is due to labour market policies and the accompanying rigid or flexible legislation, implemented in those countries, which favour either of the two forms.
- Statistics also show that only a very small and even decreasing percentage of fixed-term workers are recruited afterwards by the employer on a full-time or part-time basis, contrary to the situation regarding workers with temporary work contracts, who are much more often recruited after their stay in the enterprise.
- Both forms of contracts have been dealt with jointly in almost all proposals for EU directives since 1982 and in the above-mentioned directive on health and safety adopted in 1991.
- Several aspects are inherent to both forms of work, although regulated differently (e.g. maximum duration, renewals, principles of equality, trade union rights, etc.).

However, in addition to these relations and similarities, there are of course major differences in the legislation governing these two forms of contract. To name but a few:

- the dual relationship in fixed-term contracts (employer – worker) versus the triangle relationship in temporary work relationships (worker – temporary work agency – employer);
- the considerable involvement of the government in temporary work relationships;
  - fixed-term contract regulation is often embedded in the general labour law provisions; because of its specific features, temporary work is almost always regulated by specific legislation.

It was therefore considered more appropriate to deal with both forms in two separate questionnaires.

A further objective is not only to collect information on the legislation concerned, but also on the relevant collective agreements which complement the existing legislation. With regard to the latter, it should be **mentioned for the benefit of the experts of the European Industry Federations (EIF)** that these questionnaires are being sent to the national affiliated organizations and that we expect the EIF experts mainly to provide us with information based on the structure of the relevant sectoral collective agreements that are of interest.

### **Structure of the questionnaires**

The structure was elaborated on the basis of an analysis of relevant official EU documents (former proposals for Directives) and the literature. The objective of this non-exhaustive structure is to provide the experts with several key words and questions which they can use as a basis for formulating their replies.

In addition to the “purely legal aspects”, we have also included several more general questions on the points of view of the organizations on the use of these forms of employment and the request to provide us, if possible, with information/figures/statistics on certain specific features and developments.

### **Follow-up: replies and deadlines**

The experts may use whatever format they find most appropriate for answering these questionnaires, taking account of the objectives mentioned above. The only conditions we wish to propose are as follows:

- 1) As far as possible, please formulate your replies in line with the structure provided.
- 2) **Replies should be typed and not handwritten, for reasons of clarity and practicality.**

## **Questionnaire on temporary agency work contracts**

**Do legal problems arise in connection with:**

### **1. General aspects**

- the (lack of) definition
- the scope of legislation (i.e. Are certain categories of workers excluded? Does it apply to both the public and the private sector?)
- the reasons/grounds for which such contracts can be concluded or definitely cannot be concluded?
- The exceptions regarding the use of this form of contract defined by law and/or collective agreement
- The authorization to conclude such contracts granted by the competent public authorities
- The principle of equal treatment

### **2. The temporary work business/agency**

#### **2.1 The status of the agency as employer and the ensuing obligations**

#### **2.2 Recognition and control of the agency and the role of Government (Federal or regional), regarding in particular:**

- The conditions required for recognition
- The duration of recognition
- The suspension and withdrawal of recognition
- Other control mechanisms
- The civil and/or penal sanctions provided
- The role of the social partners in the process

### **3. The temporary worker**

#### **3.1 The contract between the worker and the agency**

- Remuneration
- Working time arrangements (working hours, rest periods, holidays, etc.)
- Access to social services in the undertaking
- Social security rights (statutory and occupational)
- Health and safety
- Vocational training
- Individual dismissal (ordinary or extraordinary dismissal, dismissal before the end of the term) and compensation (in the case of both lawful and unlawful dismissal)

#### **3.2 The collective rights of the temporary worker**

- Representation, information and consultation rights within the workers' representation bodies (works council, health and safety committee) in the temporary work agency
- Representation, information and consultation rights within the workers' representation bodies in the user enterprise
- The right to take industrial action, including strike

#### **4. The enterprise using temporary workers**

##### **4.1 The relationship between the user and the temporary work agency**

- The nature of the contract between the two parties
- The form and content of that contract
- The liability of the user if he employs a worker from an unrecognized agency

##### **4.2 The relationship between the user and the temporary worker**

- The obligations of the user (including information obligations) in respect of the temporary worker regarding the protection of working conditions, health and safety, etc.
- Liability for damage caused by the worker within the user enterprise
- The right of the worker to be informed of other job opportunities in the user enterprise for which he/she could apply

##### **4.3 The relationship between the user enterprise and the workers' representation bodies in that enterprise**

- The information obligations of the user in respect of those bodies on the use of this kind of worker. Aspects to be considered:
  - Whether or not it is obligatory to provide information
  - The form of the information
  - The content of the information
  - Time and periodicity (when and how many times a year it is to be provided)
  - The sanctions in the event of non-compliance
- The right of these workers' representation bodies to be consulted in advance on the decision to hire temporary workers. Aspects to be considered:
  - Whether or not it is obligatory to consult the body
  - The content of the consultation
  - The sanction in the event of non-compliance

#### **5. Other legal problems which might currently exist in your country in connection with this form of contract**

#### **6. What is the point of view of your organization in general on the use of this form of work contract/relationship?**

#### **7. Trends**

**What have been the most important legislative developments in the past 5 years in connection with this form of contract in your country?**

**Are there currently any new political and/or legal discussions which could lead to positive or negative changes in the short term? If so, what is the point of view of your organization in this respect?**

#### **8. If possible, please provide us with information for your country on how many temporary workers are recruited by the user in his enterprise after the period of temporary employment.**

## **List of ETUC affiliated organizations which replied to the questionnaire**

### **EU MEMBER STATES**

Austria:	ÖGB
Belgium:	CSC / FGTB
Denmark:	LO Denmark
Finland:	SAK
France:	FO / CFDT
Germany:	DGB / DAG
Italy:	UIL (tourism sector)
Luxembourg:	CGT-L / LCGB
Netherlands:	FNV
Portugal:	UGT-P /CGTP-IN/ SETACCOP
Spain:	CC.OO/ UGT-E
Sweden:	LO-Sweden/ TCO
United Kingdom:	TUC

### **EEA and CEEC countries**

Norway:	LO Norway
Czech Republic:	CMKOS
Poland:	Solidarność



Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship (OJ L 206, 29 July 1991)

**The Council of the European Communities,**

Having regard to the Treaty establishing the European Economic Community, and in particular Article 118a thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

In cooperation with the European Parliament<sup>2</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>,

Whereas Article 118a of the Treaty provides that the Council shall adopt, by means of Directives, minimum requirements for encouraging improvements, especially in the working environment, to guarantee a better level of protection of the safety and health of workers;

Whereas, pursuant to the said Article, Directives must avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings;

Whereas recourse to forms of employment such as fixed-duration employment and temporary employment has increased considerably;

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

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

Whereas the Directives on health and safety at work, notably Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>4</sup>, contain provisions intended to improve the safety and health of workers in general;

Whereas the specific situation of workers with a fixed-duration employment relationship or a temporary employment relationship and the special nature of the risks they face in certain sectors calls for special additional rules, particularly as regards the provision of information, the training and the medical surveillance of the workers concerned;

Whereas this Directive constitutes a practical step within the framework of the attainment of the social dimension of the internal market,

**HAS ADOPTED THIS DIRECTIVE:**

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<sup>1</sup> OJ No C 224, 8. 9. 1990, p. 4.

<sup>2</sup> Opinion delivered on 20 November 1990 (not yet published in the Official Journal) and OJ C 158, 17. 6. 1991.

<sup>3</sup> OJ No C 332, 31. 12. 1990, p. 167.

<sup>4</sup> OJ No L 183, 29. 6. 1989, p. 1.

## SECTION I SCOPE AND OBJECT

### Article 1

#### Scope

This Directive shall apply to:

1. employment relationships governed by a fixed-duration contract of employment concluded directly between the employer and the worker, where the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or the occurrence of a specific event;
2. temporary employment relationships between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services.

### Article 2

#### Object

1. The purpose of this Directive is to ensure that workers with an employment relationship as referred to in Article 1 are afforded, as regards safety and health at work, the same level of protection as that of other workers in the user undertaking and/or establishment.
2. The existence of an employment relationship as referred to in Article 1 shall not justify different treatment with respect to working conditions inasmuch as the protection of safety and health at work are involved, especially as regards access to personal protective equipment.
3. Directive 89/391/EEC and the individual Directives within the meaning of Article 16 (1) thereof shall apply in full to workers with an employment relationship as referred to in Article 1, without prejudice to more binding and/or more specific provisions set out in this Directive.

## SECTION II GENERAL PROVISIONS

### Article 3

#### Provision of information to workers

Without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;
2. such information:
  - covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation, and
  - states clearly any increased specific risks, as defined in national legislation, that the job may entail.

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**Article 4****Workers' training**

Without prejudice to Article 12 of Directive 89/391/EEC, Member States shall take the necessary measures to ensure that, in the cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.

**Article 5****Use of workers' services and medical surveillance of workers**

1. Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.
2. Where Member States do not avail themselves of the option referred to in paragraph 1, they shall, without prejudice to Article 14 of Directive 89/391/EEC, take the necessary measures to ensure that workers with an employment relationship as referred to in Article 1 who are used for work which requires special medical surveillance, as defined in national legislation, are provided with appropriate special medical surveillance.
3. It shall be open to Member States to provide that the appropriate special medical surveillance referred to in paragraph 2 shall extend beyond the end of the employment relationship of the worker concerned.

**Article 6****Protection and prevention services**

Member States shall take the necessary measures to ensure that workers, services or persons designated, in accordance with Article 7 of Directive 89/391/EEC, to carry out activities related to protection from and prevention of occupational risks are informed of the assignment of workers with an employment relationship as referred to in Article 1, to the extent necessary for the workers, services or persons designated to be able to carry out adequately their protection and prevention activities for all the workers in the undertaking and/or establishment.

**SECTION III SPECIAL PROVISIONS****Article 7****Temporary employment relationships: information**

Without prejudice to Article 3, Member States shall take the necessary steps to ensure that:

1. before workers with an employment relationship as referred to in Article 1 (2) are supplied, a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled;

2. the temporary employment business shall bring all these facts to the attention of the workers concerned.

Member States may provide that the details to be given by the user undertaking and/or establishment to the temporary employment business in accordance with point 1 of the first subparagraph shall appear in a contract of assignment.

## **Article 8**

Temporary employment relationships: responsibility

Member States shall take the necessary steps to ensure that:

1. without prejudice to the responsibility of the temporary employment business as laid down in national legislation, the user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work;
2. for the application of point 1, the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work.

## **SECTION IV MISCELLANEOUS PROVISIONS**

### **Article 9**

More favourable provisions

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

### **Article 10**

Final provisions

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

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

2. Member States shall forward to the Commission the texts of the provisions of national law which they have already adopted or adopt in the field covered by this Directive.
3. Member States shall report to the Commission every five years on the practical implementation of this Directive, setting out the points of view of workers and employers.

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

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

## **Article 11**

This Directive is addressed to the Member States.

Done at Luxembourg, 25 June 1991

For the Council The President J.-C. JUNCKER

## **Convention N° 181 on Private Employment Agencies (1997)**

### **Preamble**

The General Conference on the International Labour Organization,  
Having been convened at Geneva by the Governing Body of the International Labour Office,  
and having met in its 85<sup>th</sup> Session on 3 June 1997, and  
Noting the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949, and  
Being aware of the importance of flexibility in the functioning of labour markets, and  
Recalling that the International Labour Conference at its 81<sup>st</sup> Session, 1994, held the view that the ILO should proceed to revise the Fee-Charging Employment Agencies Convention (Revised), 1949, and  
Considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when the above-mentioned Convention was adopted, and  
Recognizing the role which private employment agencies may play in a well-functioning labour market, and  
Recalling the need to protect workers against abuses, and  
Recognizing the need to guarantee the right to freedom of association and to promote collective bargaining and social dialogue as necessary components of a well-functioning industrial relations system, and  
Noting the provisions of the Employment Service Convention, 1948, and  
Recalling the provisions of the Forced Labour Convention, 1930, the Freedom of Association and the Protection of the Right to Organize Convention, 1948, the Right to Organize and Collective Bargaining Convention, 1949, the Discrimination (Employment and Occupation) Convention, 1958, the Employment Policy Convention, 1964, the Minimum Age Convention, 1973, the Employment Promotion and Protection against Unemployment Convention, 1988, and the provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975, and  
Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and  
Having determined that these proposals shall take the form of an international Convention, adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Convention, which may be cited as the Private Employment Agencies Convention, 1997:

### **Article 1**

1. For the purpose of this Convention the term ‘private employment agency’ means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:
  - a. services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

- b. services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a ‘user enterprise’) which assigns their tasks and supervises the execution of these tasks;
  - c. other services relating to job-seeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.
2. For the purpose of this Convention, the term ‘workers’ includes job-seekers.
  3. For the purpose of this Convention, the term ‘processing of personal data of workers’ means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

## Article 2

1. This Convention applies to all private employment agencies.
2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.
3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.
4. After consulting the most representative organizations of employers and workers concerned, a Member may:
  - a. prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;
  - b. exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.
5. A Member which ratifies this Convention shall specify, in its reports under Article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reactions therefor.

## Article 3

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.
2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

## Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

**Article 5**

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.
2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their job-seeking activities.

**Article 6**

The processing of personal data of workers by private employment agencies shall be:

- a. done in a manner that protects this data and ensures respect for workers' privacy in accordance with national law and practice;
- b. limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

**Article 7**

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.
2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.
3. A Member which has authorized exceptions under paragraph 2 above shall, in the reports under Article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

**Article 8**

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.
2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

**Article 9**

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.



## Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers' and workers' organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

## Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1 (b) above, in relation to:

- a. freedom of association;
- b. collective bargaining;
- c. minimum wages,
- d. working time and other working conditions;
- e. statutory social security benefits;
- f. access to training;
- g. occupational safety and health;
- h. compensation in case of occupational accidents or diseases;
- i. compensation in case of insolvency and protection of workers' claims;
- j. maternity protection and benefits, and parental protection and benefits.

## Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- a. collective bargaining;
- b. minimum wages;
- c. working time and other working conditions;
- d. statutory social security benefits;
- e. access to training;
- f. protection in the field of occupational safety and health;
- g. compensation in case of occupational accidents or diseases;
- h. compensation in case of insolvency and protection of workers' claims;
- i. maternity protection and benefits, and parental protection and benefits.

## Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment services and private employment agencies.

2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

- a. formulating labour market policy;
- b. utilizing or controlling the use of public funds earmarked for the implementation of that policy.

3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

- a. to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
- b. for statistical purposes.

4. The competent authority shall compile and, at regular intervals, make this information publicly available.

#### **Article 14**

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

## **Recommendation N° 188 concerning Private Employment Agencies (1997)**

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 85<sup>th</sup> Session on 3 June 1997, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention,

1997, adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

### **I. GENERAL PROVISIONS**

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as ‘the Convention’) and should be applied in conjunction with them.
2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.  
  
(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.
3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

### **II. PROTECTION OF WORKERS**

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.
5. Workers employed by private employment agencies as defined in Article 1.1(b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.

6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.
7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.
8. Private employment agencies should:
  - a. not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
  - b. inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.
9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organization.
10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.
11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.
- 12 (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.  
  
(2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.  
  
(3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.
13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.
14. Private employment agencies should have properly qualified and trained staff.

15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:

- a. prevent the user enterprise from hiring an employee of the agency assigned to it;
- b. restrict the occupational mobility of an employee;
- c. impose penalties on an employee accepting employment in another enterprise.

### **III. RELATIONSHIP BETWEEN THE PUBLIC EMPLOYMENT SERVICE AND PRIVATE EMPLOYMENT AGENCIES**

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

17. Measures to promote cooperation between the public employment service and private employment agencies could include:

- a. pooling of information and use of common terminology so as to improve transparency of labour market functioning;
- b. exchanging vacancy notices;
- c. launching of joint projects, for example in training;
- d. concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- e. training of staff;
- f. consulting regularly with a view to improving professional practices.

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