



IZA

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## **The Role and Activities of Employment Agencies**

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September 2013

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Economic and Monetary Affairs

**Employment and Social Affairs**

Environment, Public Health and Food Safety

Industry, Research and Energy

Internal Market and Consumer Protection

# The Role and Activities of Employment Agencies

STUDY





DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT A: EMPLOYMENT POLICY

# The Role and Activities of Employment Agencies

STUDY

## Abstract

This study provides an overview of the importance and activities of employment agencies as well as their legal framework (WTO, ILO, EU) in the EU Member States and closely examines their role in selected countries, while focusing on temporary work agencies, a significantly growing market within the EU. Due to limited data, there is no clear-cut result on the agencies' longer-term impact. However, the four identified market types (market driven, social dialogue based, legislator driven and emerging markets) are analysed through country cases regarding national regulations, the treatment of workers and everyday functioning of the agencies. It becomes evident that there is a wide diversity of the branch, which needs to be taken into account when reviewing EU Directive 2008/104/EC.

This document was requested by the European Parliament's Committee on Employment and Social Affairs.

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## LIST OF ABBREVIATIONS

<b>ACAS</b>	Advisory, Conciliation and Arbitration Service
<b>ACV</b>	Christian Trade Union
<b>AÜG</b>	Law on Temporary Employment
<b>AW</b>	Agency work
<b>BAP</b>	Employers' Federation of Temporary Employment Agencies
<b>BV</b>	Business visitations
<b>BIS</b>	Department for Business, Innovation and Skills
<b>CBI</b>	Central Employers' Organisation
<b>CCNL</b>	National Collective Bargaining Agreement
<b>CGIL</b>	Italian General Confederation of Labour
<b>CIETT</b>	International Confederation of Private Employment Agencies
<b>CIPD</b>	Chartered Institute of Personnel and Development
<b>CISL</b>	Italian Confederation of Trade Unions
<b>CJEU</b>	Court of Justice of the European Union
<b>COVE</b>	TUC's Commission on Vulnerable Employment
<b>CSS</b>	Contractual Service Suppliers
<b>DBG</b>	Confederation of German Trade Unions
<b>EAS</b>	Employment Agency Standards
<b>ECJ</b>	European Court of Justice
<b>EEA</b>	European Economic Area
<b>ELFS</b>	European Labour Force Survey
<b>ESC</b>	European Social Charter
<b>EURES</b>	European Commission

- EUROCIETT** European Confederation of Private Employment Agencies
- EWCS** European Working Conditions Survey
- GATS** General Agreement on Trade in Services
- HMRC** Her Majesty's Revenue and Customs
  - ICT** Intra-corporate transfers
  - IGZ** Association of German Temporary Employment Agencies
  - ILO** International Labour Organization
- INAIL** Worker's Compensation Authority
- INPS** National Social Security Institute
- ISCED** International Standard Classification of Education
- ISFOL** Institute for the Professional Development of Workers
  - LFS** Labour Force Survey
- NIDIL** New Work Identity
- NACE** Statistical Classification of Economic Activities in the European Community
- ONS** Office of National Statistics
- PREA** Private Employment Agency
- PSC** REC Professional Standards Committee
- PPE** Personal Protective Equipment
- PWR** Pay and Work Rights Helpline
- REC** Recruitment and Employment Confederation
- RSA** Corporate Unions Representation
- RSU** Unitary Unions Representation
- RUT** Registration for Foreign Service Providers

- SAZ** Association of Employment Agencies
- TAW** Temporary Agency Work
- TEAM** The Employment Agents Movement
- TEU** Treaty on the European Union
- TFEU** Treaty on the Functioning of the European Union
- TLWG** Temporary Labour Working Group
- TUC** Trade Union Congress
- UDHR** Universal Declaration of Human Rights
- UIL** Italian Labour Union
- WIFO** Austrian Institute of Economic Research
- WTO** World Trade Organization
- ZAPT** Union of Temporary Work Agencies

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## EXECUTIVE SUMMARY

### The growing importance of private employment agencies

Generally speaking, the market of private employment agencies, which includes private employment placement agencies and temporary work agencies (TWAs), is growing significantly. This is mainly due to the **opening up of labour markets** where public institutions previously had a monopoly on recruitment. The size and distribution of private employment agencies differs across the European Union; for instance, more than 36% of such enterprises are located in the Netherlands and the United Kingdom, and the number of employees ranges between more than 136,000 in the United Kingdom and fewer than 200 in Cyprus.

The focus of this study lies on **temporary work agencies**, which are used by employers for two reasons. Firstly, temporary agency work serves as an instrument **to satisfy short-term staffing needs and screen potential employees** without taking termination provisions into account. Therefore, temporary agency work contributes to the flexibilisation of the workforce and often reduces costs, given that signing off permanent staff can be expensive and sometimes legally problematic. Moreover, temporary agency work is prevalent in sectors with strong **seasonal patterns**, thus helping to overcome staff absences.

The advantages for temporary agency workers are that they are offered the possibility to get to know different work places and jobs and are able to screen potential employers. For these reasons, temporary agency work can serve as a **stepping stone to permanent employment** or a proper job. Owing to low search costs, temporary agency work offers a way to enter or re-enter the job market and quickly earn some, or gain additional, income. Furthermore, temporary agency work may help to gain work experience and thereby increases employability. Moreover, it might suit the worker's circumstances when flexibility is needed to better harmonise work with other life spheres, such as caring or education.

Owing to the significant increase of temporary agency work, academic and political discussion has been stimulated concerning whether temporary agency work hinders or fosters the labour market advancement of those concerned. Nonetheless, the academic debate on the longer-term impact of temporary agency work has **not yet** generated a **clear-cut result**. For Denmark, findings suggest that temporary agency work can be considered as a stepping stone to regular work, which is particularly true for immigrants and those receiving welfare benefits. However, research suggests that the stepping stone function of temporary agency work is strongly pro-cyclical: in labour markets with low unemployment rates, temporary agency work is mainly used to screen potential workers. In the case of Portugal, researchers find a negative self-selection of workers into temporary agency work, meaning that temporary agency workers are more likely to be the least skilled and motivated workers. Therefore, although temporary agency work might influence a specific worker's labour market development, large influences are unlikely, especially in labour markets with unemployment benefits.

While basic statistics are essential to gain an idea of the importance of temporary agency work across the European Union, the **availability of such basic, reliable and comparable data is limited**. Thus, it is difficult to achieve an accurate picture of the importance of temporary agency work within the European Union.

Since there is no data for Cyprus and Bulgaria, and figures for Estonia and Lithuania cannot be published due to their low reliability, it has not been possible to cover the whole European Union.

The study has shown that temporary agency workers are **mostly male** (61%), with an above-average share of men particularly reported in countries with a high penetration rate of temporary agency workers. Across the European Union as a whole, 54.4% of total employment is male. Furthermore, the study finds that temporary agency workers are **relatively young**: 21.6% of the temporary agency workforce in the European Union is aged between 15 and 24 years, while the average share of young people employed is around 9%. Nevertheless, it is worth noting in this context that the age distribution varies enormously across the Member States of the European Union. Across the European Union, temporary agency work concentrates on public and private services, which partly reflects the structure of the economy. The highest concentration can be found in Sweden, where temporary agency work is entirely in services, followed by Ireland, with 80.4% of temporary agency workers assigned to firms in the service sector. Within the entire European Union, 56.1% of temporary agency workers are assigned to the **service sector**. The countries that make relatively heavy use of temporary agency work experienced a decline in demand for temporary agency workers in 2009, both in terms of absolute numbers and total employment.

Before and after the global recession in the last years, the **annual growth rate** of the sector was very high: according to the ELFS, temporary agency work increased by 10.9% in 2007, with similar growth rates achieved in 2010 (+8.6%) and 2011 (+8.0%)<sup>1</sup>. The same picture is presented by the EUROCIETT data: in 2007, temporary agency work rose by 13.1% and in 2010 by 9%. However, the ELFS data should be interpreted with caution due to difficulties in assessing the number of enterprises in the field of temporary agency work, as the classification of firms might not always be straightforward.

### **The legal framework of private employment agencies**

The European legislature has explicitly defined temporary work agencies in EU Directive 2008/104/EC. According to this Directive, TWAs are “any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”. This piece of EU legislation has been adopted based on Article 153 TEU, which allows the EU to regulate the employment conditions of temporary agency workers. However, it does not allow the EU legislature to regulate the provision of services aimed at assigning those workers to user undertakings. More specifically, the Directive on Temporary Agency Work (2008/104/EC), which defines a general framework applicable to the working conditions for temporary workers in the European Union, is currently under review. Against the backdrop of the Directive’s review being an on-going process, a final assessment regarding its legal consequences cannot yet be made.

From a worldwide perspective, private employment agencies are entangled in a **network of legal orders**. Three major international or supranational legal orders have been identified: **the WTO, the ILO and the EU**.

Furthermore, they will be affected by domestic legislation that is inevitably influenced by potentially conflicting international standards that states have ratified, or need to respect due to their affiliation to these international organisations.

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<sup>1</sup> The ELFS time series starts in 2006.

So far, the legal observations show that there is a growing convergence between the legal framework of both the ILO and the EU. Nevertheless, the ILO initially adopted a quite restrictive approach towards private employment agencies and only gradually accepted the positive role that private employment agencies could play in the labour market. This process was triggered by providing leeway for fee-charging employment agencies. Within the EU legal framework, while the CJEU had adopted a restrictive approach towards state monopolies in matching labour demand and supply, the European legislator has recently installed an elaborate framework establishing substantive safeguards for temporary agency workers.

However, the overview exhibits that temporary work agencies were not explicitly or fully covered by the ILO and EU instruments from the early beginning. Indeed, it took until the adoption of the ILO Convention No. 181 and the TAW Directive to provoke such a shift. To date, the provisions on temporary work agencies are more detailed than those related to private employment agencies in general.

### Case studies representing the four main different market types for private employment agencies within the EU

Four main market types for private employment agencies have been identified: firstly, **market driven countries**, such as the UK; secondly, **social dialogue based markets**, such as Germany in Western Europe and Denmark in Northern Europe; thirdly, **legislator driven countries**, such as Belgium in Western Europe and Italy in Southern Europe; and lastly, **emerging markets**, such as Poland in Eastern Europe.

Whereas the notion of temporary work agencies is a more harmonised concept, the national reports on the UK, Germany, Denmark, Belgium, Italy and Poland show that the notion of private employment agencies can have a different meaning in the countries involved. This **ambiguity** is due to a variety of reasons.

Firstly, the notion of private employment agencies could be interpreted as a **generic** expression, thus including temporary work agencies for instance (see for example the use of "employment agency" in the UK 1973 Employment Agencies Act and the definition in 1.2). Nonetheless, the notion of private employment agencies can also have a more **specific** meaning, relating to an activity of placement or acting as an intermediary between demand and supply. In this respect, private employment placement agencies have no employment relation with the workers concerned (contrary to temporary work agencies), and thus there is some similarity with public employment services, which do not recruit workers.

Moreover, in theory temporary work agencies can be distinguished from permanent work agencies supplying their workers to a user on a **permanent basis**. However, since the introduction of the so-called Swedish derogation, it has been possible for temporary work agencies to offer their workers permanent contracts and pay them between two assignments. These workers give up their entitlement to equal pay, which trade unions consider as a possibility to exploit them, given that there is no floor set regarding the minimum amount of hours for which they should be paid.

Finally, there is the issue of the temporary supply of **independent workers**, which falls beyond the scope of EU Directive 2008/104/EC. This phenomenon (*Werkverträge*) has been the object of critical comments in the German Report.

The above mentioned national reports examine in further detail the role and activities of private employment agencies mapping out differences between the four identified market types.

The **UK**, identified as an example of a market driven country where the regulatory environment is characterized by limited formal restrictions, lets temporary work agencies operate relatively freely. For instance, there are no legislative provisions regarding minimum start-up capital or specific professional qualifications. Furthermore, the UK makes use of the Swedish derogation by allowing agencies to offer permanent contracts to their workers.

**Germany** is an example of a market based on social dialogue. It is moderately regulated, for instance a licence from a public employment agency is necessary to establish a temporary work agency. In order to obtain this licence the entrepreneur has to pay a fee and a surety per wage earner is imposed on the company. Moreover, agencies have to report statistics and are monitored. Additionally, some sectoral bans on temporary work exist and the market is regulated by collective labour agreements, such as the ones signed by the DGB union and two associations of temporary work agencies (IGZ and BAP).

Social dialogue also plays a role in **Denmark** being an instance of the unique Nordic economic and social system. In general, though, private employment agencies are not of great importance in the country and there are no specific requirements or regulations for them. However, self-regulations takes place: The federation of private employment agencies VikarBranchen has established a code of conduct and set up an approval process. In addition to that, most of the larger trade unions have founded entities for temporary workers in the last years in order to ensure sanctions for deviations from collective bargaining agreements.

**Belgium** is one of the most regulated and legislator driven markets in terms of temporary work in Europe. Federal and regional authorities (several differences between the Flemish, Walloon and Brussels regions) are responsible for controlling the agencies' work and for instance distribute licences, which are even mandatory for foreign agencies whose headquarters are not in Belgium. In addition to that, temporary workers can only be employed by firms if at least one of the four possible motives set by law applies and there is a maximum period of time for the use of these workers. Furthermore, agency work is banned in several sectors and legally binding codes of conduct as well as funds established by social partners and the government protect temporary workers.

Another legislator driven market is the one in **Italy**. Although temporary work agencies are relatively new in the country, their work is clearly regulated in detail. For instance they have to register with the Minister of Labour and Social Policies and only obtain an authorisation if they comply with certain requirements such as paying regular contributions to funds for temporary agency workers and providing a security deposit as a guarantee for credits. Furthermore, private employment agencies need to adopt a code of conduct and cannot supply workers to substitute employees on strike.

As it is an emerging market the regulatory policies in **Poland** are still in development. Running a private employment agency is seen as any other economic activity without specific sectoral bans; however, compared to other areas agency work is a relatively regulated. For example entrepreneurs willing to establish an agency have to be registered and need to submit annual reports to the Marshall. There is no way for legal proceedings to start before the authorities are informed about irregularities. Self-regulation and trade unions do not play an important role in the Polish labour market, that also has to deal with competition and distrust between private and public agencies, discriminatory practices and forbidden fees.

## The review of the EU Directive on Temporary Agency Work

The EU Directive on Temporary Agency Work (2008/104/EC) is currently being reviewed by the European Commission. The **existing Directive allows for divergences** by granting a set of options that can be lifted by the EU Member States. The case of the UK refers to the fact that the so-called Swedish derogation has been implemented, which is consistent with Article 5 § 2 of the EU Directive (2008/104/EC). In Germany, derogations from the principle of equal treatment are based upon collective agreements (see Article 5 § 2 Directive 2008/104/EC), although it has been questioned whether they satisfy the safeguards of this article.

The Directive provides that restrictions or prohibitions to the use of temporary workers, which exist in some countries, will need to be reviewed. For instance, temporary work in Germany is banned from the constructions sector, whereas the Belgian report refers to a multitude of restrictions and prohibitions in specific sectors, as well as the entire public sector, based upon statutory law or collective agreements.

As a general rule, the recourse to agency workers is an exception rather than a rule. Furthermore, even if some conditions are met, an approval of trade union representatives might be required in many cases. Recourse to temporary agency workers in case of strike at the user's undertaking is also forbidden in some countries, such as in the UK, Belgium, Germany and Italy.

## Policy recommendations and the way forward

The current Directive deals with temporary agency work in a very broad sense and **recognises the significant differences between the countries**. In this context, it also leaves the Member States sufficient room to improve the conditions for temporary agency workers on their own.

Due to this wide diversity of the branch within the EU it is difficult to identify "good" and "bad" practices that may help in suggesting concrete and feasible policy recommendations. However, the six case studies underline the **importance of public, governmental responsibilities for information, complaint procedures and monitoring**, which may be stronger than autonomous procedures set up by sectoral associations. In this regard, it is worth noting that the role of self-regulation and collective bargaining is extremely diverse across the countries. Consequently, basic principles with regard to working conditions and the operation of agencies should be set by law. However, collective bargaining agreements can and should fill out the leeway defined in legislation.

In general, it is important to insist on the **implementation of the existing Directive** in the first place as some EU Member States such as Denmark have not fully implemented it yet. Furthermore, reporting and monitoring requirements should be strengthened as there is a need for clear public responsibilities and capacities for the dissemination of information, for instance regarding employment conditions.

It is dissuaded from regulating temporary work agencies in an overly extensive way. A **smooth and cautious approach** taking into account the different market types identified in the case studies is recommended if changes or amendments to the existing Directive are considered necessary.

Owing to the **lack of comparable data** the academic debate on temporary agency work has not yet produced a clear-cut result. Therefore, it is essential to gather and harmonise the data between the EU Member States in order facilitate a more detailed assessment of this comparatively new bridge into the European labour market. Furthermore, better

empirical information is relevant for monitoring working conditions of temporary agency workers, particularly in the case of migrant workers.

Currently, the evidence is too limited to recommend major changes in the regulatory framework of temporary work agencies.

# 1. THE ROLE OF PRIVATE EMPLOYMENT AGENCIES

## KEY FINDINGS

- Labour market intermediation can be provided by either public or private employment agencies, with the latter including both private employment placement agencies and temporary work agencies. Temporary agency work, which has been strongly increasing in Europe, is a triangular employment arrangement whereby the worker is employed by the temporary work agency and subsequently hired out to perform their work at (and under the supervision of) the user company. For user firms, temporary agency work allows flexible labour adjustments and meeting short-term staffing needs, as well as screening potential employees.
- Temporary agency workers may screen potential jobs and/or employers, gain work experience to increase their employability and quickly find a job with very low search costs. Moreover, flexibility may be needed in specific phases of life for some workers. While the individual labour market consequences for temporary agency workers are not clear-cut, it seems that short time-spells in agency work have little or no effect on subsequent earnings and employment as long as the worker masters a successful transition to regular employment. Those who remain in agency work or change back and forth from unemployment suffer a substantial loss in earnings.
- There is a lack of basic, reliable and comparable data on temporary agency work in the European Union. Depending on the source, numbers range between 2,318 and 3,370 million, measured between 1.1% and 1.6% in terms of total employment. However, it is unquestionable that temporary agency work is quantitatively important and rapidly growing. The temporary agency business is particularly vulnerable to economic shocks, with numbers having dropped sharply over the course of the economic crisis.
- The importance of temporary agency work differs between countries, with countries such as Germany, France and the Netherlands making comparatively heavy use of this form of employment (at least 2.0% of total employment). Temporary agency work seems to be a rather new phenomenon mainly in the new Member States (e.g. Estonia, Bulgaria, Lithuania and Malta, with temporary agency work ranging below 0.5% of total employment).
- In the European Union, temporary agency workers are typically male (61%). The temporary agency workforce in the EU is comparatively young: 21.6% are between 15 and 24 years old, compared to 9% among the total employed. Temporary agency workers in the EU are disproportionally unskilled: 28.1% have an ISCED level of 2 at most, compared to 21.1% among total employment. While the temporary agency workforce is dominated by nationals (84.3%), non-nationals are overrepresented in temporary work compared to the share of nationals among total employment (92.9%). In terms of the structural distribution, more than half of the temporary agency workforce is assigned to user firms in the service sector (56.1%). Empirical data on the role of private employment agencies as placement agencies is scarce. The role of private placement agencies varies regarding the job search efforts of the unemployed, and these agencies are less involved than public agencies in most countries. Comparative information on the actual importance of private placement agencies in filling vacancies is missing.

## 1.1. Introduction

“Labour market intermediaries (...) are entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved” (Autor: 2008: 1). Labour market intermediation can be provided by either private or public employment agencies. While public employment agencies are focused on information-only intermediation – providing information about jobseekers and job vacancies – private employment agencies are either information-only private employment placement agencies or temporary work agencies (see also 1.2). Although these are heterogeneous entities, labour market intermediaries share a common function, i.e. matching labour supply and labour demand. This report **concentrates on temporary work agencies**, although we nevertheless also discuss basic features of private employment placement agencies.

The increasing contracting-out of labour market intermediation from public employment agencies to private employment placement agencies in some European Member States (e.g. Germany, Belgium, Denmark, Netherlands, United Kingdom) has triggered a discussion about the pros and cons of public employment agencies versus private employment placement agencies. Private employment placement agencies are often perceived as more cost-efficient and effective than public employment agencies (Bruttel 2005). A qualitative evaluation of contracting-out of labour market intermediation from public employment agencies to private employment placement agencies in Australia, the Netherlands and the United Kingdom draws a positive picture, highlighting the increased efficiency through more competition and a rise in effectiveness of placements. However, microeconomic evaluation of German data shows that the effects on employment probabilities of the unemployed are small and negative. The success of private employment placement agencies strongly depends on the design of the tender process and the compensation scheme (Winterhager 2006).

The political discussion on labour market intermediation focuses on temporary agency work, which is a **triangular employment arrangement involving the temporary agency worker, the temporary agency and the user firm**. While the temporary agency is the employer of the temporary agency worker, the user firm that the worker is assigned to work for has the supervision and control.

Temporary agency work has been on the political agenda for some time, largely due to its growth since the 1990s. This strong increase and fear of unfair competition and a fragmentation of labour markets have triggered temporary agency work regulations in many EU Member States, with most countries having introduced regulations for equal pay between temporary agency workers and comparable permanent employees. Moreover, some also have provisions in place concerning training, representation rights and other terms and conditions of employment (Arrowsmith 2009). At the EU level, **Directive 2008/104/EC on temporary agency work**, which should have been incorporated into national legislation by 5 December 2011, has made explicit the concept of temporary agency work, aiming to achieve equal treatment for temporary agency workers.

Temporary agency work has gained new importance during the recent economic crisis and the continuing slow recovery, given that if prospects are uncertain, temporary agency work offers firms the possibility to quickly respond to demand fluctuations. The use of temporary agency work seems to be a good indicator for economic forecasts (Canoy et al. 2009): if the economy is doing well, firms hire extra staff, partly permanent employees, and also partly temporary agency workers in order to react to an increase in

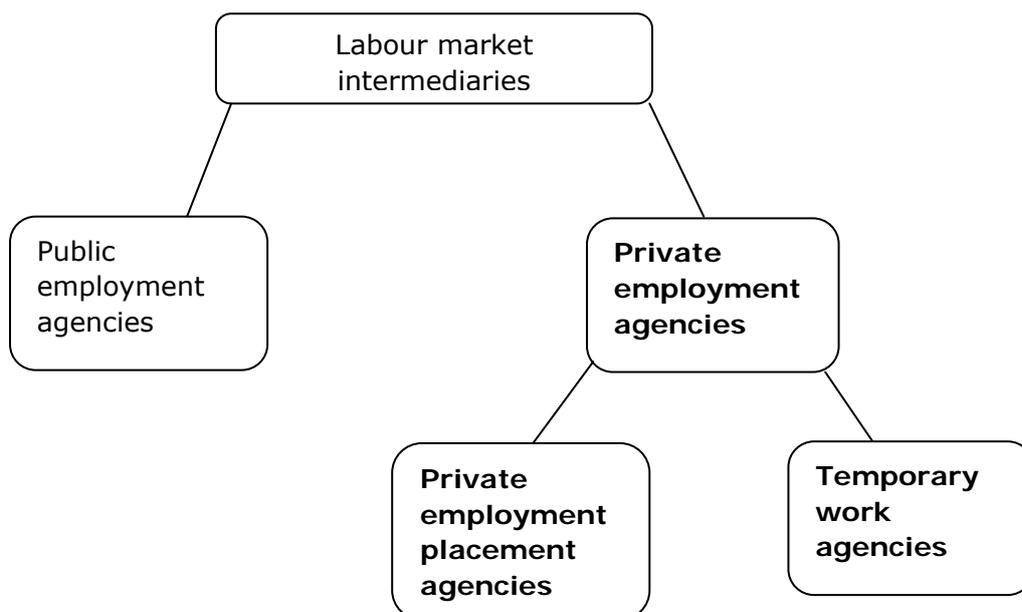
demand quickly; however, if the business cycle goes down, temporary agency workers are the first to go.

Although the empirical evidence of the individual labour market consequences is not clear-cut, as this chapter will show, temporary agency work has a rather negative connotation among social scientists and policymakers. Autor (2008: 22) suspects that the reason for this may be that “even if beneficial to individual workers and firms, [temporary agency work] may exert a negative externality on the aggregate labour market – this is, it is a ‘public bad’ “. Negative externalities might include the reduced degree of trade union organisation among temporary agency workers, the public costs of labour market instability (i.e. unemployment and social benefits), and the increased wage pressure of the user firm on internal labour.

The remainder of this introductory chapter will present the definition of terms often used in this discussion, the rationale and reasons for temporary agency work and the labour market consequences of temporary agency work.

## 1.2. Defining private employment agencies

This report discusses the role and activities of private employment agencies, which comprises private employment placement agencies and temporary work agencies, with the following section defining these different agencies.



For this report, we loosely draw on the definitions of the ILO (2009: 1f):

**"Private employment agency** – Any enterprise or person, independent of the public authorities, which provides one or more of the following labour market functions: (a) services for matching offers of and applications for employment; (b) services for employing workers with a view to making them available to a third party (“user enterprise”); and/or (c) other services relating to job-seeking, such as the provision of information, that do not aim to match specific employment offers and applications. Agencies cannot charge workers for finding work.” (ILO 2009:1)

**Private employment placement agencies** “interview jobseekers and try to match their qualifications and skills to those required by employers for specific job openings.”

**Temporary work agencies** “provide temporary employees to user enterprises to cover employee absences, skill shortage and varying seasonal workloads. Workers are employed and paid by the agency, but are contracted out to a client for either a prearranged fee or an agreed hourly wage. Some companies choose to use temporary workers on a long-term basis rather than permanent staff. (...) The resulting employment is often called “temporary work”, “temping” or “agency work”. The hiring firm pays fees to the agency, and the agency pays the wages (even if the hiring company has not yet paid the agency). Flexibility for both worker and employer is a key feature (...).” In this report, we call the resulting employment “temporary agency work” (ILO 2009: 1f).

### 1.3. Rationales and reasons for temporary agency work

For **employers**, temporary agency work essentially fulfils two goals: firstly, it is traditionally used for short-term staffing needs; and secondly, to screen potential employees without the legal burden of dismissal regulations (Autor 2008). If temporary agency work is used to hire staff, consequently some responsibility for recruitment and administration is sourced out. Thus, firms can save costs and adjust labour more flexibly without having to deal with the expensive and legally problematic laying off permanent staff. Temporary agency work is also predominant in sectors with seasonal patterns, as well as helping to cover staff absences (Arrowsmith 2009). In the public sector, it is used - inter alia - to reduce labour costs, given that the wage costs for temporary agency workers enter as non-labour costs.

For **workers**, temporary agency work may allow the testing of different kinds of work and screening possible employers, and can represent a stepping stone to permanent employment or the job that they want. Given that it is usually easy to find a job at a temporary work agency (i.e. low search costs), it offers a way of entering or re-entering the job market and quickly earning some income or supplementing their existing income. Moreover, it provides the employees with the opportunity to gain work experience and thereby increases their employability, and it might also suit the worker’s circumstances when flexibility is needed to better harmonise work with other life spheres (e.g. caring, education) (ILO 2009, ECORYS-NEI 2002).

### 1.4. Labour market consequences of temporary agency work

Neugart and Storrie (2006) analyse the **strong increase of temporary work agencies** in the 1990s, finding that an improvement in the matching efficiency of agencies mainly led to this increase. Other reasons include deregulation, technical developments improving the posting of vacancies, an improvement in the reputation of agencies and ever-closer relationships with the user firms.

The authors argue that temporary agency work does not necessarily crowd-out other jobs and that the higher matching efficiency is welfare improving. However, Jahn and Weber (2012) show that enhancing labour market flexibility by deregulating temporary agency work increases overall employment, yet also leads to the substitution of regular jobs. Furthermore, Jahn et al. (2012) argue for a possible trade-off between efficiency and equity when deregulating labour markets. Hirsch and Mueller (2012) investigate the **effects of temporary agency work on the productivity of the using company**, hypothesising that temporary work enhances numerical flexibility and allows the screening of potential workers, which may lead to increased productivity. On the other hand, one has lower firm-specific human capital and possible negative spill over effects

on permanent employees, thus negatively affecting productivity. Empirical evidence from German data shows a hump-shaped effect of the temporary agency worker intensity in a firm, with an approximate 12% share of temporary agency worker associated with the highest level of productivity. The increase of temporary agency work has prompted an academic and policy debate concerning whether **temporary agency work hinders or fosters the labour market advancement of the persons concerned**.

However, the academic debate on the longer-term consequences of temporary agency work has not produced a clear-cut result to date (Autor 2008). On the one hand, scholars have proposed arguments concerning how temporary agency workers could benefit; for instance, in helping them to improve their skills and subsequently find a permanent job. Furthermore, temporary agency work could provide workers who have difficulties in finding jobs with the chance to be "audited" and potentially offered a more stable job in the respective firm (Autor and Houseman 2010, Houseman et al. 2003, Kalleberg et al. 2003). On the other hand, researchers stress the instability and low-wage tendency of temporary agency work, providing little opportunity to increase the skill level and hindering workers from actively searching for better, long-term jobs (Jorgenson and Riemer 2000, Benner et al. 2007).

Empirical work testing these two competing hypotheses represents a methodological challenge, and according to Autor (2008: 16), "it is inherently difficult to differentiate the effects of holding given job types from the skills and motivations that cause to hold these jobs initially". In other words, researchers can hardly differentiate between the observable skills and unobservable motivations (and other unobservable skills). One way of overcoming this methodological difficulty is to use quasi-experimental data, as conducted by Autor and Houseman (2010). They exploit the data of a welfare-to-work programme in Detroit (USA) to identify the effect of temporary-help jobs on the labour market advancement of workers, finding "that temporary-help job placements do not improve and **may diminish subsequent earning and employment outcomes** among participants". Jahn and Rosholm (2010) investigate temporary agency work in Denmark between 1997 and 2006, finding that temporary agency work is **often a stepping stone into regular work**, especially for immigrants and welfare benefits recipients.

However, the stepping stone function of temporary agency work is strongly pro-cyclical: in labour markets with low unemployment rates, temporary agency work is mainly used to screen potential workers. Böheim and Cardoso (2009) find a **negative self-selection** of workers into temporary agency work, meaning that temporary agency workers are more likely to be the least skilled and motivated workers. Furthermore, a similar result is found for the US (Segal and Sullivan 1997). Considering the question of whether temporary agency work augments or inhibits labour market advancement from a longer term perspective, Kvasnicka (2009) finds no evidence that temporary agency work increases the chance of regular work over four years in Germany.

However, there is a clear positive effect for temporary agency workers coming from unemployment to remain in temporary agency work over the next four years. Therefore, it seems that there is no crowding-out of the temporary agency worker's advancement into regular employment. Using U.S. data, Andersson et al. (2009) show that workers who succeed in securing a regular job are able to counterbalance the low wage of their temporary agency work period, as they often earn relatively high wages later on. This is consistent with the view that some firms use temporary agency work to screen potential employees.

Also found by Heinrich et al. (2009), this also means that **short time-spells in temporary agency work have hardly any effects on subsequent earnings** and employment providing that the worker masters a successful transition to regular

employment. Those who remain in temporary agency work or change back and forth from unemployment suffer a substantial loss in earnings. Autor (2008: 22) argues that "it is a certainty that those who stay behind over the longer term are on average adversely selected - that is, their unobserved skills or motivation put them at a disadvantage relative to other workers".

Autor (2008: 18) emphasises an important argument by stressing that the voluntary participation of all involved parties "suggests that their potential to substantially change labour market outcomes for individual workers or firms is likely to be limited; if this were so, these arrangements would either be much less common or much more prevalent". Therefore, although temporary agency work might influence a specific worker's labour market development, large influences are unlikely, especially in labour markets with unemployment benefits.

## **1.5. Data and descriptive analysis**

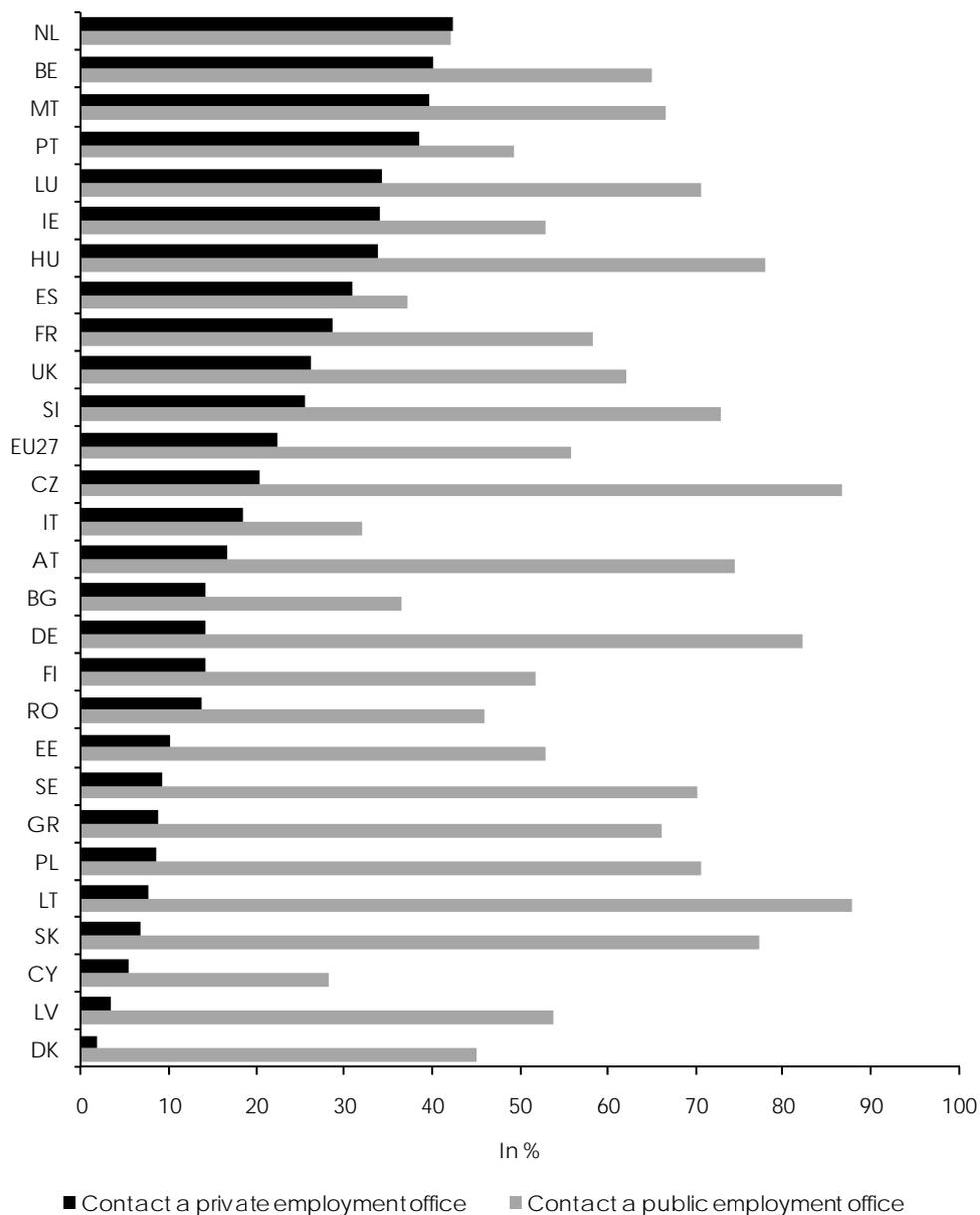
### **1.5.1. Private placement agencies – an overview**

The market of private employment agencies, i.e. temporary work agencies and private employment placement agencies, is growing rapidly. According to the ILO (2007), "this development has been fostered by the opening up of labour markets in different parts of the world where previously public institutions had the monopoly on recruitment." While the importance of temporary agency work can be relatively easily assessed, it is rather difficult in terms of private job brokerage, i.e. the "service for matching offers of and applications for employment" provided by private companies (ILO, 2007).

In the following section, we will present various indicators that shed some light on this question.

To a certain extent, the prevalence of private placement agencies can be indicated by the percentage of unemployed who contact a private employment office seeking work (Figure 1). However, unemployed persons represent only one segment of the labour market, with contacts of people out of the labour force or even those in employment who want to change their job not covered. According to the European Labour Force Survey, this channel of job search was most frequently used in 2011 in the Netherlands, where 42% of the unemployed contacted a private employment office for job search, followed by Belgium and Malta, both with a share of 40%. At the other end of the scale, Denmark reported fewer than 2% of unemployed persons contacting a private employment office. On average, 22.5% of the unemployed in the European Union used this network for placement in 2011. However, this indicator does not imply anything about the success of the search strategy.

**Figure 1 : Percentage of unemployed who contact a private/public employment office for seeking work, 2011**



**Source:** Eurostat, ELFS (European Labour Force Survey).

Figure 1 illustrates the percentages of unemployed persons who contact private and public employment offices. However, given that unemployed persons typically have to register at the public employment office in order to receive unemployment benefit, this percentage does not necessarily say anything about the importance of public employment offices as a job search channel.

**Table 1 : Activities of employment agencies, 2010**

	Number of ...			Turnover in €
	Enterprises	Employees	employees in full time equivalent units	per person employed
<b>BE</b>	<b>977</b>	<b>45,616</b>	<b>31,734</b>	<b>33.4</b>
<b>BG</b>	239	872	837	12.0
<b>CZ</b>	811	2,608	2,531	33.7
<b>DK</b>	230	1,554	1,534	115.7
<b>DE</b>	2,362	31,763	29,063	47.5
<b>EE</b>	52	338	305	18.7
<b>IE</b>	583	16,422	15,401	58.1
<b>GR</b>	802	4,639	2,420	12.8
<b>ES</b>	2,303	9,949	9,317	42.7
<b>FR</b>	1,713	12,558	8,743	112.7
<b>IT</b>	1,149	3,253	2,634	98.0
<b>CY</b>	80	173	173	27.8
<b>LV</b>	91	653	498	28.0
<b>LT</b>	119	2,754	2,232	16.2
<b>LU</b>	83	:	:	:
<b>HU</b>	536	8,062	7,694	21.3
<b>NL</b>	4,390	17,180	12,885	65.5
<b>AT</b>	273	1,355	1,133	67.0
<b>PL</b>	1,672	24,805	:	19.5
<b>PT</b>	173	5,426	4,963	15.2
<b>RO</b>	1,073	22,102	21,703	9.1
<b>SI</b>	29	597	:	21.0
<b>SK</b>	156	8,719	8,605	16.5
<b>FI</b>	48	203	177	99.7
<b>SE</b>	1,496	8,741	7,160	57.2
<b>UK</b>	5,463	136,297	116,413	67.0
<b>EU27</b>	27,319	:	:	50.0

**Source:** Eurostat, SBS (Structural business statistics). - Note: BE 2009, EE 2009 (except Enterprises 2010), GR 2009, IT 2008. Turnover per person employed: EU27 estimated value. Explanation of signs: (:) represents values not available.

The Structural Business Statistics (SBS) provides other indicators regarding the **importance of private placement agencies**, displaying key figures for enterprises operating in the NACE sector N781 "Activities of employment placement agencies". According to the SBS, the number of enterprises in that business amounts to 27,000 across the European Union, with more than 36% of such enterprises located in the Netherlands and the United Kingdom, and the number of employees ranges between more than 136,000 in the United Kingdom and less than 200 in Cyprus. Accordingly, the average size of the enterprises differs across countries.

On average, the number of persons employed per employment placement agency (staffing/administrative personnel) in the European Union was 14.8, with substantially higher numbers reported in Slovakia (56.2), Portugal (34.3), Ireland (28.7) and the United Kingdom (25.9). At the other end of the scale, Cyprus (2.6), Finland (4.5), the Czech Republic (4.1) and the Netherlands (4.7) reported fewer than 5 persons employed per enterprise. The turnover per person employed ranges between 9,100 in Romania and 115,700 in Denmark.

### 1.5.2. Temporary agency work in Europe – an overview

While basic statistics are necessary to gain an idea of the importance of temporary agency work in the European Union, the **availability of such basic, reliable and comparable data is limited**. This becomes particularly evident when comparing the various statistics on the number of temporary agency workers in the EU Member States (see table 1).

Essentially, annual figures for the EU Member states are provided by the European Confederation of Private Employment Agencies (EUROCIETT) and EUROSTAT. The figures supplied by **EUROCIETT** are gathered by the national employer's organisations of the sector or official statistics authorities (EUROFOUND, 2009). The data supplied by EUROSTAT is based on the European Labour Force Survey (**ELFS**), a continuous and harmonised quarterly survey conducted by the EU Member States. Furthermore, basic statistics and information on the working conditions of temporary agency workers is provided by EUROFOUND's European Working Condition Survey (**EWCS**), yet is only reported every five years. Beyond that, single surveys provide a snapshot of the temporary agency work sector, such as the 2009 survey on temporary agency work and collective bargaining, conducted by EUROFOUND. A much-cited study by Storrie, published in 2002, provides a comprehensive overview of temporary agency work in 15 EU Member States, providing, amongst others, an empirical introduction to the quality of data. Moreover, problems with statistical sources are addressed in detail and "considerable deficiencies in the information available on temporary work" are stated (Storrie, 2002).

Storrie mainly ascribes the lack of reliable and comparable statistics to **practical problems** in collecting statistics and **conceptual problems** with definitions varying across countries, or no legal regulation at all in the case of new forms of employment. Most debate within the literature has focused on the data quality for the United Kingdom, with the number of temporary agency workers varying enormously between different sources. For instance, Forde et al. (2008) doubt the accurateness of the widely cited figures provided by REC, the employers association of temporary agency workers in the UK, for several reasons.

Firstly, they criticise the very low response rate of the agency survey (4.5%). Secondly, they argue that the agencies reported the number of people on their payroll rather than the number of people hired out to a user firm. Thirdly, they point to the problem of double-counting, given that workers might make use of different temporary work

agencies to obtain a job. Finally, they show that the number of temporary agency workers published by the REC corresponds to the total number of temporary workers of any type (agency, fixed-term, seasonal, casual and others) released by the Office of National Statistics (ONS), with agency workers only representing a small fraction.

Following the Storrie 2002 report, the questionnaire of the European Labour Force Survey was amended on 25 November 2003, with the employment characteristics of the main job being adapted<sup>2</sup> by adding the question of whether the interviewed person holds a contract with a temporary work agency. Previously, EUROCIETT was the only institution providing comprehensive data on private employment agencies for the majority of the EU Member States. Accordingly, such information gathered in the European Labour Force Survey on temporary agency work is rather new (since 2006).

Additionally, since the revision of NACE – the statistical classification of economic activities – was implemented in the ELFS in 2008, the temporary agency business has had its own NACE code. Given that the ELFS respondents are asked to characterise their main job by declaring the “economic activity of the local unit” (NACE3D), one might think that the number of employees in this branch assesses the importance of the temporary agency work industry. However, this is not the case for two reasons: firstly, the ELFS is a self-assessment, and temporary agency workers might rather tend to quote the economic activity of the user firm to which they are actually assigned rather than the agency’s industry that employs them; secondly, in case of temporary agency workers, the interviewers are urged to code the activity of the user firm<sup>3</sup>. Therefore, the number of employees in the temporary agency work sector should only display the number of administrative personnel of temporary employment agencies. Accordingly, when talking about ELFS data, we will always refer to those who indicate their main job as working in the administration of a temporary work agency.

According to ILO (2009), “agency work has been the most rapidly growing form of employment in the EU since 1990”. In 2010, between 2,318 and 3,370 million people had a contract with a temporary work agency in the European Union, measured between 1.1% and 1.6% in terms of total employment. Therefore, it represents a relevant form of employment in the European Union, with considerable numbers in the larger economies. Similar to the 2002 Storrie report, the most significant difficulties in gaining an accurate picture of the prevalence of temporary agency work in the European Union stems from the UK data. According to EUROCIETT, the number of agency workers (in full-time equivalents) amounted to 880,000 in 2010, whereas the EWCS reported 340,000 and the ELFS only 39,000. In terms of total employment, the numbers range from 0.4% (2009, ELFS)<sup>4</sup> to 1.2% (EWCS) and 3.1% (EUROCIETT). Additionally, the numbers gathered by the ELFS in 2010 are much lower than in the preceding and following years<sup>5</sup>.

Moreover, some other countries also have considerably diverging numbers, particularly Belgium, Ireland, Italy, Latvia, Hungary, Poland, Slovenia, Spain and Sweden.

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<sup>2</sup> Regulation (EC) No 2257/2003, article 1, paragraph 1(c).

<sup>3</sup> EU Labour Force Survey, explanatory notes:

[http://circa.europa.eu/irc/dsis/employment/info/data/eu\\_lfs/LFS\\_MAIN/Coding\\_lists\\_explanatory\\_notes\\_and\\_classifications/EU\\_LFS\\_explanatory\\_notes\\_from\\_2012\\_onwards.pdf](http://circa.europa.eu/irc/dsis/employment/info/data/eu_lfs/LFS_MAIN/Coding_lists_explanatory_notes_and_classifications/EU_LFS_explanatory_notes_from_2012_onwards.pdf)

<sup>4</sup> According to EUROSTAT, the relevant data in 2010 was mistakenly not collected in the first and second quarter of 2010.

<sup>5</sup> The figures fluctuate between 151,000 (2006), 187,000 (2007), 125,000 (2008), 112,000 (2009), 39,000 (2010) and 114,000 (2011). However, according to EUROSTAT the relevant data in 2010 was mistakenly not collected in the first and the second quarter of 2010.

**Table 2 : (Temporary) agency workers in the EU – comparison of different statistics, 2010**

	(Temporary) agency workers in the EU					
	Persons in 1,000			In % of total employment		
	2010					
	EWCS	CIETT	ELFS	EWCS	CIETT	ELFS
BE	142	82	64	3.2	1.8	1.4
BG	34	8	:	1.1	0.3	:
CZ	36	32	44	0.7	0.7	0.9
DK	5	21	23	0.2	0.8	0.9
DE	237	793	767	0.6	2.1	2.0
EE	3	3	.	0.6	0.5	.
IE	29	35	10	1.6	1.9	0.6
GR (EL)	31	5	12	0.7	0.1	0.3
ES	367	87	463	2.0	0.5	2.5
FR	408	520	479	1.6	2.0	1.9
IT	153	197	106	0.7	0.9	0.5
CY	7	:	:	2.0	:	:
LV	5	3	18	0.5	0.3	2.0
LT	9	2	(5)	0.7	0.2	(0.4)
LU	4	4	4	1.7	2.0	1.6
HU	36	68	28	1.0	1.8	0.7
MT	1	:	1	0.7	:	0.5
NL	155	208	213	1.9	2.5	2.6
AT	53	66	70	1.3	1.6	1.7
PL	110	114	72	0.7	0.7	0.5
PT	65	87	82	1.4	1.9	1.8
RO	18	50	50	0.2	0.6	0.6
SI	11	5	48	1.2	0.5	5.1
SK	10	19	18	0.4	0.8	0.8
FI	19	22	24	0.8	0.9	1.0
SE	80	60	44	1.8	1.4	1.0
UK	340	880	112	1.2	3.1	0.4
EU27	2,318	3,370	2,687	1.1	1.6	1.3

**Source:** EWCS (5<sup>th</sup> European Working Conditions Survey, 2010), Ciett, Eurostat, ELFS (European Labour Force Survey, ad hoc extraction), WIFO calculations. Data provided by Ciett refer to agency workers (not only temporary ones) and are expressed in full-time equivalents. - Explanation of signs: (:) represents values not available; (.) represents values not publishable due to the small sample size, and values in brackets should be interpreted with care owing to the small sample size. Note: ELFS 2009: UK.

For instance, the Spanish figures differ enormously: according to EUROCIETT, the number of agency workers (full-time equivalents) reached 87,000 in 2010, yet on the basis of the two sample surveys the numbers vary from 367,000 (EWCS) to 463,000 (ELFS). In terms of total employment, this corresponds to a minimum of 0.5% (EUROCIETT) and a maximum of 2.5% (ELFS).

Temporary agency work seems to be a rather new phenomenon in several countries, with the **new Member States particularly showing low penetration rates**<sup>6</sup> (0.5% of total employment in Estonia, Bulgaria, Lithuania, and Malta, based on the EUROCIETT

<sup>6</sup> Percentage of temporary agency workers in terms of total employment.

and ELFS data). At the other end of the scale, countries such as Germany, France and the Netherlands make comparatively heavy use of this form of employment, with numbers around 2.0% or more of total employment. As shown in table 2, the importance of temporary agency work in the EU Member States can vary substantially between the different sources. Moreover, a cross-country comparison is even somewhat limited within one source.

There are several reasons for the underestimation or overestimation of the figures:

- People may have more than one job. In the ELFS, respondents are only classified as temporary agency workers if their main job is characterised by a contract with a temporary work agency, and not if the temporary agency work is complementary to another job. By contrast, data provided by EUROCIETT does not distinguish between different jobs. Moreover, figures from EUROCIETT might include double-counting, given that people can use more than one temporary work agency to find a job (Forde et al., 2008).
- As the ELFS is a survey of individuals drawn upon a sample of households, there are countries with no data at all due to the small scale.
- In addition, certain groups of people, such as short-term migrant workers, are likely underrepresented in the ELFS sample (EUROFOUND, 2009).
- Since the EUROCIETT data is provided by their national federations, the sector's representative organisations "may not always be able to distinguish between the stock and flow data which, given the rapid turnover in the sector, can lead to significant error (Storrie, 2002)".
- Moreover, even a cross-country comparison of the EUROCIETT data is limited due to methodological uncertainties in the gathering process, i. "inconsistencies in the measurement and presentation of data" (EUROFOUND, 2006).
- The European Labour Force Survey is a self-assessment of respondents, and temporary agency workers with a long-term assignment might not feel like temporary agency workers. Accordingly, the ELFS might underestimate the number of temporary agency workers. On the other hand, EUROCIETT does not only represent temporary work agencies but also companies operating in other human resources activities, such as private placements (recruitment, executive search), outplacements and training. Therefore, the numbers provided by EUROCIETT on agency work probably includes long-term and permanent assigned workers.
- The data provided by EUROCIETT is gathered by either the national employer's organisations or official statistics authorities. If the data is delivered by the national employer's organisations, they might underestimate the prevalence of temporary agency work, given that membership in the representative's organisation is voluntary and they might not cover the whole sector.
- The EUROCIETT data is expressed as full-time equivalents, whereas the ELFS is a head count.

Taking these remarks on data quality and comparability into consideration, it is difficult to achieve an accurate picture of the importance of temporary agency work within the European Union.

However, given that the European Labour Force Survey is standardised and harmonised across Europe, with the data currently available covering 2011 (EUROCIETT currently provides data until 2010) and focusing explicitly on temporary agency work, we will

utilise the ELFS data provided by EUROSTAT in the following cross-country comparison and trend analysis. However, we cannot cover the entire geographical area of the European Union, there is no data for Cyprus and Bulgaria at all and figures for Estonia and Lithuania cannot be published due to their low reliability<sup>7</sup>.

**Table 3 : The profile of temporary agency workers in the EU, 2011**

	Temporary agency workers							
	Number in 1,000	In % of total employment	... as a percentage of the total number of temporary agency workers					
			Sex	Age		Nationality	Education	
			Males	15-24 years old	25-54 years old	Nationals	Low	High
BE	67.1	1.5	60.6	32.8	63.9	80.1	31.6	17.7
CZ	52.5	1.1	63.2	(10.6)	77.1	92.2	(7.9)	(9.7)
DK	29.5	1.1	47.1	24.4	62.9	87.7	24.0	24.8
DE	857.9	2.2	65.8	17.9	72.7	79.6	23.5	15.1
IE	13.6	0.8	42.6	12.8	76.7	70.3	15.2	53.7
GR	8.1	0.2	(37.5)	.	83.3	71.1	(23.7)	(28.0)
ES	404.6	2.3	53.0	9.1	87.2	83.7	38.0	34.5
FR	542.3	2.1	68.7	28.3	67.3	88.6	32.1	15.2
IT	111.0	0.5	57.9	15.5	82.1	71.9	38.9	11.0
LV	17.7	2.1	47.1	(13.3)	69.1	85.1	(14.4)	23.8
LU	2.9	1.3	63.0	.	79.9	39.7	(35.2)	(21.4)
HU	33.7	0.9	55.3	23.2	69.3	99.7	15.0	15.1
MT	1.7	1.0	61.6	(34.8)	57.7	99.2	47.1	(25.2)
NL	208.7	2.5	60.7	34.4	59.4	90.1	35.2	19.0
AT	81.1	2.0	65.2	20.1	74.7	72.0	24.5	8.1
PL	62.1	0.4	46.1	30.9	62.5	99.8	(11.3)	(18.1)
PT	75.5	1.7	48.2	20.1	75.2	92.2	56.0	11.9
RO	60.0	0.7	62.5	(12.5)	82.5	100.0	(12.1)	(18.3)
SI	41.6	4.5	44.8	70.4	29.3	98.5	14.4	(8.9)
SK	29.8	1.3	51.1	15.5	79.4	100.0	.	13.4
FI	25.3	1.0	50.5	42.2	51.9	92.4	19.5	20.1
SE	55.0	1.2	54.2	31.1	61.8	95.3	15.7	28.4
UK	114.2	0.4	57.4	24.0	65.7	68.4	22.3	43.9
EU27	2,903.1	1.4	61.0	21.6	71.8	84.3	28.1	19.5

**Source:** Eurostat, ELFS (European Labour Force Survey, ad-hoc extraction). - Note: Explanation of signs: (.) represents values not publishable due to the small sample size, and values in brackets should be interpreted with care due to the small sample size. BG, EE, CY and LT are not included.

Table 3 shows the **profile of temporary agency workers in the European Union** according to four dimensions: sex, age, nationality and qualification. Temporary agency

<sup>7</sup> EUROCIETT data on the profile of agency workers cover less than half of the EU Member States (see table 6)

workers are **typically male** (61%), with an above-average share of men particularly reported in countries with a high penetration rate of temporary agency workers, such as France (68.7%), Germany (65.8%) and Austria (65.2%). There are only seven countries where the temporary agency workforce is dominated by women, with the highest portion in Greece (62.5%), followed by Ireland (57.4%), Slovenia (55.2%), Poland (53.9%), Denmark and Latvia (each 52.9%) and Portugal (51.8%). In the whole of the European Union, 54.4% of total employment is male. Temporary agency workers are **comparatively young**: 21.6% of the temporary agency workforce in the European Union is between 15 and 24 years old, while the average share of young people employed is around 9%. A further 71.8% of temporary agency workers are between 25 and 54 years old, compared to 77% of total employment. However, the age distribution differs enormously across countries, with Slovenia showing the highest share of young workers with 70.4%. Besides Slovenia, the numbers of young temporary agency workers are also considerably above average in Finland (42.2%), the Netherlands (34.4%), Belgium (32.8%), Sweden (31.1%) and Poland (30.9%). At the other end of the spectrum, countries such as Spain (9.1%), Ireland (12.8%), Italy (15.5%) and Slovakia (15.5%) have a very low proportion of young temporary agency workers. The temporary agency workforce is **dominated by nationals**, with an average share of 84.3% across the European Union. The only EU country where less than half of the temporary agency workforce comprises nationals is Luxembourg (39.7%). However, the share of nationals in this small European country is even relatively low among the total employed: in Luxembourg, 51% of the total employed are nationals and 44.9% are citizens of another EU country, compared to 93% and 3% respectively in the whole European Union.

Besides Luxembourg, another five countries report a below average proportion of nationals among temporary agency workers: with around 70%, the share of nationals in the United Kingdom, Ireland, Greece, Italy and Austria is considerably higher than in Luxembourg, yet still below the EU average. In addition, there are even countries with hardly any non-national temporary agency workers (less than 5%), including Hungary, Malta, Poland, Slovenia, Slovakia, Romania and Sweden. 28.1% of the temporary agency workforce in the European Union is **low- or unskilled** (ISCED 0 to 2), which is disproportionately high compared to 21.1% among total employment. However, southern European countries in particular show an even higher share of low or unskilled temporary agency workers, including Spain (38%), Italy (38.9%), Malta (47.1%) and Portugal (56.0%). The dominance of unskilled workers reflects the qualification structure of the total employment in those countries. For instance, Spain is characterised by a bipolar qualification structure, with its workforce comprising a high proportion of low-skilled or unskilled and high-skilled persons, while the same is true for temporary agency workers: 34% of the temporary agency workforce in Spain is high-skilled, compared to 19.5% in the whole European Union. Moreover, above average numbers for high-skilled temporary agency workers are also indicated by Ireland (53.7%), the United Kingdom (43.9%) and Sweden (28.4%). By contrast, very low numbers are reported in Austria (8.1%).

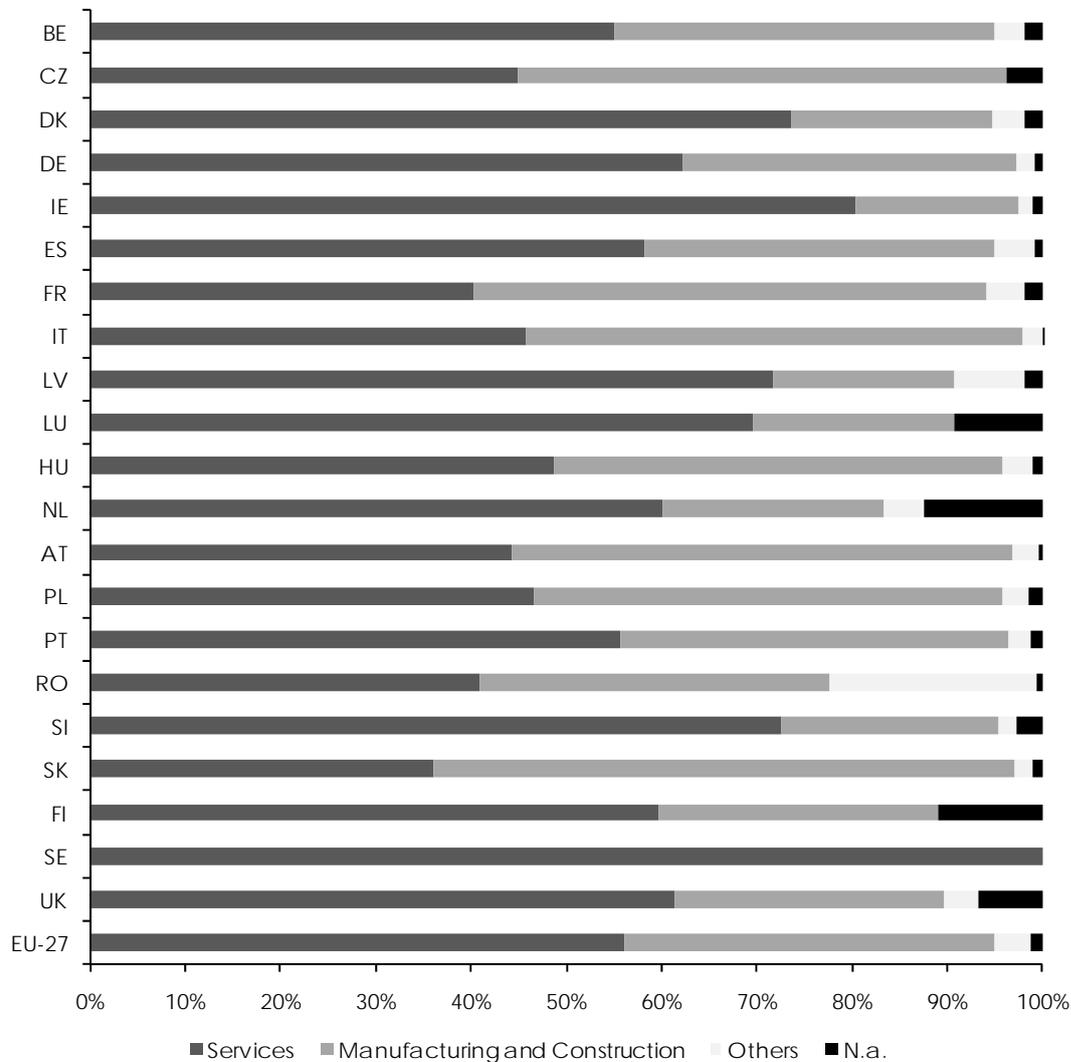
In most countries within the European Union, temporary agency work **concentrates on public and private services**, which partly reflects the structure of the economy. The highest concentration can be found in Sweden, where temporary agency work is completely in services, followed by Ireland, with 80.4% of temporary agency workers assigned to firms in the service sector. Across the European Union 56.1% of temporary agency workers are assigned to the service sector.

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in the annex).

A considerably above average concentration of temporary agency workers in services is also found in Denmark (73.7%), Slovenia (72.7%), Latvia (71.8%) and Luxembourg (69.7%). While private services typically play a major role within the service sector, more than a third of temporary agency workers are assigned to the public sector in Denmark and Ireland, which is considerable compared to other EU countries (EU27 9.1%).

**Figure 2 : The sectoral distribution of temporary agency workers in the EU, 2011**

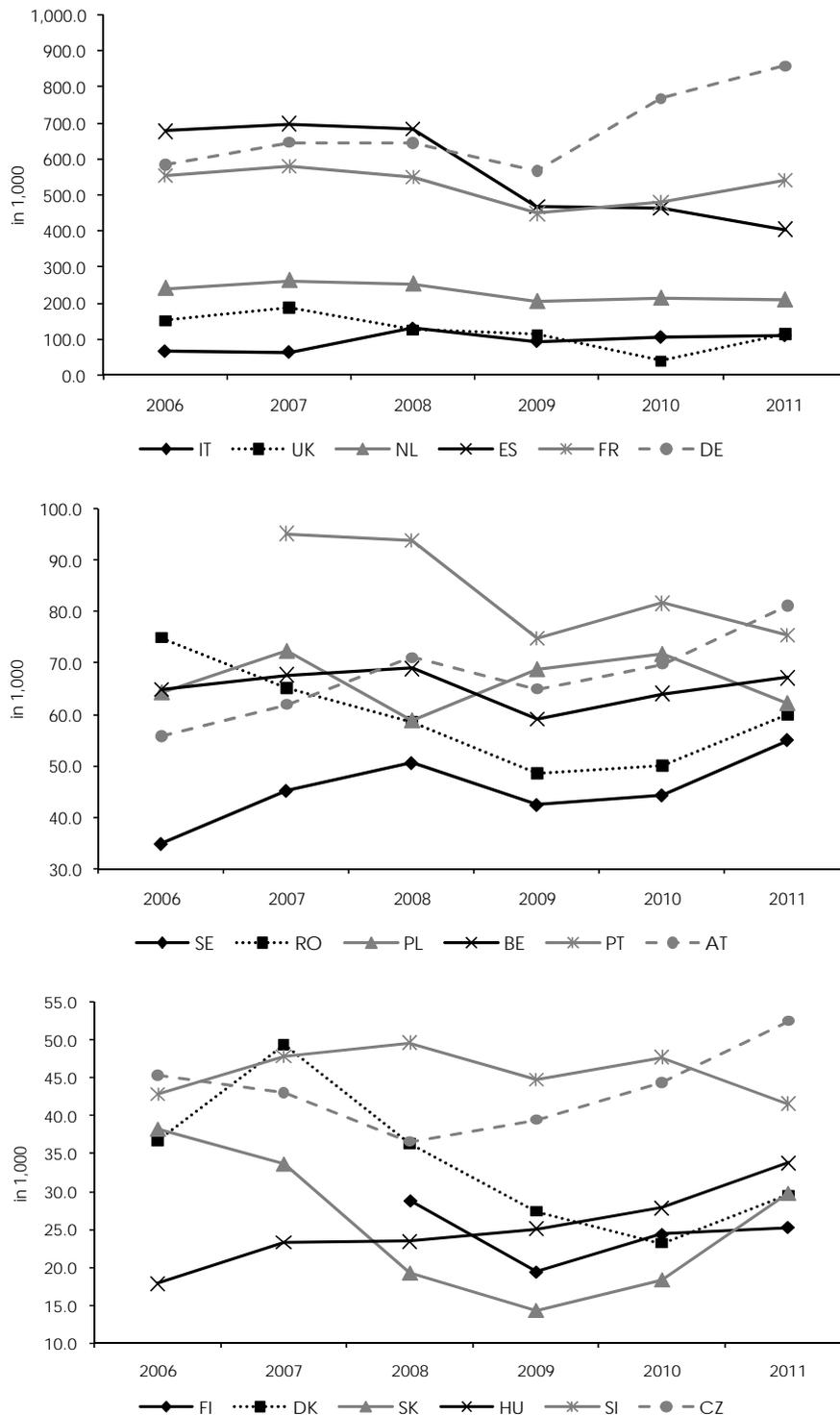


**Source:** Eurostat, ELFS (European Labour Force Survey, ad hoc extraction). - Note: BG, EE, CY, LT, GR and MT are not included. "Others" includes agriculture, mining and quarrying, electricity, and sewerage. "N.a." includes the category "no answer" and values not publishable or not available due to the small sample size.

However, there is a **small group of countries where the manufacturing and construction business dominates the sectoral distribution** of temporary agency workers: in Slovakia, this percentage reaches 60.9%, followed by the Czech Republic, France, Austria and Italy, each with around 52%. Considering only the manufacturing sector, Slovakia has the highest proportion of temporary agency workers in that business with 58.0%, followed by Italy (48.8%), Poland (44.0%) and Hungary (40.9%). By contrast, the highest portion of temporary agency workers in the construction sector is reported in Romania (19.5%), Austria (18.3%), France (17.7%) and the Czech Republic (13.8%).

The third aggregate of branches comprises agriculture, mining and quarrying, electricity, water supply and sewerage. The majority of Member States have a low percentage of temporary agency workers performing a job in this sector, with only Romania reporting appreciable numbers (21.7%).

**Figure 3 : Development of the numbers of temporary agency workers in the EU, 2006-2011**



**Source:** Eurostat, ELFS (European Labour Force Survey, special evaluation). - Note: Only countries with more than 20,000 temporary agency workers are illustrated.

Europe suffered a recession in 2009, during which 4,513 million jobs were lost (-1.8%)<sup>8</sup>. Apart from Poland, GDP declined in all European Union Member States (EU27 - 4.3%), while some countries already reported a decline in GDP in 2008, and some still in 2010. The labour market reactions were partly synchronised: while total employment decreased in the majority of EU Member States between 2009 and 2010, some countries have already reported higher employment levels than before the crisis, while other countries remain far away from pre-crisis employment levels or face a further decline in jobs.

**How was temporary agency work affected by the crisis?** According to the ELFS, the number of temporary agency workers declined by 597,000 to 2,473,500 (-19.4%) in 2009. While the numbers increased again in the following years, the pre-crisis employment level has not yet been reached – in 2011, it was still 5.5% below 2008. However, some countries performed better: Poland was the only country that did not register a drop in GDP in 2009, and one of the few countries with rising employment figures in the same year. Moreover, demand for temporary agency workers increased, yet the prevalence of this form of employment remains low (0.4% in 2011)<sup>9</sup>. By contrast, total employment in Hungary dropped in 2008 and 2009, but the demand for temporary agency workers increased during the crisis. Therefore, the number of temporary agency workers increased in terms of total employment from 0.6% in 2008 to 0.9% in 2011, and the ELFS data reveals a similar picture for Luxembourg, Greece and the Czech Republic. However, given that the numbers are relatively small, their reliability is somehow limited.

**Those countries that make relatively heavy use of temporary agency work experienced a decrease in demand for temporary agency workers in 2009**, both in absolute numbers and total employment: Between 2008 and 2009, the prevalence of temporary agency jobs dropped from 2.1% to 1.8% in France, from 1.7% to 1.5% in Germany, from 1.8% to 1.6% in Austria, and from 3.0% to 2.4% in the Netherlands. However, since 2009 the numbers of temporary agency jobs have been rising again. By 2011, France and the Netherlands reached the pre-crisis level of temporary agency jobs, while Germany and Austria already exceeded it. Having experienced a severe decline in total employment, temporary agency work in Spain fell from 3.4% of total employment in 2008 to 2.3% in 2011. Other countries with a relatively high penetration rate of temporary agency workers include Slovenia and Latvia. However, the reliability of the Slovenian data is limited due to the small scale, while the data for Latvia should be interpreted with caution, as the development of this employment form seems rather implausible, with a sharp rise in the numbers of temporary agency workers in the pre-crisis year of 2008.

Besides Spain, only four countries registered a decline in temporary agency work in both 2009 and 2010: Denmark, Ireland, Lithuania and Malta. Each has a relatively small temporary agency work sector, with the highest penetration rate in Denmark (2011 1.1%). **Before and after the economic downturn in 2009, the annual growth rate of the sector was very high:** according to the ELFS, temporary agency work increased by 10.9% in 2007, with similar growth rates achieved in 2010 (+8.6%) and 2011 (+8.0%)<sup>10</sup>. The same picture is presented by the EUROCIETT data but the growth rates are slightly higher: in 2007, temporary agency work rose by 13.1% and in 2010 by

<sup>8</sup> EUROSTAT, total employment of 15-64 year olds.

<sup>9</sup> According to the ELFS data, the number of temporary agency workers in Poland decreased in 2011; this conflicts the increasing numbers published by EUROCIETT. In addition, unlike the ELFS data, the number of temporary agency workers published by EUROCIETT dropped in 2009.

<sup>10</sup> The ELFS time series starts in the year 2006.

9%<sup>11</sup>. However, care needs to be taken with the ELFS data. In some countries, the development of temporary agency work seems rather implausible, with a sharp rise or fall in the numbers in one of the pre-crisis or post-crisis years. There are countries with an outlier on the high side, such as Latvia and Italy, as well as those with an outlier on the low side, including the Czech Republic and the United Kingdom. For instance, Latvia reported 44,000 temporary agency workers in 2008, while in the year before and the years after the employment data ranged between 10,000 and 18,000. Conversely, 112,000 people in the United Kingdom had a temporary agency job in 2009, while the numbers dropped to 39,000 in 2010 and subsequently increased to 214,000 in 2011. Therefore, the reliability of these time series for some countries is somewhat limited.

**Table 4 : (Temporary) work agencies in the EU**

	(Temporary) work agencies in the EU					
	Number of enterprises			Turnover (in Mio. €)		
	2010 or last available year					
	CIETT	SBS N782	SBS N783	CIETT	SBS N782	SBS N783
BE	142	270	69	3,762	4,318	715
BG	:	46	146	49	14	29
CZ	1,650	790	256	390	647	74
DK	1,347	659	144	944	915	127
DE	6,049	3,930	1,057	15,300	19,030	5,533
EE	30	325	10	30	100	50
IE	615	:	:	889	:	:
GR (EL)	9	6	0	104	60	:
ES	350	356	34	3,000	2,800	31
FR	1,200	2,234	3,209	17,800	23,134	2,424
IT	70	76	3	5,000	4,650	8
CY	:	11	16		3	1
LV	:	70	53	14	15	44
LT	30	70	27	29	33	10
LU	41	44	5	277	275	:
HU	667	448	120	345	507	27
MT	:	:	:	:	:	:
NL	3,640	6,079	39	10,302	16,644	539
AT	1,200	782	0		2,740	0
PL	2,998	282	397	689	327	381
PT	265	298	36	1,220	1,031	289
RO	129	175	366	84	69	58
SI	355	91	11	119	142	15
SK	129	116	28	161	64	14
FI	450	1,046	188	1,000	1,368	59
SE	500	1,761	0	2,000	2,563	:
UK	15,600	12,006	954	23,041	31,833	201
EU27	37,466	32,011	7,426	86,549	114,463	9,291

**Source:** Ciett, Eurostat, WIFO calculations. - Note: Number of enterprises, CIETT: 2009: DK, LU, NL; 2007: IE; Estimate: SI, SK. SBS – N782 (Temporary employment agency activities): 2009: GR, IT, CY. SBS – N783 (Other human resources provision): 2009: BE, GR, CY; 2008: IT, SE. Explanation of signs: (:) represents values not available.

<sup>11</sup> Figures for 2011 are not published yet by EUROCIETT (by end of January 2013).

It is **difficult to assess the number of enterprises in the field of temporary agency work**. According to the Structural Business Statistics (SBS), the numbers range between 32,000 and 39,000, depending on how the sector is defined. Companies classified under the NACE Code 78.3 "Other human resources provision" in the Structural Business Statistics provide human resources to clients' businesses on a long-term or permanent basis. The long-term or permanent assignment of workers contrasts the assignment for a limited period, which is typically for companies classified under NACE code 78.2 "Temporary employment agency activities"<sup>12</sup>. However, in both classes, the employer of the assigned workers is not the user firm but rather the unit classified under NACE 78.2 or NACE 78.3. However, the classification of firms might not always be straightforward in practice.

Unlike the ELFS, the data provided by the SBS is based on an output-oriented regulation, which means that the data-providing countries decide whether to conduct a survey or use administrative data – it is typically a combination of both<sup>13</sup>.

Accordingly, **cross-country comparisons and trend analyses are limited**. In addition, a comparison of SBS and EUROCIETT data is also limited, given that EUROCIETT does not only represent temporary work agencies but also companies operating in other human resources activities, such as private placement (recruitment, executive search), outplacement and training.

Therefore, company data provided by EUROCIETT refers to a broader field of activity. Moreover, EUROCIETT counts the number of enterprises, whether active or inactive, and consequently its figures should outnumber those provided by the SBS. However, this is not always the case (see table 4), possibly relating to national employers' organisations not necessarily representing all companies in the sector and therefore underestimating the figures, which further stresses the limited comparability.

**The countries that make heavy use of temporary agency work also report high numbers of enterprises:** according to the Structural Business Statistics, the numbers of temporary work agencies amounts to almost 4,000 in Germany, more than 2,000 in France and more than 6,000 in the Netherlands. However, these countries are outnumbered by the United Kingdom, which – according to Structural Business Statistics (NACE 782) data – reported 12,000 enterprises operating as temporary employment agencies in 2010. Together, they account for more than three-quarters of European companies in this business (75.4%). Typically, the number of enterprises operating as temporary employment agencies (N782) exceeds the number of enterprises operating in the long-term or permanent assignment of workers (N783). Indeed, the opposite is only true in five countries: Bulgaria, France, Cyprus, Poland and Romania.

The **turnover generated by temporary work agencies** in the European Member States amounted to around EUR 114 billion in 2010 (SBS N782). In terms of sales revenue, the United Kingdom represents the largest market (27.8% of sales revenues) in the European Union, followed by France, Germany and the Netherlands, which together account for more than half (51.4%) of the generated turnover in 2010. Another EUR 9 billion was generated by companies that mainly assign workers on a long-term or permanent basis to user firms (SBS N783). However, the sales revenues reported by EUROCIETT are much lower (EUR 86 billion) those delivered by the SBS.

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<sup>12</sup> <http://circa.europa.eu/irc/dsis/nacecpacon/info/data/en/NACE%20Rev%202%20structure%20+%20explanatory%20notes%20-%20EN.pdf>.

<sup>13</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_SDDS/de/sbs\\_esms.htm](http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/de/sbs_esms.htm).

### 1.5.3. Temporary agency work in selected European Countries

This chapter provides additional figures for selected countries with a sound national statistical basis. EUROFOUND conducted a survey on temporary agency work in the European Union and collective bargaining in 2009, whereby national experts were asked to assess the availability and quality of the national statistical data (see table 7 in the annex). According to this survey, “relatively few respondents found themselves more than happy with the data available.” In the following section, we will analyse the role and development of private employment agencies and their institutional settings in Germany and Austria as notable examples. Both countries are characterised by a moderate job and company mobility and an employment protection legislation that is neither very stringent nor very restrictive.

According to the OECD, the mean job tenure of employment spells (2011) was 11.5 years in Germany and 11.2 years in Austria. This contrasts to countries with a more flexible labour market, such as Denmark, where the average job tenure amounts to 8.5 years. Moreover, 14.8% of the persons employed in Germany and 15.0% of the persons employed in Austria (2011) worked less than 12 months for the same company, compared to 20.6% in Denmark. **Temporary agency employment provides firms – besides other forms of atypical employment – with a greater external numerical flexibility:** companies can rather easily adjust their headcount during business cycle fluctuations or substitute for permanent employees, including those on maternity leave, for instance. Therefore, temporary agency work increases labour market flexibility without weakening employment protection legislation for regular employment.

The OECD (Venn, 2009) has developed an indicator measuring the strictness of employment protection schemes, attempting to “quantify the costs and procedures involved in dismissing individuals or groups of workers or hiring workers on fixed-term or temporary work agency contracts”. Accordingly, on a scale from 0 (least stringent) to 6 (most restrictive), the strictness of employment protection takes a value of 3.0 for regular employment and 1.25 for temporary employment in Germany (2008). In Austria, the OECD indicator adopts a value of 2.37 for regular employment and 1.5 for temporary employment (2008). In more flexible labour markets such as Denmark, the indicator is 1.63 for regular employment and 1.38 for temporary employment<sup>14</sup>.

#### Germany

In Germany, temporary agency work has been regulated by the **Labour Placement Act (AÜG)** since 1972 (EUROFOUND, 2002). According to this act, temporary agencies have to report statistics to the Federal Employment Agency (*Bundesagentur für Arbeit*) twice a year, and therefore the numbers published by the Federal Employment Agency on temporary work agencies are non-controversial, with the latest publication covering data until December 2011<sup>15</sup>. In 2011, almost 881,700 temporary agency workers had a job in one of the 17,700 temporary work agencies. The EUROCIETT numbers amount to 813,000; indeed, they are always lower, reporting full time equivalents rather than head counts.

The demand for temporary agency workers increased considerably following the sharp fall of employment figures during the 2009 crisis (625,400), with the employment level of the sector already exceeding the pre-crisis figures in 2010 (2008: 760,600).

The production industry particularly suffered from the economic crisis, which had a severe impact on the temporary agency work sector; given that temporary agency

<sup>14</sup> [http://stats.oecd.org/OECDStat\\_Metadata/ShowMetadata.ashx?Dataset=EPL\\_R&ShowOnWeb=true&Lang=en](http://stats.oecd.org/OECDStat_Metadata/ShowMetadata.ashx?Dataset=EPL_R&ShowOnWeb=true&Lang=en)

<sup>15</sup> [http://www.ig-zeitarbeit.de/system/files/ba-statistik-31-12-2011\\_1.pdf](http://www.ig-zeitarbeit.de/system/files/ba-statistik-31-12-2011_1.pdf).

workers are typically assigned to manufacturing companies. The concentration in the manufacturing sector is reflected by the profile of temporary agency work, with the majority (60.9% in 2011) of the temporary agency workforce being male, as men are overrepresented in this sector. The Federal Employment Agency has data not only on the stock of temporary agency work, but also on **turnover within the sector**. In the second half of 2011, 561,000 new contracts were signed and 702,000 were terminated. 63.3% of the newly concluded employment contracts were held by persons who either entered the job market for the first time (9.8%) or were not employed immediately before (53.5%). For such people, temporary agency work could have been a stepping stone into the labour market. A further 36.7% of the newly-concluded employment contracts were held by persons who were employed immediately before; 9.9% of whom had a contract with a temporary work agency. However, the tenure of the temporary agency job is rather short: 8.7% of terminated contracts lasted less than one week, and 42.7% between one week and three months.

### Austria

In Austria, temporary work agencies are obliged to report their number of temporary agency workers annually at the end of July, as defined in the Labour Placement Act (*AÜG*)<sup>16,17</sup>. Only persons who were actually assigned to a user firm on the due date are recorded, with those who were sick, on vacation or without an assignment not covered. While the reliability of the Austrian data is non-controversial, it is also considered "insufficiently comprehensive" (Eurofound, 2009).

On 31 July 2012, the number of temporary agency workers reached a new record high of 78,414 in Austria, with the majority assigned to companies in the industrial and trade/crafts/service sector (74.5%). Accordingly, temporary agency workers are typically male (78%) and blue-collar workers (68%), while almost 30% are non-nationals, with a disproportionately high share of blue-collar workers (94%). Owing to this sectoral concentration, the temporary agency business was strongly affected by the economic crisis in 2009: temporary agency workers were among the first to lose their jobs when manufacturing companies had to adjust their headcount. Therefore, the pre-crisis record level of 68,081 temporary agency workers in 2008 dropped sharply to 57,230 in 2009. However, the numbers increased again in 2010, and the pre-crisis level of temporary agency workers was already exceeded in 2011. The tenure of temporary agency jobs varies between blue- and white-collar workers: while 59% of blue-collar workers are assigned to a user firm for less than 6 months, 50% of white-collar workers have an assignment lasting more than 12 months.

<sup>16</sup> <https://akupav.eipi.at/akupav/>.

<sup>17</sup> Statistics are provided from 2006 onwards.

## 2. THE LEGAL FRAMEWORK

### KEY FINDINGS

- The ILO, the WTO and the EU provide a legal framework for the work of temporary work agencies in the EU. Whereas the WTO and the ILO are not formally affected by EU law, the EU is directly bound by the standards of the WTO and Member States are able to invoke ILO standards ratified prior to 1 January 1958 to be not affected by the Treaty provisions of the TEU.
- The WTO standards are intended for promoting free trade while the ILO approach is coined by a suspicion against the commodification of labour and the concern to promote full employment. In contrast to that, the EU approach is determined by the wish to combine flexibility with security (flexicurity).
- Historically, the ILO has been suspicious regarding fee-charging employment agencies. More recently, both the ILO and the EU have adopted a more positive approach concerning the role of private employment agencies and seek to set a floor of rights for temporary workers. Despite this convergence there still exist differences between the ILO and the EU approach, though.
- In 1933, the ILO's General Conference adopted its first convention concerning fee-charging employment agencies (No. 34). Later, the Employment Service Convention (No. 88), the Fee-Charging Employment Agencies Convention (Revised) (No. 96) and the Private Employment Agencies Convention (No. 181) were adopted, some of which are revisions of each other so that for instance the ratification of Convention No. 181 involves automatic denunciation of Convention No. 96. Convention No. 181 is applicable to temporary work agencies within the meaning of EU Directive 2008/104/EC.
- The WTO General Agreement on Trade in Services (GATS) contains specific commitments for each WTO member in several Schedules that are binding under international law. Services provided by private employment agencies are called "placement and supply services of personnel". In 2006, a new Schedule was agreed between the EU and other WTO members but has to be approved by all EU Member States before entering into force.
- There is not autonomous definition of private employment agencies in EU law. However, the notion of temporary work agencies is defined in EU Directive 2008/104/EC. It combines social and employment policy objectives as it relates to employment conditions and to the well-functioning of the labour market. It hereby seeks to indirectly regulate the market for temporary work agencies although its legal basis is not related to labour market issues.
- There is an apparent conflict between Directive 2008/104/EC and Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. Accordingly, the minimum protection afforded to temporary workers is far more reaching than the maximum protection under the Posting of Workers' Directive and Directive 2008/104/EC and thus Directive 2008/104/EC needs to be implemented without prejudice to the Posting of Workers Directive 96/71/EC. However, the EU Member States have leeway to by-pass the apparent primary given to Directive 96/71/EC.

## 2.1. Employment agencies within the ILO labour standards conceptual framework

In order to gain a proper understanding of the ILO's approach towards employment agencies, it is essential to highlight the Preamble of the ILO Constitution (1919). First, it proclaims its famous credo that labour is not a commodity<sup>18</sup>. Furthermore, it relates the idea of social justice to the prevention of unemployment. The adoption of the Declaration of Philadelphia (1944), which is annexed to the Constitution, adopts a more positive stance, and has rightly been qualified as the very first international instrument proclaiming human rights<sup>19</sup>. It affirms that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". In the light of this affirmation, the Declaration enshrines "a solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve: full employment and the raising of standards of living".

Subsequent international instruments related to economic, social and cultural rights have integrated this **objective of full employment** into a declaration of a right to work<sup>20</sup>. Article 1 of the European Social Charter vests an obligation upon the Contracting Parties of the ESC "to establish or maintain free employment services for all workers" with a view to ensuring the effective exercise of the right to work<sup>21</sup>. In sum, the relevant conceptual framework is no more or less than the fundamental right to work. This conceptual link between the obligation to establish and maintain free employment services appears to have been inspired by the existence of three ILO Conventions during the time in which the European Social Charter was adopted.

In 1933, the ILO's General Conference adopted the **Fee-Charging Employment Agencies Convention (No. 34)**, while the later **Employment Service Convention (No. 88)**, 1948 was adopted fifteen years later. This Convention was complemented by **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)**.

As its title indicates, the latter holds the political ambition of revising former Convention No. 34. From a legal perspective, the notion of revision is unfortunate, given that the adoption of Convention No. 96 by the General Conference technically does not amend the former, let alone repeal it. A ratification of the revised Convention No. 96 entails an automatic denunciation of Convention No. 34, so that no ILO Member State is presently bound by it.

In 1996, the General Conference sensed the need to revise Convention No. 96, based upon the "very different environment in which private employment agencies operate when compared to the conditions prevailing when the above-mentioned Convention was adopted". In this context, it explicitly recognised the positive "role which private employment agencies may play in a well-functioning labour market".

The revision procedure was similar, whereby the adoption of the **Private Employment Agencies Convention (No. 181)**, 1997 did not automatically amend or repeal the former Convention No. 96, but due to Article 24 of Convention No. 96, ratification of Convention No. 181 involves automatic denunciation of the former.

<sup>18</sup> See in this respect: INTERNATIONAL LABOUR CONFERENCE, 81st Session, 1994, *The role of private employment agencies in the functioning of labour markets*, Geneva, International Labour Office, 1994, p. 6.

<sup>19</sup> A. Supiot, *L'esprit de Philadelphie*, Paris Seuil, 2010.

<sup>20</sup> See Article 23 UDHR (1945); Article 1 of the European Social Charter (1966) Article 6 ICESCR (1966).

<sup>21</sup> See L. Samuel, *Droits sociaux fondamentaux*, Strasbourg, Editions du Conseil de l'Europe, 2002, 32-37 and A. Swiatkowski, *Charter of Social Rights of the European Union*, Alphen aan den Rijn, 2007, 65-68.

The new Convention No. 181 has only been ratified by 26 countries, whereas Convention Nr. 96 continues to be relevant for 24 Member States, while 18 have denounced it. The majority (12) of these denunciations were operated automatically by ratifying Convention No. 181. The adoption of Convention No. 181 seems<sup>22</sup> to have been triggered by the case law of the CJEU, which will be studied below. Only a few Member States (France, Luxembourg and Malta) continue to be bound by Convention No. 96.

### **The notion of employment agencies**

There are two major distinctions between Conventions No. 34 and 96 on the one hand, and Convention No. 181 on the other.

Firstly, whereas the **former conventions refer to fee-charging employment agencies, Convention No. 181 refers to private employment agencies**. Private employment agencies will always be forced to charge a fee unless they are subsidised by public authorities, e.g. in a state where no public employment service exists. Thus, although fee-charging employment agencies will generally be private agencies, private agencies are not per se fee-charging. Furthermore, ILO Convention No. 181 is not opposed to the idea that private employment agencies charge fees from an employer. The semantic shift from fee-charging to private seems related to the more positive assessment of the role of agencies, as evidenced by Convention No. 181.

Secondly, and more dramatically, the **scope of application has been extended**. Whereas the former two Conventions very narrowly defined the employment agencies as "acting as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer", the more recent definition is much broader and at least more clear. Whereas the former definition could<sup>23</sup> be interpreted as excluding employment agencies with the quality of an employer directly recruiting workers, the more recent definition enshrined in Convention No. 181 explicitly encompasses "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".

In sum, Convention No. 181 is undoubtedly applicable to temporary work agencies within the meaning of EU Directive 2008/104/EC. Furthermore, the definition even includes "other services relating to job seeking, determined by the competent authority after consulting the most representative employers and workers organisations, such as the provision of information, that do not set out to match specific offers of and applications for employment."

**A comparison with the concept of a free public employment service** might reflect another way of delimiting private employment agencies. While Convention No. 96 has been construed as complementary to Convention No. 88, one essential difference relates to the fact that a free public employment service needs to be free, which Convention No.88 does not further define yet implies that no fees may be charged from either the employer or the worker.

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<sup>22</sup> See the references to *Höfner and Elser* in INTERNATIONAL LABOUR CONFERENCE, 81 st Session, 1994, *The role of private employment agencies in the functioning of labour markets*, Geneva, International Labour Office, 1994, 44-45.

<sup>23</sup> See on this controversy: INTERNATIONAL LABOUR CONFERENCE, 81st Session, 1994, *The role of private employment agencies in the functioning of labour markets*, Geneva, International Labour Office, 1994, 45. In our view, it can be argued that the distinct notion of "supplying a worker for an employer", implies that this worker is not employed by the employer to whom he is being supplied. On the other hand, the use of the notion intermediary suggests that the operations are restricted to placement in the narrow sense.

The essential duty of the service is much broader, ambitiously described as ensuring “in co-operation where necessary with other public and private bodies concerned, the best possible organisation of the employment market as an integral part of the national program for the achievement and maintenance of full employment and the development and use of productive resources.”. However, contrary to Convention No. 181, there is no trace of the idea that the free public employment service could act as a temporary work agency. Thus, Article 6 of Convention No. 88 suggests that the public employment service primarily acts as an intermediary, stating that it “assists workers to find suitable employment and assists employers to find suitable workers”.

### The public / private divide

The ILO approach has **historically** been inspired by a **high degree of suspicion with respect to fee-charging employment agencies**, which was further articulated in relation to fee-charging employment agencies conducted with a view to profit. The European Social Charter reflects a different attitude, furthering the establishment of free employment services without insisting that they should be public employment services.

In 1933, the ILO still advocated the abolition of fee-charging employment agencies conducted with a view to profit as well as strong preventive restrictions (authorisation by competent authority) and the supervision of fee-charging employment agencies conducted without a view to profit. Furthermore, the ILO has pushed the establishment of free public employment services (Convention No. 88). As evidenced by Article 3 of ILO Convention No. 96, the option to abolish and the promotion are intertwined, given that private agencies shall not be abolished until a public employment service is established.

In 1949, the ILO started to **adopt a more flexible approach**, allowing ratifying Member States to make a choice between a policy of prohibition of fee-charging and profit-seeking employment agencies within a period to be determined by the ratifying country on one hand, and a more liberal policy of regulation on the other.

Convention No. 181 adopts a different approach by abandoning the option of a progressive abolition of private employment agencies. It attempts to safeguard the protection of workers to be placed and or recruited by introducing **substantive safeguards** rather than solely sticking to procedural safeguards. Thus, one of the alleged purposes of the Convention is “to allow the operation of private employment agencies as well as the protection of the workers using their services”. The pathway of procedural safeguards is not abandoned as such, despite greater leeway being granted to the ratifying States. Therefore, “[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”.

The substantive safeguards are multifaceted, relating to the right to freedom of association and to bargain collectively to the benefit of workers recruited by private employment agencies. Furthermore, “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.” This provision does not differentiate between workers who are recruited and those being placed. Moreover, a similar observation can be made in the field of other principles, such as the protection of personal data of workers or the prohibition of child labour.

Article 11 refers to a set of working conditions that need to be protected in the case of workers recruited by private employment agencies, relating 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; and
- (j) maternity protection and benefits, and parental protection and benefits.

However, this article does not suggest that such protection needs to be construed according to the principle of equal treatment of workers recruited by private employment agencies and those recruited by the user firm.

Convention No. 181 deviates from the former Convention No. 96 regarding the issue of the scale of fees that needs to be established, with the obligation of imposing such a rigid scale abandoned in favour of the rule that private employment agencies shall not charge, directly or indirectly, in whole or in part, any fees or costs to workers. This rule applies irrespective of whether the workers are being placed or recruited.

There is also a shift in approach in terms of the **transnational operation of private employment agencies**. Whereas Convention No. 96 provided that fee-charging employment agencies conducted with or without seeking profit "shall only place or recruit workers abroad if permitted so to do by the competent authority and under conditions determined by the laws or regulations in force", Convention No. 181 does not require such a condition. By contrast, it only obliges Members "to 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."

Summing up, ILO Convention No. 96 did not impose an absolute state monopoly to the detriment of private employment agencies as such. It has never proclaimed a ban on fee-charging employment services as long as they were not conducted with a view to seek profit.

It allowed ratifying states to outlaw fee-charging employment agencies conducted with a view to seek profit, whereby the policy of progressive abolition inevitably amounts to a restriction of the freedom to provide services and of free competition. In this light, the emergence of temporary work agencies could be explained as a means of evading such a prohibition, given that this phenomenon was only covered in an unambiguous way by ILO Convention No. 181 as recently as 1997. Expressed otherwise, the silence on the issue of those agencies represented a **remarkable loophole** of the ILO Conventions. While ILO Convention No. 181 is more consistent with the freedom to provide services, it attempts to reconcile such a freedom with strong substantive safeguards.

## 2.2. Employment agencies within World Trade Organization (GATS) rules

When enacting or modifying its legislation, the EU has to comply with its international obligations, some of which in the field of services supplied by private employment agencies come from the WTO Agreements and particularly the **General Agreement on Trade in Services (GATS)**. The main goal of the GATS is to regulate and facilitate international trade in services, namely allowing non-EU service suppliers to operate in the EU under certain conditions.

### Obligations concerning all services

Two main GATS obligations apply to all WTO members and all services, i.e. also to the regulation of the EU and its Member States concerning services supplied by private employment agencies. First, every WTO member must treat services and service suppliers of any other WTO member in a way no less favourable than the services and service suppliers of any other country and is not allowed to discriminate between foreign service providers (Most-Favoured-Nation Treatment, Art. II.1 GATS). Second, every member must publish all relevant measures of general application affecting trade in services (e.g. in the Official Journal) and inform other WTO members of such measures (Transparency Requirement, Art. III GATS).

### Specific commitments concerning private employment agencies

The GATS also contains specific commitments undertaken by each WTO member with regard to each category of services. These commitments, if any, relate to market access and national treatment (see below). They are contained in a Schedule that is part of the WTO Agreements (Art. XVI GATS) and therefore binding under international law. However, some WTO members (including the EU and its Member States) have declared that they make no commitment regarding a particular type of service, and they consequently have no obligation to grant market access and national treatment to foreign suppliers of such services. Nevertheless, they still have to respect the general obligations of most-favoured-nation treatment and transparency (see above).

**Market access** means that the EU and its Member States must allow foreign services and service suppliers of any other WTO member to operate in the EU. Exceptions and limitations may be indicated in the Schedule. **National treatment** means that the EU and its Member States must treat services and service suppliers of any other WTO member in a way that is no less favourable than their own similar services and service suppliers concerning all measures affecting the supply of services.

This forbids discrimination against foreign service suppliers; for example, European rules on private placement agencies may not contain different conditions for European agencies than for Canadian agencies. The same is applicable within each EU Member State: Italian rules on private placement agencies (after implementation of EU law) may not contain different conditions for Italian agencies than for Canadian agencies. Exceptions and limitations may be indicated in the Schedule (Art. XVII GATS).

Therefore, in order to understand the specific obligations of the EU and its Member States, one should refer to the **applicable GATS Schedules** that contain obligations concerning private placement agencies, albeit differing according to several parameters.

### Application of the Schedules in time

The Schedules in force as of 22 March 2013 were agreed in 1994 by the EU and its then 12 Member States. Other Schedules apply individually for each of the other 15 EU Member States and Croatia.

In 2006, a new Schedule concerning the then 25 Member States was agreed between the EU and the other WTO members. This Schedule must be approved by all EU Member States before entering into force. As of 22 March 2013, the European Commission was unable to communicate the date upon which it will be applicable. When the 2006-Schedule comes into force, individual Schedules will still apply for Bulgaria, Romania and Croatia. Therefore, any modification of EU law should take into account all 16 Schedules currently in force, as well as preferably anticipating the effects of the 2006-Schedule.

### **Modes of supply**

Article I.2 GATS and the Schedules distinguish between four modes of supplying international trade in services with **different commitments applying for each mode**.

Mode 1 is called "Cross-border supply": a service is provided by a supplier in one country to a customer in another country, without either the provider or the customer crossing the border (e.g. a Brazilian head hunter provides advice to a Portuguese client during a conference call).

Mode 2 is called "Consumption abroad": the customer moves to the country of the supplier to benefit from the service (e.g. a European CEO goes to an employment agency in California with the aim of hiring an IT specialist).

Mode 3 is called "Commercial presence": the service supplier establishes a branch or a subsidiary in the customer's country (e.g. a U.S. employment agency opens an office in London to serve its British clients).

Mode 4 is called "Presence of natural persons": the service supplier sends an individual (usually his employee) to a foreign country to deliver the services (e.g. a Canadian HR consultant stays in Athens for three months to give advice to a Greek client).

In its 2006-Schedule, the EU further distinguishes between 3 sub-modes within Mode 4: intra-corporate transfers, business visitors and contractual service suppliers, whereby different commitments apply for each sub-mode.

An intra-corporate transfer means that a natural person who is employed by a foreign service supplier is temporarily transferred to a European branch or subsidiary of his employer to deliver services under Mode 3. Business visitors are natural persons employed by a foreign service supplier who are sent to the EU to negotiate the sale of services or to set up a commercial presence. Contractual service suppliers are people who supply a service on a temporary basis as an employee of a company with no commercial presence in the EU.

### **Types of placement and supply services**

In the context of GATS, the services provided by private employment agencies are called "placement and supply services of personnel". "Placement" refers to the search and selection of persons to be employed by the user firm, while "supply" means that the employee is hired by the service supplier and then made available to the firm. The Schedules distinguish between different types of placement and supply services.

Different commitments apply according to the type of placement and supply services. In this respect, reference is made to the classification of the UN Statistics Division, which divides placement and supply services into seven subclasses: Executive search services; Placement services of office support personnel and other workers; Supply services of office support personnel; Supply services of domestic help personnel; Supply services of other commercial or industrial workers; Supply services of nursing personnel; and Supply services of other personnel.

## EU Member States

Under the present regime, **13 EU Member States have adopted no specific commitment concerning placement and supply services** (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Malta, Austria, Poland, Slovenia, Slovak Republic, Finland, Bulgaria and Romania). Specific commitments concerning placement and supply services have been adopted by the EU-12 (although the commitments depend on the individual Member State), Hungary, Sweden and Croatia. Most commitments have generally been adopted with regard to Modes 2 and 3, with few commitments adopted for Modes 1 and 4 (see table 8). The future specific commitments of the EU and its Member States appear in the 2006-Schedule, although even here the commitments depend on the individual country, the subclasses of placement and supply services and the modes of supply. Again, most commitments relate to Modes 2 and 3. However, in a significant number of cases the 2006-Schedule indicates that no specific commitment was adopted.

In practice, European legislation mandatory for EU Member States has to be compatible with the most stringent commitment made by one EU Member State; otherwise that Member State would not be able to respect both EU law and its GATS commitments.

### 2.3. Employment agencies within EU law

#### Employment agencies and primary EU law

The generic notion of employment agencies is not an EU law concept for the sake of delimiting the scope of application of EU primary or secondary law.

There is **no autonomous EU definition for private employment agencies**, nor is there a single paradigm or conceptual framework to deal with the phenomenon of employment agencies under EU law. Private employment agencies within the meaning of ILO Convention No. 181 constitute services in the meaning of Article 56 TFEU. Free public employment services constitute a service of general economic interest in the meaning of Article 14 TFEU and Article 36 of the Charter of Fundamental Rights of the European Union. This legal qualification<sup>24</sup> does not entirely shield free public employment services from the Treaty provisions related to free competition; rather, Article 14 TFEU only indicates that "the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions."

In the same vein, Article 106 TFEU (freedom of competition) provides that:

*"1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.*

*2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union."*

<sup>24</sup> See A. Jacobs, "Services of General Interest and the Treaty of Lisbon", in N. Bruun, K. Lörcher and I. Schoemann, *The Lisbon Treaty and social Europe*, Oxford, Hart publishing, 2012, 277-302.

The Charter of Fundamental Rights of the European Union provides a powerful argument to confirm that free public employment services constitute services of general economic interest. Indeed, these services reflect an essential means to safeguard the fundamental right of access to a free placement service (Art. 29 Charter).

In sum, **private employment agencies are protected by free competition rules**, although the special status accorded to services of general economic interest can restrict the freedom of competition to their detriment. However, these restrictions to the freedom of competition are limited by the quintessential rationale underlying their status.

### **Private employment agencies and the Jurisprudence of the CJEU<sup>25</sup>**

The Court of Justice of the European Union has had the occasion to **assess the legitimacy of restrictions placed on the establishment of private employment agencies** introduced by Germany and Italy, conferring a state monopoly to the benefit of free public employment services and the detriment of private employment agencies in two landmark judgments.

In *Höfner and Elser v Macrotron*<sup>26</sup>, this monopoly was challenged by a private employment agency who was active as a head hunter (placement) in search of business executives to be recruited by a third party. At the time, Germany had chosen to opt for Part II of ILO Convention No. 96, which implied a progressive abolition of fee-charging employment agencies. However, Article 5 allow exceptions "in respect of categories of persons, exactly defined by national laws or regulations, for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service, but only after consultation, by appropriate methods, with the organisations of employers and workers concerned."

The head hunter was not paid for the services provided, since the client shrewdly argued that they were in fact illegal under German law. The *Bundesarbeitsgericht* submitted preliminary questions to the CJEU related to the conformity of the alleged prohibition under German law based upon the monopoly of the free public employment service with the principles of the freedom to provide services, as well as the rules on freedom of competition.

In *Job Centre*, the refusal of the Italian judicial authorities to register a private employment agency marked the heart of a judicial saga<sup>27</sup> involving two judgments of the CJEU, only the second of which is of immediate relevance<sup>28</sup>. The company to be established, Job Centre, is a private employment agency whose scope of activities is much greater than the recruitment of executives, rather serving as an intermediary between supply and demand on the employment market. The Italian *Corte d'Appello* of Milano submitted questions to the CJEU that evolved around the conformity of the Italian state monopoly with the EU principles on the freedom of services, as well as the freedom of competition. In both cases, the CJEU avoided assessing the situation according to the freedom to provide services.

In *Höfner and Elser*, the CJEU argued that the facts of the case, as established by the referring Court, were solely related to the provision of services that are confined in all respects within one single Member State. The Court ruled that since the recruitment

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<sup>25</sup> See E. Traversa, "The role played by the Court of Justice of the European Community in opening up the market for private employment agencies", *Bulletin of Comparative Labour Relations*, Nr. 36, The Hague, Kluwer Law International, 1999.

<sup>26</sup> CJEU, 23 April 1991, C-41/90 (*Höfner and Elser v Macrotron*).

<sup>27</sup> See S. Sciarra, "Job Centre: an illustrative example of strategic litigation", in S. Sciarra, *Labour Law in the Courts*, Oxford, Oregon, 2001, 241-260.

<sup>28</sup> CJEU, 11 December 1997, C-55/96 (*Job Centre Coop. arl*).

consultant (Höfner and Elser) could not rely on the Treaty provisions in the field of the freedom of services, it did not have to assess the issue of conformity. In *Job Centre II*, the CJEU stated that since the prohibition at stake was contrary to the freedom of competition, no further examination was warranted under the rules related to the freedom to provide services.

In both cases, the CJEU did not rule that granting a monopoly in the field of employment procurement in respect of business executives or in the field of mediation between supply and demand on the labour market was as such an abuse of a dominant position under the freedom of competition rules. Hence, as a matter of principle, the Court accepted that a free public employment service was not just a public undertaking but one entrusted with the operation of services of general economic interest. Whether the exercise of a monopoly in the field of recruitment of business executives constituted an abuse of a dominant position had to be later assessed based on an analysis of the German labour market.

Insofar as the German *Bundesanstalt* was in no position to satisfy the demand prevailing in the field of executive recruitment, despite the monopoly which had been attributed and since the monopoly was such as to render the activities of private employment agencies in that field impossible, a case could be built stating that such a monopoly was indeed a violation of competition rules, if it was capable of affecting transnational trade. In *Job Centre II*, the Court confirmed this approach regarding the conditions under which a state monopoly in the general field of mediation between supply and demand could have been justified<sup>29</sup>.

### Temporary work agencies

As previously highlighted, temporary work agencies constitute a specific kind of private employment agencies. Contrary to the notion of private employment agencies, European legislature has **defined the notion of temporary work agencies in EU Directive 2008/104/EC**, defining the latter as “any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction”. Insofar as temporary agency workers are being posted by a temporary work agency offering its services to a user firm in another Member State, such an operation can be qualified as posting in the meaning of the **EU Directive 96/71/EC** concerning the posting of workers in the framework of the provision of services. The **Posting of Workers Directive** is applicable to the extent that temporary employment undertaking or placement agencies “hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting”<sup>30</sup>.

The question arises of how a **potential conflict** between both instruments would need to be tackled. Upon first consideration, it is tempting to give precedence to the Temporary Agency Work Directive based on the idea that this is the most recent and most specific instrument. However, the 22nd Recital of that Directive seems to suggest otherwise, stating that EU Directive 2008/104/EC needs to be implemented without prejudice to Directive 96/71/EC. Given that the minimum protection afforded to temporary workers is more far reaching than the maximum protection under the Posting of Workers’ Directive, a conflict between both Directives seems to be inevitable.

<sup>29</sup> This approach was also confirmed in the subsequent case C-258/98, *Carra and others* of 8 June 2000.

<sup>30</sup> See Article 1 (3) (c).

However, in our view, such a conflict is only apparent. According to Article 3 (9) of EU Directive 96/71/EC temporary work agencies "must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member States where the work is carried out." This provision suggests that Member States have leeway to by-pass the apparent primacy given to EU Directive 96/71/EC while implementing EU Directive 2008/104/EC. In other words, in a case of transnational temporary agency work, there is no formal objection against the application of the principles and rules enshrined in Directive 2008/104. Member States have leeway to impose equal treatment between transnational temporary agency workers and the national temporary agency workers. Indirectly, this will amount to equal treatment between the transnational temporary agency worker and the workers of the user firm in terms of basic working and employment conditions.

EU Directive 2008/104/EC has been adopted based on Article 153 TEU (formerly Article 137 TEC), which allows the EU to regulate the employment conditions of temporary agency workers but not the provision of services aimed at assigning those workers to user firms. Nonetheless, EU Directive 2008/104/EC directly or indirectly regulates the restrictions imposed on the establishment of temporary work agencies or the provision of such services. Article 4 restricts these prohibitions or restrictions "to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented". They "shall be without prejudice to national requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies."

In sum, the aim of the EU Directive 2008/104/EC is twofold, having **sought to combine social policy objectives as well as employment policy objectives**. The intervention affects employment conditions (social policy) as well as the functioning of the labour market by seeking to eliminate restrictions on the recourse to temporary work agencies that Member States might be unable to justify (employment policy). This approach is puzzling insofar as the legal basis of the EU Directive 2008/104/EC is not related to labour market issues, which does not allow for regulatory intervention.

In fact, EU Directive 2008/104/EC adopts a **different stance from that adopted in the previous Services Directive (2006/123/EC)**, which provided a rather ambiguous safeguard clause in favour of labour law. The ambiguity resided in the fact that the Services Directive did not affect labour law as such, but only labour law "in accordance with national law which respects Community law". However, more importantly, the Services Directive stated unambiguously that it "shall not apply to services of temporary work agencies" (Article 2 (2) e)<sup>31</sup>. Furthermore, free public employment services are doomed to fall outside its scope of application, since those services offered without remuneration cannot be qualified as economic services<sup>32</sup>.

It is remarkable that a Social Policy Directive seeks to achieve what the Services Directive was unable to do, namely an (indirect) regulation of the market for employment agencies by prescribing a procedure supervising red tape in a way that is reminiscent of the Services Directive. It is essential to distinguish between private employment agencies in general and temporary work agencies. The latter are exempted from the Services Directive while the former are not, which results in the Services Directive being unable to exempt temporary work agencies from the Treaty based principle of the freedom to provide services. Therefore, restrictions on private employment agencies can be challenged insofar as they would frustrate the transnational freedom to provide services.

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<sup>31</sup> See C. Barnard « Unravelling the Service Directive », *Common Market Law Review*, 2008, 340-344.

<sup>32</sup> C. Barnard « Unravelling the Service Directive », *Common Market Law Review*, 2008, 331-332.

The same conclusion seems to be valid in relation to the restrictions that are formally excluded from the scope of Article 4 of EU Directive 2008/104/EC and relate to national requirements regarding “registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies”, with the latter illustrated by the judgment *Commission v. Belgium*<sup>33</sup>. In older case law, the CJEU only censured restrictions to the freedom to provide services that were held to be discriminatory<sup>34</sup>.

In this recent case, the conditions imposed upon temporary work agencies by an Ordonnance of the Region of Brussels were challenged by the European Commission as being contrary to the freedom to provide services. The Commission considered that a prerequisite for private employment agencies undertaking activities in supplying temporary agency workers was an unjustified restriction of the freedom to provide services (Article 56 TFEU). The Ordonnance provided that such companies had to be established as a *société anonyme* or *société de personnes à responsabilité limitée*, thus excluding a company created solely by one person, for instance. Furthermore, the Ordonnance prescribed to restrict the activities exclusively to the supply of temporary agency workers. Despite these restrictions not being imposed in a way that constituted discrimination based upon nationality, the Court followed the European Commission that these twofold restrictions (exclusivity of the goal and the prescription related to the legal form of the company) represented an unjustified restriction.

#### 2.4. Employment agencies within a network of legal orders

Private employment agencies are entangled in a network of legal orders, with three major international or supranational legal orders having been identified: the WTO, the ILO and the EU. Furthermore, they will be affected by domestic legislation that is inevitably influenced by potentially conflicting international standards that countries have ratified or need to respect due to their affiliation to these international organisations.

Although the WTO and the ILO are not formally affected by EU law, the **EU is directly bound by standards of the WTO**. Furthermore, due to Article 351 TEU, Member States have been in a position to invoke ILO standards ratified prior to 1 January 1958 in order not to be affected by the Treaty provisions of the TEU (formerly TEC). Although both Germany and Italy could have invoked these provisions in the *Höfner and Elser* and in *Job Centre II* cases, the judgments have proven otherwise. Nonetheless, Advocate-General Jacobs did refer to the importance of ILO Conventions No. 88 and 96 adopted prior to 1958 as a background to understand the German legislation in *Höfner and Elser*. However, he did not elaborate on the potential implications of Article 307 TCE (nowadays Article 351 TEU). In the opinion of AG Elmer in *Job Centre II*, no reference was made to the ILO Conventions. At present, references to ILO Conventions No. 88 and 96 are only relevant for a limited number of Member States (France, Luxembourg and Malta) due to the massive denunciation of this Convention.

ILO Convention No. 181 was concluded after 1958, and thus, Member States that have ratified this Convention will not be able to invoke Article 351 TEU in a case of a conflict between this standard and the EU provisions regarding the freedom to provide services and the freedom of competition.

Since ILO Convention No. 181 seems to have been adopted under the pressure of the case law of the CJEU (at least *Höfner and Elser*), the impression that the ILO and the EU standards are convergent initially seems to be warranted. Furthermore, the recent EU

<sup>33</sup> CJEU, 30 June 2011, C-397/2010, (*Commission v Belgium*).

<sup>34</sup> CJEU, 18 January 1979, C-110/78 and 111/78, (*Ministère public c Van Wesemael and others*) and CJEU 17 December 1981, C 278/80, (*Webb*).

Directive 2008/104/EC is indebted to the overall approach of ILO Convention No. 181, with both instruments adopting a positive approach to the role that private employment agencies can play in mediating the supply and demand on the labour market. Neither one of the instruments introduces an obligation to abolish private employment agencies. Whereas the ILO instruments seek to submit the functioning of those agencies to a system of licence and urges states to supervise them, EU Directive 2008/104/EC explicitly safeguards national provisions related to “registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies.”

Both instruments have sought to prevent potential abuse in a similar way, by seeking to improve the working conditions of temporary agency workers. Since they are both aimed at **setting a floor of rights rather than a ceiling**, some differences in the definition of that minimum protection are not *per se* problematic.

However, a comparison between both instruments is misleading, insofar as some of the working conditions of temporary agency workers enumerated in ILO Convention No. 181 are in fact protected outside EU Directive 2008/104/EC in other EU legal instruments. In this respect, the following items highlighted by ILO Convention No. 96 are covered by some EU Directives, primarily dealing with temporary agency workers or including a specific provision on temporary agency workers.

- Occupational safety and health: Directive 91/383/EC
- Compensation in case of insolvency and protection of workers’ claims: Directive 2008/94/EC

Some issues enumerated in ILO Convention No. 181 are not the object of specific EU provisions applicable solely to agency workers or covered by EU Directives that explicitly refer to agency workers. These conditions relate to issues of collective labour law such as collective bargaining, freedom of association, and to statutory social security benefits and compensation in the case of occupational accidents or diseases.

On the other hand, as indicated above, **EU Directive 2008/104/EC has adopted a much more developed and elaborated view on the issue of equal treatment** by identifying the comparator as opposed to ILO Convention No. 181. In our view, such a lack of convergence between ILO and EU standards does not necessarily create a legal conflict for Member States having ratified ILO Convention No. 181, given that both instruments are construed as providing a minimum floor of protection. Hence, this lack of convergence does not force the EU legislator to intervene.

The convergence between ILO Convention No. 181 and EU Directive 2008/104/EC is restricted to the issue of temporary work agencies. Contrary to the ILO, the EU has not developed a generic instrument related to private employment agencies. Thus, a major prohibition of ILO Convention No. 181 to directly or indirectly charge fees or costs to workers is only partially mirrored by EU Directive 2008/104/EC. Whereas the former provision is applicable to every private employment agency, the latter is only restricted to temporary work agencies.

The most evident distinction between the EU and ILO approach is related to the applicable conceptual framework. Whereas the ILO approach is obviously determined by a suspicion against the commodification of labour and a concern to promote full employment, the conceptual framework of the EU is multifaceted. It is partially determined by a wish to improve the working conditions of the agency workers (security) and partially by employment policy objectives (flexibility), as well as by legal principles of European economic law (freedom to provide services and freedom of competition). Insofar as EU Directive 2008/104/EC seeks to improve working conditions and facilitate

recourse to agency work, the question arises of whether Article 153 TFEU can constitute an appropriate basis for so much flexibility.

The WTO standards are solely inspired by an intention to promote free trade.

To summarize, there is a **growing convergence between the ILO and the EU framework**. Whereas the ILO initially adopted a very restrictive approach towards private employment agencies, it has gradually recognised the positive role that they could play in mediating between demand and supply on the labour market. This process was rendered possible through the introduction of substantive safeguards and started providing leeway for fee-charging employment agencies without a view to profit, eventually leading to recognition of the role of employment agencies that were profit seeking.

The CJEU adopted a restrictive approach towards state monopolies in matching labour demand and supply, although the European legislator has recently elaborated a specific framework establishing substantive safeguards for temporary agency workers.

The overview shows that temporary work agencies were not explicitly or fully covered by the ILO and EU instruments from the outset, and it took until the adoption of ILO Convention No. 181 and EU Directive 2008/104/EC to provoke such a shift. At present, the provisions on temporary work agencies are more detailed than those related to employment agencies in general and could constitute a source of inspiration for further elaboration.

### 3. PRIVATE EMPLOYMENT AGENCIES: MODUS OPERANDI AND NATIONAL REGULATION

#### KEY FINDINGS

- There are distinct differences between countries in the **regulatory framework** of private employment agencies and especially temporary work agencies, ranging from (1) a market driven environment in the UK where there is little formal regulation, to (2) a collective bargaining environment as Denmark and Germany where there is a balance between legislation and agreements made by collective bargaining and to (3) a legislative driven environment such as Italy and Belgium where the sector of temporary agency work is heavily regulated. Poland represents the emerging markets (4), which show a legislative framework with mixed impact results.
- **Agencies** are informed about the regulatory framework by direct government circuits as well as through trade associations. In none of the examined countries the agency can legally charge the worker for providing temporary work, apart from Germany. However, this does not occur in practice. The agency can also not charge a fee when the agency worker becomes hired on a permanent basis, except in Denmark under certain conditions. Cooperation with public employment agencies is institutionalised in Belgium and Italy, but much less so in the UK, Poland and Denmark.
- Temporary agency work is not allowed in all types of **user firms**. For instance, in Italy it cannot be used in firms where shifts have been reduced and in Germany it is not allowed in the main construction sector. In Belgium, temporary agency work is not allowed in the public sector; it is the only country besides Greece that has this limitation. In addition, agency workers cannot be used as strike breakers in Belgium or Italy, and only with difficulty in the UK and Denmark. In Germany, this is possible, however, unless stipulated differently by collective agreements. The use of temporary migrant workers is currently limited, but stakeholders in all countries expect this to rise.
- **Agency workers** receive equal treatment by law in Belgium, Italy and Poland. In the UK, full equal treatment applies only after 12 weeks. In Denmark and Germany exceptions can be made by collective bargaining agreements, while Italy makes positive exceptions for groups at risk. This translates into equal wages in most countries. In the UK, pay seems to be lower for agency workers. Training is financed by training funds in Belgium and Italy, while in the UK investment depends on the economic climate. Denmark does not have formal requirements. Other working conditions seem to be equal to regular workers except for the UK, where agency workers appear to be more at risk. Agency work often leads to permanent employment within the firm. Collective bargaining is less developed for agency workers in the UK, where no sectoral bargaining takes place, in Poland where unions within the agencies are weak or non-existent and in Germany where agency workers' representation depends on the workers representation council in the firm.
- **Compliance** with regulation remains an important issue. Belgium, Poland and the UK have a governmental complaint mechanism in place. In Germany complaints

go through special bodies of trade associations, while trade unions take up the task in Denmark.

- **Non-compliance** encompasses issues such as correct payments within the UK and Denmark and illegal fees for agency workers in the UK and Poland. Migrant work also often poses difficulty, as shown in Germany, Denmark and Belgium.
- **Challenges** remain for each country. Especially for the UK, Denmark, Poland and to a lesser extent Belgium, the implementation and further interpretation of the EU Directive on temporary agency work represents an issue. Belgium also has to face up to the discussion for opening up all sectors for agency work. On the other hand, Poland must work on the detection of non-compliance and loopholes within regulations.

### 3.1. Empirical design and country cases

This chapter analyses the modus operandi and national regulations of private employment agencies by means of multiple country cases. The respective countries were selected from the clusters created by the Boston Consulting Group and CIETT (2011) when mapping out a typology of markets in which private employment agencies operate. In the study countries were clustered based on three dimensions:

- Market dynamics – assessing each country’s social and economic system
- Industry development – evaluating the evolution of private employment services from when they were officially recognised to the current situation
- Regulatory environment – appraising the degrees of flexibility to operate and security for workers.

Four main market types were identified based on these dimensions:

- Market driven countries, such as the **UK**
- Social dialogue based markets, such as **Germany** and **Denmark**
- Legislator driven countries, such as **Belgium** and **Italy**
- Emerging markets, such as **Poland**

**Figure 4 : Six types of environment where private employment agencies operate**

MARKET TYPE		COUNTRIES	CLUSTER CHARACTERISTICS
1 Market driven	Europe	•UK	<ul style="list-style-type: none"> <li>•Rapid AW development, with appreciable drop-off in the crisis</li> <li>•Open regulatory environment with limited restrictions</li> <li>•Liberal economies favoring flexibility over security</li> </ul>
	Non-Europe	•US, Australia, New Zealand	
2 Social dialogue based	Western Europe	•Netherlands •Switzerland, Austria, Germany	<ul style="list-style-type: none"> <li>•Significant degree of AW penetration in relatively mature markets</li> <li>•Moderately regulated, varying balances of flexibility and security</li> <li>•Labor market organized and regulated by collective agreements between social partners</li> </ul>
	3 Nordics	•Sweden, Norway, Denmark, Finland	
	4 Asia	•Japan	
5 Legislator driven	Western Europe	•France, Belgium, Luxembourg	<ul style="list-style-type: none"> <li>•Penetration depending on level of industry development, ranging from below to above average</li> <li>•Highly regulated, weighted towards job security over flexibility</li> <li>•Historically labor markets with high unemployment relative to Social dialogue peers</li> </ul>
	Medi-terranean	•Italy, Greece, Spain, Portugal	
6 Emerging markets	Eastern Europe	•Eastern Europe	<ul style="list-style-type: none"> <li>•Nascent industries with AW legally recognized only recently</li> <li>•Regulatory policies still in development</li> <li>•Economic policies and market dynamics still evolving</li> </ul>
	Lat Am	•Latin America	
	Asia	•India, China	

**Source:** Boston Consulting Group/Ciett (2011) - Note: AW is used as an abbreviation for 'agency work'.

The first part of this chapter discusses the regulatory framework for each country case separately. Following the practical implications for temporary work agencies and agency workers are discussed, thereby comparing the situation in the different countries. The next section elaborates on the complaint mechanisms and (non-)compliance with regulations. Finally, the chapter concludes with a summary of the main findings and challenges each of the analysed countries faces.

### Regulatory framework

Table 5 provides an overview of the main aspects of the regulatory framework of temporary work agencies of the six cases analysed, each representing the different market and environments. These aspects include the main driver of regulation, the set-up requirements, the monitoring and sanctioning within the sector, the use of codes of conduct as a tool of self-regulation and the allocation of responsibilities between the agencies and the user firms.

Each case displays strong differences towards the others, the distinctive character of each type showing clearly. The **UK** is a prime example of the market driven environment for temporary work agencies. There are little to no formal requirements to set up an agency and, apart from self-regulation imposed within the sector, the government provides little specific monitoring or sanctioning for the agencies, apart from the general labour compliance. **Germany** and **Denmark** provide a more mixed image where regulation goes partially or mainly through collective bargaining which results in limited set-up and monitoring requirements. **Belgium** and **Italy** have clear legislative

environments with more strict requirements, both in set-up as in monitoring. **Poland** is the outlier with limited regulations but not truly driven by the market, resulting in little formal requirements for setting up an agency, but still basic monitoring of the agencies by government institutions. All cases except Poland indicate the existence of codes of conduct within the sector, mostly enforced by the sector federation. In the Belgian case, which is legislative driven, this code has the force of law.

In terms of responsibilities the image is less distinct. Generally, the agency is in charge of informing the agency workers, added with specific information duties of the user firm. Pay and working conditions can be allocated to the agency or to the user firm, but it is normally the user firm who is responsible for all aspects of labour regulation concerning the working environment. In the UK, Germany and Italy, the agency has to ensure the user firms' compliance with regulations. The regulatory framework for each case will be discussed in detail below.

**Table 5 : Main characteristics of the regulation framework in the diverse market types**

Typology		Market-driven	Social dialogue - Western Europe	Social dialogue – Nordic	Legislative driven - Western Europe	Legislative driven- Mediterranean	Emerging market
Case		UK	DE	DK	BE	IT	PL
<b>Primary actor on regulation</b>		Sector	Government/ collective bargaining	Collective bargaining	Government	Government	Government
<b>Set-up requirements</b>	Registration	General	Specific	General	Specific	Specific	Specific
	Licensing	No (sectoral exceptions)	Yes	No	Yes (Regional)	No	No
	Start-up capital	No	Yes (sureties)	No	No	Yes	No
	Professional qualifications	No	No	No	Yes	No	No
<b>Monitoring by Government<sup>35</sup></b>	Monitoring & reporting	No	Yes	No	Yes	Yes	Yes
	Sanctioning	/	finances, licence withdrawal, prosecution	finances, prosecution	finances, licence withdrawal, prosecution	finances, licence withdrawal, prosecution	finances, licence withdrawal, prosecution
<b>Monitoring by the sector</b>	Code of Conduct	Yes	No	Yes	Yes (legally binding)	Yes	No
<b>Responsibilities</b>	Information	Agency, user firm	Agency	Agency	Agency, user firm	Agency	Agency
	Pay & working conditions	User firm	Agency	User firm	Agency	Agency, user firm	Agency

<sup>35</sup> This does not exclude general inspection and sanctioning on compliance with labour law.

Typology		Market-driven	Social dialogue - Western Europe	Social dialogue – Nordic	Legislative driven - Western Europe	Legislative driven- Mediterranean	Emerging market
Case		UK	DE	DK	BE	IT	PL
	Working facilities	User firm	Agency	User firm	User firm	User firm	User firm
	Monitor compliance	Agency	Agency	/	/	Agency	Agency

### 3.1.1. United Kingdom

According to the UK Agency Workers Regulations 2010, a temporary work agency is defined as follows:

*"A person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of supplying individuals to work temporarily for and under the supervision and direction of hirers; or paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers."*

Further, the Conduct of Employment Agencies and Employment Businesses Regulations 2003 make a distinction between:

- **Employment agencies** that introduce work seekers to client employers for direct employment by those employers. This is usually known in the industry as "permanent recruitment" or employment even though the employment may only be for a fixed period; and
- **Employment businesses**, which engage work seekers under either contracts for services or contracts of employment and supply those work seekers to client hirers for temporary assignments or contracts where they will be under the hirers' supervision or control. This is usually known in the industry as the "supply of agency workers".

However, there is some blurring between the two types of business - a company engaged in both "permanent recruitment" and "the supply of agency workers" will fall into the definition of both temporary work agency and employment business to reflect both sides of the business. The focus of this case will be the regulations for temporary work agencies.

#### Setting up temporary work agencies

The **legal framework** governing temporary work agencies in the UK dates from 1973 (the Employment Agencies Act), with subsequent legislation in 2003 defining the duties of agencies more closely (the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which was most recently amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010). The EU Directive on temporary agency work was implemented by means of the UK Agency Workers Regulations in 2010. Temporary work agencies may operate relatively freely in the UK, although they may not supply workers to replace workers taking official strike action. The aim of an agency, as set out above in the 2010 Regulations, is to find work or supply employers with workers and it is defined as employment for a professional engagement or under a contract for services. The Employment Agencies Act of 1973 stipulated mandatory licensing for all businesses engaged in agency work, which they had to publicise. The licence had to be renewed every one to five years and could be revoked in the case of misconduct by the agency or its owners. However, the Deregulation and Contracting Out Act 1994 **removed the licensing requirement** for employment agencies.

Not all sectors are without licensing requirements, though. Following a fatal incident in 2004, in which 21 Chinese workers were killed, agency work in agriculture, the shellfish industry, and connected activities became subject to licensing requirements, under the Gangmasters (Licensing) Act 2004.

A gangmaster is a person who supplies workers to the user firm, regardless of whether these workers are directly employed by that person or also supplied to him. The Act covers both workers employed under a contract or without a contract, and thus the Act can also apply to workers who are not in a legal form of employment or have legal residence status.

There has been a debate on extending the scope of the Act to other sectors, most notably to the construction sector, although this has not yet been successful. Further, agencies operating in the nursing and domiciliary care sector may need to be registered with the Care Quality Commission, if operating in England, the Care and Social Services Inspectorate if operating in Wales, the Regulation and Quality Improvement Authority if operating in Northern Ireland, and Social Care and Social Work Improvement for Scotland, if operating in Scotland.

There are **no legislative provisions governing issues such as minimum start-up capital** for agencies, although those wishing to set up an agency will have to present a viable business plan to a bank in order to secure credit from that bank, as they would for obtaining credit for setting up any kind of business. Furthermore, **no specific professional qualifications** are necessary for running a temporary work agency.

### Monitoring and control procedures

Agency work is largely **self-regulated through codes of practice** issued by trade associations such as the Recruitment and Employment Confederation (REC). The government has no specific monitoring or sanctioning mechanism in place for temporary work agencies. Breaches are pursued by the associations. There are no reporting requirements, but complaints can be made against agencies, which associations will investigate. For example, complaints against REC members from candidates, clients or others can be investigated under the REC Complaints & Disciplinary Procedure.

**Complaints can be referred to the REC Professional Standards Committee (PSC)**, which may reprimand or expel members, issue compliance orders or require inspections. Expulsions are publicised in the trade press and on the REC website. However, the Employment Agency Standards Inspectorate can investigate complaints and randomly check employment agencies; it dealt with 784 complaints and 2,146 infringements during the 2011/2012 financial year. Most of the complaints and infringements that were found during these inspections related to non-compliance with sectoral agreement on issues related to user firms or work seekers, on recording information about the vacancy with user firms, on written notifications not being sent to user firms or work seekers and on record keeping.

### Self-regulation

There is currently only **one association representing temporary work agencies**: the Recruitment and Employment Confederation (REC). The REC requires members to sign up to a Code of Professional Practice. Members that breach the Code may be expelled, but this would not necessarily mean they could not continue to be able to operate as an agency. The REC introduced an enforcement team in 2007 to ensure the compliance of its members with legislation and a strengthened Code of Practice. It is estimated that the REC covers around 50% of potential membership (Winchester, 2005).

The REC does not represent the private recruitment industry, which is covered by a number of trade associations representing the various sectors. Each of these associations has a code of practice that their members agree to follow, and will normally issue best practice guidance (and operate disciplinary procedures) for members.

The REC's code of practice is based on 10 principles. These principles include respecting the law, striving for honesty and transparency, respecting work relationships, respecting diversity, ensuring safety, supporting training and skills, respecting the certainty of engagement, ensuring correct payment, ensure ethical international recruitment and respecting privacy.

**Individual agencies often abide by their own codes of conduct** or sets of principles. The global agency Adecco for example states that it “stands by the principles of equality and fair treatment for workers in and out of the workplace environment” (Adecco UK website). It operates a diverse monitoring and reporting system that complies with best practices and is a member of Opportunity Now, which is committed to creating an inclusive workplace for women, and Race for Opportunity, which is committed to improving employment opportunities for ethnic minorities across the UK. Hays also has a corporate social responsibility strategy and publishes a corporate responsibility report each year in which it details its commitments and achievements in relation to its employees, and its engagement with a range of community projects. There is also a code of practice for labour providers in the agriculture sector. In 2004, the Temporary Labour Working Group (TLWG) drew up a voluntary labour code for labour providers to the agriculture and the fresh produce trade<sup>36</sup>. This code of practice was a forerunner to statutory licensing of labour providers in this sector.

### **Responsibilities of temporary work agencies and user firms**

The Agency Worker Regulations 2010 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 set out the rights of agency workers and the liabilities and duties of agencies.

The agency must record details of each vacancy they receive from a user firm before they introduce or supply an agency worker to that user firm. The conduct regulations state that the agency must give the individual amongst others information about the identity of the user firm, the start date and duration of assignment, the job role, responsibilities and hours, the necessary experience, the potential health risks and the potential expenses by the agency worker. The user firm undertaking is responsible for supervising and directing the agency worker while they undertake the assignment. The user firm must, under the conduct regulations, provide information on the level of basic pay, overtime payments, bonus schemes, performance appraisal, annual pay increments, voucher schemes and annual leave entitlement. In special cases such as pregnancy, it is the user firm’s responsibility to carry out a risk assessment if required and to make adjustments to remove the risk if necessary or offer suitable alternative work.

The Agency Workers Regulations 2010 provide for so-called day **one rights for agency workers**, and **rights that come into force after 12 weeks**. The user firm has liability for ensuring day one rights for agency workers (essentially the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the user firm, and the right to be informed about job vacancies). The agency has liability for ensuring compliance with rights that come into force for agency workers after 12 weeks (pay and working conditions – see below).

However, the liability for ensuring these rights switches to the user company if it has given the agency incorrect information on which the agency is relying to comply with these 12-week rights.

The agency worker must be paid by the user firm unless user firm and agency are connected. Agencies themselves may hire workers, who they provide to businesses. In such cases, the temporary work agencies may charge an additional fee to user firms for their services. Furthermore, agencies that provide services to artists, models, film makers or professional sports persons may charge for their services in terms of finding work.

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<sup>36</sup> See <http://www.lpcode.co.uk/code.html> .

### 3.1.2. Germany

In the German case it is important to distinguish three types of private employment agencies:

- a) private recruitment agencies
- b) subsidised placement service
- c) temporary work agencies

These activities can be carried out jointly by individual firms, but the reasoning behind each type of agency as well as the regulation apply almost solely to each type.

The first type is a **private recruitment agency**. These agencies operating outside publicly subsidised placement activities are not very commonly used in the job searching process in Germany. Private recruitment agencies mostly deal with executive search and artist placement. A placement of nationals from third countries (non-EU/EEA countries) to Germany is also possible; however, the public employment agency reserves its right to interdict private placement services from and to foreign countries for certain occupations<sup>37</sup>. These include holiday jobs for pupils and students from foreign schools and universities, seasonal employment, exhibitors (for example in the fairground business), domestic helpers and employment in language and educational training (for example for guest workers) (IHK Kassel-Marburg 2013). Transnational job placement to Germany usually takes place without the involvement of public bodies. There is a central international placement service (*Zentrale Auslands- und Fachvermittlung*) integrated in the public employment agency (*Bundesagentur für Arbeit*). Assignment of foreign workers to the German job market normally happens via private social networks or foreign private placement services, though. There are no official numbers of placement services to or from Germany.

The second type of agency is the **subsidised placement service**. In 2002, the German government decided to contract out part of the job placement services to private providers in order to stimulate competition with the public employment service. The public employment agency in Germany subsidises private job placement services into job contracts subject to social insurance contributions as a measure of employment promotion and activation of unemployed persons.

To benefit from so called "job placement vouchers" (*Vermittlungsgutscheine*) a person has to be entitled to unemployment benefits and to be at least six weeks in unemployment within a period of three month time. This voucher will replace the fee normally paid to the private employment agency, instead directing the cost to the public employment agency. This fee is not meant to subsidise the private placement agency, but rather to activate the unemployed and to enhance their capacities as customers of private placement firms. Job placement vouchers are not used by the majority of persons entitled to them. A second way in which the public employment agency subsidises private employment placement is via allocating job placement activities of unemployed to external private or social bodies.

This practice is called "assignment of third parties" (*Beauftragung Dritter*) and is not predominant, either. From January to September 2004, 8% of all unemployed were assigned to private employment placement services (Pfeiffer and Winterhager 2006:247). The assignment seems to have even less effects on employment. In this subsidised area of private placement services, a considerable part of placement services is offered by social not-for-profit organisations often in combination with training measures.

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<sup>37</sup> Regulations regarding private recruitment services are found in SGB III § 292, §§ 296 to 298 and § 652 [Book III of the German Social Welfare Code).

Finally, there are **temporary work agencies**. Employment in temporary agency work in Germany has increased in a dynamic way during the past years, yet has been decreasing since the beginning of 2012, while overall employment is continuing to grow. The share of employees in temporary agency work out of all employees in working contracts subject to social insurance contributions is smaller than 3%. Almost three out of ten temporary agency workers do not have an accomplished professional education, in comparison to 13% in all sectors. Just under half of all temporary work contracts last less than three months. Owing to this dynamic, the temporary agency work sector exhibits a higher-than-average risk to become unemployed out of contracts subject to social insurance contributions. (Bundesagentur für Arbeit 2013). Temporary agency work in Germany is regulated in the temporary work statute (*Arbeitnehmerüberlassungsgesetz (AÜG)*) which has been in place for 40 years. The focus of the case will lie in the regulations on temporary work agencies.

### Setting up temporary work agencies

The requirements on setting up, operating and monitoring the agencies differ for each type of agency. Following the legal requirements of temporary work agencies, the establishment of a temporary work agency requires, contrary to that one of a private job placement agency, **a licence from the public employment agency**. This licence can be obtained from one of the ten public employment agency's regional departments and it is bound to the company but also to the entrepreneur personally. At present, a permission that is valid for one year costs a fee of EUR 750. In its application, the person setting up the temporary work agency needs to prove having contacted the health insurance where she wants to insure the potential employees, the fiscal authorities and the occupational cooperative who is the accident insurer (*Berufsgenossenschaft*). Moreover, the creditworthiness must be verified. In addition to that, **a surety of EUR 2,000 per wage earner, at least EUR 10,000, is imposed** on the company (IHK Pfalz 2013). The one-year licence will be extended upon request. If it has been extended three times, it is possible for the company to obtain an unlimited permission. **No specific professional qualifications** are required from the agency.

### Monitoring and control procedures

Twice a year the temporary work agency has to **report** statistics to its responsible regional public employment agency department (AÜG § 8). These include the number of agency workers listed according to sex, nationality, occupational group and type of occupation practiced before joining the temporary work agency, the number of dispositions made (*Überlassungsfälle*) listed according to sectors and the number of user firms according to sector. They also have to report the time and duration of working contracts signed with every single temporary agency worker.

The public employment agency and the customs authority, especially the department monitoring illegal employment (*Finanzkontrolle Schwarzarbeit*) are both in charge of **controlling temporary work agencies**.

Agencies with a temporary permission are controlled more often than those holding an unlimited one. Between 2005 and 2008 5,713 temporary work agencies were controlled on-site. These controls can result in **sanctions**. Between 2005 and 2008 overall 3,819 administrative fine proceedings were instituted (Deutscher Bundestag 2010:16-17). Typical problems are e.g. the correct application of the agreed on labour commitments in practice or the correct use of flextime wage records. In cases where the temporary work agency fails to observe rules regarding social insurance law, recruitment from foreign countries, the employment of foreigners, prescriptions regarding employment protection or duties stemming from labour law, a licence can be denied or withdrawn (IHK Pfalz 2013).

The supply of agency workers without a permission results in consequences in trade law, where an interdiction (*Gewerbeuntersagung*) of the user firm will be considered. This interdiction applies to the entrepreneur personally in relation to the branch in question (which would be temporary agency work): In addition to that, the user firm commits an administrative offence, which can be punished by a fine of up to EUR 30,000 (also in cases where only one worker is concerned). Regarding civil law, the supply of temporary agency workers without permission entails the artificial creation of a working relationship between temporary agency worker and user firm, whereby the user firm takes over the employer's duties, including the payment of wages. The temporary agency worker subsequently has the same rights as a standard employee in the user firm (IHK Essen 2012). Owners of user companies deploying foreigners who did not obtain any permission to work under conditions which are considerably different from German temporary agency workers carrying out the same or similar kind of occupation, are subject to a penalty of up to three years imprisonment or to a corresponding fine. Particularly serious offences where the user firm is acting out of gross self-interest are punished with imprisonment of six months up to five years; in these cases both the user firm and the temporary work agency are liable (IHK Essen 2012).

### Self-regulation

While there is some self-regulation via a **code of conduct** with respect to private recruitment agencies, this is not the case in the area of temporary agency work. Temporary work agencies are bound by collective agreements that define the working conditions of agency workers in a firm or in a sector. This means there is not a single set of conditions temporary work agencies need to follow, but a variety of conditions and rules, depending on the collective bargaining agreement and the representation of agency worker herein.

### Responsibilities of temporary work agencies and user firms

The allocation of responsibilities is especially relevant for temporary work agencies. A temporary work agency takes over all the employers' responsibilities and duties. It is responsible for the admittance and payments of holiday leaves and the payment of social insurance contributions and income taxes. The temporary agency work is as employer bound to existing labour and social law.

#### 3.1.3. Denmark

Albeit their limited role in Danish economy, the use of private employment agencies in Denmark has a long history, involving matching agencies for substitutes and - increasingly - replacement agencies. The Danish model of flexicurity involves a relative high degree of job shifts and employment benefits, compared to most European countries.

This - and the high degree of self-regulation and sanctioning mechanisms by the trade unions - may have had a dampening impact on the negative effects, such as social dumping<sup>38</sup> by the use of workers from temporary work agencies.

Partly because of the wide-spread political hesitation of "disturbing" the collective bargaining equilibriums on the Danish labour market, Denmark is today (spring 2013) only in the process of implementing the 2008 EU Directive on temporary agency work<sup>39</sup>. Both the side of trade unions and the side of employers' federations seem to unanimously agree that such rights should be implemented through collective bargaining processes, as they

<sup>38</sup> According to a governmental report there are indications of an increase of social dumping, but the level of occurrences are unknown (Rapport fra Udvalget om modvirkning af social dumping, 2012).

<sup>39</sup> In March 2013, the government initiated a public hearing process for fully implementing the EU Directive into Danish Law.

else could have a potential negative influence on the existing agreements between the parties. Currently private employment agencies in Denmark can be divided into two main categories:

- Private temporary work agencies (*Vikarbureauer*)
- Private employment placement agencies (*Rådgivere inden for jobformidling og rekruttering*)

Already in 1990, the government abolished the legislative monopoly for private placement services. Since then, **private placement agencies** have been free to operate in Denmark, with only the general laws on business management to comply with, similar to temporary work agencies. Until the new millennium, they mainly worked with recruitment for private companies. After 2004, the municipalities started outsourcing part of their job training to the agencies (mainly conduct courses for unemployed). The focus of the case will be the temporary work agencies, however.

### Setting up temporary work agencies

As of today, neither private placement nor temporary work agencies are specifically defined by Danish Law. However, since 1996, both have been included in the Danish Industrial Statistics<sup>40</sup> as a service industry. **Legal requirements for establishing and operating temporary work agencies are as for any other company in Denmark.** There is no legislation specifically meant to regulate the agencies, neither regarding their professional standard nor the monitoring set-up. Establishing a company essentially involves registering the company's purpose, expected income level and ownership construction. Foreign companies posting employees to Denmark in connection with service provision must register with the Register of Foreign Service Provider. Only within the sectors of transportation and health, where official licences or certificates are issued by a public authority, specific rules apply to the temporary work agencies.

In the health sector, the public health agency (*Sundhedsstyrelsen*) approves and monitors the temporary work agencies that employ nurses. The agencies must at least employ one authorised nurse, who is responsible for hiring nurses and intermediating the contracts. This is to ensure that the needs are professionally matched. In the transportation sector, the drivers must be approved by the Public Traffic Agency (*Trafikstyrelsen*), which should ensure that drivers hold the appropriate transport licence, agencies hold a training certificate and have financial solidity. The sanction is loss of permission.

Like the major part of labour laws in Denmark, regulation follows a tripartite collective bargaining process. The largest temporary work agencies have therefore formed an employers' federation (*VikarBranchen*) in order to enhance their bargaining power towards the governmental laws and the collective bargaining process. However, as mentioned above, in March 2013, the government sent a bill<sup>41</sup> into public hearing, which is intended to legally implement the 2008 EU Directive on temporary agency work. The bill defines a temporary work agency as an agency with an employment relationship with agency workers which are assigned to a third company (user firm) in order to undertake work temporarily under their supervision and management.

Although the Danish temporary work agencies are technically regulated by the Danish employment-related Acts and the collective bargaining process, the actual regulation encompassing the work of agency workers varies with the work situation. Firstly and most prevalently<sup>42</sup>, the work at the user firm may be regulated by a collective bargaining so-

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<sup>40</sup> Det Erhvervsstatistiske Register.

<sup>41</sup> The bill is in Danish named: "Lov om vikarers retsstilling ved udsendelse af et vikarbureau m.v."

<sup>42</sup> Due to the high degree of membership to a trade union in Denmark.

called temporary employment protocol or another agreement. Secondly, the temporary work agency may be member of a collective bargaining agreement. Thirdly, neither the user firm nor the temporary work agency may be involved in an agreement. In this situation the workers are only covered by the general Danish employment-related acts.

### Monitoring and control procedures

There is no legislation specifically meant to monitor private employment agencies. They must comply with the general business rules and laws as other companies but there is **no requirement of regular reporting** except for the regular annual accounting report.

The control and surveillance of the temporary work agencies are similar to all other industries in Denmark. The surveillance is executed by the Working Environment Act (*Arbejdsmiljøloven*), which includes regular control visits by the Danish authorities to ensure the workers' rights (with regard to breaks, toilet access, vacation, etc.), as well as a healthy and safe work environment. If these monitoring reports reveal irregularities, a process of warnings and fines is initiated, which can lead to imprisonment depending of the severity of the case. Apart from employed workers reporting to their trade unions the Danish Work Environment Authority controls whether the employment agencies follow the employment-related Acts. With the help of sample-based visits – unannounced and on a random basis or arranged by direct calls. The different forms of sanctions by the Danish Work Environment Authority, i.e. improvement notices, legal charges, administrative fines and guidelines, depend on both the enterprise's actual work environment standards and on its own efforts. The authority can close down a workplace that does not meet the applicable requirements or stop its work activity until it can be done safely.

### Self-regulation

In Denmark, the recently created federation of private employment agencies (VikarBranchen) has established its **own code of conduct** by setting up an approval process. To be approved the agency has to provide a service certificate prepared by the Danish Commerce Agency, proving their business registration. Further they must use an external auditor, provide proof of professional handling of sensitive personal information and have a mandatory certification of training in employment law to ensure an updated knowledge of employment law and collective agreements.

Members must also assume an ethical obligation to protect the members' reputation among customers, agency and public institutions. If a member agency violates the authorisation scheme or does not pass the regular controls, the company risks being banned by the federation.

### Responsibilities of temporary work agencies and user firms

According to a general Danish principle on the labour market it is the user firm who has the liability for the worker. Hence, as long as the temporary agency worker is working at the user firm, it is this company that has the responsibility for the agency workers' rights, including assurance and injury coverage. If the agency worker is in transport between two user firms or meets with the agency, it is the temporary work agency that holds the responsibility.

#### 3.1.4. Belgium

Belgium is one of the most regulated markets for temporary labour in Europe, especially for temporary work agencies. In the Belgian labour market, temporary work agencies are the most prevalent type of private employment agencies. They are often part of international HR groups that offer their clients so called "one-stop-shopping": user firms can get diverse services at one private employment agency.

Nonetheless, various other employment placement agencies such as recruitment agencies, selection agencies, artist agencies, outplacement agencies, executive searchers, head hunters and sports agents also provide employment services in the Belgian labour market. Moreover, the number of outplacement agencies is quickly growing as the Federal Government stipulated that outplacement is mandatory in certain cases such as dismissal of workers aged 45 or older and also for young employees in case of collective dismissal. The conditions for private employment agencies are regulated by both federal and regional authorities each from their own jurisdiction. Industrial law concerning temporary agency work is within the competence of the Federal Government whereas the regional governments have the competence for the regulatory framework concerning private employment placement. Each region is responsible for the implementation of the EU Directive and has already taken several steps to comply with it.

Recently, on 1 April 2013, new regulations have been enforced by the Federal Government to improve working conditions, increase employment opportunities and prevent abuses in the Belgian staffing market. At a time when the EU Directive encourages European governments to remove unnecessary restrictions this legislation generates additional responsibilities for employers. The focus of further analysis here will be the temporary work agencies.

### **Setting up temporary work agencies**

Legislation is in place for all private employment agencies that provide services in the Belgian labour market. It applies to Belgian as well as to foreign agencies, natural persons, legal persons and actual associations. The legislation for temporary work agencies is the most restrictive. They **need a licence** in order to be active in the Belgian labour market even if the agency does not have its headquarters in Belgium, which is not necessary for other private employment agencies such as placement agencies. The application procedure is organised at a regional level. Multiple certificates have to be included to assess the agency's competence, solvability and its conformity with fiscal and social law. Business managers and their proxies have to include their curriculum vitae and certificates **illustrating their professional qualifications**.

Legal persons have to include articles of association or bylaws. If temporary work agencies collect personal data of potential employees in an electronic data file, they have to register with the Privacy Commission. Furthermore, a certificate of the tax collector should be included to show that the petitioner does not have any outstanding debts, fines or interests. A similar certificate has to be included from the Social Security Office.

In the *Flemish region*, the licence is permanent if it is clear that all the necessary conditions have been met. Once it has been granted temporary work agencies have nine months' time to use the licence (starting the day that the agency received the decision). In the *Brussels region* and the *Walloon region*, they first have to apply for an initial licence valid for the first 2 years. Temporary work agencies should apply for a new licence at the earliest 6 months and no later than three months before the expiry of the initial, temporary licence. In principle, they then get a permanent licence.

Still, all private employment agencies operating in the Belgian labour market have to comply with a number of regulations that seek to protect employees, jobseekers and clients, but also aim to prevent unfair competition in the industry. All private employment agencies need to have a "bona fide" character (meaning they comply with regulation, are financially sound, have no criminal record and comply with quality standards), respect both the fiscal and social legislation, observe a number of specific regulations concerning the protection of employees and jobseekers and respect the privacy legislation. They cannot work with agencies that are not registered. Specifically they have to use only the language

of the region in which the employment activities are provided. With recent ruling of the ECJ this is being re-examined politically, especially because of the lack of official status for a translated contract.

In Belgium, many **conditions seek to guarantee the jobseekers' protection**. Agencies may not charge signing-up fees and have to treat employees and jobseekers in a respectful, non-discriminatory way. They also have to comply with the privacy legislation. Medical records can only be obtained when the information is necessary to decide whether a candidate meets the functional requirements of a job offer and jobseekers have to be fully informed about vacancies. Moreover, user firms and agency workers are entitled to **demand inspection** of the databank containing their records, such as test results. Furthermore, at request of the parties involved, the agency has to provide a copy of their file after completing the assignment. Note that agencies only have to provide a copy when user firms or agency workers consulted their file given the importance of professional guidance for a good interpretation of the documents and results. While personal results of interviews and tests have to be provided, it is not required to document the methods used in the process. In addition to these general regulations, temporary work agencies have to comply with a number of specific obligations as for instance explicitly mentioning the licence number in external communication. Moreover, agency workers may not be misled with advertising as job advertisements should contain correct, full and objective information. Finally, employment agencies may not offer agency workers in case of strike, lock-out or suspension of the employment contract due to bad weather conditions or a lack of work given the economic circumstances.

Generally, agency workers can only be used by enterprises in case of four **motives set by law**. This way, the Federal Government seeks to protect regular employees of user firms. Additionally, there usually is a maximum term for the use of agency workers to prevent temporary agency work used as a substitute for regular work.

Until recently, only three motives were accepted, each of which related to temporary flexibility of the workforce accounted for by the use of agency workers, namely (1) replacement of a regular worker, (2) dealing with a temporary increase in employment and (3) performing unusual work.

As of 1 September 2013, user firms will be able to use temporary agency work as a stepping stone to hire the agency worker on a permanent basis and can motivate their use of agency workers as such. A user firm must justify why it does not hire the agency worker straightaway on a permanent basis. To safeguard against abuse the user firm can only use the stepping-stone argument three times to hire an agency worker for the same vacancy. It can employ each worker for that vacancy through the agency for a maximum period of six months (but instead of three times six months a total period of nine months applies for all three candidates together) before hiring the agency worker on a permanent basis. If the firm still decides not to hire on a permanent basis, agency workers can no longer be used for the vacancy.

### Monitoring and control procedures

While temporary work agencies and employment placement agencies are treated similarly with respect to **reporting requirements**, substantial differences exist between the three regions. In the Brussels and Walloon regions, private employment agencies have to submit an activity report on an annual basis to ensure visibility and transparency of the regional labour market. The report concerns the agencies' activities of the preceding year. Additionally, any changes regarding the agency have to be described. The activity report is used for statistical and control purposes. It mainly contains quantitative information such

as number of workers for each valid motive and statistics concerning the user firms. Furthermore, agencies have to declare their conformity with fiscal and social law. They also have to include their account and social balance sheet. In the Walloon region, employment placement agencies have to provide qualitative information regarding (1) the perceived difficulty to meet employers' demand for labour and (2) the type of professions that workers look for and user firms search for. Private employment agencies located in the Flemish region are not required to submit an activity report. Analogously, in the Brussels and Walloon regions changes like the suspension of activities, mergers or anything that may affect the granting of the licence have to be communicated by letter or email within a certain period. In the Flemish region, agencies have to apply for an additional licence if they extend their activities.

Both active and passive **control procedures** are in place. In the Brussels and Walloon region, monitoring mainly concerns controlling the forms that agencies submit regarding their licence, registration and annual activity report. In the Flemish region, only forms related to the licence of temporary work agencies can be controlled since private employment agencies do not have to submit the other documents. Regional inspectors usually control new agencies. Among other things, they verify whether vacancies and pay slips comply with the regulations. This kind of active control is complementary to the passive control via complaint mechanisms.

Inspectors from the regional ministries of work **monitor** private employment agencies' compliance with the regulations. They are authorised to perform local inquiries and interrogate the persons involved. The inspectors monitor documents, give warnings and set a deadline for employment officers to comply with the regulations. In case of violations, they may suggest the authorities to impose sanctions. Temporary work agencies may be **sanctioned** by withdrawing their legitimisation.

After being advised by the regional inspection commission, the minister can withdraw the licence of registration when an agency breaks the decree and the implementing orders concerning private employment agency, when it no longer meets the conditions for being licensed or registered, when the licence or registration was granted based on false or incomplete statements or when the persons responsible for the agency get a criminal conviction. Alternatively, the minister can convert the licence of a temporary work agency so that it is only valid for the next six months if the agency no longer meets the conditions to be legitimate. In this period of time, the temporary work agency must demonstrate that it – again – complies with the regulations. Additionally, administrative fines or imprisonment can be imposed on private employment agencies that violate the regulations. Administrative fines are an alternative way to deal with legal transgressions rather than letting it come to a court case. In certain cases, it is moreover possible that the contract between a temporary work agency and the agency worker becomes annulled and replaced by law by an open-ended contract between the agency worker and the user firm. This happens, for instance, when agency workers are used because of an invalid motive or when the user firms continues to employ the agency worker once the temporary work agency has recalled the agency worker due to a strike or lock-out in the user firm.

### **Self-regulation**

In the Belgian labour market, the protection of jobseekers and agency workers is guaranteed by means of a **code of conduct** for private employment agencies. Different codes can be distinguished for temporary work agencies and employment placement agencies. The content of the codes is legally binding. The code of conduct is set by law and holds when the sector does not have an equivalent code at its disposal. The government encourages sectors to develop or harmonise their codes of conduct. The equivalence with the legal code has to be assessed by the minister and the advisory committee with the

social partners. The national federation representing private employment agencies (*Federgon*) implemented a code of conduct for temporary work agencies. For employment placement agencies, only the code set by law is available.

### Responsibilities of temporary work agencies and user firms

Both temporary work agencies and user firms have responsibilities towards workers. Since the temporary work agency is the employer by law, it is responsible for most work-related aspects. Nevertheless, the user firm is responsible for the implementation of employment regulations, for instance concerning anti-discrimination, safe working conditions and working hours. The agency worker receives practical job instructions and information about the working hours from the user firm. Furthermore, the user firm is liable for the motive provided to justify the use of agency workers: temporary work agencies are not required to verify the validity of the motive provided by the user firm.

#### 3.1.5. Italy

Private employment agencies in Italy can be categorised into one of the following four functions:

- **Temporary employment** (*somministrazione*) - According to this triangular involvement arrangement, the private employment agency employs the agency worker, and then the agency worker is hired out to perform his/her work ("mission") at (and under the supervision of) the user enterprise. This triangular relationship is based on either a commercial contract between the user enterprise and the private employment agency, or an employment contract between the private employment agency and the employee.
- **Intermediation** (*intermediazione*) - Services for mediating offers of and applications for employment. This activity is conducted by collecting curricula of applicants, by promoting and managing the match between demand and supply of labour, by job orienteering and professional training;
- **Search and selection of personnel** - Selection of the most suitable applicant according to the requirements of the enterprise;
- **Outplacement** - Supporting a downsizing company to help former employees in the transition to new jobs and in the re-orientation in the job market.

In general, private employment agencies are classified as temporary work agencies or intermediation agencies. A further distinction exists between specialised and generalist agencies providing temporary agency work (*agenzie di somministrazione or agenzie interinali*). In particular the former can hire workers in the form of temporary agency work only in one specific sector, while the latter can operate in any sector without constraints. Both generalist and specialised temporary work agencies are allowed to provide intermediation, selection and outplacement while intermediation agencies are automatically authorised to provide services selection and outplacement.

**Temporary work agencies are relatively new in the Italian labour market** and the basic legislation is the 196/1997 law (Treu Act). Since then, the role of private employment agencies in Italy has constantly increased. Agency employment can be temporary or permanent. Whereas temporary agency work is either admitted to satisfy technical, production, organisational or replacement needs of the user enterprise (even with regards to its ordinary activity) or for temporary needs as indicated by the terms of the applicable national collective agreement, permanent agency employment was forbidden by the 247/2007 law, but has been reintroduced by the 2010 financial law. It is currently allowed in a large number of specified sectors, but it can also be allowed through national collective

agreements. In case of permanent employment, during periods of non-use the worker remains available to the temporary work agency and she is entitled to a compensation of her availability.

The focus of this case will be on the temporary work agencies.

### Setting up temporary work agencies

In Italy temporary agency employment, introduced by the 196/1997 law (Treu Act), is defined as *lavoro interinale*. The notion of temporary agency employment has been modified by the 30/2003 law (Biagi Act), the d.lg 276/2003 and the d.lg 5/5/2004. In Italy agency employment is, in general, regulated by the **collective bargaining** agreement *Contratto collettivo nazionale di lavoro* (CCNL). It deals with the systems of union relationships, the procedures for disputes resolutions, trade union rights, safety at the workplace, and the regulation of employment relationships (temporary hiring, permanent hiring, compensation, availability, trial period, separation, etc.).

Temporary work agencies must be **registered with the specific register** for all Italian private employment agencies (*Albo delle Agenzie per il Lavoro*) at the Minister of Labour and Social Policies. The register is articulated in five sections. This can be the specialised or general temporary work agencies, intermediation agencies, agencies for the selection of personnel and outplacement agencies.

After the temporary work agency applies the Minister of Labour and Social Policies (after checking the juridical and financial requirements) issues the temporary authorisation and finalises the registration.

The temporary authorisation is valid for two years but, if required, it can be converted in a permanent authorisation if the correct implementation of previous activities is verified.

There are certain requirements for a temporary work agency's registration. For instance it has to be a corporation, cooperative or a consortium of cooperatives (Italian or any other Member State of the EU). Furthermore, the legal head office (or one of its branches) has to be within the territory of the European Union and the agency needs to be present in at least four regions with at least four workers in the head office and at least two workers for each region. In addition to that, no criminal convictions related to corporate law or labour market law of directors, general managers, representative managers and partners are allowed. In the case of multi-purpose entities separate operating divisions and accounting tools are required. Furthermore, the agencies need to be interconnected with a transparent mechanism for the match between labour demand and supply (*Borsa continua nazionale del lavoro*), which receives its information from public and private employment agencies, workers and enterprises.

Temporary work agencies are specifically required to contribute regularly to Forma.Temp (4% of the total amount of salaries paid to workers) and Ebitemp (0.2% of the total amount of salaries paid to workers), two funds for temporary agency workers. Forma.Temp is a bipartite fund for the training of workers in temporary agency employment while Ebitemp is a fund for income integration and for the provision of social contributions defined by national collective agreements. The agencies are also obliged to regular payments of social security contributions and compliance with the obligations from the applicable national collective agreements.

Besides the requirements mentioned above **each type of private employment agency needs a start-up capital**. For temporary work agencies this start-up capital varies from EUR 600,000 for the general agencies to EUR 350,000 for the specialised agencies. For the first two years the agencies need to provide a security deposit of EUR 350,000 or EUR 200,000 as a guarantee for credits towards employees and social security contributions.

Furthermore bank or insurance guarantees are needed from the third year. Cooperatives should have either 60 or 20 members.

### Monitoring and control procedures

The General Director for Employment (*Direttore generale per l'impiego*) within the Minister of Labour) has the responsibility for the keeping of the register. During the first two years as well as once the permanent authorisation has been issued, the **supervision and control** of temporary work agencies is assigned to the Provincial or Regional Directorates of Work (*Direzioni provinciali e regionali del lavoro*). They verify and control the activities of the temporary work agencies. In particular, a copy of the *contratto di somministrazione* should be transmitted to the Provincial Directorates of Work by the private employment agency. The Provincial Directorates of Work verify that the contract contains all the required elements for its validity.

Temporary agency employment is considered irregular if the contract has not been stipulated in a written form or if some elements strictly required by law are missing. In these cases, the contract is not valid, and the worker can require it to be transformed into a permanent contract between the agency worker and the user firm. Temporary agency work is fraudulent and **penalties** are prescribed if, for instance, the activities carried out by the agency were not authorised. In this case the temporary work agency is punished with a fine equal to EUR 5 per day for each agency worker.

In case of child work the arrest can be for a maximum of 18 months and the fine can be six times higher than in the case of adult work. Moreover, a user firm that stipulates a *contratto di somministrazione* with a non-authorised agency can be fined. Again, in the case of child work stricter penalties apply.

Furthermore, the temporary work agency and the user enterprise have to pay a penalty between EUR 250 and EUR 1,250 if requirements for the contract are not respected. In addition to that, temporary work agencies are not allowed to demand or receive (directly or indirectly) any payment from workers (art. 11, 276/2002 law). If they do so, the agencies are punished with a fine between EUR 2,500 and EUR 6,000 or with an arrest for a maximum of one year. In these cases, the law also requires the cancellation of the agency from the official register.

If a temporary work agency is put in place with the specific aim to avoid the labour law stipulations or the applicable national collective agreements, the agency and the user firm are punished with a fine equal to EUR 20 per each working day for each employed worker. These national collective agreements (with regard to agency employment) specify the maximum amount of temporary agency workers the user firm can use and when and how the working period at the user enterprise can be extended. If the working period continues beyond the tenth day after the end date indicated in the contract, the agency worker is considered a permanent employee; if it continues for less than 10 days, the worker has to receive an extra compensation equal to 20% of their daily wage for each extra day. This extra compensation should be paid by the temporary work agency if the extension of the working period results from an agreement between the agency and the user firm; otherwise it is paid by the user firm.

Neither temporary work agencies nor any private employment agencies are allowed to demand or receive (directly or indirectly) any payment from workers (art. 11, 276/2002 law). If they do so, the agencies are punished with a fine between EUR 2,500 and EUR 6,000 or with an arrest for a maximum of one year. In these cases, the law also requires the cancellation from the official register. Any form of signing-up fees is forbidden, including fees to finalise the employment contract or to participate in trainings organised by

the temporary work agencies; non-compliance behaviours are punished with financial penalties and with arrest.

### Self-regulation

Assolavoro is the national association of private employment agencies, established on 18 October 2006. Members of Assolavoro count more than 2,500 branches in Italy, and they represent 90% of the total turnover of private employment agencies at the national level. They provide union assistance and counselling, stipulate the national collective agreement and help to develop the juridical aspects related to industrial relations. They also promote professional trainings in the sector and organise courses and seminars.

As with all private employment agencies, temporary work agencies are required to adopt a **specific code of conduct**, which refers to the rules prescribed by national legislation and defines more specific norms concerning the relationship among its members. It forbids any form of unfair competition among its affiliates, and it can specify additional rules drawn on the best practises adopted by one or more of its member.

In case of disputes among its affiliates, Assolavoro's Board of Directors is in charge of evaluating the contingent situation, and it can award the following penalties: reprimand of the President (to adopt behaviours in line with the code of conduct); written condemnation of the blamed behaviour, notified to all affiliated temporary work agencies; suspension of membership for a certain period of time (in any case higher than three months); expulsion from the association and obligation to pay compensation for moral damages.

### Responsibilities of temporary work agencies and user firms

While the contract between the worker and the private employment agency is a simple employment contract, the commercial contract between the temporary work agency and the user firm is called *contratto di somministrazione*. The 276/2003 law stipulates all the elements it must contain to be valid. The agency worker should also receive a copy of the contract within five days after she started working at the user firm.

The responsibilities of the temporary work agency are paying wages and social security contributions to the worker, in case of non-compliance of the user enterprise, exercising their disciplinary authority over the agency worker, informing the workers about the security and health conditions of the production activities and training the agency worker to use machineries necessary for the work activity. The user firm only needs to pay wages and social security contributions to the agency worker if the worker does not receive them from the temporary work agency (thus the agency and user firm are jointly liable with regard to payments to the worker). Furthermore, the user firm is responsible for informing the worker whether her tasks require special medical surveillance or if there are specific risks to comply with the requirements of safety and security of workers. The firm also needs to inform the agency if the worker is employed in tasks that are different from the ones specified in the *contratto di somministrazione*. If there are some, the user firm is exclusively responsible for wage differences or for the compensation of damages (if the worker is employed, respectively, in more/less qualified positions with higher/lower salaries).

The user firm also needs to tell the Unitary Unions Representation (RSU) or the Corporate Unions Representation (RSA) the number of and the reasons for temporary agency employment contracts that have been agreed on, specifying their duration, their number and the qualification of the involved workers. It is liable for damages caused to third parties by the employee in the exercise of her functions and needs to tell the agency how to exercise its disciplinary authority over the worker.

### 3.1.6. Poland

There are basically four main regulations that govern the activities of employment agencies in Poland. This regulatory spectrum also covers illegal migrants to Poland<sup>43</sup>. One of these, the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions lists possible types of labour market institutions, inter alia employment agencies (Chap. 3, art 6). The Act defines the types of the employment agencies and discusses their scope of activities, responsibilities, rights and duties: "Employment agencies are the entities listed in the register of entities running employment agencies such as placement agencies, agencies placing individuals abroad for foreign employers, as well as offering the occupational guidance, the personal counselling or the temporary work agencies" (art 6. point 4).

Employment agencies are private (non-public) organisational units providing services in the domain of vocational counselling, personal counselling and temporary work, as well as searching for the available job posts for candidates both in the country and abroad. There exist **four types of private employment agencies**, in addition to the public employment services. The Act on Employment Promotion and Labour Market Institutions specifies also the activities undertaken by each of the type given:

- **A placement (recruitment) agency**, including agencies sending persons to work abroad, focuses on supporting jobseekers in finding suitable employment or any other paid job, supporting employers to find persons of certain level and type of professional qualifications; obtaining and mainstreaming available job offers, providing employers with the information on candidates once the job offer airs, initiating and organising contacts between jobseekers and employers and sending jobseekers to work abroad.
- **A personal counselling agency** is in charge of carrying out employment analyses in various workplaces, defining qualifications, predispositions and other characteristics indispensable to work in a particular place and position; indicating sources and methods of acquiring candidates for job posts and verifying candidates with respect to the expected qualifications and predispositions.
- **A vocational counselling** on the other hand consists of helping individuals with selecting profession and a work place suitable for a given person, providing information necessary to take decisions, e.g. related to professions, labour market, education and training possibilities and initiating, organising and running the group counselling and activation courses to support active job search; providing the employers with the selection of the candidates to be employed, as well as with necessary information and counselling services.
- Finally, **temporary work agencies** are defined by employing temporary staff and directing them to work temporarily, taking into account the regulations laid in the Act of 2 July, 2004 on Freedom of Conducting Business Activity<sup>44</sup>.

It is worth noting that the potential entrepreneur interested in developing a private employment agency may run it in one of the forms listed above, in few or all listed areas. However, it is even more important that running a private employment agency is considered as any other economic activity. Currently, it is a rather regulated area of

<sup>43</sup> The Act of 20 April, 2004 on Employment Promotion and Labour Market Institutions (Ustawa o promocji zatrudnienia i instytucjach rynku pracy, Dz.U. z 2011 r.nr. 291 poz.1707 z późn. zm.); The Regulation of the Minister of Labour and Social Affairs of 26 January, 2009 concerning the employment agencies, defining forms of the registration applications, as well as forms of the certification and the information on the activities of entities.

<sup>44</sup> Specific regulations are laid in the Act on Employment of Agency workers (Ustawa z dnia 9 lipca 2003 r. o zatrudnianiu pracowników tymczasowych, Dz.U. 2003 nr 166 poz. 1608).

economic activity, but there are plans for its deregulation. At present there are no specific sectoral rules mentioned in the regulations, except for the army, which is not relevant for this analysis. The analysis will focus on temporary work agencies, but most agencies combine several activities.

### Setting up temporary work agencies

All of the four mentioned types of employment agencies are considered a special case of the economic activity, a regulated economic activity. It means that the entrepreneurs are obliged to specify their activity and services, whether it is one or all of the aforementioned four types, and to **register**, based on the declaration submitted. The register, organised in an electronic form, is run by the Marshall of the Voivodship (*Marszałek Województwa*) and it is open to all interested parties. Once the registration is approved the entrepreneur receives a certificate.

However, some services do not need to be registered, such as sending own employees abroad to work for foreign employers and specific exchanges such as language and teaching programs. The registration process can be perceived as bureaucratic to some. The potential agency has to provide a set of obligatory information and has to fill in and submit the declaration. The Marshall of the Voivodship and its services then verify the provided data upon the registration request. The process closes with either a negative or positive decision, in case of the latter the certificate is issued. It costs PLN 200 and is non-refundable, even if the registration request is declined and the certificate is not issued.

The certificate includes information such as the name of the temporary work agency, its address, date and number of registration, and it is updated when changes occur.

International entrepreneurs providing employment services do not have to register, yet before they start their activity the Marshall of the given region (*voivodship*) where the activity takes place must be notified. The information provided must include information such as the country of origin, mark of the entrepreneur (*oznaczenie*), and the region and time where the services are going to be provided in Poland. In the interviews concerns were raised about the quality of information provided and stored in the database.

At present there are **no legal requirements regarding a deposit or a need for a start-up capital**. Until 2005 the minimum start-up capital was PLN 50,000 for temporary work agencies. This served as a protection for agency workers against liabilities. Any entity willing to perform services in any of the forms of a temporary work agency should have no dues in taxes and levies including social security payments, health insurance payments, no criminal record and not be in the condition of liquidation or bankruptcy. The potential temporary work agency should possess an office where services are rendered and where confidentiality is assured, basic technical infrastructure to act as a temporary work agency, as well as qualified personnel. **Professional qualifications** depend on the type of agency. Only some types of employment agencies are expected to employ customer-serving staff with certain qualifications – the appropriate criteria had been formulated in the law. **Temporary work agencies require no professional qualifications** although the secondary school education is obligatory to serve customers. However, for both vocational counselling and personal counselling agencies have to employ staff with a higher education (university) degree of which the curriculum includes a course on vocational or personal counselling or they must employ employees that possess at least one year of professional experience of work as a personal or vocational counsellor. Employers try sometimes to evade this by employing someone with these qualifications on a part time basis, fulfilling the criteria but not having to hire these more expensive workers full-time.

### Monitoring and control procedures

All private employment agencies have specific **reporting requirements**. Irrespective of the type of activity performed, one or all listed, every year by 31 January temporary work agencies are required to submit the annual report on their activities, which is sent to the Marshall Office. The report includes the number of people who found employment, the number of employers and jobseekers using the agency's services (counselling and guidance) and the number of people in temporary agency work directed by the agency. Based on that, every year by 31 March the Marshall Office or a public agency on its behalf is obliged to prepare common information on the employment agencies in the region (*voivodship*) that is being sent to the Ministry of Labour and Social Affairs.

The report should include various statistics on the registered agencies, the audits and controls and the international entrepreneurs. The reporting scheme is seen as an efficient tool by the interviewed agencies without burdening them with bureaucratic duties.

Compliance with these requirements is **monitored**. As it is stated by the public employment services a two-month period is given to the agencies to make sure that all the pending reports are submitted. In case this is not done, the request is sent to the entrepreneur running the temporary work agency. There is no other way of monitoring being carried out by the registration authorities which seems to be an obvious gap. In fact no legal proceedings can start unless the authorities are informed of the irregularities. A breach of compliance in either reporting or following regulations can be **penalised**.

Not submitting an inactivity report for two years in a row can result in a ban of providing temporary work agency services for the three subsequent years. Other irregularities, such as employing an agency worker within a user firm for more than 18 months within a 36-month period and the legality of stay and employment of migrant agency workers, can also result in being crossed out of the register or other sanctions such as fines.

The National Labour Inspection or the Marshall act as instruments of control. It can carry on planned or spot-on controls. Once informed about irregularities (by the submitting of a complaint), the Inspection carries out on-spot controls. Controls can also be carried out by the body acting on behalf of the Marshall. If such irregularity is confirmed, the Inspection notifies and puts forward a motion to the court. The method of control depends on the area of the agency's activities. The most complicated procedures refer to temporary work agencies as they have to be conducted both in the agency and at the user firm to ensure that all the information is verified properly. The general rules regarding fines resulting from **non-compliance** with the Act on Employment Promotion and the Labour Market Institutions set the limit of the fine for PLN 5,000. However, the Act on Employment of Agency workers sets a higher limit of fines for temporary work agencies, up to PLN 30,000. When the non-compliance is repeated continuously and it is confirmed more than twice, a fine of up to PLN 50,000 may be imposed. However, user firms leasing the agency workers are covered by regular regulation with lower level of fines, which surely is a loophole.

### Self-regulation

There is no information on self-regulation of employment agencies and no formal requirement for them to join bodies such as boards of commerce and business or organise themselves in professional bodies for the whole category of employment agencies and their various types. At the moment there are two organisations that the employment agencies can join. It is important to note that participation is not obligatory.

One of them is the Polish HR Forum (*Polskie Forum HR*), which was previously called ZAPT (the Union of Temporary Work Agencies - *Związek Agencji Pracy Tymczasowej*). The name changed, as currently all employment agencies can join it, including the larger international companies such as Adecco, Randstad, Manpower, Trankwalder etc. The member companies generate almost 50% of the whole market turnover. The other organisation is called SAZ

(Association of the Employment Agencies - *Stowarzyszenie Agencji Zatrudnienia*). The main company that is a member is called Workservice and it is the biggest Polish company.

There is some conflict between the two organisations as SAZ seems to be overusing the non-employment contracts (civil-legal contracts - *umowy cywilno-prawne*<sup>45</sup>) to provide temporary work.

### Responsibilities of temporary work agencies and user firms

It is interesting to note that there are various forms of responsibilities allocated to various types of services. As far as temporary work agencies are concerned, a specific type of the triangle ensues between the agency, acting as the employer of the agency worker, the user firm and the agency worker himself/herself. The agency holds the major responsibility, employs, pays taxes and levies, as well as ensures that all legal and regulatory requirements are met.

## 3.2. Practical implications for the temporary work agency

### 3.2.1. Information dissemination regarding the legal framework

Regulations that employment agencies have to comply with are continuously subject to change due to evolutions in national and European labour law. Since the process of gathering and understanding legal information tends to be rather complex, employment agencies are often informed by the government on their rights and duties. Trade associations also play an active informative role. The cooperation between governmental institutions and trade associations appears to be very close in some countries. For instance, in the **UK** the Employment Agency Standards (EAS) Inspectorate works closely with trade associations, such as the Recruitment and Employment Confederation (REC) and the Employment Agents Movement (TEAM) and trade unions to raise awareness of the EAS and UK employment agency legislation for employment agencies, user firms and work seekers. The UK's Advisory, Conciliation and Arbitration Service (Acas) also offers advice and guidance to temporary workers and temporary work agencies on their rights and duties. For migrant workers, the government (through <https://www.gov.uk>) offers information, advice and guidance, as does Citizens Advice, the TUC and the UK Border Agency.

A similar system seems to be in place in emerging markets such as **Poland**, although there is a need for further improvements. Information on changes in regulation in the sector are disseminated in various ways, such as dialogue on both regional and national level. The Ministry of Labour and Social Affairs and the Regional Labour Office at times invite representatives of employment agencies for meetings and discussions regarding for example changes of law. Usually only representatives of the biggest employment agencies are invited to participate. However, representatives argue that it is not always possible to find time to participate. They also stress that after changes have been introduced the regulations are now satisfactory and there is not necessarily need for further changes. Nevertheless, independent initiatives within companies or within the industry are the main drivers to provide information on changes in the legal framework. Most employment agencies have their own investigation units that monitor changes to the regulatory framework. Furthermore, there is some access to changes via various human resources portals. It happens very often that the legal departments of customers notify the employment agencies about industry-related changes.

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<sup>45</sup> Civil – legal contract is a form of employment different to the regular employment contract. The most often occurring are a contract for specific work (*umowa o dzieło*), a mandate contract (*umowa zlecenie*), or a managerial contract (*kontrakt menedżerski*).

In other countries governmental institutions and trade associations inform the agencies in separate ways. This is for instance the case in **Belgium** where information regarding legislation is disseminated in two ways. Changes in the regulations concerning private employment agencies are announced in the Bulletin of Acts, Orders and Decrees which is publicly available. Nevertheless, *Federgon*, the sector federation of private employment agencies, notifies its members (i.e. 97 per cent of all temporary work agencies) when the legal framework has changed.

### 3.2.2. (In)ability to charge agency workers

In most countries any form of signing-up fees is forbidden. Agencies may not charge workers for their services; private employment agencies are not allowed to demand or receive any payment from workers. Temporary agency work provides an easy entry for candidate-workers into the labour market as the agency takes over the match making process between vacancies and candidates. However, if the agency charges a fee to the candidate-worker for this matching to a vacancy, a barrier is created, making it more expensive and thus more difficult for the candidate-worker to be employed at suitable work. In **Italy**, apart from that, any provision limiting the agency worker's freedom of choice (with regard to accepting a job offer from the user enterprise) is forbidden. However, in **Poland** charging payment is allowed when Polish nationals are sent to work abroad.

In such circumstances actually incurred costs, such as the return trip of the jobseeker, visa costs, medical checks and translations can be reimbursed. Furthermore, in the **UK** agencies that provide services to artists, models, film makers or professional sports persons may charge for their services in terms of finding work. This is also the case in **Belgium** where private employment agencies can charge a fee to paid sportsmen or "spectacle performers".

**Germany** appears to deviate from the general rule of not charging fees. Private employment agencies are allowed to charge a limit of EUR 2,000 maximum concerning the amount of fee to be paid by the jobseeker (exceptions are made for example for athletes and artists). It is not possible to demand a fee from the (future) jobholder when the placement is made into an apprenticeship. By allowing private employment agencies to charge fees to jobseekers, the German law is not in line with ILO Convention No. 181, the Private Employment Agencies Convention, Art. 7.1. However, Germany did not ratify this Convention. It was only ratified by countries such as Belgium, Finland, Italy, the Netherlands, Poland, Portugal and Spain. Nevertheless, in practice, usually no assignment fees are paid by jobseekers because other ways of finding a new job, such as friends and relatives or announces, are still the channels used predominantly (Brenke/Zimmermann 2007). Therefore, jobseekers would usually not accept to pay (anything/much) for such a service.

### 3.2.3. Charging a fee to the user firm for permanent recruitment

Generally, in **Italy** any provision limiting the agency worker's freedom of choice (with regard to accepting a job offer from the user enterprise) is forbidden. Likewise, in the **UK** an agency may not prohibit a worker from taking a permanent job with a user firm in which the worker has worked on a temporary basis.

This is also the case in **Denmark**. In general, the Danish Job Clause Act (*Jobklausuloven*) prevents all companies, including private employment agencies, from making special contractual arrangement with the user firm on recruitment barriers, including payments or fines for concluding a contract. However, the Act exempts arrangements whereby

temporary agencies receive fair disbursement for a user firm's recruitment of a temporary agency worker. The fee, which is common in the temporary work industry, is typically formulated as an interchange compensation for the agency's "investment" in the worker, such as the service the agency has supplied by making temporary workers available to the company as well as the cost of recruitment and training of temporary workers. The fee can only involve a specified period, and is only used if the user firm employs a worker sent by the agency. Such an agreement must not prevent temporary workers from obtaining other employment, including the possibility of permanent employment. Temporary agencies in Denmark are therefore seen as important ice-breakers for the unemployed.

However, the agreements between the agency and the user firm may to some extent prevent temporary workers from recruitment. Therefore, the new bill directs that such agreements only may involve what is referred to as "a reasonable compensation, which may include the direct costs for the temporary agency for training and the user firm's saved costs for alternative recruitment."

In case of disagreements between the user firm and the temporary work agency, it will be up to the courts to determine what a reasonable compensation involves.

#### 3.2.4. Cooperation with public employment agencies

In **Belgium** temporary work agencies cooperate with public employment agencies (on a regional level) through tenders. These tenders mainly concern giving training or guidance to particular groups such as long-term unemployed, younger or older jobseekers. That way, public employment agencies can focus on their core business. While they are the directors in the labour market, the private employment agencies operate as actors. Another upcoming business for cooperation between public employment agencies and temporary work agencies concerns the migration of workers to Belgium in order to fill in "bottleneck vacancies". By informing potential migrant workers, organising events, teaching them the language required for the job, etc., public and private employment agencies hope to reduce the skills mismatch in the labour market.

Governmental initiatives also stimulate the cooperation between public and private employment agencies in **Italy**. The Italian legislator mainly fosters the cooperation through two tools. "Borsa continua nazionale del lavoro" is an open and transparent system for the match between the demand for and the supply of labour, collecting the available information provided by private and public agencies, workers and companies. Both private and public agencies are obliged to provide the system with all the data they obtained from workers and companies. Through this mechanism the services provided by both types should complement each other. The system of "accreditamenti"<sup>46</sup> allows Regions to create a regional register of public and private employment agencies entitled to provide intermediation services and to implement active labour market policies financed through public funds. Being registered (*accreditata*) is strictly required for private agencies in order to access public funds. Each Region should specify the additional requirements for private employment agencies to be registered (*accreditare*), the procedures for the registration, and the form of cooperation between public and private agencies.

However, only nine Regions adopted regional laws to implement the system of "accreditamenti", and only in two Regions, Tuscany and Lombardy, this system has actually been implemented. The case of Lombardy is unique for Italy, as it assigns an exclusive competence to public agencies only with regard to administrative activities, while it admits a full competition between public and private registered agencies with regard to the provision of intermediation services.

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<sup>46</sup> Art. 7, 276/2003 law.

The cooperation between public and private employment agencies is less institutionalised in the UK. Some temporary work agencies are working with the UK government on its flagship job creation programme, the Work Programme, designed to move individuals from unemployment into work. These include Pertemps, which is the government's preferred bidder for contracts in the West Midlands, and Reed, which is the preferred bidder in the London area. The programme is designed to help all individuals back into work, including those deemed to be vulnerable, such as individuals with mental health problems, and those who have been out of the labour market for a long period of time.

Private employment agencies play an important role in the institutional architecture of the labour market in **Poland**. They do not only serve and support the individuals seeking employment but also provide advice in the labour market.

From this perspective, the cooperation between the public employment services (*publiczne służby zatrudnienia*) and the employment agencies is expected by the legislator and is stipulated in the Act on Employment Promotion and Labour Market Institutions. Spytek-Bandurska (2012) notices that such cooperation could benefit both parties: public employment services would fill their mission activity, while private agencies would gain profits. Exchange of experiences would take place which could reduce prevailing stereotypes. However, such cooperation - as expressed by some interviewees - still remains a wish of the legislator. For example in mid-April there was an expert debate on the future of employment services held by the office of the President of Poland with none of the interviewed agencies participating. There seems to be a lot of distrust between the two types of institutions, especially from the side of the public sector employees who think that agencies receive high payments for their work whereas they receive no extra pay. As there are no regulations, the distrust will continue. The public employment services' officials argue that private employment agencies are not interested in cooperation and take away their clients. In turn, recruiters (especially the high flyers) do not see much space for cooperation as the private and public employment agencies serve completely different customers. Although attempts to make some working relationships with the public labour offices (public employment services) did not prove to be successful, some of the temporary work agencies are very active and try to find a common space for cooperation with the public employment services. The most common area of cooperation is related to training, conferences and discussions on changes, not the provision of services. Furthermore, there are some cases of informal cooperation between the private employment agencies and the public employment services. Unfortunately, there is no feedback from the Ministry and other public agencies.

The situation is quite different in **Denmark**. Until 2009, the Public Employment Service constituted the state's joint job distribution centres. In 2009, these joint job centres were dismantled from the state, effectively transferring all job matching activities to the municipal authorities. Since 2010 the municipalities have had the "full economic responsibility for all unemployed (including their benefits) albeit with a refund from the state". A few municipalities attempted to out-source part of their job-centre advisory services to private agencies.

However, after harsh public criticism on procedural errors and negative work environments in the new private agencies the municipalities halted these contracts.

### 3.3. Practical implications for the user firm

#### 3.3.1. Sectoral bans for agency workers

The country cases show that temporary agency work can be used in most, if not all, cases. In the **UK** and **Denmark**, there are no sectoral bans on temporary agency work. While this also holds for **Poland**, there is an exception in the Polish labour market for the Army, which has its own specific employment agency. Nonetheless, some actions are excluded for employment agencies, e.g. it is not possible to participate and provide services in the EURES network.

A few bans on temporary work agencies exist in Italy and Germany. In **Italy** temporary agency workers should not work at production units in which regular shifts have been reduced or suspended (with consequent wage integrations from social security assistance) or where workers with the same functions were collectively dismissed in the previous six months (except for union agreement).

In addition to that, temporary agency workers are not allowed to work if the risk evaluation has not been carried out. In **Germany**, temporary agency work is banned in the construction sector, which is divided into construction core businesses and subsidiary businesses. Temporary agency work is only forbidden in the former, which includes activities such as structural and civil engineering, track construction or insulation, while it is allowed in subsidiary construction activities like carpet laying, maintenance cleaning or network constructions. However, in the core construction activities it is possible to hire out workers between two firms both belonging to this sector if they have been using the same collective labour agreement contracts for three years; the company hiring out needs a permission to do so in this case.

Most sectoral bans on temporary agency work have been found in **Belgium**. The use of temporary work in construction has only been allowed as of 2002 after a ban of thirty years to combat undeclared labour. However, temporary agency work is currently banned in the sector of removal companies, furniture storage and related activities falling under the jurisdiction of the Joint Committee on Transport, and is also unavailable in the sector of inland navigation. Additionally, companies that fall under the jurisdiction of the Joint Committee for construction can only use temporary agency work to replace a disabled employee and deal with a temporary increase in work under the conditions specified and procedures established by the joint committee for the construction company. Furthermore, in the public sector, the use of temporary agency work is only allowed to replace contractual civil servants. In all other cases, temporary agency work is banned in the public sector. Consequently, temporary work agencies cannot target the main share of approximately one third of the total workforce that is currently employed in the public sector, mainly in administration and state education activities.

At the moment, Belgium and Greece are the only European countries where temporary agency work is practically banned from the public sector. Recently, initial steps have been taken to gradually remove this barrier and further implement the EU Directive, which seeks to remove unjustified barriers in the market.

The Belgian State Secretary for Civil Service & Modernisation of Public Services has started the debate to open the public jobs market to agency workers. Still, the use of temporary agency work would be limited under present proposals. First, an agency worker might temporarily replace a permanent worker for a maximum period of three months. Second, agency workers could be employed if there would be a substantial rise in the workload. While the Belgian federation representing temporary work agencies encourages the initiative to install a legal framework for the use of agency workers in the public sector, it

believes that the introduction of agency workers in the public sector will be a gradual process. However, trade unions are opposed to the idea, for instance, due to the insecurity temporary work implies.

### 3.3.2. The use of agency workers as strike breakers

In **Italy** the 276/2003 law prescribes that temporary agency workers are not allowed to replace workers on strike. The situation is similar in **Belgium** where employment agencies may not offer temporary workers in case of strike, lock-out, or suspension of the employment contract due to bad weather conditions or a lack of work given the economic circumstances.

Besides a few cases in recent years, there is no tradition in **Denmark** for using temporary work agencies in connection with strikes. The established employers' federation disclaims the possibility of supplying temporary workers to a user firm affected by strike. In 2012 a long conflict in a major IT company involved the import of employment from India, which received political attention on whether the national issuing of working permits could include permits for employment on companies affected by strike.

The situation is slightly different in the **UK**: agency workers may by law not be supplied to replace employees on strike unless the strike is unofficial. The Conduct of Employment Agencies and Employment Businesses Regulations 2003 states that "an employment business shall not introduce or supply a work-seeker to a user firm to perform (a) the duties normally performed by a worker who is taking part in a strike or other industrial action ("the first worker"), or (b) the duties normally performed by any other worker employed by the user firm and who is assigned by the user firm to perform the duties normally performed by the first worker, unless in either case the employment business does not know, and has no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action" (Regulation 7).

In **Germany**, the situation is reversed: it is not forbidden to make use of temporary agency workers as strike breakers unless the temporary work agency signed a collective labour agreement that forbids strike-breaking. However, temporary agency workers have the possibility to reject an offered assignment in a user company struck against. In addition to that, the temporary work agency has to inform their employees about the situation in the user company, as well as about their right to refuse the deployment (Cf. *Arbeitnehmerentsendegesetz* §11(5)).

### 3.3.3. Employing migrant workers

In **Belgium** job posting by foreign temporary work agencies is only possible if the respective agencies have the licence that is required to operate in the Belgian labour market. In the Brussels and Walloon regions, this restriction also holds for employment placement agencies.

However, in the Flemish region, foreign placement agencies can operate in the labour market as long as they meet the regulations seeking to protect employees. As for migrant workers, both EU and non-EU migrant workers can work as agency workers in Belgium if they have the required permits. Public and private agencies seek to cooperate to move migrant workers to the Belgian labour market to fill in "bottleneck vacancies".

In **Poland** not all migrant workers are allowed to legally work in the labour market. The vast array of migrants' categories that are allowed includes recognised refugees, EU citizens and persons holding work permits. In some cases a work permit is not required (e.g. if one holds a residence permit), while the work permit is obligatory for some functions or employers. Similarly, supply of temporary agency workers to **Germany** is not allowed from outside the European Union. In principle it is possible from Bulgaria and

Romania as temporary work agencies represent companies providing services but de facto strongly restricted because a work permit is required for nationals from these countries wishing to work in Germany until the end of 2013. Temporary work agencies in the European Union need permission from the public employment agency to hire out workers, just like German temporary work agencies. The number of foreign permission holders is estimated around 100 or 200, transnational worker supply not playing an important role. However, employers' associations in temporary agency work report a growing interest in the transnational supply of employees, especially concerning skilled personnel.

A similar trend is observed in **Denmark**. While statistics on issued working contracts and police reports on illegal work show that the overall prevalence of migrant workers in Denmark is relatively limited, Denmark has experienced an increase in - especially eastern European - commuters with individual Danish work permits. From 2010 to 2012, this included rates on about 90% from Romania, 39% from Lithuania and 14% from Poland. The number of companies employing workers from the new Member States in Denmark shows similar development<sup>47</sup>. Most of the migrant workers are active in agriculture, the construction sector and the service sector (including travel and cleaning)<sup>48</sup>. This development is partly the reason for a 2012 governmental report on social dumping, recognising a growing challenge on how the Danish labour market model incorporates an increasing occurrence of social dumping – and complementary initiatives to invert this development. Such initiatives are improved application and enforcement of rules, including the usage of the Registry of foreign employment service<sup>49</sup> and the introduction of an authorisation system for temporary work agencies to ensure similar wage and working conditions to the normal collective bargaining level.

In **Italy** temporary agency work can be legally undertaken by EU as well as non-EU citizens<sup>50</sup>. However, in the light of the Italian Migration Law, temporary agency employment does not represent the most favourable form of employment for non-EU workers. The permit of stay issued for working reasons is based on the working contract: the duration of the permit of stay depends on the duration of the job, and a new permit of stay should be issued every time the worker passes from one job to another, even if the previous permit of stay is still valid.

The temporary nature of agency employment implies that the temporary agency worker needs to obtain a new permit of stay every time the agency worker starts a new working relationship (with the only exception involving those migrant workers who have a permanent employment contract with the employment agencies). Given these requirements, the situation of migrant workers in this form of employment is characterised by high levels of precariousness. For instance, their access to credit and housing is even more difficult than for migrant workers in other forms of employment and it is almost impossible for them to reunite with their family. Furthermore, a long-term permit of stay (*Carta di soggiorno*) cannot be issued to them due to the precarious nature of their employment (and therefore their income).

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<sup>47</sup> Danish Statistics Bureau.

<sup>48</sup> For comparison, in the UK many migrant workers come to work in the UK, predominantly in hotels and restaurants, food processing, fruit picking and shellfish gathering.

<sup>49</sup> RUT: Registeret for udenlandske tjenesteydere.

<sup>50</sup> Temporary agency work is a form of dependent employment, and therefore, on the base of the principle of equal treatment and opportunity (art. 2 of Testo Unico sull'Immigrazione and ILO's 143/76 Convention), it can be legally undertaken by migrant workers (EU as well as non-EU citizens).

**Box 1: The legal grey zone – Contracts of work and labour (*Werkverträge*)**

While working conditions of temporary agency workers are subject to increasing regulations, such as the newly set minimum wages, a possibility for employers to circumvent these standards and involved costs exists in the form of contracts of work and labour (*Werkverträge*). The so called *Werkverträge* are legal relationships between two companies or one company and a single person, where a customer pays an agent for the provision of a certain product (*Werk*). Traditionally, *Werkverträge* are used when a company needs to buy in expertise for which it cannot provide on its own (e.g. the maintenance of a web site, the professional production of any kind of advertisement, the issue of an accountant's report).

The agent (who provides the product) is always paid for the correct fulfilment of the agreed-on task and not for the time they spent producing it. While this use of contracts of work and labour is not doubtful, the legal underspecification concerning a delimitation of what is seen as a "contract of work and labour" and what is seen as temporary agency work leads to an abuse of this legal arrangement to cover illicit temporary agency work. A relative shift in the importance of temporary agency work and employment based on contracts of work and labour can be seen. This becomes obvious when comparing the development in the past years of the numbers of on-site employees employed based on contracts of work and labour and the numbers of temporary agency workers employed in the production plant of BMW in Leipzig. While the number of temporary agency workers has risen from 1,500 in 2006 to 1,750 in 2013, the number of employees with contracts of work and labour has more than quintupled from 400 to 2,200 (Klebe 2013).

Originally, contracts of work and labour are supposed to be used to frame independent working relationships. The agent is the sole responsible for the provision of the product: only she is liable for the product and the way it was produced, she employs her own employees who are not subordinated to the customer. This entails that the user company has no authority to give directives regarding the form, place or time of the execution. In practice, companies conclude contracts of work and labour with subcontractors to hire (long-term) employees to low costs. These employees are de facto subordinated to the user company, but some arrangements are undertaken in order to stage-manage this group of employees as external to the company (e.g. no access to common recreation rooms, different work places marked by line drawn on the floor). In the metal and electrical industry, for example, hiring based on contracts for work and labour is widespread for canteen staff, cleaning, gatekeeper and security staff, but also occurs in IT, logistics, production and even development (Klebe 2013).

The payment of the subcontractor based on a contract of work and labour can be charged as non-personnel-costs so that inspection of the documents in question is usually denied to a possible workers' representation of the customer company. In general, formal representation of the subcontractor's employees is not possible for the customer's workers' representation. Even the customer company who signs the contract of work and labour with the subcontractor is not legally entitled to know the details of the employment contracts between the subcontractor and their employees. This regulation protects the customer company as it can pretend to be unaware of abuses of worker's rights.

Controls are hampered by the fact that there exist no legally defined criteria by which employment based on a contract of work and labour can be distinguished from temporary agency work. Additionally, the burden of proof is assigned to the employees who would have to proof that an illicit supply of temporary agency workers can be

shown. As affected employees are often migrant workers deployed on very precarious conditions, it is obvious that this task cannot be fulfilled by them. In this way, legal uncertainty combined with a reluctant control system leads to an abuse of contracts of work and labour in illicit temporary deployment. However, it has to be said that in German case law the distinction between contracts for work and labour and illicit temporary agency work has often been made, showing that a distinction grounded on the existing law is possible. What is missing is a formal list of criteria.

Unions demand a clarification of legal matters, together with an improvement of the controlling system. Besides a better allocation of competences, a central complaints office where anonymous hints are registered and taken seriously (if repeated) could be established. Another possibility unions see to prevent these abuses is to set a binding general minimum wage (DGB 2005:10). It has to be added that the dimension of the phenomenon is hard to estimate, as data is very hard to obtain.

### 3.4. Practical implications for agency workers

#### 3.4.1. Equal treatment

From the first day of employment agency workers have equal rights in **Belgium, Italy and Poland**<sup>51</sup>. This is not the case in the **UK** where the TUC and the CBI agreed in May 2008 a joint text on the equal rights of agency workers compared to directly-employed staff (before the EU Directive became law in the UK in 2011) despite the lack of regular cooperation at national level between the TUC and the central employers' organisation CBI and the UK government. The parties agreed that after 12 weeks in a given job, there should be an entitlement to equal treatment between temporary workers and user company workers, in terms of at least "the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by that undertaking to occupy the same job. It will not cover occupational social security schemes." The CBI was reluctant to negotiate on this issue but recognised that a joint text was necessary in order to secure the 12-week qualifying period for equal rights. The TUC was disappointed at the lack of substance of the text but wanted to move the issue on.

The subsequently implemented regulations were based on this agreement distinguishing between so-called day one rights for agency workers and rights that come into force after 12 weeks of employment:

From day 1, an agency worker is entitled to the same access to facilities, such as staff canteens, childcare and transport as a comparable employee of the user firm, and the right to be informed about job vacancies. After a 12-week qualifying period, an agency worker is entitled to the same basic conditions of employment as if they had been directly employed by the user firm on day one of the assignment, specifically:

- **pay** - including any fee, bonus, commission, or holiday pay relating to the assignment. This does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay
- **working time rights** - for example including breaks and any annual leave above the statutory minimum.

This 12-week qualifying period may be interrupted by an up to six-week break for medical reasons or when work is interrupted beyond the worker's control. A worker also qualifies for the same rights if they carry out two or more assignments for the user firm, or one of its

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<sup>51</sup> However, in Poland there is one exception regarding the paid leave (holidays); agency workers have two days less per year.

intermediaries or subsidiaries, particularly if this is meant to prevent the worker from acquiring continuous employment for twelve weeks. This legislation was based on the 2008 TUC/CBI agreement on temporary agency work (see above).

In **Denmark** the recently drafted bill to implement the EU Directive on temporary agency work will – if implemented – ensure that derogations from the principle of equality can only appear if there are collective agreements concluded by the major part of trade unions in Denmark. Moreover, foreign employment agencies with collective bargaining agreements from their home country will not be able to derogate from the principle of equality.

Such derogations are already in place in **Germany**: The equal pay and equal treatment policy regarding core working conditions has to be followed. A different policy than the one of equal pay and equal treatment of agency workers is only possible when the temporary work agency has agreed on a collective labour agreement in dialogue with authorised unions. Based on this agreement a departure from the equal treatment policy is possible, for instance regarding employment protection<sup>52</sup>. Yet, to avoid the firing of permanent staff and rehiring as temporary agency workers, a deviation from the “equal pay” principle (modified by collective agreements) is not possible for a temporary agency worker who concluded a work relationship with the user firm during the last six months before the deployment as a temporary agency worker (IHK Saarland 2011). Unions, however, complain that the possibility to depart from the equal treatment convention based on collectively agreed agreements (which is fully in line with the European Directive) opens a door to treat temporary agency workers differently from core workers. This is especially problematic as there is no limit set regarding the time a temporary agency worker can be treated as “temporary” employee.

In **Italy** a deviation from the equal treatment principle is possible for groups at risk.

In order to sustain the labour market entry or the re-placement of long term unemployed persons, workers with a migration background, disabled persons, etc., the law<sup>53</sup> provides specific measures (economic and regulatory) to incentivise private employment agencies to take disadvantaged workers among their clients. In practice, this norm admits an exception to the principle of equal treatment between dependent employees and temporary agency workers (a) within specific training/placement/re-qualification programmes in favour of disadvantaged workers or (b) upon specific conventions with Municipalities, Provinces, Regions and *Italia Lavoro* (the dedicated agency within the Minister of Labour and Social Policies)<sup>54</sup>. While the possibilities introduced by this law have not been fully exploited by private employment agencies (partly because of the bureaucratic complexity involved in the procedure), measures<sup>55</sup> have been taken to incentivise its application.

For instance, in case of temporary work, the specification of the (technical, productivity, organisational or replacement) reasons for the use of this form of employment is not necessary for disadvantaged workers<sup>56</sup> (or “severely disadvantaged worker”: any person who has been unemployed for 24 months or more).

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<sup>52</sup> The two big collective labour agreements signed by the DGB union (Deutscher Gewerkschaftsbund) and the two most important associations of temporary work agencies (IGZ and BAP) are the IGZ/DGB-agreement and the BAP/DGB agreement. They include amongst other things a shorter cancellation period in the first three months of deployment.

<sup>53</sup> Law 276/2003 (art. 13).

<sup>54</sup> This specification, introduced in the law 276/2003, was eliminated by the law 80/2005, but then it has been reintroduced by the law 183/2010.

<sup>55</sup> Changes introduced in the Italian legislation by the d.lgs. 24/2012 (“Implementation of the 2008/104/CE Directive regarding temporary agency employment”).

<sup>56</sup> Disadvantaged groups are defined as follows: unemployed persons receiving unemployment benefits or other forms of social security benefits for the previous 6 months; disadvantaged workers as defined in art. 2 No. 18 of Regulation 800/2008/EC on the state aid block exemption (not in regular paid employment for the previous 6

### 3.4.2. Working conditions

#### Pay

Several measures have been taken by the Federal Government and the social partners to guarantee fair wages for agency workers in **Belgium**. As in **Italy** and **Poland**, temporary agency workers receive a salary equal to the one they would receive if they had been hired as regular workers. This way, the legislator seeks to prevent that agency workers are a threat for regular workers and that they are used as cheap labour. Likewise, indexation and increases of temporary agency workers' pay are similar to those of regular workers in Belgium. All workers are liable to the collective labour agreements of the industry the user firm is subject to. Temporary agency workers in Belgium receive their end-of-year bonus from the Social Fund for Agency Workers. They are entitled to this bonus when having worked at least 65 days during the reference period from 1 July to 30 June via one or more agencies. The Social Fund is financed by temporary work agencies and managed by employers and unions from the sector. It also pays unemployment and sickness benefits.

In addition to the equal pay policy agreed-on minimum wages have been in place in **Germany** since the beginning of 2012. The minimum wages cannot be undercut and are valid for the whole sector of temporary work. They amount to EUR 8.19 in West and EUR 7.50 in Eastern Germany (NGG 2013:11).

In addition to that, the collective labour agreements are not allowed to subvert sector specific minimum hourly wages, in cases where they are fixed by law<sup>57</sup>. According to the law on deploying employees (*Arbeitnehmerentendegesetz*) these minimum wages could also be fixed in a tripartite consensus instead of in agreements of the employer's umbrella organisation. This tool was introduced in the first place to protect the domestic labour market (at least in sectors where minimum hourly wages are fixed) from cheaper work force provided by foreign temporary work agencies; meanwhile it is used to achieve better working standards in general too.

In the **UK** researchers have examined the income of agency workers and permanent workers. According to the UK Labour Force Survey (LFS), the gross income of temporary and agency workers was £ 10.50 per hour or £ 334 per week in 2012, compared with £13.40 per hour and £ 480.60 per week for permanent employees. A 2008 survey undertaken by the UK government also used data from the LFS, and took user company employees with two years' service as a comparator, arguing that temporary agency workers are likely to be relatively inexperienced in their post. It took hourly earnings, finding that overall hourly earnings of agency workers were 94% of the level for all employees with less than two years' service in their company in Q4, 2007 (median wage comparison of £ 7.00 versus £ 7.48). However, much depends on how pay is measured – the UK Trades Union Congress (TUC) believes that the pay gap between agency and user company workers is actually much wider than reported above, at around 31%. Its 2007 survey found wage differentials of between 61% and 94% (i.e. temporary workers' pay was 61% and 94% of permanent workers' pay), depending on occupational and professional category, with an average differential of just under 80%.

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months; not attained an upper secondary educational or vocational qualification (ISCED 3); over the age of 50; single adult with one or more dependents; working in a sector or profession in a Member State where the gender imbalance is at least 25% higher than the average gender imbalance across all economic sectors in that Member State and belonging to that underrepresented gender group; member of an ethnic minority within a Member State and need development of their linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment).

<sup>57</sup> Generally binding minimum hourly wages are in place in the waste industry, for electricians, maintenance/house cleaning, painter and varnisher, the care industry, laundry services focusing on industrial and commercial customers, professionals in further education, security services and in the temporary work services themselves. (IGZ 2013)

The largest differential was found amongst managers and senior officials (61%), narrowing to 94.5% for those in personal services occupations.

In **Denmark** the general observation is that the salary levels do not lag far behind the equal permanent contractors. However, there is a difference between wages paid on a monthly basis and those paid by the hour. There are no general laws guaranteeing workers basic rights in relation to remunerations, such as overtime, and salary-pay. Instead, there are provisions under the employment legislation, which protect employees who are comprised by this legislation, to obtain certain basic rights in relation to such remunerations.

### **Box 2: UK - The Swedish derogation**

Some employers are reported to be looking at different supply models rather than reducing their temporary workforce, and this has become a focus of debate. The Directive and the UK implementing Regulations allow agencies to employ agency workers as employees of the agency, in which case the 12-week qualifying period for equal pay with user company workers would not apply.

This is known as the Swedish derogation (so called because it was introduced into the regulations at the request of the Swedish government): Article 5(2) of the Directive states:

*"As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 [principle of equal treatment] where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments".*

The UK implementing Regulations make use of this clause (Regulation 10 of the Agency Workers Regulations 2010).

This practice is reported to be gaining popularity in some sectors such as retail, where there is a high volume of agency workers over the long term. The UK Chartered Institute of Personnel and Development (CIPD) predicts that many employers will choose to keep agency workers as agency workers employed by the agency itself for the sake of continuity rather than employing agency workers for themselves and changing staff every twelve weeks to save money. This is also the view of the trade unions, which believe that using agencies who keep workers as their employees will be easier to administer than worrying about putting into place 11-week contracts.

Employer representatives also believed the larger agencies would do this more routinely. However, trade unions are not happy with this development, as they believe that workers could potentially be exploited by the fact that the UK government has not set a floor for the minimum number of hours that agencies should pay workers for between assignments. The UK government (Department for Business, Innovation and Skills, BIS) guidance on the Regulations states that: "The Regulations refer to contracts of greater than 'one hour' per week in order to demonstrate that providing a 'zero hours' contract (which may not provide a sufficient amount of mutuality of obligation, required in an employer/employee relationship) will not meet the requirements of the derogation contract".

Trade unions have been angered by this: "The government has not set a floor – it has only said that employers should not work on the basis of zero hours contracts. This means that potentially agencies could pay workers for one hour at the UK minimum wage, which is not acceptable to us" (trade union interviewee). There has also been media speculation about this practice. A report from the Daily Telegraph in November

2011 noted the spread of this practice: "The so-called "Swedish derogation" appears to be in widespread use across the UK, with recruiters working for Tesco, Morrisons, Premier Foods and DHL among those adopting the model to circumnavigate new law aimed at boosting 1.4m temps' rights".

The REC has issued guidance on this issue for its members, stating that "[t]he recommended approach is to engage agency workers on this [derogation] contract once they are out of assignment in advance of a new assignment commencing. This ensures a clean break and compliance." It argues in general that the Swedish derogation is a welcome development, as the alternative would mean job losses for agency workers.

In January 2013, a first employment tribunal judgement on this issue was given (*Bray & Ors vs Monarch Personnel Refuelling*), ruling in favour of the employer who was using the Swedish derogation. The case involved a temporary agency that has a long-term arrangement to provide British Petroleum (BP) with tanker drivers. When the Agency Workers Regulations 2010 came into force, BP was concerned that direct recruits' unions would demand a parallel pay rise if agency drivers were given equal pay.

BP therefore required its agencies to switch their agency workers to the Swedish derogation model.

A group of the agency's tanker drivers reluctantly signed the new agreements, which appeared to comply with the complex requirements set out in the Agency Workers Regulations 2010 for this exception to apply. These include that: the contract of employment must contain a statement that the agency worker gives up the right under the Agency Workers Regulations 2010 to the same employment conditions as direct recruits insofar as they relate to pay; and the agency must take reasonable steps to obtain suitable employment for the agency worker and pay her for at least four calendar weeks between assignments before it can terminate the contract. The tanker drivers challenged the validity of the agreements in an attempt to claim equal pay with BP's directly recruited tanker drivers. The employment tribunal ruled that that the new contracts were compliant with the regulations, as they had been entered into before the beginning of the first assignment under those contracts.

## Training

The legislation does not provide any guarantees for training for agency workers in **Denmark**. Investments in training tend to follow the economic climate in the **UK**. According to the UK Labour Force Survey, 25.9% of temporary and agency workers received training within the previous 13 weeks in 2012. However, this share has declined from a level of 31% in 2000. The greatest negative impact on training took place during the first years of the recession in 2009 and 2010. Some 12% of temporary and agency workers had received training within the previous four weeks, down from around 18% in 2000. Although the economic climate has had a negative impact, the offer of training within the previous four weeks appears to have remained relatively stable since 2008 in contrast to the share of people who received training in the previous 13 weeks.

In **Belgium** the legislator has taken formal initiatives to guarantee investments in training for agency workers. The Social Fund for Agency Workers incites temporary work agencies to organise training in the sector. Moreover, it provides financial incentives for the employment of groups at risk in the labour market. While temporary work agencies contribute 0.4% of their total payroll to the Social Fund, they can recover their contribution by submitting files for training projects. Both wage costs and the cost of external training qualify for support of the Social Fund. Furthermore, in 2006 the social partners of the

temporary work sector established the Training Fund for Agency workers, which is a joint committee seeking to promote individual and collective training activities for agency workers. It cooperates with the training funds in which the agency workers are employed. The Training Fund receives annual financial support from the Social Fund to finance the cooperation with the training funds of the diverse sectors as well as its operating costs (EUR 626,586 in 2011).

Likewise, in **Italy** Forma.temp is a fund aimed at improving the access of agency workers to vocational training to improve their employability and facilitate their progression in the labour market through temporary agency work.

It is funded by regions and private employment agencies (through compulsory contributions), and it offers four types of training: general training (strengthen the workers' employability and acquisition of skills and knowledge that are useful in any work place), vocational training (acquisition of competences and techniques relative to the specific tasks required for the assigned 'mission'), training on the job (acquisition of experiences at the work place, strengthened through the coaching of a tutor), life-long learning (re-qualification of competences and anticipation of working needs through training). Any fees for agency workers to participate in trainings organised by the employment agencies are forbidden.

### Other working conditions

In the **UK** the 2007 TUC survey states that whilst directly employed workers may receive enhanced occupational entitlements (to annual leave (including bank holidays), sick pay and maternity pay, for example) agency workers are more likely to receive only the minimum statutory entitlements. In **Belgium** substantial differences exist between blue-collar workers and white-collar workers concerning leave and holiday allowance. For both groups of workers, every day worked as an agency worker is taken into account for the leave and holiday allowance for the next year. However, for blue-collar workers, holiday-related matters are taken care of by the National Office for annual leave, while white-collar workers receive their holiday allowance on a weekly basis (together with their salary payment) from the temporary work agency.

Nevertheless, both blue-collar workers and white-collar workers are entitled to unemployment benefits and sickness benefits to temporary workers through the Social Fund financed by temporary work agencies and managed by employers and unions from the sector.

In **Denmark** the general observation regarding the working conditions of employees of private employment agencies is that the protection for the temporary agency work does not lag far behind the equal permanent contractors. The Danish employment acts ensures all workers, including temporary agency work, certain basic rights in relation to working hours, breaks, rest periods, night work and vacation. However, there are no general laws guaranteeing workers basic rights in relation to holidays. Instead, there are provisions under the employment legislation, which protect employees who are comprised by this legislation, to obtain certain basic rights in relation to such remunerations.

Italian agency workers are also substantially protected by legislation. In **Italy** agency workers have equal working hours, number of days of leave and permission, and are entitled to the same social and welfare services. In particular, temporary agency workers can be dismissed before the end of the "mission" only for justified reasons or just cause (according to the Workers' Statute). Furthermore, if workers on a temporary contract become pregnant, they cannot be fired from the beginning of their pregnancy until the child's first birthday if this period is within the duration of the "mission" (according to the laws for the protection of motherhood). Moreover, employment agencies should pay social

security contributions to INPS and the insurance against the risk of accidents and occupational diseases to Inail. Hereby, the amount of the contributions should be equal to the amounts paid by the user firm for its independent employees<sup>58</sup>.

These contributions allow the agency workers to receive welfare benefits for periods of unemployment, sickness and maternity, to mature the requirements for retirements and to receive compensations in the event of an accident at work or occupational disease. In this respect, Ebitemp is a bilateral body established by private employment agencies as well as unions aimed at improving job employment as well as social security of temporary agency workers. It provides social support by granting a supplementary pension system to temporary agency workers, de facto creating a separated welfare system for this sector.

Finally, there is some evidence that workers in temporary and casual positions are more exposed to risks and accidents at work, due to factors such as the nature of their employment and the sectors they work in (such as construction). This is a particular concern for the TUC in the **UK**. For example, the Equality and Human Rights Commission's 2010 inquiry into working conditions in the meat processing sector (see below) found that health and safety was a particular concern for agency and migrant workers in the sector. Key findings were:

- not being given any appropriate personal protective equipment (PPE)
- poor-quality, ill-fitting and shared PPE
- lack of job rotation
- lack of training on health and safety issues, or not being able to understand it, and
- having to work excessive hours.

Further, according to the TUC's Commission on Vulnerable Employment (COVE) report, it would seem that many temporary, casual and seasonal jobs are monotonous and do not require high levels of skills: "The incidence of monotonous tasks and inflexible working schedules has been found to be higher among temporary staff".

### 3.4.3. TAW as a stepping stone into permanent employment

Temporary agency work can be a stepping stone to more permanent employment, as the Italian case illustrates. In **Italy** temporary agency work helps unemployed persons into employment: an extremely high percentage of temporary agency workers were unemployed before starting temporary agency work, and a large share of them moved to other forms of employment at the end of the contract. According to a survey conducted by ISFOL in 2008 50% of workers in temporary agency employment have been told that a transition to a permanent employment might be possible, and 50% of them consider this possibility as feasible.

Ichino, Mealli and Nannicini (2005) show that temporary agency work increases the probability of finding a permanent job, although this effect is heterogeneous across regions and with respect to observable characteristics such as age, education and the firm's sector. This form of employment is a stepping stone for further employment opportunities especially for young workers and during the transition from education to work. However, only 20% of the interviewed workers consider temporary agency employment as a step towards better and more stable working opportunities in the future, while 57% of them state that they are in temporary agency work because of the lack of other working

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<sup>58</sup> For employees hired on permanent contracts by employment agencies, the cost of such contributions during periods when they are not on a mission shall be the one provided by companies in the tertiary sector.

opportunities. Regional differences also emerge as this form of employment is overrepresented, relative to overall employment, in the Northern regions and underrepresented in the Southern regions.

In order to foster the role of temporary agency work as a mean towards other forms of employment and to avoid that temporary agency work substitutes permanent employment, the national legislation prescribes the so-called stabilisation system: According to national collective agreements regarding agency workers, an extension of the working period should be justified by objective reasons, and a maximum of six extensions in 36 months (or in 42 months in case the working period has been extended not more than twice during the first 24 months of the working relationship) should be admitted. Moreover, the temporary work agency should offer a permanent contract to its agency worker if she (a) has been employed by agency at the same user enterprise for more than 36 months (even if not consecutive) or (b) has been employed by the agency at different user enterprises for more than 42 months (even if not consecutive). For the first twelve months after this offer the temporary work agency cannot dismiss the worker except for just cause.

In **Belgium**, **Italy**<sup>59</sup> and **Germany**, temporary agency workers have the right to be informed about job vacancies at the user enterprise. Belgian Federal law moreover states that the contract between the temporary work agency and the agency worker cannot stipulate that the worker is prohibited to get an open-ended contract with the user firm. Additionally, in Belgium, the new legislation made it possible for user firms to employ agency workers with the motive to engage people on a permanent basis (cf. supra 3.1.4). Alternatively, since April 2013, the use of successive one-day contracts has been limited following debates between the national labour council and social partners. One-day contracts can only be used repeatedly by the same user company if it can prove an absolute need for such contracts. The so-called 48-hour rule, which allows for a written employment contract to be produced within 48 hours from the start of the assignment, has also been phased out.

#### 3.4.4. Union representation

Trade union participation of agency workers ensures attention to workers' rights and provides agency workers with specific information and services. However, the situation in different countries shows agency workers cannot rely on union everywhere as both the formal organisation as membership varies significantly. It can be noted that in countries with more legislative driven environments for private employment agencies, there exists a stronger trade union participation and organisation. In some countries there is a strong tradition of unionisation and all main trade unions devote specific attention to agency workers.

In **Italy** the main unions have specific subchapters devoted to dependent-self-employment (*parasubordinato*) and atypical contracts. Examples are the sections Tem.p@, NIdiL and FeLSA from the three main unions (UIL, CGIL and CISL). These subsections inform the agency workers about their rights (health protection, social security, parental leave, etc.) through direct meetings and (online) newsletters. They are also involved in the collective bargaining process.

In **Belgium** unionisation also goes through three main unions with specific committees to monitor agency work. In both countries agency workers are represented in the union through their temporary work agency and not through their user firm. Still, trade union representation in the user firm may increase trade union representatives' engagement towards agency workers.

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<sup>59</sup> As introduced by the implementation decree of the EU Directive.

In Belgium it happens that temporary work is used to keep the user firm's workforce below the limit set by law for setting up works councils amongst others. Stronger engagement of agency workers in the firm's trade unions might help in ending this practice and is a goal set by the unions themselves. Belgian trade unions receive information from the Social Fund for Agency workers which tells them about any temporary increase in the work and replacement of workers. Additionally, since 1 April 2013 the companies' obligation to inform trade unions about their use of temporary agency work has been extended. Hence, unions have a better overview of the use of temporary work, enabling them to detect problems at a faster rate.

**Denmark's** trade unions are also strong and during the last decade each of the larger trade unions has established entities to serve temporary workers and freelancers. These entities provide information on the workers' rights, support for lawyers and average salary levels for the main branches. However, it is not known how many agency workers are members.

In other countries participation in trade unions is less institutional. In the **UK** a number of trade unions cover agency workers but there is no dedicated union for agency workers only. The TUC runs various campaigns around agency work, focusing on equal treatment for agency workers and improvements to pay and working conditions, while agency workers are free to join any union which is normally present in the sector. Still, participation appears low. Figures from REC state that its membership is 5,550 individuals and 3,700 employment agencies, with 7,700 branches. Trade unions estimate that they represent around 8% of temporary workers.

The same low participation holds true for **Germany**. Trade union participation of temporary workers as well as their collective bargaining and representation in the agency and the user firms are often limited. This makes it difficult for unions in both countries to provide transparency and information dissemination on rights and duties.

In Germany it is especially difficult to represent the interests of migrant temporary agency workers. Trade unions face difficulties caused by the short time most migrant temporary agency workers spend in Germany (usually no more than three months) and the language barrier. In addition to that, in user firms deploying numerous temporary agency workers there are often no workers' representations in place so that trade unions cannot contact the workers there.

**Poland** appears to be a case where trade unionisation for agency workers is exceptionally low. They have no specific trade union representing them but are also not the first concern of trade unions within the user firms, although this depends on the respective firm and can change the longer the agency worker is employed. It is very rare for agency workers to organise themselves in a union within the temporary work agency.

Employer's attitudes towards trade unions are not positive, either, seeing them as antagonistic instead of collaborative. Similarly agency workers have little incentive to unionise unless irregularities occur.

#### 3.4.5. Collective bargaining

The existence and participation of agency workers in trade unions has a profound effect on collective bargaining. Bargaining agreements take place on several levels, be it the sector or the agency or user firm.

However, the cases can be separated into two groups where collective bargaining is more dependent on sectoral negotiations or where it is more dependent on the bargaining process within agencies or user firms.

In a number of countries collective bargaining is clearly focused on sectoral agreements. Temporary agency work is one of the most regulated policy areas in **Belgium**, with social partners playing a large influence on collective bargaining. Trade unions and employer's federations influence pay and working conditions through their representation in the joint committee of the sector and the collective agreements they conclude. Furthermore, the social partners have advisory authority in the recognition of temporary work agencies (when they apply for their licence). However, trade unions do not necessarily play a role in the agency and the user firm.

A similar bargaining model exists in **Denmark** where a tripartite collective bargaining model has mainly regulated the sector (though not understood as a sector on its own). Although the temporary work agency workers are covered by employment acts, there are still situations where they do not share the same rights as their colleagues with permanent contracts. These involve areas regulated by collective agreements without temporary worker protocols.

In **Poland** collective bargaining also takes place on high level agreements, but more due to low trade union organisation at the level of the agency and user firm. The lack of specific trade unions or chapters makes it more difficult to talk about collective bargaining for agency workers. The trade unions participate in proceedings related to the changes of law via the Tri-parity Commission. For example, they played a significant role during the negotiations on extending the period of temporary agency work from 12 to 18 months.

In **Italy** there is a unitary representation system (specifically for temporary agency workers) in order to promote actions for the protection and development of temporary work. The Union Delegates on the Territory (*Delegato Sindacale Territoriale*) are named by trade unions at regional or provincial level. They negotiate with and act against temporary work agencies for the proper application of temporary contracts, employment regulations and union rights. The Union representative in the private employment agencies (*Rappresentante sindacale in azienda*) is named by agency workers. Agency workers also have the right to meet during working hours to discuss union issues in an assembly.

In other countries sectoral collective bargaining does not exist. There is for instance no collective bargaining activity at sectoral level in the **UK**, reflecting the general lack of bargaining at this level in the UK. The only level at which collective bargaining on the issue of temporary workers in any real sense takes place is that of the individual company or agency. Agreements between employment agencies and user firms will normally be bipartite between agencies and sector trade unions.

The trade unions and employers' federation do not regularly work together on the issue of temporary work, although it occasionally happens as when they agreed in May 2008 a joint text on the equal rights of agency workers compared to directly-employed staff.

In **Germany** collective bargaining is a very important element of regulation but as trade union participation of temporary workers is limited so is their role in collective bargaining within the agency and the user firms.

If the agency does not have its own workers' representation council, the workers' representation in the user firm is responsible for representing the workers' interests. However, in 2008 only 11.4% of all companies in Germany provided formal worker's representations (Stettes 2008).

### 3.5. Compliance with regulation

#### 3.5.1. Complaints

In most countries formal complaint mechanisms exist for agency workers. In the **UK** workers who wish to complain about issues having to do with pay and their rights at work can contact the Pay and Work Rights Helpline (PWR). This was launched in September 2009 and handles complaints from the public in a number of areas, including temporary agency work. PWR advisers can give information and guidance about basic workplace rights covered by enforcement bodies. They can also put callers in touch with the relevant enforcement body who will investigate further and take enforcement action where necessary. Statistics of the Employment Agency Standards (EAS) Inspectorate comparing 2011/12 with 2010/2011 observe a decline in complaints received from 958 to 642. The EAS investigated 784 complaints in 2011/2012, including cases that were carried over from the previous reporting year, and also carried out 407 targeted inspections during the year. The cases investigated during 2011/12 were more complex and protracted and resulted in the EAS identifying 2,065 infringements and issuing 917 warning letters.

**Belgium** also has a formal complaint mechanism in place. Complaints owing to alleged violations of the regulations can be filed in writing, by telephone or by email with (regional) governmental institutions. The complaint has to specify where the agency makes a violation in order for the governmental institutions to be able to verify whether the complaint is valid. Anonymity is guaranteed for the party filing the complaint. The results of the investigation are not only communicated to the agency worker filing the complaint, but also to the (regional) commission that may suggest sanctions. No figures are available publicly, but both the employers' federation as the unions do not report a high number of complaints.

A third country where complaints are registered through official public institutions is **Poland**. Agency workers can submit a complaint to any of the public bodies dealing with irregularities. There are a number of these, such as the National Labour Inspection, the Regional Labour Office (or agency running the register) or the court, yet the complaint has to be submitted in writing and it has to be signed. This surely reduces the willingness of the workers to complain. The most important and relevant public body is the National Labour Inspection (*Państwowa Inspekcja Pracy*), which monitors and controls the very broad area of labour regulations and rights of employees. One of the crucial points of its activities is to control the legality of employment, including foreigners, other paid work, business activities and meeting various obligations by those running employment agencies, including registration requirements. Agency workers can request to keep their identity confidential or allow the inspectors to use their name and the case as a reason for the control. There are few complaints, which can indicate that the treatment of agency workers is good in general. Complaints can also be lodged at the employers' organisations. Such complaints are subject to review and scrutiny. However, the only action employers' organisations can take is to pose questions, if the complaints concern their members. There are no regulations allowing the workers' organisations to deal with the problem further.

A slightly different complaint system can be observed in **Germany**, which does not work through public institutions but by services organised by the associations for temporary work agencies IGZ and BAP. Agency workers of agencies that are member of the association can contact conflict management services provided by these associations. The IGZ for example maintains such a service, independent from the association's managing board, called KuSS (*Kontakt- und Schlichtungsstelle*), which deals with complaints regarding breaches of the code of ethics. It is unclear how many complaints the agencies actually receive.

**Denmark** seems to be an outlier, as there is no specific formal institution for registering complaints of temporary agency workers. The role of monitoring and reporting on rights and working conditions of agency workers is in general executed by the workers' unions. Trade unions are central in monitoring, as well as in following-up by complaints and law suits when relevant. They ensure access to the general complaint mechanism for the workers - the Danish Labour Court – and by this, ensure that a deviation from the collective bargaining agreements is sanctioned. When it comes to compliance with the Danish Employment Act the temporary workers who have not signed up for membership can make individual complaints through the court system.

### 3.5.2. Non-compliance with the regulations

While in many countries the sector of temporary agency work is strictly regulated the question remains how temporary work agencies comply with regulations. For countries such as the **UK** reports exist from the body charged with overseeing the implementation of the UK temporary agency Regulations, the Employment Agency Standards (EAS) Inspectorate. The EAS produces a report each year. Its enforcement is based on a structured assessment of risk, which targets the higher-risk sectors. In 2011/2012, as a result of targeted inspections nationwide into the healthcare sector, EAS carried out 64 targeted inspections and identified a total of 127 infringements. In the catering and hospitality sector, 45 targeted inspections resulted in the identification of 88 infringements. A total of 25 targeted joint inspections in South Wales with colleagues from the UK tax and revenue authority (HMRC) National Minimum Wage Teams identified 107 infringements. As a result of 27 targeted regional inspections in the Northampton area, a total of 103 infringements were identified. Most of the infringements that were found during these inspections related to non-compliance with contractual arrangements for user firms or potential agency workers; recording information about the vacancy with user firms, written notifications not being sent to user firms or work seekers and record keeping. As a result, the EAS carried out several lengthy and complex investigations resulting in three successful prosecutions in April and May 2012. In total, EAS recovered £ 128,523.06. Most of this money related to non-payment of wages to temporary work seekers or where fees were charged to work seekers for working services.

In **Denmark** there is missing data to know to what extent non-compliance occurs but increasingly frequent, individuals and trade unions make usage of the media to report non-compliance with regulations, i.e. underpayment or illegal work conditions. The negative press on such issues seems to generate a self-regulating mechanism within the company or association (especially concerning non-compliance with payments to migrant workers). Concerning the illegal temporary work of migrants the Danish police provide information on reports, charges and verdicts in court cases. Even though the statistics do not reveal the actual level of undeclared work of migrant workers, the figures indicate that there is a downward trend in the discovery of undeclared work between 2005 and 2011.

In case of disagreement, the cases of non-compliance are treated within the Danish labour court system.

Most cases of non-compliance in **Belgium** relate to migrant workers and the documents they need in order to be employed in the Belgian labour market (residence permit, work permit). The labour law for migrant workers is rather complex and is regularly violated (in an administrative way). According to an employers' federation, the government could improve the coordination for work and residence related matters of migrant workers. Nevertheless, trade unions stress that the complex regulation may not be an excuse for temporary work agencies to violate the legislation for migrant workers. While the social partners did not mention pay issues during the interviews, it appears to be a problem that

agency workers regularly have to deal with. In December 2012, the Christian Trade Union (ACV) reported that most of the recorded complaints it received from agency workers were pay-related with most complaints referring to pay arrears. The study illustrates that there are important differences between temporary work agencies in the Belgian labour market. Still, the social partners stress that no noteworthy differences are observed between sectors.

In **Poland** a number of issues of non-compliance were identified. In comparison to the global definition provided by the ILO the Polish regulations are rather specific and they divide various activities undertaken by the agencies into specialisations such as temporary work, guidance, counselling and recruitment. The representatives of the control bodies point out that there exists some misunderstanding amongst the private employment agencies in general as to various forms of conducted activities, which causes some legal irregularities and might result in legal consequences (fines).

The first cases of non-compliance relate to the prohibition to charge a fee to agency workers. The Report of the Chief Labour Inspector (2012) shows that in 2011 there was an increase in the recorded number of cases when jobseekers were forced to pay for the temporary work agency services. As many as 119 of such cases were registered, compared to 208 cases in 2009 and 2010 combined. This shows that temporary agencies do not always comply with regulation and that there is either a willingness of workers to pay for these services or a lack of information on the rights of agency workers. Candidates for agency work do not realise they can or just do not want to report a breach of the law by the temporary work agency to the National Labour Inspection (PIP, 2013).

In 2011 the inspectors of the National Labour Inspection had conducted 420 controls in employment agencies. They were aimed at finding out whether the regulations of the Act on Employment Promotion and Labour Market Institutions specifying the obligations of the agencies were implemented correctly. In 2010 427 controls were carried out. There were irregularities in almost 50% of the controlled agencies, mostly the lack of compliance with regulations on how to run the agencies or the lack of the required registration. Out of the controlled sample, 33 agencies illegally acted without the certificate. Interestingly, there were two foreign entrepreneurs from the EU/EEA who were not allowed to provide services and who had not notified the Marshall of the region that they decided to start operating. There were also irregularities related to sending jobseekers to work abroad, e.g. 34% did not sign contracts with the companies they were sent to work for.

Looking at the position of EU workers and other workers, the only difference is that EU workers do not need a working visa and work permit to work in Poland. Thus, their employment is less problematic and bureaucratic in comparison to employment of other foreign workers.

The Małopolska Labour Inspection reports a number of irregularities concerning foreign workers, such as work without a work permit, work in a different position and conditions than shown in the work permit, no contracts signed or no levies. Such irregularities in the region were reported in case of Ukrainians, Filipinas, Mongolian, Moldavian and Vietnamese. However, interestingly, the scale of such irregularities has decreased (PIP, 2013, 52-55). Finally, there are also the issues related to discrimination and equal rights. The last available report from the National Labour Inspection (2011, s. 127-128) shows that in 2011 there was an increased number of recorded discriminatory practices. Such practices were found in 11 agencies, whereas in 2010 in only 5. The discrimination occurred mostly in job ads. It was proven that discrimination touched as many as 110 persons. Employers tend to deny this happens. Apart from outright non-compliance, there is also the evasion of regulation, which borders on non-compliance. For example, the Act on Employment of Agency workers states that there is a maximum period of 18 months of

work for a single company within 36 months period. However, by making small administrative changes, such as changing the name of the company or directing the worker through another related agency, the maximum period becomes invalid and starts again. This makes it possible to use temporary agency work indefinitely.

### 3.6. Conclusion and challenges

#### 3.6.1. Main findings

Generally, the notion of temporary work agencies is a relatively harmonised concept within the EU, whereas the notion of private employment agencies can have a different meaning in the several EU Member States. On the one hand, it could be interpreted as a generic expression, thus including temporary work agencies, as illustrated in the definition in 1.2 and the use of “employment agency” in the UK Employment Agencies Act (1973). On the other hand, the notion of private employment agencies can have a more specific meaning relating to an activity of placement or acting as an intermediary between labour demand and supply. In this regard, the agencies do not have an employment relation with the worker (contrary to temporary work agencies) and there is some similarity with public employment services.

Moreover, differences between temporary work agencies and permanent work agencies that supply workers to a user firm on a permanent basis have been increasingly blurred since the introduction of the Swedish derogation (see box 2) which allows temporary work agencies to offer their workers permanent contracts.

Another aspect concerns the temporary supply of independent workers, which falls beyond the scope of EU Directive 2008/104/EC. The so-called *Werkverträge* (see box 1) have been mentioned in the report on Germany.

Looking closer at the six countries it becomes clear that each country displays some differences towards the others, which reflect the distinctive character of the environment in which temporary work agencies operate.

The **UK** has no formal requirements to set up a temporary work agency and, apart from self-regulation imposed within the sector, the government provides little specific monitoring or sanctioning for the agencies. This excludes compliance with overall labour laws of course. Thereby the UK is a prime example of the market driven environment for temporary work agencies.

**Germany** and **Denmark** provide a more mixed image where regulation goes partially or mainly through collective bargaining. This results in limited set-up and monitoring requirements. Especially Denmark heavily relies on these regulations based on social dialogue instead of formal regulations. As Denmark is on the verge of implementing the EU Directive on temporary work, it will introduce a more legislative approach.

**Belgium** and **Italy** already have clear legislative environments with more strict requirements, both in setting-up as in monitoring temporary work agencies.

**Poland** turns out to be the outlier in the country cases as it is not truly driven by the market, yet only has a limited regulated framework. Accordingly, there are little formal requirements for setting up an agency, but still basic monitoring activities by government institutions.

All cases except Poland indicate the existence of codes of conduct within the sector, mostly enforced by the sector federation. In the Belgian case, which is legislative driven, this code has the force of law.

These differences in the regulatory setting are also reflected in the practical implications for the diverse stakeholders, i.e. temporary work agencies, user firms and agency workers, even though there are some similarities in the diverse markets.

**Overall**, governmental institutions play an informative role concerning changes in the regulatory framework in all countries – sometimes in close cooperation with trade associations and trade unions (e.g. in the UK). Moreover, agencies are generally not allowed to charge agency workers for their services. Several countries also stressed the relatively limited prevalence of migrant workers at the moment of the interviews, yet, at the same time, they expect a growing interest of user firms in the transnational supply of employees.

However, several differences became apparent over the diverse country cases. For instance, the legislator driven policies of **Belgium** and **Italy** provide special funds for financing training activities and social protection measures (such as sickness and unemployment benefits) for agency workers. Furthermore, in these countries the cooperation between public and temporary work agencies is highly institutionalised. Public tenders, public data systems and public registers are used to manage the cooperation between both types of employment agencies. In **Denmark** and **Germany** the importance of social dialogue is illustrated by the possibility to derogate from the principle of equal treatment by means of collective labour agreements. Furthermore, in Germany, it is not forbidden to use temporary agency workers as strike breakers unless the temporary work agency signed a collective labour agreement that forbids strike-breaking. The market driven system of the **UK** favouring flexibility over security also has some typical implications for the main stakeholders. A particular characteristic of the UK market is the deviation from the general equal treatment policy by making a distinction between “day 1 rights” and “12-week rights”. Furthermore, investments in training turn out to depend heavily on the economic climate, thereby following the situation in the market. This is in sharp contrast with the situation in Belgium and Italy.

Overall, the regulatory framework in all cases is in compliance with international and European legislation. However, minor issues remain. Germany for example is not in compliance with ILO standards of the Convention No. 181 Article 7.1, which states that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

Private employment agencies in Germany have this option, even if it is rarely used, but Germany also has not ratified this Convention thus is legally not in transgression. A lack of strict monitoring or regulation can lead to non-compliance of international or European standards. In countries where self-regulation is dominant the individual agencies might promote equal treatment yet discriminate against certain workers. Such cases are documented both in Belgium and the UK. Nonetheless, they are normally reported and sanctioned, as is the charging of fees such as in the UK or Poland. There is also a black box concerning the information for agency workers on job vacancies within user firms and social facilities provided to them. Compliance in these fields is difficult to register as inspections can difficultly target these and for agency workers to complain they need to realise that an actual transgression has occurred.

### 3.6.2. Challenges

The different set of regulations and practical implications also imply different challenges that the diverse countries are currently facing.

Further regulating the sector of temporary work in the **UK** remains a sensitive issue in the UK, with the views of trade unions and employers differing widely.

Broadly speaking, trade unions feel that there is not enough regulation of a practice which they believe can be exploitative of workers. Conversely, the employer organisation CBI believes that the Directive is inappropriate for the UK context and that the UK implementing Regulations have "gold-plated" the Directive unnecessarily. The CBI is campaigning for a reform of the Regulations.

The implementation of the Directive remains a challenge for other countries as well. **Denmark** has just started implementing it and introducing some new tighter rules. The government expects the proposed bill to have limited economic and administrative impact for the private sector as a whole as the bill allows for exempting the areas where bargaining agreements operate. The direct impact on temporary work agencies and their workers depends therefore on whether the agencies operate in areas that are already covered by collective agreements. For those operating in such areas, new collective agreements may appear in the near future to ensure the principle of equality between temporary and permanent workers is implemented.

Also for **Italy** the implementation of Directive 2008/104/EC poses difficulties. The implementation should simplify the procedure of employing vulnerable workers, of incentivising private employment agencies to take disadvantaged workers among their clients, and of introducing a higher level of flexibility in the sector. However, the introduction of the Directive has created an intense debate between the social partners, especially between temporary work agencies and the sector unions, with the latter worried about the risk that this deregulation, instead of facilitating the employment of disadvantaged workers, will in practise allow temporary work agencies to discriminate against these groups at risk. Indeed, following the implementation decree of the Directive, in 2012 Manpower and Gi Group, two private agencies belonging to Assolavoro, signed an agreement with Italia Lavoro that allows the employment of disadvantaged workers at lower wages (for a maximum of 20% less than the referring wage) and at lower placement (at a maximum of 2 lower levels), in practice admitting an exception to the principle of equal treatment between dependent employees and temporary agency workers. Furthermore, an important challenge in the Italian labour market is to improve the situation of migrant workers which is often referred to as precarious.

For **Belgium** the Directive does not pose a real problem, even though it can be seen to be interpreted differently by all three Regions. This suggests the need for further clarifications on its implementation. The social partners, however, see some important specific challenges for temporary agency work in the Belgian labour market. For instance, according to employers, it is a challenge to introduce temporary agency work in the public sector and other banned sectors such as inland navigation. Furthermore, measures could be taken to remove the severe restriction that the construction sector faces. At the moment, in this sector temporary agency work may only be used for at most six months to replace workers or give the user firm the manpower for a temporary increase in work. Furthermore, temporary work agencies need a particular licence to operate in the construction sector. Alternatively, trade unions seek to change particular situations that jobseekers denounce. One such practice is the false prospect of permanent employment that many agency workers experience. They state that user firms often offer an option on a permanent job offer but when push comes to shove the contract is ended just before agency workers are entitled to a contract of indefinite duration.

Trade unions claim that, more than once, employees are stringed along with daily or weekly contracts, all too often to do a permanent job. Employers may benefit from such flexibility at the expense of agency workers. The trade unions state that the social partners should look into this matter and take the necessary measures to prevent any form of abuse.

The emerging market of **Poland** has its own challenges ahead. The Polish country case stressed the legislator's wish for a close, productive cooperation between public and temporary work agencies. However, at the moment, such cooperation is missing. Working towards such cooperation is an important challenge for Polish agencies.

Since its enactment in 2004, the Act on Employment of Agency workers has been regulating forms of employment, and employment with a regular contract is now expected. However, the Polish law is not unequivocal and allows employing workers using various other forms, civil-legal forms of employment that lack social security and are thus cheaper. The employment agencies associated within SAZ (Association of Employment Agencies<sup>60</sup>) take advantage of this pattern of employment, which, according to members of the Polish Human Resources Forum, is considered as bending the law and a shadow economy activity. It is reported as such by the National Labour Inspection, which is the authority in these matters. However, each case is dealt with individually. The proposed changes to the regulatory framework, imposing levies on all contracts, will reduce such potential irregularities. Statistics have shown a significant decrease in the number of civil-legal forms of employment and a rise in regularly employed agency workers. However, due to the effects of the economic crisis, civil-legal contracts started to dominate again. The overall number of agency workers of 499,024 is nonetheless the highest in the history of temporary work in Poland (Spytek-Bandurska, 2012).

Secondly, the control bodies notice the Act on Employment Promotion and Labour Market Institutions remains problematic to enforce. On one hand, sign-up fees cannot be detected unless the complaint is received and a candidate or worker is willing to participate in the proceedings and be heard as a witness. There should a better way to control this more directly. On the other hand, discriminatory practices are difficult to prove although published/aired job ads are regularly screened and monitored.

To add to this, the Act of 9 July 2003 on Employment of Agency workers is quite complex as there is a catalogue of conditions when temporary work is not allowed but where no sanctions are foreseen, which makes activity of the National Labour Inspection very difficult. In case any inconsistency or irregularity is found no actions can be undertaken other than the written information and recommendations for a change.

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<sup>60</sup> Both SAZ and the Polish HR Forum are the associations that gather temporary work agencies.

## 4. IMPROVING REGULATION OF PRIVATE EMPLOYMENT AGENCIES FOR THE FUTURE

### KEY FINDINGS

- Private employment agencies operate under a set of rules defined by the EU, international law and national regulation. The current EU Directive deals with the arrangement of temporary agency work in a very broad sense and respects the broad diversity of the branch in the EU. It leaves room for exemptions and enough space for the Member States to improve the conditions for workers on the national labour market on their own.
- Owing to the wide range of the branch, a smooth and flexible approach is recommended when revising the Directive after the review process is completed. Research suggests maintaining major parts of the current Directive rather than expanding the existing legal framework; if necessary, changes should be prepared only on a small scale.
- Most important, however, is to ensure the full implementation of the Directive and in particular to strengthen reporting and monitoring competences of the EU Member States. Furthermore, the cases studied suggest that the role of self-regulation and collective bargaining is somewhat limited and cannot replace legislation on minimum requirements in this field.
- However, the lack of comparable data and of empirical evidence regarding the practice of private employment agencies and their contribution to labour market dynamism hampers an in-depth assessment. Therefore, further research could contribute to solving this problem.

### Employment agencies in the EU and the existing legal framework

**Private employment agencies, which comprise private employment placement agencies and temporary work agencies**, are defined as labour market intermediaries matching labour supply and demand. Whereas EU Directive 2008/104/EC relates to temporary workers only, this report discusses both some features of private employment placement agencies which provide information about jobseekers and vacancies, and temporary work agencies.

**Private employment placement agencies** as information-only intermediaries have been the focus of a political debate on the pros and cons as compared to public employment agencies for some time due to the increasing contracting-out of labour market intermediation in the European Union to the private sector. Private employment placement agencies are often perceived as being more cost efficient and effective; an assessment supported by a qualitative evaluation carried out for the Netherlands and the UK. The findings stressed the importance of the increased efficiency through more competition and a rise in the effectiveness of placements. Nevertheless, as a micro-econometric evaluation of German data exhibits, the effects on employment probabilities of the unemployed are relatively small and negative. Thus, the success of private employment placement agencies primarily depends on the design of the tender process and compensation scheme.

**Temporary work agencies** which provide workers to user firms in cases of employee absences, varying seasonal workloads and skill shortages are becoming increasingly

important within the EU; their appearance on the political agenda is mainly due to their growth since the 1990s.

Yet, one has to note that both private placement agencies and temporary work agencies are only responsible for limited shares of the relevant markets, i.e. total placements or total employment, in the EU Member States, while private agencies can and do play an important role in some countries and sectors. An analysis of temporary work agencies (Neugart and Storrie, 2006) found that their improved matching efficiency was the main reason for the strong increase. Apart from that, deregulation, technical developments improving the posting of vacancies, the increased reputation of agencies and closer relationships with the user firm led to the agencies' growth. According to the analysis, temporary agency work does not necessarily crowd-out other jobs and can be welfare-improving. Another study, however, suggested that temporary work indeed increases overall employment but also leads to a substitution of regular jobs. Furthermore, other findings underlined that temporary work may lead to negative spill-over effects on permanent employees due to the lower firm-specific human capital caused by it, which may result in negative effects on productivity.

### Diversity and growth of private employment agencies

In general, it can be argued that the empirical operation and contribution of private employment agencies to the labour market, both with respect to placement and to temporary agency work, crucially depend on the volatile **economic cycle** and, most importantly, the **larger institutional environment**. A core element is certainly the extent to which public employment agencies rely on the involvement of private placement agents as a complement to their own efforts in bringing jobless people into work or the degree of competition between the two types of placement agents inserted by way of labour market policy reforms.

Temporary agency work, however, is also heavily affected by the legal framework governing permanent employment and other flexible forms of employment such as fixed term contracts. The larger **the regulatory gap** between standard employment and different types of flexible jobs, the more relevant temporary agency work becomes, in particular in a situation where there are particular advantages in terms of employment flexibility and labour costs (see the German or Belgian case). Agency work also serves as a screening tool in labour markets where occupational degrees are less formalised, e.g. in the UK. As mentioned above private employment agencies depend heavily on the economic cycle, which is especially true for temporary agency work as this flexible form of employment strongly reacts in phases of upswing or recession as the most recent crisis has shown.

Yet, while agency work can be a form of labour market entry for those who would face strong barriers to employment otherwise, the agency work sector also tends to constitute a peculiar segment of the labour market where some groups of workers cycle between jobs and phases of unemployment. Hence, it seems fair to say that the **stepping stone function** of agency work is relevant in some cases, but at the same time agency work contributes to **labour market segmentation** when it is predominantly used as a flexible and cheap form of labour without a credible chance to move to direct and more stable employment.

The analysis of the six cases (United Kingdom, Germany, Denmark, Belgium, Italy, Poland) stresses the individual national environments in which temporary work agencies operate and implies the different challenges the Member States are facing.

The reason for this is that across the Member States various approaches regarding temporary agency work exist; a fact which can be explained with the four **different**

**market types (market driven, social dialogue based, legislator driven and emerging markets)** based on the three dimensions market dynamics, industry development and regulatory development that were displayed in the case studies.

For instance the UK is an example of a market driven country with an open regulatory environment and limited restrictions in the field of temporary work. It lets the agencies work relatively freely and there are no legislative provisions regarding minimum start-up capital or specific professional qualifications. In contrast to that, Belgium is a legislator driven country with detailed restrictions for example regarding the four motives set by law allowing companies to employ temporary workers. In the light of a review of the Directive, attention has to be drawn to this wide diversity of the branch. It is rather difficult to not only find general guidelines regarding the adjustment of an EU-wide regulation but to also take into account national differences and needs.

### **What works with regulation and monitoring?**

Given the variety of private employment agency markets, it is not straightforward to identify **“good” and “bad” practices** and suggest a feasible policy learning from one specific EU Member State. Yet, the case studies presented with this study show that there are some, yet not fully conclusive hints pointing at the fact that public, governmental responsibilities for information, complaint procedures and monitoring might be stronger than more or less autonomous procedures set up by sectoral associations. **Self-regulation**, in this context, by way of codes of conduct and other instruments can only be of limited relevance as compared to a binding legal framework set at the national level and shaped partially by EU or international law. Self-regulation tends to be voluntary and therefore stays at the disposal of members of sectoral associations. Furthermore, in most cases private employment agencies can operate without joining an association or adhering to a code of conduct – except for countries where such regulation is legally binding such as Belgium. Hence, it has to be noted that the role of self-regulation and collective bargaining is highly diverse across EU Member States. Basic principles regarding working conditions of temporary agency workers and the operation of private employment agencies should therefore be set by law.

However, as the German case and others show, **collective bargaining agreements** can and should play a role in filling out the leeway defined by legislation. They can also be adapted over time, reflecting changing economic conditions and political considerations. However, if problems with the functioning of private employment agencies and the monitoring of their operation arise, a legal adaption regarding reporting requirements and supervision might be needed. Stimulation of self-regulation and collective bargaining will neither be easy nor sufficient to ensure worker protection and compliance.

### **Policy recommendations**

The current Directive on temporary work agencies deals with the arrangement of temporary agency work in a **very broad** sense. It recognises the significant differences between the Member States with respect to the use of temporary work as well as the working conditions and legal provisions of it and thus tries to establish a framework which **respects the diversity of the branch**.

For instance it does not affect relations between social partners and leaves room for exemptions to the principle of equal treatment: The so-called Swedish derogation makes it possible for agencies to offer their workers (who give up their entitlement to equal pay) a permanent contract and pay them between assignments.

Furthermore, the Directive does not specify penalties for agencies and user firms in the event of non-compliance with it but only stipulates their effectiveness, appropriateness and

dissuasive effects. Against this backdrop, the provisions appear to be deliberately kept open and thus allow for national arrangements in each Member State of the EU.

The interaction of temporary agency work with the larger legal and economic environment makes it very hard to come to clear and universal policy recommendations regarding **working conditions of agency workers** that go beyond the flexible set of requirements stipulated by the existing Directive. Here, some room to manoeuvre should be left for national policy makers both at the legislative level and in the realm of collective bargaining. A strict European-wide re-regulation of agency work would run the risk of endangering the (partial) stepping stone function of agency work and could encourage the use of less protected forms of employment such as economically dependent self-employment.

As the authors of the present study indicate, they have found **no frequent or serious violations of the Directive 2008/104/EC** in the European Union. Hence, research suggests keeping rather than expanding the existing legal framework as especially the country cases have clearly shown that the Directive already works and leaves the Member States sufficient space to improve the conditions for temporary agency workers on their own. The European Parliament is well advised to observe and closely monitor the interim assessment of the Directive by the European Commission. It should then comment on the Commission's finding with a particular focus on the protection of workers' rights and monitoring issues. However, it is important that the European Parliament insists on the **full implementation** of the existing Directive in the first place. As the case studies have shown there are some remaining, albeit limited issues in a number of EU Member States that need to be fulfilled. They should be reflected and documented appropriately during the review process which has to provide the best information available on all EU Member States. Furthermore, it might be advisable to strengthen **reporting and monitoring requirements** in the private placement and agency business to ensure full observation of binding pieces of regulation. This might be more relevant than adjusting working conditions of agency workers or increasing administrative requirements for the start of private employment agencies. In particular, there is need for clear public responsibilities and capacities for the dissemination of information on employment conditions, reporting and monitoring as sectoral self-regulation and supervision will not be sufficient.

If necessary, changes or amendments to the Directive should be prepared with greatest care and only on a small scale; a **smooth and cautious approach** is recommended taking into account the diversity of the branch within the EU, the larger regulatory frameworks in particular EU Member States as well as the EU's international obligations, especially concerning the GATS schedules currently in force which are part of the WTO Agreements.

However, the investigation has been marked by **lacking comparable data**, which is essential concerning a European-wide study and the reason why the academic debate on temporary work has not yet been able to produce a larger body of evidence. As stressed in the report, methodological problems are one great challenge. The lack of information hampers a detailed assessment of this relatively new bridge into the labour market.

Therefore, further research could contribute to gathering and harmonising data on private employment agencies between the countries. Providing better empirical information is also particularly relevant for the area of **monitoring** working conditions of temporary agency workers and the practices of both private placement activities and temporary work agencies. Better and more systematic reporting can help facilitate better monitoring here. This is particularly relevant in the case of migrant workers' employment by private agencies. Again, given the lack of strong empirical evidence, it would be premature to give advice on one specific and particularly effective model. Building upon existing national patterns is probably the most suitable solution. As of now, the evidence is too limited to suggest major changes in the regulatory framework as such.

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## ANNEX

Table 6 : The profile of temporary agency workers in the EU, 2009

	Agency workers						
	... as a percentage of the total number of temporary agency workers						
	Sex	Age		Education		Sectors	
Males	<25	>45	Medium	High	Manu- facturing & Construction	Services	
BE	58	37	12	42	31	41	55
CZ	48	36	18	25	5	62	34
DK	39	:	:	:	:	19	73
DE	70	24	22	:	:	54	32
GR	44	39	6	63	31	12	67
ES	:	:	:	39	5	35	62
FR	71	29	16	:	:	62	37
IT	52	33	8	:	:	44	52
LU	:	:	:	40	25	38	39
HU	54	:	:	51	5	70	6
NL	53	47	13	53	19	24	35
AT	80	:	:	:	:	:	:
PL	48	50	7	:	:	70	25
PT	:	:	:	70	20	30	60
RO	52	35	8	:	:	:	:
SI	56	27	6	:	:	:	:
SK	57	31	12	:	:	:	:
FI	34	:	:	58	27	:	:
SE	40	26	17	50	40	31	65
UK	42	:	:	25	39	:	:

**Source:** Cieltt, Economic report, the agency work industry around the world, 2011 (based on figures available for 2009). - Notes: Education: PT, LU, ES: figures for 2008. Sectors: LU, DK, PT, ES, HU: figures for 2008.

**Table 7 : National centre verdict on the availability and quality statistical data**

State	Perception of data
AT	Official survey is systematically conducted but insufficiently comprehensive.
BE	Employers' federation produces most data (recognised as valid by others including trade unions).
BG	None available as TAW is without statutory basis.
CY	No data as TAW is without statutory or institutional basis.
CZ	Agencies are obliged to report data annually to the Ministry, or attract a fine of CZK 500,000; however, but only a third of all agencies complies. The requirement is not enforced partly because the Ministry cannot cope with current levels of data given the large number of agencies now operating.
DE	Satisfactory overall, though specific surveys of the agency worker population could better deal with issues such as union membership or workers' levels of satisfaction.
DK	Limited: reflects recent origin of TAW arrangement and growth through migrant labour.
EE	Very poor: labour force statistics do not analyse TAW due to low sample size; the first independent sector survey took place in 2007 but has been criticised on methodological grounds.
ES	Quite reliable, given formalities required for TAW contracting
FI	Quite reliable: there are data from several sources including a large survey of agency workers.
FR	Two authoritative official data sources covering use of agency work (DARES) and nature of agency workers (INSEE), but methodological changes have weakened the latter since 2005
GR	Limited: few studies and official figures require updating (most recent is 2004; Ministry data for 2005–2006 is anticipated for summer 2008).
HU	Good overview at the aggregate level but more information is required, both on the business data of agencies and employment patterns of agency workers.
IE	Official data probably underestimates TAW; the problem is the highly fluid nature of the employment arrangement combined with uncertainty over who is the employer.
IT	Good: reliable data is provided by the Study Centre Observatory of Temporary Work (Osservatorio Centro Studi per il Lavoro Temporaneo), created by FORMATEMP and EBITEMP.
LT	No official data as TAW has no legal basis and no other surveys due to small scale
LU	Little recent data and mostly basic
LV	Not available; TAW is at a very early stage and official surveys do not differentiate it.
MT	No data due to small scale
NL	Variable quality
NO	Reasonable – combination of employers' association and official data ( latter due to improve)
PL	Readily available basic data from government agencies' websites
PT	Largely insufficient
RO	Not substantive enough, reflecting that TAW operations have been permissible for only 3 years

State	Perception of data
SE	Difficult to obtain: TAW is new and forms part of a range of other sectors and activities.
SI	Difficult to find detailed statistics: the level of TAW is relatively low despite recent rapid growth.
SK	Some weaknesses: official data are collected by the relevant ministry (ÚPSVaR) from annual reports submitted by agencies, but not all agencies complete these and they do not cover general data on agency workers such as gender, age, working time schedules or longevity of assignments.
UK	Inconsistent – the relevant ministry (BERR) thus commissioned a quantitative study of the sector in 2008.

**Source:** European Foundation for the Improvement of Living and Working Conditions, Temporary agency work and collective bargaining in the EU, 2009, Table 2.

#### A. Commitments of the EU and its Member States<sup>61</sup>

A1. Specific restrictions to the commitments of the EU-12 in the sector of Placement and Supply

A7. Specific restrictions to the commitments of Hungary in the sector of Placement and Supply

A14. Specific restrictions to the commitments of Sweden in the sector of Placement and Supply

A17. Specific restrictions to the commitments of Croatia in the sector of Placement and Supply

A1b. Horizontal restrictions to the commitments of the EU-12 in all sectors of services

A2b. Horizontal restrictions to the commitments of the Czech Republic in all sectors of services

A3b. Horizontal restrictions to the commitments of Estonia in all sectors of services

A4b. Horizontal restrictions to the commitments of Cyprus in all sectors of services

A5b. Horizontal restrictions to the commitments of Latvia in all sectors of services

A6b. Horizontal restrictions to the commitments of Lithuania in all sectors of services

A7b. Horizontal restrictions to the commitments of Hungary in all sectors of services

A8b. Horizontal restrictions to the commitments of Malta in all sectors of services

A9b. Horizontal restrictions to the commitments of Austria in all sectors of services

A10b. Horizontal restrictions to the commitments of Poland in all sectors of services

A11b. Horizontal restrictions to the commitments of Slovenia in all sectors of services

A12b. Horizontal restrictions to the commitments of the Slovak Republic in all sectors of services

A13b. Horizontal restrictions to the commitments of Finland in all sectors of services

A14b. Horizontal restrictions to the commitments of Sweden in all sectors of services

A15b. Horizontal restrictions to the commitments of Bulgaria in all sectors of services

<sup>61</sup> All Annexes A are excerpts from the WTO Services Database, <http://tsdb.wto.org/default.aspx> (as of 29 March 2013).

A16b. Horizontal restrictions to the commitments of Romania in all sectors of services

A17b. Horizontal restrictions to the commitments of Croatia in all sectors of services

B. Communication from the European Communities and its Member States - Certification - Draft consolidated GATS Schedule, S/C/W/273\*, 9 October 2006 [excerpts]

C. Classification of Placement and supply services of personnel, United Nations Statistics Division, <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=9&Lg=1&Co=8720>

**Table 8 : Specific commitments concerning placement and supply services**

<p>k) Placement and Supply Services of Personnel Executive Search Services  (CPC 87201)</p>	<p>1) DE, ES, IE, PT, SE, AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SE, SI, SK: Unbound HU: None</p>	<p>1) DE, ES, IE, PT, SE, AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SE, SI, SK: Unbound HU: None</p>
	<p>2) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None SE: None for nationals and residents with work permits excluding seamen AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound</p>	<p>2) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None SE: None for nationals and residents with work permits excluding seamen AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound</p>
	<p>3) DE, PT, AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound ES: State monopoly. HU: None SE: None for nationals and residents with work permits excluding seamen</p>	<p>3) DE, PT, AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound HU: None SE: None for nationals and residents with work permits excluding seamen</p>
	<p>4) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, SE, UK: Unbound except as indicated in the horizontal section AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound</p>	<p>4) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, SE, UK: Unbound except as indicated in the horizontal section AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound</p>
<p>Placement Services  (CPC 87202)</p>	<p>1) BE, DE, DK, EL, ES, FR, IE, IT, LU, NL, PT, UK, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SE, SI, SK, HR: Unbound HU: None</p>	<p>1) BE, DE, DK, EL, ES, FR, IE, IT, LU, NL, PT, UK, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SE, SI, SK, HR: Unbound HU: None</p>
	<p>2) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None SE: None for nationals and residents with work permits excluding seamen AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound</p>	<p>2) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None SE: None for nationals and residents with work permits excluding seamen AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound</p>
	<p>3) DE: Subject to a mandate given to the service supplier by the competent authority. The mandate will be granted in function of the situation and development of the labour market. PT, AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound BE, FR, ES, IT: State monopoly HU: none SE: None for nationals and residents with work permits excluding seamen</p>	<p>3) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound SE: None for nationals and residents with work permits excluding seamen</p>

	4) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, SE, UK: Unbound except as indicated in the horizontal section AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound	4) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, SE, UK: Unbound except as indicated in the horizontal section AT, BG, CY, CZ, EE, FI, HR, LT, LV, MT, PL, RO, SI, SK: Unbound
Supply Services of Office Support Personnel  (CPC 87203)	1) DE, FR, IT, IE, NL, PT, HR, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SE, SI, SK: Unbound HU: none.	1) DE, FR, IT, IE, NL, PT, HR, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SE, SI, SK: Unbound HU: none.
	2) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None SE: None for nationals and residents with work permits excluding seamen HR, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SI, SK: Unbound	2) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, UK: None SE: None for nationals and residents with work permits excluding seamen HR, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SI, SK: Unbound
	3) DE, PT, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SI, SK: Unbound  IT: State monopoly HR: Unbound, except for placement and supply of Croatian nationals for employment in Croatia by legal persons mediators and subject to prior approval by the Ministry of Labour and Social Welfare for the following professionals: house-maid, babysitter, musician, singer, farmer, fruit-grower, vintner, masseur, nurse, music teacher, driving instructor, actor, culture and art performances organizer, physical therapist, master of ceremonials-speakers or musician. HU: None SE: None for nationals and residents with work permits excluding seamen	3) DE, PT, HR, AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SI, SK: Unbound HU: None SE: None for nationals and residents with work permits excluding seamen
	4) BE, DE, DK, EL, ES, FR, HU, IE, IT, LU, NL, PT, SE, UK: Unbound except as indicated in the horizontal section HR: Unbound, except as indicated in the horizontal section and that persons should have at least two-year post-secondary school qualification and three-year working experience in personnel management. AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SI, SK: Unbound	4) BE, DE, DK, EL, ES, FR, HR, HU, IE, IT, LU, NL, PT, SE, UK: Unbound except as indicated in the horizontal section AT, BG, CY, CZ, EE, FI, LT, LV, MT, PL, RO, SI, SK: Unbound

k)	1)	All Member States except AT, CY,	1)	All Member States except AT, CY, CZ, DE,
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<p>Place ment and Suppl y Servic es of Perso nnel<sup>62</sup></p> <p>Execu tive Searc h Servic es (CPC 87201 )</p>	<p>CZ, DE, ES, EE, FI,IE, LT, LV, MT, PT, PL, SE, SI, SK: None</p> <p>AT, CY, CZ, DE, ES, EE, FI,IE, LT, LV, MT, PT, PL, SE, SI, SK: Unbound.</p> <p>2) All Member States except AT,CY,CZ, EE, FI, LT, LV, MT, PL, SI, SK: None</p> <p>AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK: Unbound</p> <p>3) All Member States except AT, CY, CZ, DE, ES, EE, FI, LT, LV, MT, PT, PL, SI, SK: None</p> <p>AT, CY, CZ, DE, EE, FI, LT, LV, MT, PT, PL, SI, SK: Unbound</p> <p>ES: State monopoly</p> <p>4) <u>ICT and BV</u>: All Member States except AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK : Unbound except as indicated in the horizontal section:</p> <p>AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK: Unbound</p>	<p>ES, EE, FI,IE, LT, LV, MT, PT, PL, SE, SI, SK: None</p> <p>AT, CY, CZ, DE, ES, EE, FI, IE, LT, LV, MT, PT, PL, SE, SI, SK: Unbound</p> <p>2) All Member States except AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK: None</p> <p>AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK : Unbound</p> <p>3) All Member States except AT, CY, CZ, DE, EE, FI, LT, LV, MT, PT, PL, SI, SK: None</p> <p>AT, CY, CZ, DE, EE, FI, LT, LV, MT, PT, PL, SI, SK: Unbound</p> <p>4) <u>ICT and BV</u>: All Member States except AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK : Unbound except as indicated in the horizontal section:</p> <p>AT, CY, CZ, EE, FI, LT, LV, MT, PL, SI, SK: Unbound</p>
	<p><u>CSS</u>: All Member States: Unbound</p>	<p><u>CSS</u>: All Member States: Unbound</p>
<p>Place ment Servic es (CPC 87202 )</p>	<p>1) All Member States except HU: Unbound</p> <p>HU: None</p> <p>2) All Member States except AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: None</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: Unbound</p> <p>3) All Member States except AT, BE, CY, CZ, DE, FR, ES, EE, FI, IT, LV, LT, MT, PL, PT, SI, SK: None</p> <p>DE: Subject to a mandate given to the service supplier by the competent authority. The mandate will be granted in function of the situation and development of the labour market.</p> <p>BE, FR, ES, IT: State monopoly.</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, PT, SI, SK: Unbound</p>	<p>1) All Member States except HU: Unbound</p> <p>HU: None</p> <p>2) All Member States except AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: None</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: Unbound</p> <p>3) All Member States except AT, CY, CZ, EE, FI, LV, LT, MT, PL, PT, SI, SK: None</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, PT, SI, SK: Unbound</p>

<sup>62</sup> SE: national and residents with work permits, excluding seamen

	<p>4) <u>ICT and BV</u>: All Member States except AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: Unbound except as indicated in the horizontal section</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: Unbound</p>		<p>4) <u>ICT and BV</u>: All Member States except AT, FI, CY, CZ, EE, LV, LT, MT, PL, SI, SK: Unbound except as indicated in the horizontal section</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, SI, SK: Unbound</p>
	<p><u>CSS</u>: All Member States: Unbound</p>		<p><u>CSS</u>: All Member States: Unbound</p>
<p>Supply Services of Office Support Personnel (CPC 87203)</p>	<p>1) All Member States except AT, DE, FR, FI, IT, IE, NL, PT, SE, CY, CZ, EE, LV, LT, MT, PL, SK, SI: None</p> <p>AT, DE, FR, FI, IT, IE, NL, PT, SE, CY, CZ, EE, LV, LT, MT, PL, SK, SI: Unbound</p> <p>2) All Member States except AT, FI, CY, CZ, EE, LV, LT, MT, PL, SK, SI: None</p> <p>AT, FI, CY, CZ, EE, LV, LT, MT, PL, SK, SI: Unbound</p> <p>3) All Member States except AT, DE, FI, IT, PT, CY, CZ, EE, LV, LT, MT, PL, SK, SI: None</p> <p>IT: State monopoly</p> <p>AT, DE, FI, PT, CY, CZ, EE, LV, LT, MT, PL, SK, SI: Unbound</p> <p>4) <u>ICT and BV</u>: All Member States except AT, CY, CZ, EE, FI, LV, LT, MT, PL, SK, SI: Unbound except as indicated in the horizontal section</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, SK, SI: Unbound</p>		<p>1) All Member States except AT, DE, FR, FI, IT, IE, NL, PT, SE, CY, CZ, EE, LV, LT, MT, PL, SK, SI: None</p> <p>AT, DE, FR, FI, IT, IE, NL, PT, SE, CY, CZ, EE, LV, LT, MT, PL, SK, SI: Unbound</p> <p>2) All Member States except AT, FI, CY, CZ, EE, LV, LT, MT, PL, SK, SI: None</p> <p>AT, FI, CY, CZ, EE, LV, LT, MT, PL, SK, SI: Unbound</p> <p>3) All Member States except AT, DE, FI, PT, CY, CZ, EE, LV, LT, MT, PL, SK, SI: None</p> <p>AT, DE, FI, PT, CY, CZ, EE, LV, LT, MT, PL, SK, SI: Unbound</p> <p>4) <u>ICT and BV</u>: All Member States except AT, CY, CZ, EE, FI, LV, LT, MT, PL, SK, SI: Unbound except as indicated in the horizontal section</p> <p>AT, CY, CZ, EE, FI, LV, LT, MT, PL, SK, SI: Unbound</p>
	<p><u>CSS</u>: All Member States: Unbound</p>		<p><u>CSS</u>: All Member States: Unbound</p>
<p>Supply services of</p>	<p>1) All Member States except HU: Unbound</p>		<p>1) All Member States except HU: Unbound</p>

<p>dome stic help perso nnel, other comm ercial or indust rial worke rs, nursin g and other perso nnel (CPCs 8720 4, 87205 , 87206 , 87209 )</p>	<p>HU: None</p> <p>2) All Member States except HU: Unbound</p> <p>HU: None</p> <p>3) All Member States except HU: Unbound</p> <p>HU: None</p> <p>4) <u>ICT and BV</u>: All Member States except HU: Unbound</p> <p>HU: Unbound except as indicated in the horizontal section.</p>	<p>HU: None</p> <p>2) All Member States except HU: Unbound</p> <p>HU: None</p> <p>3) All Member States except HU: Unbound</p> <p>HU: None</p> <p>4) <u>ICT and BV</u>: All Member States except HU: Unbound</p> <p>HU: Unbound except as indicated in the horizontal section.</p>
	<p><u>CSS</u>: All Member States: Unbound</p>	<p><u>CSS</u>: All Member States: Unbound</p>



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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