

Geographies of Temporary Staffing Unit *Working Brief 25*

Regulating Temporary Staffing: the geographical unevenness of national labour market legislation

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Introduction

Over the past three decades, the geographical expansion of the largest temporary staffing agencies has challenged how individual countries regulate their activities, and the conditions under which they place workers. What has emerged in recent years is a highly uneven regulatory landscape. While the general tendency has been towards the liberalisation of the business of staffing agencies, there are still a number of examples of countries hardening the stance they take on the industry. This Working Brief outlines the different regulatory frameworks in place in a selection of EU, North American and Asian countries to provide an overview of the global pattern of temporary staffing regulation. The Working Brief also looks at efforts to introduce an EU Directive on temporary agency work.

Temporary Staffing Law Making: Temporal Dimensions

The uneven spread of temporary staffing activities, and the geographical expansion of trans-national staffing agencies, has shaped the timing and the form of national government responses to this atypical form of employment. Table 1 charts the introduction of laws, and amendments to existing legislation, which relate to temporary staffing. It is clear that in those countries in which temporary staffing has long been in existence – such as the Netherlands, Germany, France and the UK – there is a long history of regulating temporary agency work. However, many have made significant amendments to, or revisions of, this early legislation. In these European ‘heartland’ staffing markets, these amendments have further *deregulated* the industry, rather than adding constraints or extra provisions. The 1990s witnessed a flurry of legislation

Table 1: Date of principle temporary agency work legislation for selected countries

Country	First Law	Amendments	Revisions
Netherlands	1965		1998; 1999: Liberalisation
Denmark	1968		1990: All regulation removed (shift to collective agreements)
Ireland	1971	1993: Unfair Dismissals (Amendment) Act 2003: Protection of Employees (Fixed-Term Work) Act	
Germany	1972	Successive increases to temporary assignment duration	2002: Major revision removed all time constraints on placements and various other constraints
France	1972	Successive changes to permissible reasons and contract duration 2005: Wider role for temporary worker agencies as state monopoly on permanent placements is ended	
UK	1973	1976: Enforcement inspectorate 1994: Licensing requirement removed 2003: Simplification and worker rights	
Belgium	1976	1987: Law adopted based on 1976 temporary law 2000: Temporary worker agencies role in placing long-term unemployed people 2001: Permitted in construction industry 2005: Permitted in agriculture, horticulture, and hotels and restaurants	
Norway	1977		2000: Temporary agency workers allowed alongside other temporary employment 2005: Wider scope for temporary/temporary agency employment
Japan	1985	1999: Job categories significantly expanded	
Austria	1988	2002: Health and safety 2005: Permitted in nursing. Law adopted in public bodies	
Portugal	1989	1996: Unspecified minor amendments	1999: Increased duration; training; health/safety protection
Sweden	1993		
Spain	1994		1999: Limitations and pay parity
Luxembourg	1994		
Italy	1997	2003: Wider scope for usage	

Korea	1998	
Finland	2001	
Greece	2001	2003: Social dialogue input
Hungary	2001	Amendment to Labour Code on Employee Leasing 2003: Act on Labour Inspection
Romania	2003	Sept 2004: Amendment concerning temporary agency establishment and procedures April 2005: Licensing of agencies introduced
Slovenia	2003	
Turkey	2003	
Poland	2004	
Slovakia	2004	
Czech Republic	2004	Employment Act Changes to Labour Code to cover Agency Work

Source: Adapted from EIRO (2005: Table 6).

regulating temporary agency work across Europe, and beyond, with Sweden, Spain, Luxembourg, Italy and Korea legalising temporary staffing, and Japan, Portugal, Denmark and the Netherlands liberalising their staffing markets. Since this time, most of the regulatory activity has taken place in the emerging markets of Central and Eastern Europe, with countries such as Poland, Hungary and the Czech Republic regulating temporary agency work. However, the story is not just one of liberalisation, as some countries have recently tightened their rules on agency work, such as the Netherlands (alongside deregulation of other aspects), Portugal, Spain and the UK.

National Differences in Regulation

The majority of countries in which temporary agency work occurs now have specific legislation governing all or some of the following issues: the activities of temporary agencies (often including their licensing); the conditions of use of temporary agency workers; the contractual arrangements and responsibilities between the agency, the worker and the user company; the contents of the contract between the agency and the worker; the pay and employment conditions of temporary agency workers; and the rights of agency workers. However, the *degree* to which countries have regulated these issues varies greatly, and is in many ways determined by their own definitions of 'temporary agency work'. As discussed in Working Brief 24, there are four main ways of defining 'temporary agency work'. For example, the UK, Ireland, Denmark and Finland do not define it as a distinct form of work and therefore have little or no specific legislation regulating temporary agency work. At the other extreme, France has specifically defined the triangular relationship between agency, worker and user, and additionally defined the temporary agency worker as distinct, with particular rights. This has resulted in France introducing a number of pieces of targeted legislation to govern temporary staffing activities.

Table 2 provides brief details of the national regulations with rules on the maximum length of contract; restrictions on the use of temporary agency work; whether a licence is required; if temporary agency workers receive parity with permanent equivalents; and rules governing the trade union rights or representation of temporary agency workers. A number of important points can be observed:

- The majority of countries do not impose a time limit upon the temporary contract. Where there are limits, these range from 15 days in Belgium (where a permanent worker is replaced temporarily without trade union agreement), to 24 months in Italy and France. Some countries have a restriction on the number of renewals of individual contracts allowed;

Table 2: Regulation of key aspects of temporary agency work for selected countries

Country	Regulation of maximum length of temporary contract	Restrictions on use of temporary agency work	Licence required	Parity with permanent workers	Exercise of union/representation rights for temporary workers
Australia	None	None	No	No	No special provisions
Austria	None	Very few	Yes	Yes	No special provisions
Belgium	15 days – 12 months (including renewal), depending on circumstances	Significant. Restricted to cover for absent employees, temporary workload peaks and special work	Yes	Yes	Mainly in agency
Canada	None	None	No	No	No special provisions
Cyprus	None (unregulated)	None (unregulated)	Yes	Yes	No special provisions
Czech Republic	12 months	Few. Some specific restrictions apply under collective agreements	Yes	Yes	No special provisions
Denmark	None	None	No, with exception of healthcare workers	Yes, following arbitration award	No special provisions
Estonia	None (unregulated)	None (unregulated)	Yes	Yes	No special provisions
Finland	None	None	No	Pay and conditions generally regulated by collective agreement	No special provisions
France	Usually 18 months (including renewal), but 9 or 24 months in some circumstances	Significant. Restricted to cover for absent employees, temporary workload peaks and inherently temporary work	Yes	Yes	Mainly in agency
Germany	None	Some restrictions, but not extensive	Yes	Yes	Divided, but mainly in agency
Greece	None (unregulated)	None (unregulated)	No	Yes	No special provisions
Hungary	None	Very few. Cannot be used to replace striking workers	Yes	No	No special provisions

Ireland	None	None	Yes	No	No special provisions
Italy	24 months (including 4 renewals) by collective bargaining	Significant. Restricted to cover for absent employees and temporary workload peaks. Not to be used to carry out dangerous work; to replace striking workers; or where collective redundancies have been made in previous 12 months	Yes	Yes	Divided, but mainly in agency
Korea	Less than one year. Only one renewal permitted	Significant. Restricted to cover for absent employees and jobs which require particular expertise, special skills or expertise. Not to be used to carry out dangerous work.	Yes	No	No special provisions. (Collective agreements)
Japan	One year for certain job categories. No limit on number of renewals	Few. Not permitted in construction, port work, transport and guard services	Yes	No	No special provisions
Latvia	None (unregulated), although some restrictions determined by the Labour Law may apply	None (unregulated)	Yes	Yes	No special provisions
Lithuania	None (unregulated)	Unregulated, but significant restrictions exist under some collective agreements. Restricted to cover for absent employees and temporary workload peaks. Not to be used to carry out dangerous work; to replace striking workers; or where collective redundancies have been made in previous 6 months	Yes (but not as temporary work agencies, <i>per se</i>)	No	No special provisions
Luxembourg	12 months (including 2 renewals)	Significant. Restricted to specific, non-permanent jobs	Yes	Yes	Divided, but mainly in agency

Malta	None (unregulated)	outside company's normal activity. None (unregulated)	No	No	No special provisions
Netherlands	None	Very few	No*	Yes	In agency (user company after two years)
New Zealand	None	None	No	No	No special provisions
Norway	None	Significant. Restricted to replacement, seasonal work and unpredictable, short-term changes in activity. Exceptions covered by collective bargaining.		No	In agency
Poland	A temporary employee may not provide labour to the benefit of any one employer for more than an aggregated 12 months over a period of 36 consecutive months.	Significant. Restricted to seasonal, period and ad hoc tasks or to cover for absent employees. Cannot be used where collective redundancies were made in previous 6 months. Cannot be used to replace striking workers.	Yes	Yes	No special provisions
Portugal	6-12 months	Significant. Restricted to cover for absent employees, temporary increases in workload, and short-lived/seasonal tasks	Yes	Yes	No special provisions
Romania	12 months (one renewal allowed, up to 18 months)	Significant. Restricted to cover for absent employees, temporary increases in workload, and short-lived/seasonal tasks. Cannot be used to replace striking workers.	Yes	Yes	No special provisions yet
Slovakia	None	None	Yes	Yes	No special provisions
Slovenia	None	Some restrictions. Cannot be used to replace striking	Yes	Yes	No special provisions

Spain	No maximum in some cases, 6 months in others (up to 18 months by collective bargaining)	workers; to do dangerous jobs; where collective redundancies have been made in last 12 months; and other cases defined by sectoral collective agreements Significant. Restricted to cover for absent employees, temporary workload peaks, and 'market circumstances'	Yes	Yes	Mainly in user company
Sweden	None	None	No	Pay and conditions regulated by wide-ranging national collective agreements	In agency
Turkey	Six months (up to two renewals allowed)	Significant. Restricted to cover for absent employees, and temporary workload peaks.	n/a	n/a	n/a
UK	None	Very few. Cannot be used to replace striking workers.	No	No	No special provisions
US	None	None	No	No	No special provisions

*The Dutch government intended to re-introduce a licensing system to combat 'illegal practices' in the temporary agency sector, but the proposal was dismissed in May 2005.

Source: TUC (2005: Table 2); EIRO (2005), own research.

- Despite the liberalisation of temporary work in some countries, others have maintained significant restrictions. Belgium, France, Italy, Spain, and Norway still have significant restrictions which limit the use of temporary agency workers to situations such as the temporary replacement of a permanent employee, to meet temporary increases in workload, or seasonal work. Other 'emerging' staffing markets such as Poland, Portugal, Romania and Turkey have also imposed significant restrictions on the use of temporary agency workers;
- In addition, some countries have placed restrictions on the use of temporary agency workers doing certain types of jobs. For example, and despite a long period of deregulation, Japan still restricts the use of agency workers from construction, port, transport and guard services work. This type of sector restriction is increasingly rare but nevertheless in many countries temporary agency workers are still banned from doing 'dangerous' work;
- Some countries place very few restrictions on the use of this form of labour. These tend to be the countries such as the UK, the US, Australia, Denmark and Ireland where the industry is lightly regulated, or the regulation is devolved to the state level, as is the case in the US. However, in some instances, temporary agency workers are not allowed to be used in the event of strike;
- These countries also do not require temporary staffing agencies to be licensed, forming a minority, albeit an important one in terms of the importance of these countries to the global staffing market. In most countries agencies are normally required to apply, and often pay for, a license to operate. The institutional justification for this is to facilitate closer monitoring of activities and operations and to help prevent bad practice in the industry. However, it is debatable whether this occurs in practice;
- The issue of parity between temporary workers and their permanent equivalents is a significant one, and will also be discussed in relation to the EU Working Directive below. In many countries listed in Table 2, parity in terms of pay and/or some or all employment conditions is guaranteed by law (and/or collective agreement). However, in 9 of the countries there is not parity. Many of these belong to the 'unregulated' set of countries where it is argued that market forces dictate the rate of temporary agency worker pay;
- In many countries there are no special provisions made for temporary agency workers with respect to union representation. Often, this has only occurred in those countries where their definition of temporary agency work has been specifically set out, and temporary agency workers given special status. Collective bargaining at the national level plays a role in the overall regulation of temporary agency work in some countries. This is often in a complex relationship with legislation (EIRO, 2005). National level, inter-sectoral bargaining occurs in Belgium, France, Finland and Sweden. Collective bargaining also occurs at the sectoral level,

playing a range of roles with respect to regulation. Specific sectoral bargaining (involving trade unions and employers' associations of temporary work agencies) occurs in Belgium, Italy, Luxembourg, the Netherlands and Spain. A number of other variations on the relationship between unions, legislators, user companies and staffing agencies exist across the world, adding another complex layer of differentiation between countries. In some countries, temporary agency work has yet to be covered by collective agreements (e.g. Austria), and in others collective bargaining does not occur and company level bargaining occurs between the agencies themselves and agreements on the use of temporary agency workers in other firms (e.g. the UK).

Shifting the regulatory scale: EU directives

The regulation of temporary staffing is highly uneven across the countries shown in Table 2, for a variety of interrelated reasons related to country histories, cultures and broader frameworks of legislation and economic practice. Over time, many countries have developed their own approaches to the definition and regulation of temporary staffing. However, there has been a level of 'experience sharing' between countries with regard to legislation, particularly between the EU15 countries and the ten newly exceeded nations. This uneven regulatory landscape has been the focus of EU attention over the last two decades, as the institution seeks to tackle 'problematic' issues surrounding temporary staffing, such as worker conditions and job security. In 1990 the European Commission put forward proposals to create a minimum level of consistency between different types of contracts and proposed legislation in three areas; part-time work, fixed-term contracts and temporary work. Further proposals have been advanced by other social partners in 1995 and 2000. The European Commission responded in 2002, proposing a Directive laying down the principle of non-discrimination against temporary workers, aiming to set minimum EU-wide standards and create a level playing field for companies in different Member States. However, this Directive has been blocked by some Member States for over two years, and in September 2005 the European Commission announced that the proposals were to be 'temporarily shelved'. Therefore, for the time being, the regulation of temporary agency work remains at the national scale in Europe.

Conclusion

This Working Brief has outlined the key issues related to the regulation of the temporary staffing industry. Its rapid growth and the associated increase in the numbers of people globally employed on temporary contracts, has triggered a number of phases of regulation. The first of these occurred in continental Europe in the 1970s, with a phase of deregulation across Europe in

the 1990s, and more recently the legalisation and regulation of temporary staffing in Central and Eastern Europe. As discussed in Working Brief 24, individual country definitions of 'temporary agency work' varies widely, but can be categorised into four types. In this Working Brief we can see that the 'unregulated' group of countries such as the UK and US have imposed very little, if any, regulation on the industry. This represents one extreme of regulation, as opposed to that of France, where many aspects of temporary agency work, including the status of temporary agency worker, has been defined and regulated. As Table 2 shows, the regulatory frameworks of other countries are placed somewhere between these two extremes. The uneven geography of regulation has resulted from cultural and economic differences between nations, in addition to the relative youth of the temporary staffing industry in some parts of the world. However, attempts to harmonise this regulatory landscape, such as the EU Directive, have failed, often as national differences have proved insurmountable. Therefore, in the short-term at least, this divergence of agency operation, and worker experience, across national boundaries is set to continue.

References:

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