



Temporary agency work and collective bargaining in the EU

Executive summary

Introduction

Temporary agency work (TAW) is a unique, 'triangular' form of employment, which involves a temporary employment relationship between a temporary work agency – which is the employer – and a worker, where the latter is assigned to work for, and under the control of, an undertaking making use of his or her services (the user company). A report from Eurofound gives a comparative overview of the situation regarding TAW in Europe; its findings are based on the results of a questionnaire distributed to 28 national centres in March 2008. The research was conducted by Eurofound's European Industrial Relations Observatory (EIRO), with the support and involvement of the social partners at European and national levels. The main issues covered were the extent and nature of temporary agency work, employment and working conditions in the sector, the statutory framework and the role of social dialogue and collective bargaining in the Member States.

Policy context

Social dialogue for temporary agency work has had institutional force at EU level since the establishment of a Sectoral Social Dialogue Committee in 2000. The first Joint Declaration was issued in 2001 and in the past two years two further important and influential Joint Declarations have been produced. In February 2007, the Joint Declaration within the framework of the flexicurity debate reaffirmed the need 'to reach a fair balance between the protection of agency workers and enhancing the positive role that agency work may play in the European labour market'. In May 2008, the Joint Declaration on the draft Directive on working conditions for temporary agency workers informed the political agreement reached in the EU Employment Council in June 2008. This stated that the principle of equal treatment from the first day of an assignment will be the general rule. However, Member States may agree derogations via collective agreements by the social

partners or, where these do not have general legal force, by alternative means following a national-level agreement between social partner representatives. The agreement also accepted that existing restrictions on TAW, such as by sector or occupation, contract duration or reasons for use, should be reviewed and justified. On 22 October 2008, the European Parliament supported the proposals put forward by the Council and the Commission without amendment. Member States are now required to incorporate Directive 2008/104/EC¹ into national law within three years.

Key findings

Temporary agency work is a significant form of employment in most Member States and employs large numbers of workers, especially in Belgium, France, Germany, Italy, the Netherlands, Spain, and the UK. It is also an area experiencing rapid, and in some cases substantial, levels of growth, both in terms of number of employees and sector revenues.

On the supply side, factors helping to drive the growth in TAW include its active use to facilitate the re-engagement of long-term unemployed into work, and a growth in the labour force participation of people that need or prefer temporary work. On the demand side, TAW enables user firms to make relatively easy labour adjustments and cost savings by outsourcing some responsibility for recruitment and administration. Agency work is also widely used in sectors affected by seasonal patterns of demand and to cover staff absences.

¹ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L372, 5 December 2008, p. 9.

There are clear differences between countries in the structure of the sector and patterns of TAW use. First, there is disparity in the balance between large and small agency firms. Some countries have a highly concentrated market for TAW, dominated by the large multinational firms. Second, there is some variation between countries in the sector and occupational patterns of demand. The most obvious difference concerns the form and substance of regulation. TAW is largely a highly regulated industry involving a mix of legislation, collective labour agreements and instruments of self-regulation at national level. Different Member States have different traditions of labour market regulation, and different policy preferences concerning the balance between employment flexibility and security. In most cases it is the law that has primacy in the regulation and enforcement of the key terms and conditions of TAW. However, collective bargaining is an important regulatory mechanism in the 'old' Member States. Most of the EU15 have sector-level bargaining for TAW, with the UK constituting the exceptional case from the largest economies. In contrast, the new Member States (NMS) have virtually no arrangements for collective bargaining in the regulation of TAW, though some have introduced relatively strong legal frameworks in recent years.

Most countries have trade associations that promote and self-regulate agency work, or employer organisations (11 in total) which, in addition to such activities, also participate in collective bargaining. In contrast, trade union organisation is relatively underdeveloped. Only in three countries were specific TAW unions found: France, Greece and Italy. Ten countries were able to provide estimates of trade union density for TAW workers, half of which report low and half high figures for membership density. Union presence was reported to be particularly low in the NMS.

Almost all countries have some provision for equal pay between agency workers and comparable permanent employees of the user enterprise, whether established by law and/or collective agreement. A significant number also have regulations in place concerning training, representation rights and other terms and conditions of employment. The often rapid expansion of the sector, especially where this has included large numbers of migrant workers, has heightened concerns over potential illegal activities such as tax evasion, safety practices (particularly in construction) and 'social dumping' in terms of wage rates and employee benefits. Such considerations have contributed to a tightening of the regulatory system in some countries.

The main areas of regulation include: the reasons and circumstances under which user companies are permitted to make recourse to TAW; limiting the proportion of agency workers; proscribing temporary agency work in certain sectors or occupations; or placing a ceiling on the duration or number of TAW assignments. Overall responsibility for enforcing the regulations concerning temporary agency work are usually shared between labour inspectorates, the authorities responsible for issuing licences, and tax authorities.

Policy pointers

- TAW is largely a highly regulated sector, but there is a wide variation as to how and what is regulated. There is a mix of statutes, collective agreements and self-regulation in place. The law has primacy, but collective bargaining is also important in the EU15, mainly at sectoral level. The NMS have no arrangements for collective bargaining and some of them also have no specific regulation (Bulgaria, Cyprus, Estonia, Latvia, Lithuania, and Malta).
- A key problem in the regulation of the sector by the social partners is not just the weak tradition of sectoral-level bargaining, but a lack of trade union organisation for agency workers.
- There is a meaningful European social dialogue between Eurociett and UNI-Europa which also promotes social dialogue at national level via roundtables.
- There is a lack of reliable data on TAW in many of the Member States.
- TAW can be a means of achieving wage-cost control as well as labour flexibility, especially for lower-skilled employment in competitive sectors with varying or unpredictable demand.
- TAW offers groups such as students, migrant workers, women returning from childcare breaks, disabled and unemployed people access to the labour market. In principle, TAW can help workers develop their work skills and experience, thereby offering pathways into more secure employment.
- In trying to reach a fair balance between protecting agency workers and enhancing the positive role that agency work may play in the European labour market, TAW seems to be at the heart of the flexicurity debate.

Further information

The report on Temporary agency work and collective bargaining in the EU is available at <http://www.eurofound.europa.eu/eiro/studies/tn0807019s/index.htm>.

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