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Report on temporary employment agencies and temporary agency work

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Simon Deakin
Mark Freedland
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Governance
and Tripartism
Department

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**A comparative analysis of the law
on temporary work agencies
and the social and economic implications
of temporary work in 13 European countries**

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Foreword

In 2013 the Greek Government requested technical assistance from the ILO in order to review the legal framework regulating temporary employment agencies and temporary agency work in Greece, so as to bring it into line with EU and ILO norms, and with good practices in European Union member States in terms of managing workforce adjustment.

In order to respond to this request a group of independent experts, under the supervision of the ILO, was asked to produce the present report which provides a comparative analysis of the law on temporary agency workers in a selected number of EU Member States. The experts were Professors Nicola Countouris (University College London), Professor Simon Deakin (Cambridge University), Professor Mark Freedland (University of Oxford), Aristeia Koukiadaki (Senior Lecturer, University of Manchester), and Associate Professor Jeremias Prassl (University of Oxford). The experts conducted their analysis between December 2013 and January 2014, through the use of country-specific questionnaires and the cooperation of a number of national experts. Its comparative findings set out the law in force as of December 2013. The sections covering Greece and those covering EU legislation and other supranational sources set out the law in force as of October 2014. The authors subsequently had the opportunity to revise some aspects of it in light of ILO reviews.

The report has benefitted from the contributions of Janine Berg, Sean Cooney, Colin Fenwick, Youcef Ghellab, and Corinne Vargha. The report would not have been possible without the support and guidance of the Director of the ILO Research Department, Mr. Raymond Torres, and the Deputy Director of the ILO Regional Office for Europe and Central Asia, Ms. Rie Vejs-Kjeldgaard. Special thanks are also due to Mr. Konstantinos Papadakis, who at the time was the Senior Liaison Officer for Cyprus and Greece/ILO Athens.

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Moussa Oumarou
Director
Department of Governance and Tripartism

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Abbreviations and acronyms

ABU	Federation of Private Employment Agencies (Netherlands)
ASEP	Civil Service Staffing Council (Greece)
AÜG	Temporary Employment Act (Germany)
BAG	Federal Labour Court (Germany)
BZA	Federal Association for Temporary Agency Work and Staff Services (Germany)
CIETT	International Confederation of Private Employment Services
CJEU	Court of Justice of the European Union
CLA	collective labour agreement
DARES	Department of Regional Affairs for Economy and Health (France)
DGB	Confederation of German Trade Unions
ECA	Employment Contracts Act (Estonia)
EEA	European Economic Area
EEC	European Economic Community
EES	European Employment Strategy
ELFS	European Labour Force Survey
ENIDEA	Association of Temporary Employment Agencies (Greece)
ERA	Employment Relationship Act (Slovenia)
ESC	European Social Charter
ETA	Equal Treatment Act (Estonia)
ETP	equal treatment principle
ETUI	European Trade Union Institute
EU/OSHA	European Agency for Safety and Health at Work
FNV	Netherlands Trade Union Confederation
GSEE	General Confederation of Greek Workers
ILO	International Labour Organization/Office
IMF	International Monetary Fund
IZA	Institute for the Study of Labour
LMSBA	Labour Market Services and Benefits Act (Estonia)
MEDEF	French Enterprises Movement
NBBU	Dutch Association of Intermediary and Temporary Employment Agencies
PASYPET	Pan-Hellenic Union of Employees Providing Labour to Third Parties
PES	public employment services
PRISME	Association of Temporary, Service and Employment Workers (France)
SYAE	Council of Health and Safety of Employees (Greece)
TAW	temporary agency work
TEA	temporary employment agency
TFEU	Treaty on the Functioning of the European Union
TUC	Trades Union Congress (United Kingdom)
TzBfG	Law on Part-time and Temporary Employment (Germany)
UWV	Institute for Employee Benefit Schemes (Netherlands)
WAADI	Allocation of Workers by Intermediaries Act (Netherlands)
WCA	Works Councils Act (Netherlands)
WLRI	Working Lives Research Institute

Executive summary

Introduction: Research context and methodology

1. This report provides an overview of the regulation of temporary agency work in 13 EU Member States, and examines both national and supranational rules shaping temporary work relations in those countries. It was produced by a group of independent experts, all of them labour lawyers¹ and most of them academic labour lawyers, with a view of assisting the International Labour Office in the context of the ongoing technical assistance programme developed with the Greek Government in a number of areas, including “labour legislation to regulate collective dismissals”.² As is widely known, since May 2010, the Union’s Euro-area Member States and the International Monetary Fund (IMF) have been providing financial support to Greece through an Economic Adjustment Programme in the context of a sharp deterioration in the country’s financing conditions.³ This support has been accompanied by a request on the part of the lending institutions’ representatives to implement a number of reforms aimed at improving the competitiveness of the Greek economy. Amongst a series of detailed specifications, Greece has been asked to adopt “reforms [that] will ease interpretation of and foster compliance with labour laws with a view to bring legislation in line with EU best practices, and to this end a review will be carried out [...], comparing Greek regulations on temporary employment, scope of temporary employment agencies [...] with those in other EU Member States”.⁴

2. In this context, between December 2013 and January 2014, the authors of this report set out to conduct a comparative analysis of the law on temporary agency work in a selected number of EU Member States. This review was carried out through the use of country-specific questionnaires and the cooperation of a number of national experts that responded to them;⁵ the resulting comparative findings are presented in Section 4 of the report. The authors note that, since the drafting of Section 5 of the present report in January 2014, a number of significant amendments to the pre-existing Greek legal framework on temporary agency work (TAW) were introduced by Law 4254/2014,⁶ which was adopted in the context of the financial assistance programme received by Greece. Section 5 was amended in order to reflect these changes. Section 4 of the report describes the law in the remaining 12 Member States as applicable in December 2013. Section 2, providing a socio-economic and labour market analysis of temporary agency work, has been produced mostly on the basis of work carried out, between January and July 2014, by ILO officials with inputs from independent experts.⁷ The remaining sections were drafted jointly by the authors of the main report,

1. Nicola Countouris (University College London, United Kingdom), Simon Deakin (University of Cambridge, United Kingdom), Mark Freedland (University of Oxford, United Kingdom), Aristeia Koukiadaki (University of Manchester, United Kingdom), Jeremias Prassl (University of Oxford, United Kingdom).

2. ILO: *Regional perspectives on technical cooperation: Europe and Central Asia*, Governing Body, 320th Session, Geneva, Mar. 2014, GB.320/POL/7, p. 9, para. 31. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235534.pdf.

3. For latest updates, see http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/.

4. European Commission Directorate-General for Economic and Financial Affairs: *The Second Economic Adjustment Programme for Greece, Third Review – July 2013*, European Economy Occasional Papers 159 (Brussels), p. 7.

5. Tamás Gyulavári (Hungary), Frank Hendricx and Aline Van Bever (Belgium), Mijke Houwerzijl (Netherlands), Anu Laas (Estonia), Jose Maria Miranda Boto (Spain and Portugal), Andreja Poje (Slovenia), Jenny Votinius (Sweden). The editors of this report also acted as national experts in respect of the remaining jurisdictions, namely France, Germany, Greece, Italy and the United Kingdom. The editors also gratefully acknowledge the help of Cathleen Rosendahl and Elisabeth Kohlbacher.

6. Law on measures for the support and development of the Greek economy in the framework of implementation of Law 4046/2012 and other provisions, FEK A 85/7.4.2014. For the purposes of the present report, reference is made to Law 4052/2012, as amended by Law 4254/2014.

7. Including the Working Lives Institute of London Metropolitan University and the Institute for the Study of Labour (IZA), Bonn, Germany.

who gratefully acknowledge the general support to their research work which they respectively receive from the Labour Rights Institute of University College London, St John's College, Oxford and Magdalen College, Oxford, the Centre for Business Research at the University of Cambridge, and the School of Law of the University of Manchester.

Prevalence, trends and social effects of temporary agency work

3. Section 2 of the report presents the growing trend in the use of temporary agency workers in most EU Member States, with most statistical studies suggesting that in countries such as France, Germany and the Netherlands, temporary agency work is an increasingly common form of employment that has by and large withstood the labour market shockwaves produced by the 2008 economic crisis and, if anything, been further fuelled by subsequent labour market developments. This section however also comments on the challenges surrounding the sourcing of reliable and consistent data on TAW in Europe. This point is perhaps best exemplified by the study produced for the European Parliament in 2013 highlighting that while according to the International Confederation of Private Employment Agencies (CIETT), the 2010 figure for TAW in the United Kingdom was 3.1 per cent, the equivalent figure in the European Labour Force Survey (ELFS) only amounted to 0.4.⁸ This important issue aside, the section also notes that younger workers and workers employed in less-skilled occupations are far more likely to find themselves in TAW than older and more skilled labour market participants. This is not problematic per se, but since these workers are typically associated with groups or individuals with weaker bargaining power in the labour market, and thus more vulnerable to a possible deterioration in working conditions, it calls for a heightened regulatory attention on the part of legislators across Europe. This is particularly the case in the face of mounting evidence which suggests that TAW is often associated with relatively higher rates of accidents at work, deskilling processes, lower wages, and fragmented and discontinuous work relations. Whether temporary agency work helps or hurts workers will continue to be the subject of much debate. On the whole, the studies explored in this section find that temporary agency work can be helpful for bringing previously inactive or unemployed persons into the labour market; at the same time, however, there is little if any evidence of TAW constituting a stepping-stone into regular employment, at least for the less skilled. The section concludes by arguing that more policies are needed to ensure that workers' safety and health is a priority, regardless of the form of labour market engagement.

The supranational regulation of collective dismissals in Europe: Equal treatment, adequate protection, and protective lacunae

4. For much of the 20th century, the majority of European countries, with the notable exception of the United Kingdom, maintained several restrictions on, and even complete prohibitions of, the operation of TWA. This approach was very much reflected at the ILO level by the two Fee-Charging Employment Agencies Conventions (1933 (No. 34) and the revised Convention of 1949 (No. 96)), which provided for a stringent regulation of TWA and their activities. But as national attitudes towards flexible forms of work and temporary work in general began to change, so did the approach of the ILO, whose Private Employment Agencies Convention, 1997 (No. 181) represented, in the words of CIETT, 'a dramatic U-turn of the [Organization's] position regarding the private employment services industry: from prohibition (Conventions n°34 and n°96) to legal recognition and support of the development of the activities of private employment agencies'.⁹ While this may not be an inaccurate depiction of Convention No. 181, Section 3 of this report notes that its core provisions are tasked with making sure that temporary agency workers benefit from the "adequate protection" and enjoyment of a number of fundamental rights at work, including freedom of association and collective bargaining (Article 4), equality of opportunity and treatment (Article 5), and, "in accordance with national law and practice", the protection of personal data (Article 6), and the protection

8. W. Eichhorst et al.: *The role and activities of employment agencies*, IZA Research Report No. 57 (Bonn, Institute for the Study of Labour (IZA), 2013), p. 25. Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507459/IPOL-EMPL_ET\(2013\)507459_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507459/IPOL-EMPL_ET(2013)507459_EN.pdf).

9. CIETT website, at: <http://www.ciett.org/index.php?id=47>.

and enjoyment of minimum wages, working time and working conditions, statutory social security, access to training, health and safety, and maternity and parental rights (Article 11). In addition, it is noted that Article 2(4)(a) of Convention No. 181 provides that governments, having consulted with the relevant social partners, can “prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to” in the Convention. It is noted that only 12 EU Member States have ratified Convention No. 181.

5. While the core protective principle enshrined in Convention No. 181 is the principle of “adequate protection” by reference to a number of fundamental rights at work, the worker-protective aspiration of EU Directive 2008/104 hinges upon the principle of “equal treatment”; more specifically, on the principle of equal treatment in respect of “basic working and employment conditions” (defined in Article 3(1)(f)), between temporary agency workers and workers who are directly employed by the user company to which they are assigned (Article 5). The analysis carried out in Section 3 of this report also notes the presence and relevance of Article 4 of the Directive, ostensibly permitting a number of national restrictions on, and prohibition of, temporary agency work. However, Section 3 also notes the narrow personal and material scope of the equal treatment principle (and of the Directive as a whole), as well as the existence and role of a number of qualifications and possible exceptions and derogations contained in Articles 1(3) and 5(2)-5(4) of the instrument. It is suggested that these protective lacunae pose serious questions on the ability of the Directive to provide an adequate level of protection to those European workers occupied through private employment agencies. In any case it is worth noting that Directive 2008/104 is a minimum harmonization instrument accompanied, in Article 9(2), by a “non-regression clause”.

Regulating temporary agency work in Europe: Equal treatment and persisting restrictions

6. The comparative analysis carried out in Section 4 of the report revealed a highly diverse range of national approaches in the regulation of TAW. This is due partly to the “minimum harmonization” nature of Directive 2008/104, and partly to the fact that all the Member States covered by this report had sought to regulate, at times quite restrictively, TAW prior to the coming into force of the EU instrument. All in all, there is quite a wide diversity between Member States with regard to the level of restrictions placed upon TAW, the level of TAW which occurs in practice, and, interestingly, the correlation between the level of restriction and the level and spread of actual TAW itself (or a lack thereof). Nevertheless, there are also important commonalities amongst the countries covered.

7. By and large it appears that all Member States have sought to comply with what is arguably the key protective provision contained in Directive 2008/104, the equal treatment provision in respect of basic working conditions. The extent to which the use of the Article 5(4) exception, as implemented by the United Kingdom, is compatible with the letter of the Directive and the equal treatment principle (ETP), is currently the subject of a complaint by the Trades Union Congress (TUC) to the Commission under Art. 258 TFEU. The other key provision of the Directive is arguably Article 4, which required that existing restrictions and prohibitions upon the use of TAW (apart from those excepted by Art. 4(4)) had to be reviewed and reported to the Commission by 2011. Article 4 also provided that such restrictions and prohibitions could be justified on the grounds of the general interests listed in its paragraph 1. The evidence from the analysis carried out in Section 4 is that a significant majority of Member States maintain restrictions and prohibitions on the use of TAW. Some of these restrictions are contained in legislation and some in collective agreements, and may fall within the ambit of Article 4 of Directive 2008/104. There is a sense that some Member States may have understood the concept of a “review” of these restrictions as synonymous with their “removal” (see notably the comments by the Spanish expert), even though this is not immediately apparent from the wording of Article 4.

8. It is also worth noting that some Member States which maintain, through legislation or collective agreement, various restrictions or limitations upon the use of TAW (e.g. France, Germany, Italy) have a relatively high (and higher than the EU average) TAW share of the labour market. According to some statistics (but see the important caveat introduced in the opening paragraphs of Sections 2 and 4 of the report, as reiterated above in paragraph 3, the United Kingdom could have one of

the lowest shares of temporary agency workers in the European Union as a whole, even though it is arguably the most lightly regulated system. But even if those statistics supporting the opposite view that the United Kingdom is actually the EU country with the highest share of TAW were true, it would be difficult to suggest that other EU Member States should embrace the UK approach to TWA regulation. Section 4 of the report provides evidence to the effect that more than half of the United Kingdom's temporary agency workers operate outside the material scope of application of Article 5 of the Directive because of the application of the 12-week qualifying period and it is thus difficult to argue that UK temporary agency workers enjoy a sufficient level of protection in terms of their pay and basic working conditions, which is, according to some, the “do ut des/quid pro quo” implicit in the Directive for prohibitions and restrictions to be loosened or removed. Conversely, some countries with relatively restrictive or protective regulatory frameworks (e.g. France, Italy) tend to have a flourishing TWA industry, making it difficult to establish any evident correlation between regulatory framework and recourse to TAW.

Temporary agency work: Summary and implications for Greece

9. The analysis carried out in Section 5 of the report reveals that Greek legislation on TAW has been the subject of a series of recent regulatory interventions aimed at facilitating the recourse by employers to this particular form of work. Even as this report was being written, the Greek Parliament adopted Law 4254/2014, a far-reaching instrument that was explicitly seeking, as its heading suggested, to “support and develop” the Greek economy, and sought to do so, inter alia, by liberalizing further the activities of temporary work agencies and the conclusion and regulation of TAW contracts, in particular through the removal of the restrictions related to the reasons for concluding TAW, and by easing regulation limiting the recourse to agency work in cases of redundancies.

10. The main authors of the present report are of the view that, in effect, the successive reforms of TAW adopted in Greece since 2010, as detailed in Section 5, have “normalized” the use of temporary agency work, meaning that, in Greece, as in other EU Member States, it is now possible to conclude TAW contracts with a degree of ease that is by and large comparable to the conclusion of bilateral employment contracts of an indefinite duration. If this “normalization” was what was being sought when asking Greece to adopt “reforms [that] will ease interpretation of and foster compliance with labour laws with a view to bring legislation in line with EU best practices, and to this end a review will be carried out [...], comparing Greek regulations on temporary employment, scope of temporary employment agencies [...]with those in other EU member states”,¹⁰ then the view of the present authors is that this objective has been abundantly achieved. If anything, as noted in the concluding paragraphs of Section 5 of the report, it is now hard to see in what ways temporary agency work can still be seen as an exception to what the Directive refers to as “employment contracts of an indefinite duration” which should be seen, according to the Directive itself, as “the general form of employment relationship”.¹¹

Conclusions: The promises of “flexicurity” and the premises for decent temporary agency work

11. The primary purpose of this report is to provide an overview of the regulation of temporary agency work at a supranational European level and in 12 EU Member States (plus Greece), with a view of assisting Greece in assessing its own national legal framework on temporary agency work in a comparative and EU perspective. This exercise was linked to the ongoing labour market reform process encouraged by a number of supranational institutions, and in particular the European Commission, the European Central Bank and the International Monetary Fund, in the context of the financial support provided to Greece through what is known as the Economic Adjustment Programme. As this report was being produced between December 2013 and October 2014, it became clear that Greece was embarking on a series of reforms aimed at facilitating and liberalizing

10. European Commission Directorate-General for Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece, Third Review – July 2013*, op. cit., p. 7.

11. Paragraph 15 of the Preamble to Directive 2008/104.

further the activities and the use of TAW. As noted in Section 4 of this report, the Greek reforms are part of a more generalized trend towards a greater use of what are often defined as “atypical work relations” in European labour markets, a trend that has gained further momentum since the adoption of Directive 2008/104 and, more recently, in connection with a series of national and supranational efforts aimed at assisting the economic recovery in Europe.

12. These reforms, and more generally EU and national policies in the area of “atypical” work relations, have embraced the regulatory trade-offs implicit in the concept of “flexicurity”. The promises of flexicurity are abundant¹² and have been analysed at length, often in a critical vein, by numerous academic commentators.¹³ Section 3 of the present report notes that in the context of TAW, and by reference to Directive 2008/104, these trade-offs have been understood by some¹⁴ as amounting to a quid pro quo between the improvement of the working conditions of TAW (by reference to the equal treatment principle) and the progressive liberalization of the provision of TAW, mostly for the purposes of job creation and overall economic performance.¹⁵

13. The comparative analysis carried out in Section 4 of this report, and the analysis of Greek law in Section 5, point towards an emerging idea of “flexicurity” in the TAW context where temporary agency work arrangements are progressively being “normalized”. The worker-protective preoccupations that have traditionally motivated and justified a restrictive regulatory approach in respect of TAW are progressively fading, to a large extent due to the protective promises inherent to the “equal treatment” principle. But arguably, fundamentally important as this principle is, there are a number of risks emerging from it being considered as tantamount to a new *lapis philosophorum*, capable of addressing all the worker-protective concerns inherent to temporary agency work. Even leaving aside the more technical questions pertaining to the identification of a “suitable comparator” or to the narrow scope of application of Directive 2008/104, it is fair to say that “equal treatment” does not address some of the concerns inherent to TAW, and may even obscure them with its presence. As noted by Davies, “the focus [of the relevant EU Directives] on equal treatment makes objection more difficult because it is hard to be against equality”, whilst at the same time producing “a tendency to blind us to the on-going disadvantage faced by non-standard workers even in a situation of equal treatment. For example, although an agency worker might be entitled to a rate of pay equal to that paid by a directly hired worker, he or she is still at a disadvantage because of the inherently insecure nature of agency work”.¹⁶

14. In conclusion, then, while the equal treatment principle can play an essential role in the quest for an adequate level of protection of TAW, it cannot be seen as sufficient to achieve this end, certainly not on its own. Assigning specific protections to atypical workers in general, and to temporary agency workers in particular, and doing so in a way which addresses the specific insecurities inherent in these work relations, is arguably equally essential in order to anchor TAW firmly within the principles of “decent work” and “adequate protection” which, to a large extent, ILO Convention No. 181, and ILO action more broadly, seek to secure. Securing these principles, however, may well require maintaining in place many of those restrictions to TAW which are currently being dismantled, partly under the auspices of EU Directive 2008/104 and EU policy action,¹⁷ as well as introducing special additional rights and entitlements¹⁸ in terms of additional training, additional payments and additional benefits, aimed at compensating temporary agency workers for the inherent precariousness associated with their working lives.

12. See in particular European Commission: *Flexicurity pathways: Turning hurdles into stepping stones*, Report by the European Expert Group on Flexicurity (Luxembourg, 2007).

13. See the recent collection of essays in M. Keune and A. Serrano (eds): *Deconstructing flexicurity and developing alternative approaches: Towards new concepts and approaches for employment and social policy* (London, Routledge, 2014). Also, cf. S. Fredman: “Women at work: The broken promise of flexicurity”, in *Industrial Law Journal* (2004, Vol. 33, No. 4), pp. 299–319.

14. See European Commission: *Transposition of Directive 2008/104/EC on temporary agency work*, Report of the Expert Group (Luxembourg, 2011), p. 30.

15. Some of the arguments developed along these lines can be found in EUROCIETT: *The contribution of private employment agencies to flexicurity and a better functioning labour market in Europe*, leaflet (Brussels, undated); and EUROCIETT: *Europe 2020 from strategy to action: Ensuring inclusive growth* (Brussels, 2010).

16. A. Davies: “Regulating atypical work: Beyond equality”, in N. Countouris and M. Freedland (eds): *Resocialising Europe in a time of crisis* (Cambridge, Cambridge University Press, 2013), pp. 243–244.

17. It should be noted that even some EU documents on flexicurity suggest a role for these restrictions, for instance by reference to “limit[ing] the consecutive use of fixed-term contracts and temporary work agency assignments”; see European Commission, *Flexicurity pathways: Turning hurdles into stepping stones*, op. cit., p. 29.

18. In a similar vein see Davies, “Regulating atypical work”, op. cit., pp. 243–245; and N. Countouris: *The changing law of the employment relationship* (Aldershot, Ashgate, 2007), p. 143.

Introduction

1

This report provides an overview of the regulation of temporary agency work in 13 EU Member States and examines both national and supranational rules shaping temporary work relations in those countries. It was produced by a group of independent experts, all of them labour lawyers and most of them academic labour lawyers,¹⁹ with a view to assisting the International Labour Office in the context of the ongoing technical assistance programme developed with the Greek Government in a number of areas, including “labour legislation to regulate collective dismissals”.²⁰ As is widely known, since May 2010, the Union’s Euro-area Member States and the International Monetary Fund (IMF) have been providing financial support to Greece through an Economic Adjustment Programme in the context of a sharp deterioration in the country’s financing conditions.²¹ This support has been accompanied by a request on the part of the lending institutions’ representatives to implement a number of reforms aimed at improving the competitiveness of the Greek economy. Amongst a series of detailed specifications, Greece has been asked to adopt “reforms [that] will ease interpretation of and foster compliance with labour laws with a view to bring legislation in line with EU best practices, and to this end a review will be carried out [...], comparing Greek regulations on temporary employment, scope of temporary employment agencies [...] with those in other EU Member States”.²²

In this context, between December 2013 and January 2014, the authors of this report set out to conduct a comparative analysis of the law on temporary agency work in a selected number of EU Member States. This review was carried out through the use of country-specific questionnaires and the cooperation of a number of national experts that responded to them;²³ the resulting comparative findings are presented in Section 4 of the present report. The authors note that, since the drafting of Section 5 of the present report in January 2014, a number of significant amendments to the pre-existing Greek legal framework on temporary agency work (TAW) were introduced by Law 4254/2014,²⁴ which was adopted in the context of the financial assistance programme received by Greece. Section 5 was amended in order to reflect these changes. Section 4 describes the law in the remaining 12 Member States as applicable in December 2013. Section 2, providing a socio-economic and labour market analysis of temporary agency work, was produced mostly on the basis of work carried out, between January and July 2014, by ILO officials with inputs from independent experts.²⁵ The remaining sections were drafted jointly by the authors of this report, who gratefully acknowledge the general support to their research work which they respectively receive from the Labour Rights Institute of University College London, St John’s College, Oxford and Magdalen College, Oxford, the Centre for Business Research at the University of Cambridge, and the School of Law of the University of Manchester.

While it would be accurate to say that fixed or short-term contracts were present, to a certain extent, in most industrialized economies throughout the 20th century,²⁶ it is arguably only since the early

19. Nicola Countouris (University College London, United Kingdom), Simon Deakin (University of Cambridge, United Kingdom), Mark Freedland (University of Oxford, United Kingdom), Aristeia Koukiadaki (University of Manchester, United Kingdom), Jeremias Prassl (University of Oxford, Kingdom).

20. ILO: *Regional perspectives on technical cooperation: Europe and Central Asia*, Governing Body, 320th Session, Geneva, Mar. 2014, GB.320/POL/7, p. 9, para. 31. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235534.pdf.

21. For latest updates, see http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/.

22. European Commission Directorate-General for Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece, Third Review – July 2013*, op. cit., p. 7.

23. Tamás Gyulavári (Hungary), Frank Hendricx and Aline Van Bever (Belgium), Mijke Houwerzijl (Netherlands), Anu Laas (Estonia), Jose Maria Miranda Boto (Spain and Portugal), Andreja Poje (Slovenia), Jenny Votinius (Sweden). The editors of this report also acted as national experts in respect of the remaining jurisdictions, namely France, Germany, Greece, Italy, and the United Kingdom. The editors also gratefully acknowledge the help of Cathleen Rosendahl and Elisabeth Kohlbacher.

24. Law on measures for the support and development of the Greek economy in the framework of implementation of Law 4046/2012 and other provisions, FEK A 85/7.4.2014. For the purposes of the present report, reference is made to Law 4052/2012, as amended by Law 4254/2014.

25. Including the Working Lives Institute of London Metropolitan University and the Institute for the Study of Labour (IZA), Bonn, Germany.

26. See the historical sections in R. Blanpain, H. Nakakubo and T. Araki (eds): *Regulation of fixed-term employment contracts: A comparative overview*, Bulletin of Comparative Labour Relations Series, Vol. 76 (Alphen aan den Rijn, Kluwer Law International, 2010).

1980s, and more vigorously since the 1990s, that most Western European countries have sought to regulate these forms of work, mostly with the declared or implicit view of encouraging flexible forms of employment on a number of policy grounds. For much of the 20th century, the provision of temporary work through private intermediary agencies was subject to very tight controls and restrictions, and was even prohibited in a considerable number of Western European countries, with trade unions across the Union resisting the introduction of atypical and temporary forms of work.²⁷ The European Economic Community (EEC) itself had originally contemplated approaching the issue of temporary work in order “to protect workers hired through temporary employment agencies and to regulate the activities of such firms with a view to eliminating abuses therein”.²⁸ In more recent years, the European Union itself had occasionally reflected on the “continuing disadvantages for the holders of jobs of short duration”,²⁹ and the improvement of the “job quality” of temporary agency work was one of the drivers behind the 2002 Commission proposal of an EU instrument regulating temporary agency work.³⁰

But unquestionably, throughout EU Member States, a process of acceptance and progressive liberalization of temporary work started to emerge in the 1990s, and was eventually encouraged and reinforced by EU law and EU employment policy in the later part of the decade.³¹ For instance, at its inception, the European Employment Strategy (EES) encouraged Member States to “examine the possibility of incorporating ... more adaptable types of contract, taking into account the fact that forms of employment are increasingly diverse”.³² The adoption of Directive 2008/104³³ cemented the view that temporary agency work “contributes to job creation and to participation and integration in the labour market”,³⁴ and encouraged “a review of any restrictions or prohibitions which may have been imposed on temporary agency work” as a quid pro quo for “improvement in the minimum protection for temporary agency workers”.³⁵ While in recent years this type of policy prescription has often been accompanied by cautious warnings against the risks posed by “segmented labour markets”,³⁶ EU institutions have by and large consistently encouraged the liberalization of temporary work and temporary agency work, including in the context of recent financial assistance and adjustment programmes to particular EU Member States, with the Commission explicitly asking Greece, for instance, to “facilitate the use of temporary ... contracts”,³⁷ and to “eliminate temporal limits in the use of temporary working agencies [and] adopt legislation to promote fixed-term contracts”.³⁸

It is against this background that the present report offers a supranational and comparative overview of the regulation of temporary agency work in a selection of EU Member States (namely Belgium, Estonia, France, Germany, Hungary, Italy, the Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom), with a particular focus on Greece.

This report is structured as follows. After the present introductory paragraphs, the second section offers an analysis of the incidence, growth and characteristics of temporary agency work, and temporary work more broadly, in the 13 EU Member States covered by the study, including some consideration of the potential effects of any given regulatory environment on the incidence of temporary agency work. That section also analyses the characteristics of workers and the occupations that are most commonly associated with temporary work, and briefly engages with the debate on whether, and under what conditions, temporary agency work can constitute a potential stepping stone for so-called labour market entrants, as well as the extent to which it represents a “trap” in

27. Cf. N. Countouris: *The changing law of the employment relationship* (Aldershot, Ashgate, 2007), Chapter 3.

28. Council Resolution of 21 January 1974 concerning a Social Action Programme, [1974] OJ C 13/3.

29. European Commission: *Taking stock of five years of the European Employment Strategy*, COM (2002) 416 final (Brussels), p. 14.

30. See European Commission: *Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers*, COM(2002) 149 final (Brussels) pp. 5–7 in particular.

31. For an analysis of the key aspects of these developments see Countouris, *The changing law of the employment relationship*, op. cit., pp. 116–121, 136–141, and Chapter 6.

32. European Commission: *The 1998 Employment Guidelines: Council Resolution of 15 December 1997* (Luxembourg, 1998).

33. Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008 on temporary agency work, [2008] OJ L 327/9.

34. Paragraph 11 of the Preamble to the Directive.

35. Paragraph 18 of the Preamble to the Directive.

36. European Commission: *Green Paper: Modernising labour law to meet the challenges of the 21st century*, COM (2006) 708 final (Brussels), p. 8.

37. European Commission: *The Economic Adjustment Programme for Greece: First review – summer 2010*, European Economy Occasional Papers No. 68 (Brussels, 2010), p. 42.

38. European Commission: *The Economic Adjustment Programme for Greece: Second review – autumn 2010*, European Economy Occasional Papers No. 72 (Brussels, 2010), p. 30.

the sense of leading to an overall downgrading of working conditions in Europe. This is followed by a brief review of the possible social effects of temporary work, particularly with regard to occupational health and safety.

The third section of the report analyses key EU and ILO legal instruments and provisions which, in various ways and to varying degrees, come together to shape the regulation of temporary agency work in the countries covered by the report. The key instruments that will be analysed are:

- European Union Directive 2008/104 (the Temporary Agency Work Directive);
- ILO Private Employment Agencies Convention, 1997 (No. 181); and
- Article 3 of the European Social Charter (to a more limited extent).

The third section also includes occasional references to European Union Directive 91/383/EEC (Health and Safety for Temporary Workers Directive) and European Union Directive 99/70 (Fixed-term Work Directive), as well as to other relevant ILO instruments.

The fourth section of the report provides a comparative review and analysis of the domestic regulation of temporary employment agencies, by focusing on a number of key aspects of these forms of work, including in particular:

- (i) the key legal typologies through which temporary agency work is supplied in domestic labour markets;
- (ii) the key principles regulating the provision of temporary work and temporary agency work, with a particular focus on the principles of equal treatment and of ensuring adequate protection to temporary workers;
- (iii) the key restrictions applicable to the conclusion or renewal of temporary agency work contracts including, where relevant, measures introduced to prevent or address abuses arising from the unlawful conclusion of such contracts; and
- (iv) the extent to which the regulation of temporary work and temporary agency work is mediated or affected by provisions collectively agreed by the social partners.

A further purpose of Section 4 is to explore the extent to which the relevant regulatory framework in the area has developed over the last few years.

The fifth section of the report provides a more detailed assessment of the regulation of temporary agency work in Greece, partly replicating the structure of the analysis carried out in Section 4.

This analysis of Greek legislation is followed by a concluding section drawing on the analytical and comparative findings of the report to offer a short series of regulatory and policy reflections on TAW in Europe in general and in Greece, more specifically.

Prevalence, observed trends and social effects of temporary work

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2.1 Prevalence and observed trends

Temporary agency work (TAW) – temporary work provided through an intermediary agency³⁹ – is an established feature of European labour markets. Quantitative data on temporary agency work are difficult to garner and assess,⁴⁰ partly because of the challenges faced by surveys based on the self-assessment of respondents in what is a highly complex and technical area of labour market regulation.⁴¹ A study produced for the European Parliament in 2013 highlighted that while according to the International Confederation of Private Employment Agencies (CIETT) the 2010 figure for TAW in the United Kingdom was 3.1 per cent, the equivalent figure in the European Labour Force Survey (ELFS) amounted to only 0.4 per cent,⁴² with similar discrepancies affecting the data on TAW in Hungary, Ireland and Spain. So statistical data in this area are problematic and need to be approached and assessed carefully.

In spite of these quantitative and statistical challenges and occasional inconsistencies, most studies indicate a growing trend in the number of temporary workers and temporary agency workers in most EU Member States.⁴³ The presence of temporary forms of employment in EU labour markets (especially when considered alongside the resilience of the ‘self-employed’⁴⁴ and of the ‘self-employed persons without employees’⁴⁵ figures in Eurostat datasets), confirms the structural presence in the EU Member States of forms of work that, on the basis of their temporary and sometimes triangular nature, depart from the archetypal open-ended and bilateral “standard employment relationship”. More and more workers offer their work and services through contracts with a fixed duration, where the conclusion of the contract is established by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event.

A number of studies suggest that a growing portion of these temporary workers are recruited via temporary employment agencies. According to CIEET, for instance, there were 8.25 million temporary agency workers employed by CIETT member agencies in Europe in 2012, representing 23 per cent of the world’s temporary agency employment. Within Europe, France employed the most workers during the year (two million), followed by the United Kingdom (1.1 million), Germany (878,000) and Italy (470,000). According to CIEET data, only 12,000 Greek workers were employed as agency workers by CIETT member agencies in 2012; the daily average number of full-time equivalent workers for that year was 6,900.⁴⁶

In relative percentage terms, the differences in the share of temporary employment agency employment appear less dramatic, but Greece has the lowest incidence of TAW among the 13 European Member States under study, according to data from the European Labour Force

39. More precisely, the term “temporary agency work” is used in this report to refer to the employment relationship between a temporary employment business or agency and a worker, where the latter is assigned to work for and under the control of a user, be that a natural or legal person, for a limited period of time. This working definition, unless otherwise stated, does not refer to contracts or relationships whereby agency workers are assigned to a user on a permanent basis, or to contracts or relationships that are not contracts or relationships in the employment sphere

40. A lucid analysis of this challenge arising from TAW data collection is provided in W. Eichhorst at al.: *The role and activities of employment agencies*, IZA Research Report No. 57 (Bonn, Institute for the Study of Labour (IZA), 2013), pp. 23–26 in particular. Available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507459/IPOL-EMPL_ET\(2013\)507459_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507459/IPOL-EMPL_ET(2013)507459_EN.pdf).

41. As noted by B. Burchell, S. Deakin and S. Honey: “It is likely however, given the complexity of establishing status and the range of factors tribunals have to take into account, that some individuals may not be certain of their status or they maybe mistaken” (*The employment status of individuals in non-standard employment* (London, Department of Trade and Industry (DTI), 1999), p. 28)). Eichhorst et al. (op. cit.) also note that “temporary agency workers with a long-term assignment might not feel like temporary agency workers” (p. 26). A recent review of employment status by the UK Department for Business, Innovation and Skills (BIS) also notes: “In many instances workers are not aware of their employment status”. See ‘Employment review launched to improve clarity and status of British workforce’ press release (6 October 2014) available at <https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce>.

42. Eichhorst at al., *The role and activities of employment agencies*, op. cit., p. 25.

43. See European Commission: *Employment and social developments in Europe 2012* (Luxembourg, 2012); European Commission: *Employment in Europe 1999* (Luxembourg, 1999).

44. European Commission, *Employment and Social Developments in Europe 2012* (Luxembourg: Publications Office of the European Union, 2012), page 31.

45. See European Employment Observatory Review: *Self-employment in Europe 2010* (Luxembourg, Publications Office of the European Union, 2010), p. 6. According to Eurostat’s Labour Force Survey, in 2011 the EU27 had some 32.7 million self-employed workers. The Eurostat dataset code is *lfsa_esgan2* and provides a separate figure (which in 2011 stood at 21.5 million, for “self-employed persons without employees (own account workers)”.

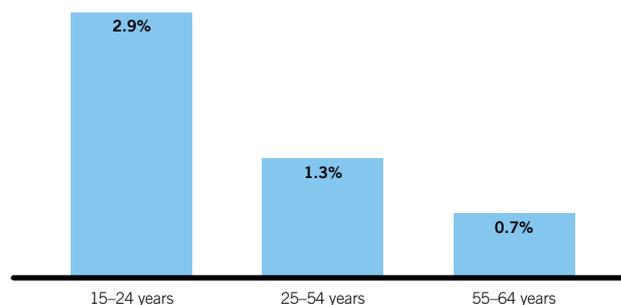
46. CIETT: *Economic Report* (Brussels, 2014 edition). The data is collected from CIETT members; thus the figures represent only temporary agency workers who have worked for a CIETT member agency.

Survey.⁴⁷ Since, as further discussed in Section 5, the legal framework regulating TAW in Greece appears to be in line with EU Directive 2008/104, and since, as emerging from the analysis in Section 4, the country does not appear to be an outlier with respect to its regulation when compared to a number of other EU Member States, it is difficult to attribute the low incidence of TAW exclusively or mainly to the regulatory framework. The comparatively low figure could instead be indicative of the structure of the Greek economy and labour market, whereby 36 per cent of the labour force is self-employed, above the rates of Chile (27%) or Italy (26%) and most businesses are small (96 per cent have fewer than ten employees).⁴⁸ The Business Registry of Greece, which gives employment information for firms with ten or more employees, reports that in 2002 only 55 per cent of employees worked in large firms, defined as having 100 or more employees.⁴⁹ According to CIETT, nearly 60 per cent of the firms that use temporary agency workers have more than 100 employees, thus the high incidence of employment in small firms in Greece could be affecting the usage of temporary agency work. Finally, the still severe employment crisis in Greece – with a 2014 unemployment rate of 27 per cent – means that firms can often operate under excess capacity and thus may not need to recur to temporary workers to supplement their permanent staff. Indeed, temporary agency employment in Greece, like in many other parts of the world, has been affected by the economic crisis. During 2004–07, TAW employment in Greece had grown by 133 per cent, but then fell by 37 per cent over 2007–11.⁵⁰

2.2 Characteristics of temporary agency workers

Disaggregating data on temporary agency work by age, occupation and skill level reveals that the incidence of TAW does not cut evenly across the labour market; younger workers and workers employed in less-skilled occupations are far more likely to find themselves in TAW than older and more skilled labour market participants. In 2012, young workers (2.9%), aged 15–24, had an temporary agency employment rate that was more than double that of prime-aged workers (1.3%), aged 25–54 (figure 2.1). TAW is also more prevalent among elementary occupations, with 3.3 per cent of workers engaged in temporary agency work, followed by plant and machine operators with

Figure 2.1
Workers employed in temporary agency work, by age, selected EU countries, 2012 (percentages)



Note: Countries include Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Spain, Sweden and United Kingdom. The unit of investigation is the working population aged 15 to 64 years according to the ILO definition (including self-employed and family workers).

Source: ExAKT/IZA calculations based on European Labour Force Survey.

47. Eichhorst et al., *The role and activities of employment agencies*, op. cit., p. 25.

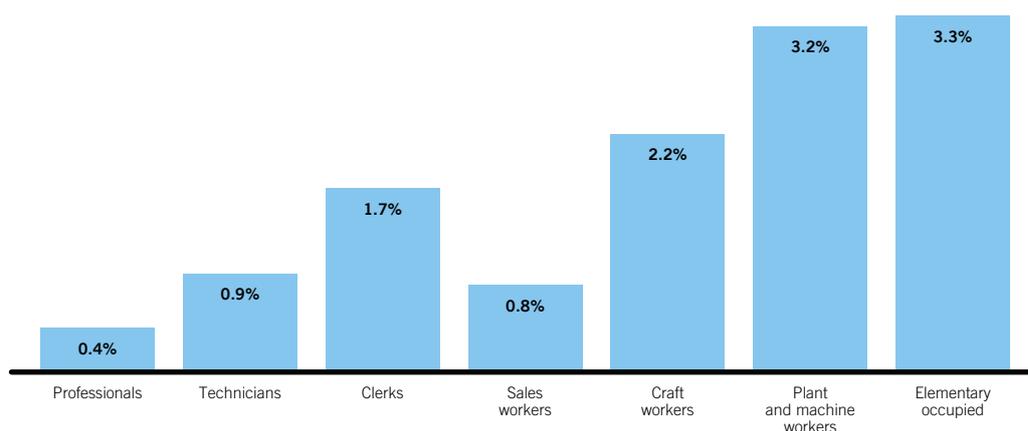
48. Data from OECD: *Factbook 2011–2012*. Available at: <http://www.oecd-ilibrary.org/sites/factbook-2011-en/07/01/04/index.html?itemId=/content/chapter/factbook-2011-61-en>,

49. Hellenic Statistical Authority: 2002 Business Registry.

In comparison, approximately 71 per cent of American workers work in firms with 100 or more employees, if the sample is restricted to firms with nine or more employees (United States Bureau of Labour Statistics, 2013).

50. S. McKay et al.: *Study on precarious work and social rights*, Report for the European Commission, Final report (London, Working Lives Research Institute (WLRI), London Metropolitan University, 2012).

Figure 2.2
Workers employed in temporary agency work, by occupation, selected EU countries, 2012 (percentages)



Note: Countries include Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Spain, Sweden and United Kingdom. The unit of investigation is the working population aged 15 to 64 years according to the ILO definition (including self-employed and family workers).

Source: ExAKT/IZA calculations based on European Labour Force Survey.

3.2 per cent. The incidence of temporary agency work among professional jobs was lowest, with only 0.4 per cent of workers employed under TAW contracts (figure 2.2). A similar pattern emerges from educational data: the incidence of temporary agency work among the low-skilled (1.8%) is more than double what it is for the high-skilled (0.8%).

Temporary agency work is thus more frequently associated with workers who have weaker bargaining power in the labour market, making them more vulnerable to a possible deterioration in working conditions. It also means that the flexibility coveted by businesses is being shouldered disproportionately by the less-skilled.

2.3 Policy implications of temporary agency work

Debates on the merits of temporary agency work have centred on two main issues: whether these jobs provide a stepping stone into the labour market for workers who may otherwise not have been employed; and the working conditions of temporary agency work, including access to training, wages and occupational safety and health.

2.3.1 Temporary agency work as a stepping-stone, or as a trap?

Whether temporary agency employment can provide a stepping-stone for workers into regular employment has been the subject of numerous empirical studies. Hveem investigates the probability that a temporary agency worker will end up in permanent employment in Sweden. He finds no evidence of a stepping-stone effect; rather he finds a negative regular employment effect, though this slowly fades over a couple of years.⁵¹ Similarly, Kvasnicka finds no empirical support for the stepping-stone hypothesis in Germany. Temporary agency workers do not seem to benefit from improved chances of employment outside agency work over a four-year period; however, they do not seem to suffer from larger risks of future unemployment either. Thus, temporary agency work seems to help to bring the unemployed into this specific type of work, but not necessarily into permanent regular jobs.⁵²

51. J. Hveem: "Are temporary work agencies stepping-stones into regular employment?", in *IZA Journal of Migration* (2013, Vol. 2, No. 21).

52. M. Kvasnicka: Does temporary work help provide a stepping stone to regular employment?", in D. H. Autor (ed.): *Studies of labor market intermediation* (Chicago, University Of Chicago Press, 2009), pp. 335–372.

Some authors suggest that the probability of finding a permanent job through temporary agency work is dependent on observable characteristics and regions. For Spain, Garcia-Perez and Muñoz-Bullon find that working for a temporary work agency improves the probability for high-skilled workers of achieving a permanent contract.⁵³ For Italy, Ichino, Mealli and Nannicini find that temporary agency work increases the probability of finding a permanent job, but this effect is heterogeneous across regions, and with respect to observable characteristics such as age, education and economic sector. The probability of finding an occupation with permanent duration is higher for workers in services than for workers in manufacturing and also higher for younger workers during the transition from school to work.⁵⁴

2.3.2 Effects on working conditions, including wages and training

Despite the emphasis on equal treatment in the EU Directive, empirical studies of wage differentials among temporary agency workers vis-à-vis other workers regularly find evidence of statistically significant wage penalties for temporary agency workers. Jahn, using administrative data for Germany, finds that the wage gap for German temporary agency workers is rather large (15 to 18 per cent less than permanent workers), although there is variation between occupation and region. However, she also finds that two years after leaving the temporary agency work sector, these workers overcome the former wage penalty.⁵⁵ In a follow-up study, Jahn and Pozzoli find that the sizeable wage gap for temporary agency workers decreases with time spent in the sector, as temporary agency workers are able to accumulate human capital while employed in this sector. However, agency employment seems to stigmatize those workers who move frequently from one temporary agency job to the next.⁵⁶ Niebuhr and Buch studied the role of TAW for apprenticeship graduates, and found a pronounced wage gap and persistent adverse wage effects, as opposed to the absence of a significant wage disadvantage for graduates who switch to regular employment. However, as an important percentage of graduates who enter the labour market via a temporary agency job do not manage permanently to leave temporary agency work, they continue to be affected by persistent wage penalties.⁵⁷

Böheim and Cardoso, using linked employer–employee data for Portugal, find that TAW workers earn lower wages than their peers, but that this difference is mostly due to workers' characteristics. They estimate that TAW workers earn on average 9 per cent less than comparable workers when controlling for workers' observable attributes only; when controlling for unobservable characteristics this difference is reduced to 1 per cent. In the Portuguese case, according to this study, young workers earn higher wages in TAW than their peers in other firms. This is not the case for prime-age and older workers. Also, the authors find no stigma effect for young workers which could slow wage progression after working for a temporary work agency, in contrast to prime-age and older workers.⁵⁸

Forde and Slater found for the United Kingdom that observed wage gaps are reduced when individual characteristics are taken into account, although they remain relatively large and significant for agency workers. Even after controlling for human capital differences they find an 11 per cent hourly wage penalty for male agency workers and a 6 per cent penalty for women in relation to permanent workers.⁵⁹

Training is important for upgrading workers' skills and thus their ability to command higher wages. The European Labour Force Survey reports that temporary agency workers received training, in the four weeks preceding the interview, to the same extent as full-time permanent employees

53. J. I. Garcia-Perez and F. Muñoz-Bullon: "Temporary help agencies and occupational mobility", in *Oxford Bulletin of Economics and Statistics* (2005, Vol. 67, No. 2), pp. 163–180.

54. A. Ichino, F. Mealli and T. Nannicini: "From temporary help to permanent employment: What can we learn from matching estimators and their sensitivity?", in *Journal of Applied Econometrics* (2008, Vol. 23), pp. 305–327.

55. E. J. Jahn: "Reassessing the wage penalty for temps in Germany", in *Journal of Economics and Statistics* (2010, Vol. 230, No. 2), pp. 208–233.

56. E. J. Jahn and D. Pozzoli: "The pay gap of temporary agency workers: Does the temp sector experience pay off?", in *Labour Economics* (2013, Vol. 24, Issue C), pp. 48–57.

57. A. Niebuhr and T. Buch: *Wage effects of labor market entry via temporary work agency employment: Evidence for German apprenticeship graduates*, Paper presented to the Beiträge zur Jahrestagung des Vereins für Socialpolitik 2013: Wettbewerbspolitik und Regulierung in einer globalen Wirtschaftsordnung. Available at: https://www.econstor.eu/dspace/bitstream/10419/79818/1/VfS_2013_pid_32.pdf.

58. R. Böheim and A. R. Cardoso: "Temporary help services employment in Portugal, 1995–2000", in D. H. Autor (ed.): *Studies of labor market intermediation*, op. cit.

59. C. Forde and G. Slater: "Agency working in Britain: Character, consequences and regulation", in *British Journal of Industrial Relations* (2005, Vol. 43, No. 2), pp. 249–271.

(10 per cent for TAW v. 9.6 per cent for full-time permanent workers, according to 2012 ELFS data). However, over a longer period, there does appear to be a significant training gap. Nienhüser and Matiaske, using data for 15 European countries from the European Working Conditions Survey, find that 82 per cent of temporary agency workers had received no employer-provided training in the previous year, compared with 63 per cent of permanent workers. Based on a multivariate analysis, they find that a temporary agency worker is 2.5 times less likely to be provided training and, furthermore, that the risk of low pay is four times higher. The authors also attempt to ascertain whether wage penalties are lower for countries that abide by the principle of non-discrimination given in the EU Directive on Temporary Agency Work, but did not find statistical confirmation of this hypothesis.⁶⁰

2.3.3 Effects on occupational safety and health

Access to training is not just important for developing workers' skills and earnings potential, but also in preventing accidents. A temporary worker who does not receive training on basic safety at the workplace runs the risk of having an industrial accident with potentially deleterious consequences for the worker and the workplace. In general, temporary agency workers, like other workers on temporary contracts, have less knowledge about their work environment⁶¹ and rights and feel more constrained by their status not to complain about work hazards, making it more difficult for them to change their working conditions. They are also unlikely to be represented in health and safety committees.⁶² Although they suffer many of the same risks of workers on temporary contracts, because of the triangular employment relationship, with the contracting agency paying the wages but the user firm giving instructions, there is greater potential for accidents, even if responsibility for safety and health at the workplace lies with the user firm.

In a 2007 survey conducted by the European Agency for Safety and Health at Work (EU/OSHA)⁶³ Risk Observatory, temporary workers of more than six months' standing suffer the highest frequency of labour-related negative health effects (37 per cent when compared to the total number of workers employed under different types of contract), since in addition to the activity being temporary and more intense, they are exposed to physical and environmental risks (more prolonged than for shorter temporary contracts) and the psychological effects of workplace pressure. They are also at greater risk of workplace accidents because of a lack of training.

Moreover, there is evidence of greater accident rates among temporary and temporary agency workers. In France, a 1998 inquiry into working conditions by DARES revealed that the accident rate involving workers in temporary employment companies was 13.3 per cent compared with an average of 8.5 per cent for the country as a whole, and that for apprentices the rate was as high as 15.7 per cent. In Spain, the comparative statistics for accidents between 1988 and 1995 indicate that the accident rate per 1,000 workers was 2.47 times higher for temporary workers than for permanent employees, and that the rate of fatal accidents was 1.8 times higher. In Belgium, in 2002, the accident rate for permanent manual workers, or those with long-term contracts, stood at 61.7, compared with 124.56 for manual workers hired via temporary employment agencies.

60. W. Nienhüser and W. Matiaske: "Effects of the 'principle of non-discrimination' on temporary agency work: Compensation and working conditions of temporary agency workers in 15 European countries", in *Industrial Relations Journal* (2006, Vol. 37, No. 1), pp. 64–77.

61. G. Aronsson: "Contingent workers and health and safety", in *Work, Employment and Society* (2009, Vol. 13, No. 3), pp. 439–459.

62. M. Quinlan and C. Mayhew: "Precarious employment, work re-organisation and the fracturing of occupational health and safety management", in K. Frick, P. Langaa Jensen and T. Wilthagen (eds.): *Systematic OHS management: perspectives on an international development* (Amsterdam, Elsevier Science, 2000).

63. European Agency for Safety and Health at Work (EU-OSHA): *Expert forecast on emerging psychosocial risks related to occupational safety and health* (Luxembourg, Publications Office of the European Union, 2007).

The supranational regulation of TAW in Europe: Key provisions and principles

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This section is composed of three main subsections. The first offers a brief analysis of European Union Directive 2008/104, which came into force in December 2011. The second provides a summary overview of ILO Convention No. 181, which has been ratified by 28 countries, 12 of which are also EU Member States. A third subsection provides a brief assessment of the impact that the European Social Charter (ESC) has on the regulation of TAW in Europe.

3.1 The EU regulation of TAW: Directive 2008/104 and relationship with other EU instruments and sources

The EU legal framework on TAW is predominantly, though not exclusively, shaped by Directive 2008/104 on Temporary Agency Work (hereinafter “the Directive”).⁶⁴ The following discussion briefly elaborates on a selection of key issues and provisions surrounding the application of this Directive.

Directive 2008/104 is the key instrument shaping the EU’s regulation of temporary agency work, although it should be noted that, as recognized by the Directive itself, other instruments also play an important role in shaping the regulatory framework, in particular Directive 91/383 (Health and Safety of Temporary Workers Directive),⁶⁵ Directive 96/71 (Posted Workers Directive),⁶⁶ and Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU).⁶⁷ The Della Rocca case (Case C-290/12) has effectively established that Directive 99/70 (Fixed-term Work Directive) does not apply to TAW, and Article 2(2)(e) of Directive 2006/123 (Services Directive) explicitly excludes the services of temporary work agencies from its scope. Finally, while not directly recalled by Directive 2008/104, it is arguable that Directive 91/533 also applies, albeit perhaps tangentially, to the regulation of TAW in EU Member States.⁶⁸

3.1.1 Scope of application

Some key concepts in the Directive are defined below.

- **Worker** (A 3(1)(a)) and **contract of employment or employment relationship** (A 3(1)(c)). The Directive specifies that a “worker” is “any person who, in the Member State concerned, is protected as a worker under national employment law” definitions. The same would arguably apply to the definition of “contract or employment relationship”. It is, however, also arguable that this does not give national employment law systems unfettered discretion in deciding who is to be seen as a worker and what a contract or relationship amount to. The Court of Justice of the European Union (CJEU), in Case C-393/10, *O’Brien*, established (in respect of the similarly worded provision contained in Directive 97/81, the Part-time Work Directive), that any exclusions arising from a

64. European Union Directive 2008/104. At the time of writing, the Court of Justice of the European Union (CJEU) has only had one opportunity to clarify by means of interpretation this relatively recent instrument, in Case C-290/12 (*Della Rocca*), with an additional reference now pending before it: Case C-533/13, *AKT*. Both the Commission and the European social partners have however sought to contribute to elaborating further on the implications of the Directive and on its transposition in EU Member States: see in particular, European Commission: *Transposition of Directive 2008/104/EC on temporary agency work*, Report of the Expert Group (Luxembourg, 2011); I. Schömann and C. Guedes: *Temporary agency work in the European Union: Implementation of Directive 2008/104/EC in the Member States*, ETUI Report No. 125 (Brussels, European Trade Union Institute, 2012); E. Voss et al.: *The role of temporary agency work and labour market transitions in Europe: Institutional frameworks, empirical evidence, good practice and the impact of social dialogue* (Hamburg, EUROCIETT/UNI Europa, 2013).

65. See Recital 13 of the preliminary observations of Directive 2008/104, arguably conferring a *lex specialis* role on Directive 91/383.

66. See Recital 22, arguably introducing a requirement for the coordinated implementation of the two Directives.

67. See Recital 22 of the preliminary observations of Directive 2008/104. See also Case C-397/10, *Commission v Belgique*. Two contrasting arguments can be put forward here. The first is that Article 4(4) of the Directive has now introduced an explicit and special exception for national rules on registration, licensing, certification and financial guarantees or monitoring of temporary work agencies. The second one that such rules must in any case not hinder market access, or do so in a justified and proportionate way, in compliance with Articles 49 and 56 TFEU.

68. See Opinion of AG Ruiz-Jarabo Colomer in Case C-369/96, *Arblade*, and Case C-306/0, *Ruben Andersen*.

domestic definitions “may be permitted ... only if the nature of the employment relationship concerned is substantially different from the relationship between employers and their employees”, and effectively amounts to genuine self-employed activity. The intermediation of self-employed contractors, an activity present in a number of EU Member States, thus falls outside the scope of the Directive.

- **Temporary work agency** (A3(1)(b)). The definition contained in the Directive is such as to cover both public and private legal and natural persons concluding contracts or “employment relationships” with a worker with a view to “temporarily” assigning him or her to work for a user and under the user’s supervision. This arguably suggests that employment businesses that act as intermediaries on the labour market by introducing workers or self-employed professionals to companies willing to recruit them through a bilateral contract of employment or contract for services are outside the scope of the Directive. By the same token, it is arguable that other kinds of services often provided by employment businesses (such as training, placement services whereby the agency does not retain an employment contract or relationship with the worker) and “labour-only subcontracting” practices are also likely to fall outside the scope of the Directive.
- **Temporary agency worker** (A 3(1)(c)). A temporary agency worker is defined as a “worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction”. In the absence of a specific interpretation by the CJEU it is unclear whether agency workers that are assigned to a user company to work permanently fall within the scope of the Directive.⁶⁹

3.1.2 The equal treatment principle (ETP)

The central regulatory principle contained in Directive 2008/104 is the equal treatment principle in respect of “basic working and employment conditions” (defined in Article 3(1)(f)), between temporary agency workers and workers who are directly employed by the user company to which they are assigned (Article 5).

3.1.3 Exceptions, derogations, and qualifications to the ETP

The ETP is subject to a limited number of qualified exceptions contained in Article 5(2) (in respect of pay, for temporary agency workers employed under open-ended contracts and paid between assignments); Article 5(3) (collective opt-outs, which must however respect “the overall protection of temporary agency workers”) and Article 5(4) (for Member States with no universally applicable collective agreements that, having consulted with the social partners, can derogate from the ETP, for instance by means of a qualifying period, provided however “that an adequate level of protection is provided for temporary agency workers”). It should also be noted that Article 1(3) permits a further derogation for contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme, subject to prior consultation with the social partners.⁷⁰

3.1.4 The ETP and anti-avoidance measures

Article 5(5) applies to the ETP in general and, as such, also covers the derogations contained in Art 5(2)-(3)-(4). It asks Member States to adopt measures aimed at preventing “misuse in the application” of these provisions. Therefore it is understood that the anti-avoidance measures adopted in each Member State are likely to differ depending on the type of derogation enacted in each system (and by the presence, status and content of relevant collective agreements). The provision also calls for more specific anti-avoidance measures to be adopted “to prevent ... successive assignments

69. We note that a number of national judicial decisions have so far suggested that assignments of an undetermined duration fall outside the scope of the Directive. See, for the United Kingdom, *Moran v Ideal Cleaning Services Ltd* (Appeal No. UKEAT/0274/13/DM) and, for Germany, the *Bundesarbeitsgericht Beschluss vom 10. Juli 2013 - 7 ABR 91/11*. See also European Commission, *Transposition of Directive 2008/104/EC on temporary agency work*, op. cit., p. 14.

70. Case C-157/11, *Sibilio* explicitly acknowledged this type of derogation, in the context of Directive 99/70 (the Fixed-term Work Directive).

designed to circumvent the provisions of this Directive”, a possible reference to systems which subject the ETP to a “qualifying period” (under Art 5(4)).

3.1.5 Restrictions on and prohibition of temporary agency workers

Article 4(2) of the Directive asks Member States, in consultation with the social partners, to review restrictions or prohibitions on TAW by 5 December 2011, and verify whether these could be justified on grounds of “general interest relating in particular to the protection of temporary agency workers”, “health and safety at work” and the “need to ensure that the labour market functions properly and abuses are prevented” (outlined in Art 4(1)). According to Art 4(4), this requirement was introduced “without prejudice” to national requirements pertaining to the “registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies”. The exact scope and permissibility of these restrictions has yet to be decided upon by the CJEU.⁷¹

3.1.6 Minimum harmonization and non-regression clause

Article 9(1) of Directive 2008/104 recalls its minimum harmonization nature, and the right of Member States to apply or introduce rules (including collectively agreed ones) which are more favourable to workers. Article 9(2) restates the “non-regression clause” generally associated with this type of instruments.

3.2 The ILO regulation of TAW: The Private Employment Agencies Convention, 1997 (No. 181)

In several jurisdictions, triangular arrangements were prohibited or heavily restricted during the course of the 20th century; this approach was shared by the first international labour standards dealing with these issues: the ILO Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) and the Fee-Charging Employment Agencies Convention, 1933 (No. 34). During recent decades, as a consequence of a wider economic and policy pressure towards flexibilization of labour markets, also leading to reregulation and deregulation of employment protection, TAW has been increasingly liberalized,⁷² leading to debate and discussions between governments and social partners at the national and international level and to the adoption of international or supranational standards, such as the ILO Private Employment Agencies Convention, 1997 (No. 181) and Private Employment Agencies Recommendation, 1997 (No. 188), which represented a major change from the more restrictive approach of the previous relevant international labour standards mentioned above.

One of the declared aims of Convention No. 181 is to allow the operation of private employment agencies whilst ensuring the protection of workers using their services. Under the Convention private employment agencies can, however, be prohibited from operating with regard to some categories of workers or economic activities. Substantial importance is given to fundamental principles and rights at work to be enjoyed by temporary agency workers, in particular with regard to their right to freedom of association and to collective bargaining (Article 4) and the right not to be discriminated against (Article 5).

In addition, Convention No. 181 requires ratifying States to ensure adequate protection by allocating the respective responsibilities of private employment agencies and of user enterprises in relation to a series of rights and principles, such as freedom of association; collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers claims; and maternity and parental protection and benefits (Article 12). Moreover, workers should not be charged any fee or

71. A preliminary reference on the interpretation of Article 4(1) is currently pending before the CJEU, see Case C-533/13, *AKT*.

72. In some countries, however, it is not possible to enter into TAW relationships under the current legislation (e.g. Albania, Algeria, Dominican Republic, Paraguay, Saudi Arabia, Tunisia, Turkey).

other expenses by agencies, unless a specific exception is made by public authorities in this respect and in the interest of workers (Article 7).

Further specific provision for TAW can be found in the Private Employment Agencies Recommendation, 1997 (No. 188). In addition, the Employment Relationship Recommendation, 2006 (No. 198) aims to ensure that standards are applicable to all forms of contractual arrangements, “including those involving multiple parties”.

3.2.1 Objectives and core protective provisions

Not unlike Directive 2008/104, Convention No. 181 explicitly states that its main purpose “is to allow the operation of private employment agencies as well as the protection of the workers using their services” (Article 2(3)). The core provisions of the Convention are tasked with making sure that TAWs benefit from the “adequate protection” and enjoyment of a number of fundamental rights at work, including freedom of association and collective bargaining (Article 4), equality of opportunity and treatment (Article 5), and, “in accordance with national law and practice”, the protection of their personal data (Article 6), as well as the protection and enjoyment of minimum wage levels, working time and working conditions, statutory social security, access to training, health and safety, and maternity and parental rights (Article 11). Article 7 introduces a qualified prohibition of fee-charging agencies.

3.2.2 Scope of application

Under Article 1 of the Convention, “private employment agencies” are defined as natural or legal persons offering both the kind of services covered by Directive 2008/104 and “consisting of employing workers with a view to making them available to a third party” (Article 1(b)), but also other services such as “matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships” (Article 1(a)), and “other services relating to job-seeking ... such as the provision of information, that do not set out to match specific offers of and applications for employment” (Article 1(c)). Article 1(2) specifies that the Convention applies to “workers” including jobseekers, and Article 8 provides that it also covers “migrant workers recruited or placed in [the Member’s] territory by private employment agencies”. However, in spite of this broad scope, the Convention would not seem to apply to those triangular situations where, despite the presence of a user enterprise, the intermediary does not have the status of an agency, or if it does, it does not employ workers under a contract of employment or an employment relationship.⁷³ In this respect, it is worth recalling that Recommendation No. 198 has explicitly asked Members to develop national policies to “ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due” (recommendation 4(c)).

3.2.3 Prohibitions and exclusions

Article 2(4)(a) provides that governments, having consulted with the relevant social partners, can “prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to” in the Convention. This is a provision in many ways equivalent to the one contained in Article 4(2) of Directive 2008/104, although, in contrast with the Directive, it does not suggest that such prohibitions must be justified on grounds of general interest. Article 2(4)(b) also permits governments to exclude workers or certain activities from the Convention, “provided that adequate protection is otherwise assured”. Ratifying members are explicitly requested to report on any prohibitions and exclusions adopted, and give reasons for them (Article 2(5)).

73. The slightly ambiguous choice of words “contract for service or a contract of employment with the agency who finds them work” used in the ILO report *Private employment agencies, temporary agency workers and their contribution to the labour market*, Issues Paper WPEAC/2009, Sectoral Activities Programme (Geneva, 2009), p. 2, is likely to be intended to refer to the “contract of service” (rather than the contract for services).

3.2.4 Allocation of responsibilities

In respect of workers covered by Convention No. 181, Article 12 of the Convention asks ratifying States to determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies and of user enterprises in relation to key employment rights such as collective bargaining, minimum wages, working time, and maternity protection. This is an important provision which ought to be read in light of Recommendation No. 198 discussed above, and which the ILO Committee of Experts appears to be insistent upon.⁷⁴

The adoption of Convention No. 181, to quote the words used by the employers' international confederation CIETT, "represented a dramatic U-turn of the ILO position regarding the private employment services industry: from prohibition (Conventions n°34 and n°96) to legal recognition and support of the development of the activities of private employment agencies".⁷⁵ It was introduced at a time when most EU countries were progressively dismantling or restructuring their public employment services (PES), which had held a monopolistic position in regard to the provision of job placement services and, as reflected in Article 13 of the Convention, when domestic and supranational policy makers were considering new options for shaping the relationship between PES and private employment agencies.⁷⁶ This Convention has in many ways acted as a catalyst for the emergence of a shared consensus over the function and regulation of TAW between the social partners, as reflected in the Memorandum of Understanding between CIETT Corporate Members and the UNI Global Union on Temporary Agency Work.⁷⁷ That said, it should be mentioned that some trade union representatives have expressed more cautious views about the benefits of TAW, and have continued to highlight the labour market risks associated with the expansion of agency work. Peter Rossman, IUF Communication Director, is reported by the ILO website as noting that "Convention 181 exists to protect workers, not to promote the expansion of the agencies in the guise of promoting decent work. The Convention has to be restored to its original function."⁷⁸

In conclusion, the Convention is a carefully drafted instrument whose main purpose is to strike a balance between the operation of TWA and the protection of temporary agency workers (see Article 2(3)). By comparison, EU Directive 2008/104 appears to be more geared towards a progressive liberalization and expansion of the TWA sector, following improvements in the minimum protection enjoyed by temporary agency workers (see for instance Recital 18 of the Directive). For instance, Article 2(4) of the Convention may grant more leeway to ratifying MSs seeking to restrict or prohibit TWA services in respect of certain categories of workers and certain economic activities than Article 4 of Directive 2008/104 does, particularly since the Convention does not seem to require that such prohibitions be justified on grounds of general interest.

3.3 The European Social Charter and the regulation of TAW

Neither the 1961 nor the 1996 European Social Charter (ESC) contain provisions addressed explicitly to TAW. However, in a number of instances the European Committee for Social Rights has made findings of non-conformity in respect of the failure of some Member States (of both the EU and the Council of Europe) to ensure that Article 3 of the Charter (The Right to Safe and Healthy Working Conditions) is applied to all workers, irrespective of the nature of their contracts, and to temporary workers in particular. In its 2009 Conclusions it noted that:

for the situation to be in conformity with Article 3§1 of the Charter, states must take the necessary measures to equip non-permanent workers (temporary agency workers and fixed-term workers) with information, training and medical surveillance adapted to their employment

74. See for example, *Poland* – CEACR, direct request, 2011. Available at www.ilo.org, NORMLEX: Direct Request (CEACR) - adopted 2011, published 101st ILC session (2012), Private Employment Agencies Convention, 1997 (No. 181) – Poland (Ratification: 2008).

75. CIETT website, at <http://www.ciett.org/index.php?id=47>.

76. Cf. P. Thuy, E. Hansen and D. Price: *The public employment service in a changing labour market* (Geneva, ILO, 2001); M. Freedland, P. Craig, C. Jacqueson and N. Kountouris: *Public employment services and European law* (Oxford, Oxford University Press, 2007).

77. Memorandum of Understanding between CIETT Corporate Members and UNI Global Union on Temporary Agency Work (San Diego, 2008). Available at: <http://www.ciett.org/fileadmin/templates/ciett/docs/MoU-UNI-CiettCMC-Final-EN.pdf>.

78. ILO: "Temporary agency work: What the unions expect from the ILO", online article. Available at: http://www.ilo.int/actrav/info/pr/WCMS_230602/lang-en/index.htm.

status, in order to avoid any discrimination in respect of health and safety in the workplace. The Committee indicates that these measures must ensure that such workers are afforded adequate protection, including against risks resulting from a succession of accumulated periods spent working for a variety of employers, exposed to dangerous substances, and, if necessary, must contain provisions prohibiting the use of vulnerable workers for some particularly dangerous tasks.⁷⁹

In other reports, the Committee has highlighted some inadequacies in the national legal frameworks of some EU Member States in respect of the issue of employers' liability in case of accidents at work affecting TAW. In an earlier report, it noted that

the issue of health and safety for temporary agency workers raises two particular issues of concern in the United Kingdom: (i) this category of workers are put at a risk because of inadequate training or preparation for the position, which is often linked to either the agency not making sufficient enquiries about the job, or the client not providing sufficient details; and (ii) where an accident has occurred both agency and hiring firm may refuse liability because of lack of clarity in the employment relationship.⁸⁰

The Committee also expects Member States to clarify whether “non-permanent workers are entitled to representation at work in health and safety questions”.⁸¹

It is, finally, worth noting that the Committee has long held the view that the rights protected under Article 3 do not exclusively apply to subordinate workers, but are also to be enjoyed by self-employed professionals.⁸²

79. European Committee of Social Rights: *Conclusions XIX-2 (2009)* (Strasbourg, Council of Europe, 2010), Spain, p. 415.

80. European Committee of Social Rights: *Conclusions XVIII-2* (Strasbourg, Council of Europe Publishing, 2007), United Kingdom, pp. 626–627.

81. *Ibid.*, p. 627.

82. See the finding of non-conformity against Spain, in European Committee of Social Rights, *Conclusions XIX-2*, *op. cit.*, Spain, p. 415.

Regulating temporary work and temporary agency work: A comparative analysis

4

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This section provides a selection of comparative findings emerging from some of the national reports received from the national experts involved in this research project.⁸³ The information received is presented in five separate parts, respectively focused on:

- the contractual forms through which temporary work through an agency or business can be provided;
- the substantive protections and rights accorded to temporary agency workers;
- any restrictions on the use of TAW still present in the national legal systems covered;
- the relevance, if any, of collective agreements to the regulation of TAW; and
- the extent to which companies are able to recruit workers on the basis of temporary contracts.

This section outlines the relevant legal provisions on the regulation of temporary work and temporary agencies in the EU Member States selected, as applicable in December 2013.

4.1 Contractual forms through which temporary work through an agency can be provided

In drafting the present section of the report, it has become apparent that whereas the adoption and implementation of Directive 2008/104 has undoubtedly contributed to a certain convergence between the national legal frameworks regulating TAW in Europe, there are also a number of persisting and significant differences in the way in which temporary work agency arrangements operate in the various Member States examined.

For instance, it is apparent that different legal systems permit the use of different types of contracts to encapsulate the work relationship between agency and worker. A first group of countries (e.g. Belgium, and pending an important reform, France) insists on the contracts between the agency and the worker being construed on the basis of fixed-term work contracts. It will become apparent from Section 5 that Greece is the other country covered by this report to adopt this approach. The rationale behind this approach is that temporary work is meant to be used to satisfy temporary needs of user companies, rather than permanent ones, and therefore the work relationship between the agency worker and the agency ought to reflect that. These systems, in effect, try to encourage user companies that need to recruit workers to satisfy permanent, rather than temporary, production needs to do so through bilateral and open-ended contracts of employment, rather than through atypical agency contracts.

A second, larger, group of legal systems (Estonia, Hungary, Italy, Portugal, Sweden and the United Kingdom) is open to temporary work contracts between worker and agency being construed on the basis of either fixed-term or open-ended contracts of employment. Some of these systems (e.g. Italy, Portugal) started by regulating temporary agency workers on the basis of their domestic regulation of fixed-term work, and only moved to this more hybrid model in recent years. Other countries (e.g. Germany) moved to this hybrid model from an original approach which effectively required that agencies conclude permanent contracts with their workers, in order to assign them on a temporary basis to user companies. Within this model, there are considerable variations. In countries such as Sweden, open-ended TAW contracts are the norm, whereas in countries such as Estonia, Spain or the United Kingdom, fixed-term (and often very short-term fixed-term) contracts are more prevalent.

Both the “fixed-term” model and the “hybrid model” fall within the scope of application of Directive 2008/104. In the view of the authors of the present report, it is unclear whether – and indeed

83. Tamás Gyulavári (Hungary), Frank Hendricx and Aline Van Bever (Belgium), Mijke Houwerzijl (The Netherlands), Anu Laas (Estonia), Jose Maria Miranda Boto (Spain and Portugal), Andreja Poje (Slovenia), Jenny Votinius (Sweden). The editors of this report also acted as national experts in respect of the remaining jurisdictions, namely France, Germany, Greece, Italy and the United Kingdom. The editors also gratefully acknowledge the help of Cathleen Rosendahl and Elisabeth Kohlbacher.

probably unlikely that – the Directive demands Member States to move to the hybrid model simply by providing, under Article 5(2), that they can opt out of the equal-treatment principle in respect of temporary agency workers “who have a permanent contract of employment with a temporary-work agency [and] continue to be paid in the time between assignments”.

As a side note to this debate, it is also worth noting that a number of national experts have suggested that TWA often intermediate between workers and users on the basis of contractual arrangements that are not, technically, contracts of employment, but rather, contracts for services or other independent/self-employed contracts (see the explicit note by the Estonian and UK experts). These types of tripartite arrangements are not covered by the EU and ILO instruments discussed in the previous section, but – as noted above - they fall within the scope of Article 3 of the European Social Charter.

It is also possible to split the Member States covered by this report into two separate groups or models by looking at the contractual arrangements used to assigning a temporary agency worker to a user company. A first, smaller, group of Member States (Italy and the United Kingdom) is open to temporary work contracts between worker and agency being construed on the basis of open-ended contracts of employment. A second, larger, group of countries (Belgium, France, Germany, Hungary, Portugal and Spain) has yet to embrace the idea that assignments of temporary agency workers to a user company could be for an undetermined or open-ended period. In July 2013, the German Federal Court agreed with a company works council’s refusal to accept the recruitment of temporary workers employed without a stipulated time limit at their companies, effectively interpreting the Temporary Work Act (*Arbeitnehmerüberlassungsgesetz, AÜG*) as demanding that temporary agency workers be “temporary” in the sense that an assignment cannot be for an indefinite duration.⁸⁴ The following table presents a partial reproduction and selection of the national responses provided by the expert contributors to this report, with references to relevant domestic legislation.

Contractual forms of temporary work through an agency

Member State	Information provided by national experts
Belgium	<p>Temporary work is regulated by the Law of 24 July 1987, which provides that temporary work can be carried out either in a direct relationship between employee and employer, or in the context of a triangular relationship involving a temporary work agency, a temporary worker, and a user. In practice, it is only through the latter form (agency work) that temporary work is used.</p> <p>As a rule, fixed-term contracts are used. Replacement contracts for the period during which the replaced person is absent, and contracts for well-defined work are the other contractual forms under which temporary work can be carried out (cf. Law of 24 July 1987 on Temporary Work, art. 2).</p>
Estonia	<p>Temporary agency work involves a tripartite relationship. It can take place on the basis of an employment contract (regulated by the Employment Contracts Act, ECA) or on the basis of a contract for services (or “service contract” in Estonia) (regulated by the Law of Obligations Act, LOA). It is presumed that an employment contract is entered into for an unspecified term. Temporary agency work contracts are often fixed-term contracts.</p> <p>In February 2012 the ECA was amended by articles on temporary agency work and the requirements of Directive 2008/104/EC were transposed into national law. The amended labour law enables fixed-term contracts and simplifies the extension of these contracts in case of temporary agency work. According to art. 6(5) of the ECA, in the case of an employment contract an employer and employee agree that the employee carries out work, on a temporary basis, in compliance with a third party’s (user undertaking) instructions and supervision, and the employer shall notify the employee that the duties are performed by way of temporary agency work in the user undertaking.</p>

84. Federal Labour Court (Bundesarbeitsgericht, BAG), decision of 10 July 2013 - 7 ABR 91/11. See ETUI: “German Labour Court rules on temporary agency workers”, press release (16 July 2013). Available at: <http://www.etui.org/News/German-Labour-Court-rules-on-temporary-agency-workers>

Contractual forms of temporary work through an agency (contd.)

Member State	Information provided by national experts
	<p>In the case of temporary agency work, a service contract is often used. According to art. 619 of the LOA, by an authorization agreement one person (the mandatary) undertakes to provide services to another person (the mandator) pursuant to an agreement (to perform the mandate) and the mandator undertakes to pay remuneration to the mandatary therefor if so agreed. It is presumed that a mandatary shall perform the mandate in person.</p> <p>The employment contract under the ECA offers more social guarantees than authorization agreements and self-employment. If temporary agency work takes place in the service contract relationship, the employer, temporary work agency and contractor should agree whether communication with the Health Insurance Fund and social tax payments are made by the mandator or mandatary.</p>
France	<p>At the time of writing, in France a contract with a temporary employment agency (<i>contrat de travail conclu avec une entreprise de travail temporaire</i>) is predominantly regulated by the French Labour Code (in particular, though not exclusively, arts. L1251-1 to L1251-58) and by a number of inter-sectoral, sectoral and company-level collective agreements.</p> <p>Traditionally French labour law has been insistent upon temporary agency work satisfying genuinely temporary needs of the user company (see art. L1251-5), and as such art. L1251-11 provides, in the first instance, that the <i>contrat de mission</i> (i.e. the contract between the temporary worker and the temporary agency) must indicate a term for its expiry, and is therefore understood as being a fixed-term contract, effectively coinciding with the assignment (structured as a separate commercial contract called <i>contrat de mise à disposition</i> and regulated by arts. L1251-42 to L1251-44). The same article, however, provides that such a term need not be present if the object of the contract is that of replacing an absent worker (or a worker whose contract is suspect, or a worker whose recruitment is pending), or in case of seasonal or inherently temporary work (considered as such by virtue of a decree or a collective agreement). In such cases the contract must however be concluded for a minimum term, and will expire upon the return of the absent worker, or the arrival of the worker being recruited.</p> <p>In 2011 the MEDEF-affiliated employers' association PRISME (<i>Regroupement des professionnels de l'intérim, services et métiers de l'emploi</i>) suggested the adoption of a <i>contrat de mission à durée indéterminée</i>.⁸⁵ While this suggestion was not taken up by the French Government, the most recent national collective agreement, <i>Accord du 10 juillet 2013 portant sur la sécurisation des parcours professionnels des salariés intérimaires</i>⁸⁶ does contemplate, in art. 2, the introduction of a new <i>contrat de travail à durée indéterminée conclu entre un intérimaire et l'ETT</i>, effectively breaking the traditional nexus between the temporary assignment and the temporary contract between the worker and the agency (which can now recruit temporary workers on open-ended contracts, but not assign them to users on an open-ended basis). It was expected that this national agreement would, in the course of 2014, lead to the adoption of a series of changes to the French Labour Code, to permit the adoption of these new open-ended TWA contracts.</p> <p>At the time of writing, therefore, French TWA can employ workers on open-ended contracts only when these workers are part of the agency's core staff (i.e. through a bilateral contract and without the agency being able to assign them to a user).</p> <p>The activities of French TAW are restricted by arts. L1251-1 to L1251-4 to the provision of temporary work (discussed in this report), the range of intermediation and placement services contemplated in art. L5321-1, and the provision of <i>travail à temps partagé</i> (where the temporary worker offers his services to more than one user) regulated by arts. L1252-1 to L1252-13 of the French Labour Code. Their operation is subject to various licensing, authorization and financial requirements mostly contained in arts. L1251-45 to L1251-53.</p>

85. See <http://la-page-de-l-emploi.pagepersonnel.fr/emploi-interim/interim-un-contrat-de-mission-a-duree-indeterminee/>.

86. Available at: <http://www.legifrance.gouv.fr/affichIDCC.do?idConvention=KALICONT000027944712&fastReqlD=962430423&fastPos=34&oldAction=rechConvColl>.

Contractual forms of temporary work through an agency (contd.)

Member State	Information provided by national experts
Germany	<p><i>Temporary work</i> is regulated through the Part-Time and Temporary Employment Act (<i>Teilzeit- und Befristungsgesetz</i>, TzBfG) implementing Directive 99/70/EC. The definition of temporary work is found in §3 Abs.1 TzBfG, as a contract of employment limited either by reference to a particular time period or task.</p> <p><i>Temporary agency work</i> is regulated in the Temporary Employment Act (<i>Arbeitnehmerüberlassungsgesetz</i>, AÜG), which has been the subject of repeated legislative updates (notably in 2003 and 2011). Temporary work agencies need to be licensed by the Ministry of Labour (§1). If workers are provided without authorization, or any other of the key entitlements set out in §9 (see section 4.2, below) are violated, the primary sanction is the establishment of a direct relationship of employment, which comes into force between the end-user and the worker due to the void of the other contractual arrangements in the triangular relationship (§10(1)).</p> <p>The <i>duration</i> of agency work agreements is a challenging question: §1(1) of the AÜG stipulates that the provision of workers to the end user is to be temporary (<i>vorübergehend</i>), without however specifying how this is to be achieved. A Federal Labour Court (BAG) ruling of December 2013 rejected an individual's claim following three years' service as a temporary agency worker due to a lack of definition of "temporary" relationships, and the absence of specific sanctions in the AÜG.⁸⁷ A more promising route can be found via the works council's co-determination rights in §14 AÜG. In the summer of 2013, the BAG upheld a works council's refusal under this paragraph to agree to the deployment of temporary agency workers, where the assignment had an open-ended character.⁸⁸</p> <p>Another route to challenge longer fixed-term agency work arrangements is through the (general) limitations on fixed-term work found in §14 of the TzBfG. These are however subject to provisions on objective justification.</p>
Hungary	<p>Temporary agency work is available in the following contractual forms:</p> <ul style="list-style-type: none"> • Employment relationship regulated by the Labour Code (arts. 214-222). • Public employment relationship regulated by the Labour Code (arts. 214-222). <p>However, agency work cannot be performed for basic tasks of the given institution, which are defined by a ministerial decree.</p> <p>The employment contract between the worker and the agency can be either a fixed-term contract or an open-ended one. However contractual arrangements tend to be of a temporary nature (even though agencies are progressively showing some interest in concluding open-ended contracts, partly to benefit from the equal treatment principle (ETP) opt-out option, actionable when agency workers are paid between assignments). The assignment of the temporary worker to a user company cannot exceed five years (a limit introduced as part of the implementation of EU Directive 2008/104), but assignments tend to be much shorter.</p>
Italy	<p>TAW in Italy is predominantly regulated by articles 20-28 of Legislative Decree no. 276 of 2003 (as modified, more recently, by LD 83/2012) and by national and sectoral collective agreements concluded by the most representative social partners. The main national collective agreement currently in force (but about to be renewed) was concluded in 2008 by ALAI-CISL, NIDIL-CGIL, UIL-CPO (organizing TAW) and ASSOLAVORO (representing roughly 85 per cent of the TW agencies business, and a EUROCIETT member).⁸⁹ There is also a draft agreement of 2013, on the basis of which a new national collective agreement will be concluded soon.⁹⁰</p> <p>TAW (<i>somministrazione di lavoro</i>) can take place through a variety of different contractual arrangements. The employment contract between the agency (<i>agenzia di lavoro</i>) and the worker can be either a fixed-term contract and an open-ended one (art. 22 of LD 276/2003). Article 22(2) provides that, if the contract is a fixed-term one, it is generally subject to Legislative Decree 2001/368</p>

87. BAG decision of 10 December 2013 - 9 AZR 51/13. The Government's Coalition Agreement contemplates a limitation to 1.5 years (18 months), without however addressing the much more challenging question as to which sanctions regime would apply to any contraventions.

88. BAG decision of 10 July 2013 - 7 ABR 91/11. See ETUI, "German Labour Court rules on temporary agency workers", op. cit.

89. See <http://www.nidil.cgil.it/files/Ccni%20somministrazione.pdf>.

90. See http://www.felsa.cisl.it/sites/default/files/Assolavoro_Accordo_27_settembre_2013_rinnovo_ccni.pdf.

Contractual forms of temporary work through an agency (contd.)

Member State Information provided by national experts

(implementing EU Directive 99/70), with the explicit exception of the provisions limiting successive renewals of fixed-term contracts contained in art. 5(3) of LD 2001/368.

The contract assigning a TAW to a user company (*contratto di somministrazione*) can be for either a fixed duration and for an indefinite one (art. 20). In the latter case it is usually referred to as a “staff leasing” contract (this type of contract was briefly prohibited between 2007 and 2010).

Temporary work agencies can also provide a number of other services (such as labour market intermediation, personnel recruitment and training), depending on their authorization and licensing status. The type and range of services that they can potentially offer is contained in arts. 4 and 20 of LD 276/2003, and their activities and operation are subject to the financial and statutory requirements and guarantees referred to in art. 5 of the Decree.

Netherlands Working for temporary employment agencies (TEAs) creates a triangular employment relationship. Since 1 January 1999, the relation between the temporary worker and the agency is explicitly classified as a contract of employment (art. 7:690 DCC), which means that all labour laws are applicable, with some specific exceptions made for these contracts. The relation between the temporary agency worker and the user firm is considered as a factual relationship, not being a contract of employment, but nevertheless subject to some protection under labour law (see section 4.2 below).

By classifying the relationship between an agency employee and the agency as an employment contract, the legal position of agency employees is enhanced. Nevertheless, there are some exceptions to the general rules pertaining to ordinary employment contracts. The first is that parties may agree in writing that the contract of employment will end without notice at the moment that the user firm states that there is no more work. However, this exception is limited in time. The second is the exception to the provision in art. 7:668a DCC, which for ordinary employees states that after three fixed-term contracts (s)he is automatically entitled to an open-ended employment contract. This entitlement is postponed for an agency worker. It is furthermore possible to make further deviations in collective labour agreements (CLAs).

Portugal Temporary agency work (*trabalho temporário*) is regulated by arts. 172-192 of the Labour Code (*Código do Trabalho*, CT). This kind of contract can be concluded in the situations where ordinary temporary contracts are permitted under arts. 140.2.a to 140.2.g, as well as in a number of other special situations contemplated by art. 175.1 CT. The latter are:

- 1) to fill a vacancy during the selection process for that job;
- 2) intermittent need of workforce, if this need is shorter than half the normal working time;
- 3) intermittent need of family support, of a social nature; or
- 4) realization of temporary projects concerning installations of restructuring of undertakings, establishments, industrial assemblies or reparations.

Article 140 CT contemplates a further list of reasons, which include (140.2.a to 140.2.g CT):

- 1) replacement of another employee (several grounds, including among others illness, pregnancy, court procedures...);
- 2) seasonal activity, or other activity whose production cycle is irregular;
- 3) unusual increase in the activity; or
- 4) execution of occasional tasks or precise services, not lasting in time.

These provisions effectively suggest that the assignment of an agency worker to a user company can only be temporary in nature.

As for the contract between the agency and the worker, art. 180.1 CT, provides for a contract *a termo resolutivo*, i.e. for a fixed-term (though the term can be certain or uncertain); and art. 183 CT contemplates the possibility of concluding open-ended agency work contracts .

According to art. 3 of *Decreto-Lei n.º 260/2009 de 25 de Setembro*, temporary work agencies have as their main object the supply of workers. Nonetheless, they can also provide “selection, professional guidance and training, consulting and human resources management”.

Contractual forms of temporary work through an agency (contd.)

Member State	Information provided by national experts
Slovenia	<p>The provisions of work to other users is possible only on the basis of an employment contract between a worker and his or her direct employer (employment agency), who in line with employment legislation in the Employment Contracts Act (ERA), on a basis of a “concession contract” can perform activities of providing workers to another employer (art. 59 ERA -1).</p> <p>The employment contract between an employment agency and a worker should be concluded for an indefinite period of time (art. 60 ERA -1). It could also be concluded for a definite/fixed period of time, but only when the work for the user meets the conditions for the conclusion of fixed-term work contracts (54(1), ERA -1). For this contract, the same time limitations apply as for the fixed-term employment contract (as defined in art. 55).</p>
Spain	<p>Temporary work through agencies is only allowed, according to art. 6.2 LETT, under the contractual forms established in arts. 15 ET and 11 ET, regulating temporary work in general. As such, the assignment of an agency worker to a user company can only be temporary. While agencies are allowed to conclude both fixed-term and/or open-ended contracts with agency workers, the latter are in practice a very rare occurrence.</p> <p>Art. 15.1 ET regulates three modalities of temporary work contracts:</p> <ol style="list-style-type: none"> 1) <i>Contrato para obra o servicio determinado</i> (work contract for specific projects or services) can only be used when the employee is hired for a determined activity, which is autonomous and substantively within the activity of the company and which, even though it is of a limited period, in principle has an uncertain duration. The maximum length of this contract is three years, but collective bargaining can extend it up to four years. 2) <i>Contrato eventual por circunstancias de la producción</i> (work contract to meet production requirements) can be used when required by the circumstances of the market, accumulation of tasks, or excess order volumes (considering the company’s normal activity). Its maximum length is six months within any given year, but collective bargaining can modify it up to a year within a period of eighteen months. 3) <i>Contrato de interinidad</i> (replacement contract) is used when the contractor substitutes a worker entitled to return to work after leave. It can also be used during a selection process. The duration of the contract is identical to the leave period. In the case of a selection process, the maximum delay is three months, save in public administration, where no limit is established. <p>Article 11.2 ET regulates the <i>contrato para la formación y el aprendizaje</i> (training and apprenticeship contract), intended for “young people” without skills (16–25, up to 30 until the unemployment rate reaches 15 per cent, no age limit for handicapped people). Its duration lasts between a minimum of one year and a maximum of three years. It must combine working time and training time (minimum 75/25 per cent during the first year, 85/15 per cent afterwards – salary in proportion), in order to learn a profession. This type of contract has been modified several times since 2010, in order to build in German-style modality.</p> <p>The only exception in temporary work for agencies up to 20 December 2013 was a ban on utilizing the <i>contrato en prácticas</i> established in art. 11.1 ET. This training contract can only be used with people already holding a university or professional training degree. It can be concluded up to five years after the end of studies and its content must be linked to the subjects there covered. Its minimum duration is six months and its maximum two years. The total amount of time spent under this type of contract is two years for each degree held (that is, two years for a bachelor’s degree, two years for a master’s ...). The salary during the first year can be 60 per cent of a full post, and 70 per cent during the second year.</p>
Sweden	<p>The Temporary Agency Work Act, SFS 2012:854 (hereinafter the Act) applies to employees who are employed by temporary work agencies for the purpose of being temporarily assigned to work for an undertaking under the latter’s supervision and direction. The law defines a temporary work agency as any natural or legal person who employs temporary agency workers in order to assign them to user undertakings to work under their supervision and direction (Section 5.1 of the Act). The Act applies equally in the private and public sectors, and also partly to posted workers employed by a temporary work agency outside Sweden.</p>

Contractual forms of temporary work through an agency (contd.)

Member State Information provided by national experts

The Act specifies the obligations of the temporary work agency and the user undertaking, respectively, in relation to the temporary agency worker. However, just like other employment relationships, the relation between the temporary work agency and its employee is covered by the Employment Protection Act. The form of the temporary agency worker contract thus does not differ from other employment contracts. It may be permanent or fixed-term, full-time or part-time. Statistics from the employer association the Swedish Staffing Agencies indicate that about 80 per cent of temporary agency workers have permanent employment, and that about 70 per cent of the employees in the sector work full-time.

In Sweden, temporary work agencies and private employment agencies have traditionally been regulated by the same legislation. Today, these two activities are subject to separate legislation, but it is not uncommon that the same undertaking acts both as a temporary work agency and as a private employment agency, and that in the latter capacity this undertaking also provides training and consultancy activities. For instance, Swedish Staffing Agencies is the common federation for temporary work agencies together with outplacement and recruitment companies. Collective agreements play a significant role in the implementation of the Act.

United Kingdom

In the United Kingdom, the provision of TAW (as well as the activity of temporary work agencies) is very lightly regulated, and before the adoption of EU Directive 2008/104, regulation on the rights and entitlements of temporary agency workers was hardly existent at all. At the time of writing, the operation and activities of temporary work agencies and the rights of temporary agency workers are mainly regulated by The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (and to a certain extent by the Employment Agencies Act 1973, as amended by the Deregulation and Contracting Out Act 1994) and the Agency Workers Regulations 2010, as well as by a number of key court decisions. The presence and overall influence of collective agreements is minimal, if at all relevant.

Agencies are permitted to conclude any kind of employment contract, and even contracts other than contracts of employment (i.e. contracts for services) with the workers that they seek to supply to user companies, and the assignment can take place on the basis of both temporary or open-ended contractual arrangements. The 2010 Regulations only apply to relationships premised on contracts of employment or “any other contract with the agency to perform work or services personally” (reg. 3(1)) but to the exclusion of relationships whereby the agency or user appears as a client or customer of the individual (reg. 3(2)). The recent decision of the Employment Appeal Tribunal in *Moran v (1) Ideal Cleaning Services Ltd; (2) Celanese Acetate Ltd* (of December 2013) suggested that agency workers placed with an end user indefinitely are not covered by the Regulations and the Directive.

The United Kingdom has implemented Directive 2008/104 while availing itself of the possibility of subjecting the application of the equal treatment principle (ETP) contained in Article 5 to a three-month qualifying period.⁹¹ It is understood that, de facto, this excludes more than half of the United Kingdom’s temporary workers from the ETP, and there have been fears on the part of the Trades Union Congress (TUC) that appropriate rotation clauses are being used as standard terms in the contract between agency and end-user clients.

The operation and activities of temporary work agencies is also subject to very light touch regulation, and agencies are allowed to offer simultaneously a wide range of employment, recruitment, training and consultancy services.

As noted in a number of national and international reports and academic papers, this light touch regulatory apparatus, coupled with a number of weaknesses inherent in the common law system when dealing with the employment status of workers and the rights of self-employed workers, often results in temporary agency workers not being sure about their rights and entitlements and often missing out even on fundamental anti-discrimination rights (see *Muschett v HM Prison Service* [2010] EWCA Civ 25).

91. See House of Lords Select Committee on the European Union: *Agency workers: Joint Declaration by the Government, the CBI and the TUC, 20 May 2008*, Twenty-Sixth Report, Appendix 3. Available at: www.parliament.uk.

4.2 Substantive protections and rights accorded to temporary agency workers

It transpires from the responses provided by the national experts that the Member States covered by the present study have at least implemented the core protective provision contained in Directive 2008/104. That is to say, they give effect to the equal treatment principle in respect of basic working conditions between agency workers and workers directly employed by the user company.

But once more, as soon as we move beyond this core requirement, national approaches to the implementation of Directive 2008/104 vary considerably. At one end of the spectrum is the United Kingdom, which has adopted, on the basis of Article 5(4), a qualifying period of three months for equal treatment (thus de facto excluding more than half of temporary agency workers from its scope, with an ever-increasing number of TAW arrangements structured to last for 11 weeks exactly), and whose courts consider that TAW placed with users on a permanent basis are outside the scope of Directive 2008/104.⁹² At the opposite end, we have systems such in France and Italy, with more pervasive and robust equal-treatment provisions that are not subject to qualifying periods and apply, in the case of Italy, to agency workers placed with users on a permanent basis. A number of countries such as Germany, the Netherlands and Sweden allow collective agreements to depart from the equal treatment principle in a number of areas (and typically in respect of pay) under Article 5(2) and 5(3) of the Directive, which some academic literature has occasionally seen as very problematic in terms of the effective protection accorded to and enjoyed by agency workers.⁹³ In any case, it should be noted that all the collective opt-outs contemplated by Article 5(3) and 5(4) of the Directive (and for that matter by Article 2(4)(b) of ILO Convention No. 181) still require that temporary agency workers be granted “adequate” or “overall” protection. It is also worth noting that some Member States understand some restrictions and prohibitions on the use of TAW as intimately linked to the need to protect temporary agency workers, a point that is discussed further in the following subsection 4.3.

It is hard to find a strong correlation between more stringent levels of regulation of TAW and the ratification of ILO Convention No. 181. Undoubtedly, Belgium and Italy appear to confer a relatively generous set of rights on their agency workers and both countries are ratifying members of Convention No. 181. But other countries, such as France, that have not ratified this ILO instrument appear to offer their TAW a comparable level of protection. A more detailed presentation of the various national frameworks is presented in the following table.

Protections and rights of temporary workers

Member State	Information provided by national experts
Belgium	<p>Temporary work can only be performed for well-defined, specific reasons or motives, which are laid down by the Law of 24 July 1987, and which have to be present at the level of the user enterprise. These are:</p> <ul style="list-style-type: none"> • replacement of a permanent employee; • responding to a temporary increase in workload; • performing of exceptional work; or • recruitment of the temporary worker. <p>The principle of non-discrimination and equal treatment is central to the Law on Temporary Work. This principle existed long before Directive 2008/104 was adopted. Article 10 of the Law on Temporary Work states that the salary of the temporary agency worker is not to be less than the salary payable had he or she been hired directly by the user as a permanent worker under the same circumstances.</p> <p>In view of protecting the temporary worker as an employee under employment law, there is a legal presumption that a temporary worker is an employee of the temporary work agency. This is a presumption <i>juris et de jure</i>, which means that it cannot be refuted.</p>

92. *Moran v (1) Ideal Cleaning Services Ltd; (2) Celanese Acetate Ltd* (Appeal No. UKEAT/0274/13/DM).

93. This appears to be a particular concern in Germany, see W. Eichhorst: *The unexpected appearance of a new German model*, IZA Discussion Paper No. 6625 (Bonn, IZA, 2012) pp. 11–13 in particular.

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>Article 7(3) of the Law of 24 July 1987 provides that “the temporary employee is an employee who enters into a contract of employment with a temporary work agency to perform, for a remuneration, work as permitted by this Law to the benefit of one or more users”.</p> <p>Temporary workers are always free to alter their relationship and to conclude an employment contract with the user. According to the Law of 1987, clauses in the employment contract prohibiting the hiring of a temporary worker by the user are considered to be null and void.</p>
Estonia	<p>Estonia has transposed Directive 2008/104/EC on temporary agency work into its national legislation; ILO Convention No. 181 has not been ratified. In Estonia, there is no special law on temporary agency work and intermediaries. The Employment Contracts Act (ECA) and the Equal Treatment Act (ETA) were amended in connection with temporary agency work; agencies are regulated by the Labour Market Services and Benefits Act (LMSBA). Article 1(1) of the LMSBA states that the purpose of the Act is, through the provision of labour market services and payment of labour market benefits, to achieve maximum employment rates among the working population, and to prevent long-term unemployment and exclusion from the labour market. Chapter 5 of the LMSBA regulates a provision of labour market services by legal persons in private law and sole proprietors as well as their registration procedure, and requires service free of charge to jobseekers, the unemployed and employers alike.</p> <p>Article 38(1) of the LMSBA entered into force on 1 May 2009. It states that in addition to the Estonian Unemployment Insurance Fund, labour market services may be provided by legal persons in private law and sole proprietors who are registered as labour market service providers in the register of economic activities. On 20 February 2012 the amended art. 38 on temporary agency work services entered into force. Those acting as an intermediary of temporary agency work should be registered as such in the register of economic activities. Article 38(1)(2) of the LMSBA stipulates that an intermediary of temporary agency work shall not demand remuneration from the employee performing temporary agency work for the intermediation to the user undertaking for performance of duties or for entry into an employment contract with the user undertaking.</p> <p>The requirement to register an undertaking providing employment services arises from the Register of Economic Activities Act and the LMSBA. The registration proceedings and registration data are specified in art. 39 of the LMSBA. In order to be registered in the register of economic activities as a labour market service provider or intermediary of temporary agency work, a legal person in private law or a sole proprietor shall submit the registration application, where it is also stated that mediation of temporary agency work should be free of charge for job applicant and end-user. The Ministry of Social Affairs is the administrative agency that shall carry out registration proceedings within the meaning of the Register of Economic Activities Act. However, the employment service provider is obliged to submit a confirmation of the authenticity of registration details to the Ministry of Social Affairs annually by 15 April if more than three months have passed from registering the undertaking or amending the registration at the undertaking's request.</p> <p>In February 2012, the Equal Treatment Act was amended to require the equal treatment of part-time employees, employees who have concluded employment contracts for specified term, and employees who perform duties by way of temporary agency work. Article 11.1(2.1) of the ETA stipulates that employees who perform duties by way of temporary agency work shall not be subjected to less favourable conditions of occupational health and safety, working and rest time and remuneration for work than those applied to comparable employees of the user undertaking. Employees who perform duties by way of temporary agency work are entitled to use, during the period of performing duties, the benefits of the user undertaking, including notably all meal, transportation and child-care services, on the same conditions as comparable employees of the user undertaking.</p> <p>Discrimination is prohibited; equal treatment and equality promotion are required by art. 3 of the ECA: “An employer shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act and Gender Equality Act.”</p> <p>The obligations of the employee and employer are specified in Chapter 3 of the ECA. Article 17(5) points out that if duties are performed by way of temporary agency work, the employee shall also follow the instructions of the user undertaking. Such instructions are subject to the provisions of this</p>

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>section. In case of conflict between the instructions of the employer and of the user undertaking, the employee shall follow the instructions of the employer. The employee could have some rights and interests, and art. 17(2) of the ECA stipulates that upon giving an instruction, an employer shall reasonably take the interests and rights of the employee into account. Article 114 explains how resolution of disputes should be approached: disputes arising from an employment contract shall be resolved under the conditions and pursuant to the procedure provided for in the ECA and the Individual Labour Disputes Resolution Act.</p> <p>Article 12(1) of the Occupational Health and Safety Act (OHSA) stipulates that an employer shall ensure conformity with occupational health and safety requirements in every work-related situation. If duties are performed by way of temporary agency work, however, the user undertaking shall guarantee conformity with occupational health and safety requirements in the user undertaking. An employee is required to comply with an occupational health and safety order of the employer, a working environment specialist, occupational health doctor, labour inspector or working environment representative.</p>
France	<p>The key substantial protections and rights offered to French temporary agency workers are the following:</p> <p>Form and content of TAW contracts</p> <p>Both the contracts between temporary agency workers and temporary work agencies and the contracts between the agency and the user company are subject to a long list of formal and substantial requirements. The <i>contrat de mission</i> must be in writing (art. L1251-16, as a matter of <i>ordre public</i>), and failing that the contract is converted into a normal open-ended contract of employment (see Soc. 12 juin 1981, Bull. Civ. V.419). It must be issued to the worker within two days of starting the assignment itself (art. L1251-17) and must at the very least contain the terms referred to in the <i>contrat de mise à disposition</i> and required under art. L. 1251-43; the worker's professional qualifications; the way in which the worker is to be remunerated (including details about the <i>indemnité de fin de mission</i> prescribed by art. L. 1251-32, a sort of end of contract lump sum payment); details about the worker's social security arrangements; and the worker's right to be employed by the user directly once the assignment has come to an end (art. L1251-16).</p> <p>The <i>contrat de mise à disposition</i> must also be concluded in writing as a matter of <i>ordre public</i> (art. L1251-42) and it must contain a fairly comprehensive list of terms specified in art. L1251-43, including the reasons justifying the conclusion of the contract; the term of expiry of the contract; information in respect of the possible health and safety implication of the task to be performed by the worker (and any equipment necessary and made available to the latter), and the level of pay (in its various components) that would be perceived by a comparable worker directly employed by the user company. Any clauses seeking to limit the worker's ability to conclude a bilateral contract with the user upon the end of the assignment are deemed to be null and void under art. L1251-44.</p> <p>Reasons for concluding a TAW contract</p> <p>Traditionally these reasons have been exhaustively regulated by what are now arts. L1251-6 and L1251-7, with some extra leeway granted to collective bargaining. The objective reasons referred to in art. L1251-6 effectively amount to the replacement of absent workers; coping with temporary surges in the user company's activities; recruiting for seasonal work or work that is deemed (by decrees or collective agreements) to be temporary in nature (so-called <i>emplois d'usage</i>); the replacement of various types of managerial positions in a closed number of artisanal, commercial, and agricultural businesses (referred to in al. 4 and 5 of art. L1251-6); and the filling of a vacant position pending the recruitment of a full-time employee. Art. L1251-7 adds to this list three more exceptional reasons permitting the conclusion of a TAW contract when a collective agreement or a statutory provision explicitly permit the recruitment of specific categories of unemployed or disadvantaged workers; when the agency and user commit – on the basis of a collective agreement or statutory provision – to offering some form of vocational training; and when the agency and user commit to offering to the worker an apprenticeship leading to the award of a recognized diploma or professional qualification. Finally, it is also contemplated that a TAW contract can be used to perform emergency works and repairs in the user company and prevent imminent dangers.</p>

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>Limits to the duration of contracts</p> <p>In line with the rationale that TAW ought to satisfy “temporary needs” of the labour market (as opposed to more permanent ones) French law provides a fairly stringent regulation of the duration of TAW contracts and of successive renewals. These limits depend by and large on the principal reason that was relied upon to conclude the TWA contract in the first place. Under art. L1251-12, a TWA contract can last up to 18 months if it was concluded to replace an absent worker or one of the managerial positions referred to in al. 4 and 5 of art. L1251-6, or to satisfy a temporary surge in the activities of the user enterprise. If the reason for recruiting the worker was to replace a worker pending a new recruitment round, or to perform emergency repairs and works, then that limit is reduced to nine months. A higher limit of 24 months applies to TAW when the reason was to satisfy a surge in activity motivated by a foreign export contract, or if the replacement of the worker is for a position that is coming to an end, or if the posting is to a user company located abroad.</p> <p>Equal treatment principle</p> <p>The ETP is guaranteed by the combined effect of art. L1251-43 al. 6 (in respect of pay) and arts. L1251-21 to L1251-24 (in respect of working conditions, health and safety, and access to amenities and collective facilities). As in the case of other Member States with well-functioning industrial relations systems, the application of the ETP is greatly facilitated by the widespread presence and coverage of collective agreements. It is worth noting that the wording of art. L1251-43 al. 6 (<i>salaire que percevrait dans l’entreprise utilisatrice, après période d’essai, un salarié de qualification professionnelle équivalente occupant le même poste de travail</i>) suggests the possibility of identifying a hypothetical comparator (a task greatly facilitated by the presence of applicable collective agreements).</p>
Germany	<p><i>Temporary workers</i> are protected by the principle of non-discrimination in §4 Abs. 2 TzBfG.</p> <p>§9 Nr 2 AÜG provides for the principle of equal pay and equal treatment for <i>temporary agency workers</i> compared to the essential working conditions of the user undertaking, even though deviation by collective agreement is possible (BAG 14.12.2010 - 1 ABR 19/10. TA). Workers have the right to be informed by the client entity of its comparative working conditions (§ 13).</p> <p>On health and safety, §8 <i>Arbeitsschutzgesetz</i> (Labour Protection Act) requires strict cooperation between all parties in health and safety matters (though a 2010 government survey suggests that the working conditions of 55 per cent of temporary agency workers examined were insufficient).</p>
Hungary	<p>The special provisions on temporary agency work are contained in arts. 214-222 of the Labour Code.</p> <p>Key definitions</p> <ul style="list-style-type: none">• Temporary agency work covers situations where an employee is hired out by a temporary work agency to a user enterprise for remunerated temporary work, provided there is an employment relationship between the worker and the temporary work agency (placement).• “Temporary work agency” shall mean any employer who places an employee, with whom it has an employment relationship, under contract to a user enterprise for temporary work supervised by the user enterprise.• “User enterprise” shall mean any employer under whose supervision the worker performs temporary work.• “Temporary agency worker” shall mean an employee with an employment relationship with a temporary work agency with a view to being assigned to a user enterprise to work temporarily, where employer rights are exercised jointly by the temporary work agency and the user enterprise.• “Assignment” refers to situations where the temporary agency worker is placed at the user enterprise to work temporarily.

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<ul style="list-style-type: none">• The following may function as temporary work agencies:<ul style="list-style-type: none">a) a company established in an EEA Member State that is authorized under national law to engage in the activities of temporary work agencies; orb) a business association established in Hungary whose members have limited liability, or a cooperative society in respect of employees other than its members; this business association or cooperative must satisfy the requirements prescribed in this Act and in other legislation and must be registered by the government employment agency.• The assignment of workers is not allowed:<ul style="list-style-type: none">a) in the cases specified by the relevant employment regulations;b) with a view to replacing workers on strike;d) beyond the duration of five years.• The user enterprise shall not have the right to order a temporary agency worker to work for another employer.• An agreement shall be considered invalid if:<ul style="list-style-type: none">a) it contains a clause to ban or restrict any relationship with the user enterprise following termination of the employment relationship on any grounds;b) it contains a clause to stipulate the payment of a fee by the employee to the temporary-work agency for the assignment, or for entering into a relationship with the user enterprise.• The user enterprise shall inform the local works council:<ul style="list-style-type: none">a) of the number of temporary agency workers employed and of the employment conditions;b) of vacant positions;at least once in a six-month period, and shall keep the temporary agency workers it employs informed on a regular basis (art. 216). <p>The relationship between the temporary work agency and the user enterprise</p> <ul style="list-style-type: none">• The agreement between the temporary work agency and the user enterprise shall specify the material conditions of assignment, and the sharing of employer rights. The employment may only be terminated by the temporary-work agency. The agreement shall be made in writing.• The agreement between the temporary work agency and the user enterprise may contain a clause to stipulate that non-wage benefits shall be provided to the employee by the user enterprise directly.• The user enterprise shall inform the temporary work agency in writing:<ul style="list-style-type: none">a) of its normal course of work;b) of the person exercising employer's rights;c) of the manner and the timeframe within which to supply the information necessary for the payment of wages;d) of the qualification requirements pertaining to the work in question; furthermoree) of all aspects that are considered significant in terms of the employment of the worker in question (art. 217). <p>Temporary employment relationship</p> <ul style="list-style-type: none">• The employment contract shall contain a clause indicating that it was concluded for the purpose of temporary work, and shall contain a description of the work and the base wage.• Before the assignment, the temporary work agency shall provide to the employee the following information in writing:<ul style="list-style-type: none">a) the identification data of the user enterprise;b) the beginning date of the assignment;c) the place of work;d) the normal course of work at the user enterprise;

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<ul style="list-style-type: none">e) the person exercising employer's rights on the user enterprise's behalf;f) the particulars on travel to work, room and board. <ul style="list-style-type: none">• During the assignment, the employer's rights and obligations relating to:<ul style="list-style-type: none">a) occupational safety;b) the employer's obligations in art. 51;c) working time and rest periods, and keeping recordsshall appertain to the user enterprise (art. 218). <p>Termination of employment</p> <ul style="list-style-type: none">• Termination of the assignment shall be construed as a reason in connection with the temporary work agency's operation.• If termination is effected by the temporary work agency the employee shall be exempted from work during the notice period unless otherwise agreed.• The employee may terminate the employment relationship without notice if an infringement is committed by the user enterprise.• The notice period is only 15 days (the general rule is at least 30 days), no matter how long the employment relationship has lasted or which party terminates it. If termination is effected by the temporary work agency the employee shall be exempted from work during the notice period unless otherwise agreed.• For the purposes of entitlement to severance pay only the duration of the last assignment during the employment relationship shall be taken into consideration, not the whole time of the employment relationship.• In case of temporary agency work, the rules of collective dismissals shall not apply.• The user enterprise shall notify the temporary work agency in writing concerning any infringement on the employee's part within five working days from the time of gaining knowledge.• The employee shall submit the notice for termination of the employment relationship to the temporary work agency (art. 220). <p>Liability for damages</p> <ul style="list-style-type: none">• In connection with any damage caused by the employee the user enterprise may demand compensation from the employee in accordance with the Labour Code's general provisions. By agreement between the temporary work agency and the user enterprise, the provisions of civil law on liability for damages caused by an employee shall apply in this case instead of the labour law provisions. In the application of the provisions of civil law on the employer's liability for damages caused by an employee the user enterprise shall be construed as the employer, unless the temporary work agency and the user enterprise agree to the contrary.• For any damage caused to the employee while on assignment, the user enterprise and the temporary work agency shall be subject to joint and several liability (art. 221). <p>Special provisions relating to employment relationships between school cooperatives and their members (arts. 223-227 of the Labour Code)</p> <ul style="list-style-type: none">• A school cooperative (employer) and its full-time student (employee) may enter into a fixed-term employment relationship so as to permit such student to perform work at a third party (customer) with a view to supplying services to such third party.• The employment contract shall specify:<ul style="list-style-type: none">a) a description of the responsibilities undertaken by the employee;b) the threshold of the employee's base wage for the duration of work performed at the customer;c) the agreed means of communication during the period when the employee is not required to work.

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<ul style="list-style-type: none">• Work may be initiated upon the parties having reached an agreement in writing concerning:<ul style="list-style-type: none">a) the person of the customer;b) the job to be performed;c) the base wage;d) the place of work;e) the date when work is to commence;f) the duration of work.• The employer shall inform the employee in writing at the time of taking up work of:<ul style="list-style-type: none">a) the regular work hours;b) the date of payment of wages;c) the functions of the job;d) the person delegated to give instructions.• During the period of work performed by the employee, the customer shall exercise and discharge the employer's rights and obligations relating to compliance with the provisions on:<ul style="list-style-type: none">a) occupational safety;b) the employment of women, young workers and persons with reduced ability to work;c) working time, rest period and the records of these.• The employment relationship shall be terminated at the time membership ceases to exist.• The length of time when no work is required may not be less than the duration of leave referred to in the Labour Code (arts. 223-227). <p>Equal treatment principle</p> <p>The provisions of the Equal Treatment Act (Act 125 of 2003 on Equal Treatment and Promotion of Equal Opportunities⁹⁴) apply to temporary agency work. However, these general provisions shall be applied in harmony with the equal treatment provisions of separate acts (e.g. the Labour Code). Article 219 of the Labour Code contains the following special provisions on the equal treatment of temporary agency workers:</p> <ul style="list-style-type: none">• The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment, at least those available to the workers employed by the user enterprise under employment relationship. The basic working and employment conditions shall, in particular, cover:<ul style="list-style-type: none">a) the protection of pregnant women and nursing mothers; andb) the protection of young workers;c) the amount and protection of wages, including other benefits;d) the provisions on equal treatment.• As regards the payment of wages and other benefits, the provisions on equal treatment shall apply as of the 184th day of employment at the user enterprise with respect to any worker:<ul style="list-style-type: none">a) who is engaged with a temporary work agency in an employment relationship established for an indefinite duration, and who is receiving pay in the absence of any assignment to a user enterprise;b) who is recognized as a long-term absentee from the labour market ;c) who is working within the framework of temporary agency work at a business association under the majority control of a municipal government or public benefit organization, and a registered public benefit organization. <p>Since the length of the assignment is usually short (less than 183 days), and in practice most temporary agency workers receive pay in the absence of any assignment, thus, the equal treatment principle shall not apply, if the contract is for an indefinite duration. This is a very easy way of circumventing the equal treatment principle, and in practice the exception (non-application of equal treatment) is the general rule.</p>

94. Available at: <http://www.egyenlobanasmod.hu/data/SZMM094B.pdf> (English).

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
Italy	<p>The Italian regulation on TAW is fairly detailed; the key substantial protections offered to temporary agency workers are the following:</p> <p>Form of contract</p> <p>Both the contract of employment between the worker and the temporary work agency and the commercial contract between the agency and the user company must be in writing, and art. 21(4) of LD 276/2003 expressly provides that if the assignment contract does not meet this formal requirement, it is held to be null and void and the worker is presumed to be directly employed by the user company.</p> <p>Content of contracts</p> <p>In respect of both contracts, the law (and the collective agreements, see in particular art. 22-23 of the 2008 agreement, cited in section 4.1 above) also specify a number of content requirements and information that need to be evidenced in writing.</p> <p>As far as the <i>contratto di somministrazione</i> with the user company is concerned, requirements (spelled out in art. 21 of LD 276/2003) range from the more formal duties to provide details about the licensing certificate held by the agency, the place, duration and type of work, to the more substantive obligations to state, for instance, which of the “technical, productive, organizational, or replacement reasons” contained in art. 20(3)-(4) are relied upon to justify the conclusion of a fixed-term assignment. The law also requires the assignment contract to spell out the respective duties of the agency and the user vis-à-vis the worker (e.g. the vicarious liability of the user in respect of unpaid wages) and vis-à-vis each other, including, for instance, the duty of the user to inform the agency about the levels of pay applicable to comparable workers.</p> <p>Concerning the contract of employment between the agency and the worker, art. 22 of the Decree more or less reproduces and refers to the general formal and content requirements applying to the conclusion of fixed-term or open-ended contracts of employment, while also supplementing them with some more specific requirements such as the presence of any risks to the worker’s health and safety in the user company and of the measures taken to address them. If the contract is an open-ended one, it must also state the level of pay applicable to the worker between assignments (which the collective agreement currently sets at a minimum of €700/month, see art. of the 2008 national collective agreement).</p> <p>Reasons for concluding a TAW contract</p> <p>Article 20 of LD 276/2003 enumerates the reasons that an agency must rely upon in order to stipulate and conclude a contract for the assignment of a worker to a user company. Assignments for an undetermined period can only be concluded for one of the reasons and activities listed in art. 20(3), which currently contains 11 different and broad headings, ranging from work in call-centres (art. 20(3)(g)) to more specialized services in the IT or construction industry. Collective agreements (including company-level agreements) are authorized by art 20(3)(i) to expand this list further.</p> <p>In regard to the conclusion of fixed-term assignment contracts, these reasons tend to reflect the ones permitting the conclusion of fixed-term contracts, and in effect amount to reasons pertaining to technical, organizational, productive and replacement needs of the user company, including those linked to its ordinary activity (art. 20(4)).</p> <p>Over the years these reasons have been progressively relaxed and tend to be applied fairly liberally. In particular, a series of reforms adopted since 2010 have progressively removed the need to specify the reason for concluding a fixed-term assignment contract (<i>somministrazione a tempo determinato senza causale</i>), e.g. for newly hired temporary workers, as long as the assignment does not exceed the one year limit (Law n.99/2013, converting LD 76/201), and has even removed the temporal limits prescribed in art. 42(1) of the 2008 collective agreement, e.g. when the user undertaking is a start-up company (<i>somministrazione a tempo determinato senza causale e senza limite di utilizzo</i>) though a maximum period of 48 months still applies.</p>

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>Limits to the duration of TAW contracts</p> <p>Art. 20(4) delegates to collective agreements the power to limit the duration and number of assignments of TAW to user companies. The current national agreement provides a normal limit of 36 months and of six consecutive renewals (art. 42(1) of the 2008 collective agreement), though this can be extended to 42 months if in the first two years of the assignment the contract was not renewed more than twice (art. 42(2)). Under art. 20(4) of LD 276/2003 (and as confirmed by the 2008 collective agreements) these limits do not apply to some categories of workers involved in job creation or vocational education and training programmes.</p> <p>Equal treatment principle</p> <p>The ETP is a right from day one, as provided by art. 23(1) of LD 276/2003 and by art. 26(1) of the 2008 national collective agreement (in respect of pay). It applies regardless of the type of contract of employment and even to open-ended contracts of assignment to a user company.⁹⁵The only exceptions apply to particular categories of long-term unemployed workers.</p>
Netherlands	<p>Temporary agency work in the Netherlands is on the one hand regulated by the 1998 Allocation of Workers by Intermediaries Act (hereinafter WAADI) in conjunction with some provisions of the Civil Code, and on the other hand by the sector itself through collective agreements. The regulatory framework for TAW in the Netherlands thus comprises a combination of legal and contractual measures that had been adopted in legislation, covenants, and collective labour agreements (CLAs) by the end of the 1990s. Since 1999, temporary employment agencies have been seen as regular employers and, following a certain term of service, agency workers are treated as regular employees.</p> <p>The legislation is to be found in the Civil Code (introduced by the Flexibility and Security Act), the Placement of Persons by Intermediaries Act and the Works Councils Act (WCA). The WAADI regulates the TAW market as allocator on the labour market and has abolished the licence system. The Flexibility and Security Act (hereinafter F&S Act) has created clarity in the labour relations concerning TAW. The intended result of all these measures was to inject additional flexibility into the labour market by relaxing dismissal laws and the rules to start a temporary work agency on the one hand, while generating a higher level of security for employees in flexible jobs on the other. Two collective agreements are applicable, one of which as a rule is declared generally binding (see below, section 4.4). Finally, the F&S introduced, combined with a revision of the Works Councils Act, agency workers' co-determination rights in the agency and in the user firm (art. 1(3)(a) Works Councils Act) similar to those of the "regular" Dutch workforce. More precisely, persons who have worked in a user company for at least 24 months, on the basis of a temporary employment contract concluded with another company (for instance a temporary work agency) as defined in art. 7:690 of the Civil Code, are granted the same information and consultation rights in the user company. These rights are granted on the condition that the work performed by these temporary workers falls within the sphere of the normal business activities of the user company. Furthermore, these persons are also considered to be workers of the supplier company (for instance a temporary work agency or secondment company). As a result of these extensions of the definition of "worker", persons who are posted/seconded by a temporary work agency or other suppliers of staff to the same user company for a longer period of time can claim information and consultation rights in the companies of both the supplier and the recipient.</p> <p>Art. 8 WAADI establishes the principle of equal treatment with comparable workers in the user firm. According to this provision the agency must offer the agency worker the same wage and other working conditions as the employees of the user enterprise with the same or a comparable type of job. Thus, in the Netherlands, there is a basic principle of equal treatment between agency workers and workers in the user enterprise. However, this rule does not apply if either the collective agreement for agency workers of temporary employment agencies (ABU-CLA) provides to the contrary, or if the CLA applicable to the user firm requires remuneration (and other working conditions) of agency workers to conform with this CLA. These two rules thus allow the social partners</p>

95. See Circolare 13 of 2009, available at: <http://ebitemp.it/files/MINLAV-Circ-13-2009.pdf>.

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>to depart from the basic principle of equal treatment between agency workers and comparable workers in the user firm. In this way a balance has been struck between, on the one hand, the rule of equal treatment for work of equal value and, on the other hand, the contractual freedom and autonomy of the collective bargaining partners, which is limited by the equal treatment rule.</p> <p>Recently, the WAADI and the WCA were amended in order to implement EU Directive 2008/104. This concerns only minor changes, due to the fact that the Dutch legislation is perceived as being already largely in conformity with the Directive. Article 5(1) of the Directive, which deals with the equal treatment of temporary agency workers with regard to certain employment conditions, is transposed by art. 8(1)(b) WAADI. In addition, Article 5(5) of the Directive is transposed by art. 8(3) (a) WAADI, allowing the social partners to deviate from the rules on equal treatment by collective agreement, for as long as the collective agreement foresees in measures preventing misuse of, in particular, successive assignments designed to circumvent the provisions on equal treatment. Article 6 of the Directive is transposed by art. 8(b) WAADI. This new inserted article stipulates that agency workers should be informed clearly and in a timely manner about vacancies in the user undertaking in order to give them the same opportunity to find permanent employment as other workers in that undertaking. Article 6(2) of the Directive, which provides that every direct clause that prohibits or has the effect of preventing the conclusion of a contract between the user undertaking and the temporary agency worker after the assignment is null and void, is transposed by art. 9(a) WAADI.⁹⁶ The new inserted art. 8(a) WAADI transposes Article 6(4) of the Directive, giving agency workers equal access to amenities or collective facilities of the user undertaking. Article 31(b) of the WCA is amended with the obligation for the user company to provide information on the use of temporary agency workers, such as on how many temporary agency workers are employed or are expected to be employed in the future. In this way Article 8 of the Directive is implemented.</p>
Portugal	<p>Their rights and entitlements of temporary agency workers follow the same regime established for other workers employed by the user in respect of working conditions, working place and duration, contractual suspension, health and safety and access to social facilities (185.2 CT).</p> <p>The most complex case in Portuguese Law pertains to the regulation of pay. According to art. 185.5 CT, the temporary agency worker is entitled to the minimum wages established in the collective agreement applicable to the temporary agency or the user enterprise, or to that linked to the same work or to work of the same value, if that is more favourable. In any case, according to art. 185.10 CT, after 60 days of work the temporary agency worker is entitled to the same collective agreement as those comparable workers performing the same functions in the user undertaking.</p> <p>Agency workers with an open-ended contract with a temporary work agency are entitled to be paid when not actually assigned to a user company. According to art. 184(2)(a) they are entitled to whatever pay is established under the relevant collective agreement, or to two-thirds of their last pay, or of the minimum guaranteed pay, whichever is more favourable. If, in the absence of an assignment, they provide their services directly to the agency that employs them, they are entitled to full pay for the work and services provided (184(2)(b)).</p>
Slovenia	<p>Art. 61, ERA-1 stipulates that in the employment contract between the worker and the temporary employment agency, it shall be agreed that:</p> <ul style="list-style-type: none">• the worker shall temporarily perform the work with various users, at the location and during the period stipulated by the referral to work with the user; and• that the level of the wage and of the compensation shall depend on the work actually performed for users, taking into account the collective agreements and general acts that bind individual users.

96. This is actually a re-codification of Dutch law that existed until 1 July 1998 (art. 93 *Arbeidsvoorzieningswet 1990*) and a codification of the jurisprudence of the Dutch Supreme Court that (based on art. 6:248 of the Civil Code) declared such clauses as unreasonably onerous, meaning that it is therefore null and void (HR 4 April 2003, LJN: AF2844, NJ 2007/351 with note Heerma van Voss).

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In an employment contract for indefinite time, the employment agency and the worker shall also agree about the level of compensation for the period of a premature cessation of work with the user, and/or for the period in which the employer fails to provide work with the user. The wage compensation may not be lower than 70 per cent of the minimum wage (art. 61(3), ERA-1).

With the aim of reducing abuse and increasing information, two new paragraphs have been added to art. 59, ERA-1:

- *The right of workers to information.* Art. 59(5), ERA-1 stipulates that the user, when asked by the trade union or works council or workers' representative, must inform them once a year about the reasons for the use of posted workers and their number.
- *Limitation of the share of agency workers at the user.* This constraint, which is also new, states that "the number of posted workers with the user should not exceed 25 per cent of employees employed with the user, unless stipulated otherwise by the branch collective agreement". Excluded from this constraint are workers who are employed by the employment agency for an indefinite period of time. This constraint does not apply to small employers.

Further regulations are described below.

Rights, obligations and responsibilities of the user and of the worker

The worker must carry out the work pursuant to the user's instructions; violation of this provision shall represent a possible reason for the establishment of disciplinary responsibility or for the termination of the employment contract with the employment agency (art. 63, ERA-1).

In the period when the worker is performing work for the user, the user and the worker must take into account the provisions of ERA-1, of collective agreements concerning the obligations of the user, and/or of the user's general acts, with regard to rights and obligations. ERA-1 (para. 3) adds that these rights include also the right to use all benefits and privileges which are provided by the user to his employees in connection with their employment. If the user is in breach of the obligations deriving from ERA-1, collective agreements binding on the user, and/or of the user's general acts, the worker is entitled to refuse to carry out the work. The worker shall take annual leave in agreement with the employment agency and the user.

Agreement between the employment agency and the user

Before the worker starts, the user must inform the employment agency about all conditions which must be fulfilled by the worker for the provision of work, and shall submit to the employment agency the assessment of risk of injuries and damage to health.

Before the worker starts working for the user, the employment agency and the user conclude a written agreement in which they define in greater detail mutual rights and obligations, as well as the rights and obligations of the worker and of the user. The user is, notwithstanding the provisions of a written agreement, responsible for compliance with the provisions of the law, collective agreements and general acts of the user regarding health protection at work, working time, breaks and rests (art. 62(2) ERA-1).

According to ERA-1, the employment agency shall be obliged to provide education, training and capacity building. In written agreements, the user and the employment agency should also include an agreement on education, training and capacity building of the posted worker for the period of his/her work for the user. In accordance with this agreement, the worker must be notified in writing regarding conditions of work at the user as well as the rights and obligations. The written notice may also be sent by e-mail provided by the employment agency.

The user is also responsible for the correctness and completeness of the data on conditions regarding the possibility of terminating the fixed-term employment relationship, as well as for the correctness and completeness of the data regarding the payment for work, and for the purpose of wage calculation and other remuneration obligations deriving from the employment. The user shall be subsidiarily responsible (liable) for the payment of wages and other remuneration deriving from the employment relationship to the worker for the period in which the worker performed the work (added in ERA-1, art. 62 (5 and 6)).

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>Premature cessation of the user's need for work performed by the worker shall in individual cases not represent a reason for terminating a fixed-term employment contract. In this case the employment agency is obliged to pay the wage compensation (in line with ERA-1) to the worker until the expiry of the contract (art. 60 (3), ERA-1).</p> <p>The principle of non-discrimination/equal treatment</p> <p>The ETP is included in art. 57, ERA-1. This article stipulates that during the period of employment for a fixed term, the contracting parties shall have the same rights and obligations as in the case of employment for an indefinite period of time, unless stipulated otherwise by ER -1. Different treatment is permissible only for well-founded reasons.</p> <p>Specifics on admissible different treatment derive from specifics of the fixed-term contract. The termination regime is different when contracts for indefinite and fixed terms are compared. Very positive is the fact that the new ERA-1 (2013) introduced severance payments in case of fixed-term contract termination. A fixed-term employment contract shall end without notice upon the expiry of the time for which it was concluded or upon the completion of the agreed work or upon the cessation of the reason for which the contract was concluded (art. 79, ERA-1). In this case the worker has the right to severance pay (the exceptions from this rule are defined in art. 79).</p> <p>Case law</p> <p>The worker and the employer have the same rights and obligations, whether the employment contract is concluded for a definite or indefinite period. Therefore, the worker employed for an indefinite period of time cannot enjoy an advantage over the person who has a contract concluded for a definite period of time (VDSS Pdp 1883/2004).</p>
Spain	<p>For workers employed through an intermediary, art. 11.1 LETT establishes that they are entitled to the same essential conditions as if they were hired directly by the employer. Essential conditions include salary (since 1999), working hours, overtime, holidays, night-time work and days off. They are also entitled to the same dispositions regarding health and safety measures, pregnancy, breast-feeding and non-discrimination. Their collective rights must be defended by the user undertaking's workers' representatives (art.17 LETT).</p>
Sweden	<p>The Temporary Agency Work Act, SFS 2012:854 (hereinafter the Act) rests on the principles of employee protection, equal treatment and collective autonomy. For quite some time, a prohibition has applied in Sweden for temporary work agencies to request, agree or receive payment from their employees in exchange for arranging for them to be placed at a user undertaking. This prohibition has been incorporated in the Act (see Article 3(f) of the EU Directive, in comparison with Section 10 of the Act). A temporary work agency is also forbidden to prevent in any manner a worker from accepting employment with a user undertaking for which he or she is working or has worked (Section 9 of the Act).</p> <p>Implementing the principle of equal treatment, the Act assigns the overall responsibility for the protection of the temporary agency worker to the temporary work agency, which has a duty to ensure its employees the same basic working and employment conditions as if they had been recruited directly by the user undertaking to occupy the same job (Section 6 of the Act). As regards provisions in legislation, and regulations regarding working time, protection in connection with pregnancy, non-discrimination, etc., according to their wording these are already to be applied equally to temporary agency workers and persons directly employed by the user undertaking (Government Report Prop 2011/12:178, 32). The Act expands the principle of equal treatment to also cover conditions laid down by collective agreements or other binding general provisions (Section 5.3 of the Act). Thus, whereas the Directive refers to conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions, the Swedish Temporary Agency Work Act refers only to conditions laid down in collective agreements or other binding general provisions.</p>

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Member State Information provided by national experts

In the Act, the concept of basic working and employment conditions is defined as conditions laid down by collective agreements or other binding general provisions in force in the user undertaking, and refers to the following areas: protection in connection with pregnancy and of children and young people, along with equal treatment for men and women and protection against discrimination based on gender, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation or age (Section 5.3 (c) and (d)). Holidays and public holidays, working time, overtime, breaks, rest periods and work during nights, along with wages (Section 5.3 (a) and (b)). The requirement for equal treatment does not apply to workers employed through special employment support, in sheltered employment or in development employment, and the requirement for equal treatment in terms of wages does not apply to workers who have a permanent contract and receive a salary between temporary assignments (Section 8).

The principle of equal treatment can be deviated from in collective agreements, provided that the overall protection for temporary agency workers agencies is respected (Section 3). A temporary work agency that is bound by a collective agreement may also apply the agreement to an employee who is not a member of the employee organization that concluded the agreement. Thus, in cases where the temporary work agency is bound by a collective agreement that meets the requirement of respecting the overall protection, basic working and employment conditions in the areas covered by the Act (i.e. working time, wages, etc.) will be governed by this collective agreement. This applies even if these conditions are inferior to those prevailing at the user undertaking; in these cases, the temporary work agency need not apply the principle of equal treatment.

In cases where the temporary work agency is *not* bound by such a collective agreement, but where a collective agreement is in force in the user undertaking, the legal principle of equal treatment will be applicable according to its wording. In the areas covered by the Act, the temporary agency worker will thus have the right to the basic working and employment conditions imposed by the user undertaking's collective agreement. To the extent that the areas covered by the Act are not regulated in the collective agreement of the user undertaking, or in any other binding general provisions, the conditions set out in statutory labour legislation apply. However, as the principle of equal treatment only provides a minimum standard, the employment contract may also contain more favourable conditions.

Lastly, it may be the case that neither the temporary work agency nor the user undertaking is covered by a collective agreement that governs the basic working and employment conditions, and that no other binding general provisions that regulate these basic conditions are available through the user undertaking. Here, as in the above-mentioned example, the temporary work agency will have to fall back on statutory labour legislation in its application of the principle of equal treatment. In this connection is important to note that Sweden has no statutory regulation on minimum wages. This means that in the absence of a collective agreement, wages are not covered by the principle of equality in the Act – as this principle only covers conditions laid down by collective agreements or other binding general provisions in force in the user undertaking. Therefore, in these cases, a wage claim can never be based on the Temporary Agency Work Act and its requirement for equal treatment. Instead, the claim must concern unfair wages and be based on contractual grounds (such a wage claim should be based on Section 36 of The Contracts Act SFS 1915:218; cf. Government Bill Prop. 2011/12:178, 57).

Moving on to the user undertaking, it is bound by an obligation to ensure the access of employees of the temporary work agency to collective facilities and amenities under the same conditions as employees employed directly by the undertaking (Section 11 of the Act). This means that the temporary agency worker must be provided access to premises – for example, exercise rooms and other staff areas – as well as other things collectively provided to employees of the user undertaking. This obligation of the user undertaking is not unconditional, and applies only provided that there are no special reasons to set it aside. An assessment of whether there are any special reasons shall be made on a case-by-case basis. Examples of circumstances that may be taken into account include the nature of the benefit; the action required from the user undertaking; and, in some cases, the duration of the assignment (Government Bill Prop. 2011/12:178, 50). In order

Protections and rights of temporary workers (contd.)

Member State	Information provided by national experts
	<p>to provide temporary agency workers with the same opportunities to find permanent employment as other employees, the user undertaking is also obliged to inform temporary agency workers of all vacant permanent positions and probationary employments at the undertaking.</p> <p>In case of infringements of the Temporary Agency Work Act, both the temporary work agency and the user undertaking can be liable to the employee for damages both compensatory (for the loss incurred) as well as penal (for violation of the law) (Sections 13 and 14 of the Act).</p>
United Kingdom	<p>As discussed in section 4.1 above, the 2010 Regulations provide a number of key protections to all agency workers that are linked to their agency by a “contract of employment” or a contract for personal work or services. In contrast with other systems, the conclusion of TAW contracts is not subject to the existence of temporary staffing needs of the user company, to a list of objective reasons, to a limited number of renewals, or to a maximum duration of sort. The key protections and entitlements afforded are as follows.</p> <p><i>Equal treatment principle</i> (subject to a 12 weeks continuous employment “in the same role” qualifying period under reg. 7(3)).</p> <p>Under reg. 5, agency workers have the right to receive “basic working and employment conditions” granted to a “comparable employee” working for and under the supervision of the user in the same establishment (or failing that in a different establishment) and is “engaged in the same of broadly similar work”. These basic conditions are defined by regulations as relating to pay (though to the exclusions of specific payments and rewards, see regs. 6(2)-(4)), working time, night work, rest periods and annual leave.</p> <p>Temporary agency workers with a permanent contract with the agency can be excluded from the ETP principle in respect of pay altogether (reg. 10). While this would normally entail that workers would receive some pay (usually 50 per cent of the last assignment pay, and at least the national minimum wage) between assignments, and therefore constitute a positive new development, the fact is that agency workers can be recruited under so called “zero-hours contracts” that reduce the payment obligation of agencies vis-à-vis their workers to an extremely low number of hours, or to no pay at all. The way reg. 10 is applied in practice is currently the object of a complaint by the TUC to the Commission under Art. 258 TFEU, lamenting “workplaces where agency staff are paid up to £135 a week less than permanent staff, despite working in the same place and doing the same job”.</p> <p>Rights to access to collective facilities and amenities are not subject to the 12 weeks qualifying period.</p> <p>Control on successive short-term contracts (anti-avoidance provisions)</p> <p>While there is no limit on the number of successive renewals, given the 12 weeks qualifying period, the Regulations seek to prohibit and address the inherent risk that TAW could be subject to a succession of short assignments with the view of circumventing the ETP altogether. These are commonly known as “anti-avoidance provisions” and are contained in reg. 9(3)-(4); they effectively deem a succession of short assignments to amount to a longer assignment if the structure of the assignments suggests an attempt to circumvent the qualifying limit.</p>

4.3 Restrictions on the use of TAW

All Member States covered by the present report appear to have retained a number of restrictions or prohibitions on the use of temporary agency workers. These vary from a fairly universal prohibition of the use of agency workers to replace workers on strike to less common prohibitions, such as those of using agency workers in some sectors that are either characterized by high-risk health and safety environments (e.g. Slovenia, Spain) or because of the sensitivity of particular sectors of the labour market (e.g. the construction sector in Germany). Some of the restrictions arise from the fact that in some countries (e.g. Belgium, France, and to a certain extent Germany and Spain), TAW can still only be used to satisfy needs of the user company that are of a temporary nature, although in some cases the limits placed on successive renewals tend to be perfunctory (e.g. Estonia, where they can be renewed for up to 120 months). Other Member States (e.g. Italy, Portugal, Slovenia, and to a certain extent Sweden) try to limit or restrict the use of TAW for user companies that, in the recent past, have made permanent workers redundant.

This is an area where the social partners also tend to play an important role. In countries such as Sweden, for instance, unions can effectively veto the use of temporary agency workers, whereas in countries such as Italy, collective agreements can set quotas for the use on agency workers as a share of the workforce of the user company (usually between 5 and 15 per cent).

With reference to the detailed comparative information provided in the following table, it is interesting to note that some Member States (e.g. Spain, Sweden) have expressly assessed some of the restrictions as being caught by Article 4(1) of Directive 2008/104, though they have sometimes decided that they could be justified on general interest grounds (see Sweden).

Restrictions on the use of temporary agency work

Member State	Information provided by national experts
Belgium	<p>Temporary contracts, including TAW contracts, can only be concluded to carry out temporary work. Temporary work is defined as the activity of:</p> <ul style="list-style-type: none">• replacing a permanent employee;• responding to a temporary increase of the workload;• performing exceptional work; or• having a temporary agency worker working for a period of maximum 6 months, after which the worker may be hired directly by the user. Hence, temporary agency work is used as a means of recruitment. <p>Beyond these activities, temporary work is not permitted (cf. arts. 1 and 1bis, Law of 24 July 1987 on Temporary Work).</p> <p>Within the limits of these activities, the use of successive fixed-term contracts is in principle allowed without limitation, with one exception: the use of successive daily contract is only allowed if the user can prove the need for the use of successive daily contracts (cf. art. 8bis, Law of 24 July 1987).</p> <p>The use of temporary work is prohibited in case of strike, and has been traditionally prohibited in some particular sectors, such as the construction sector and services offered by removal companies. As far as the construction sector is concerned, collective agreement n° 36 quaterdecies of 19 December 2001 made temporary work available in this sector. The social partners of the joint committee for the transport sector, however, expressed in the light of Article 4 of Directive 2008/104 the view that the prohibition of temporary work in the removal companies service sector is justified on the grounds of health and safety at work and the functioning of the labour market.</p>
Estonia	<p>On 20 February 2012, amendments in connection with TAW entered into force. Art. 9(1) of the ECA stipulates that if duties are performed by way of temporary agency work, an employment contract may be entered into for a specified term also if it is justified by the temporary characteristics of the work in a user undertaking.</p>

Restrictions on the use of temporary agency work (contd.)

Member State	Information provided by national experts
	<p>Successive fixed-term contracts are calculated on a basis of every user undertaking separately. The maximum cumulated duration of successive fixed-term contracts is 120 months (five years plus renewal of a five-year employment contract for the same work).</p> <p>There are no restrictions on successive fixed-term contracts on the basis of service contracts (regulated by the Law of Obligations Act, 2001).</p> <p>In addition to other obligations, the employer must inform employees about job vacancies (art. 28(2)(9.1), ECA). The employer should notify an employee who is performing duties by way of temporary agency work of vacant positions in the user undertaking corresponding to his or her knowledge and skills with regard to which an employment contract can be entered into for an unspecified term, unless the user undertaking has notified the employee of the vacant positions.</p> <p>According to art. 20(1)(1) of the Employees' Trustee Act, an employer who has at least 30 employees shall inform and consult workers' representatives about circumstances pertaining to employees, including those employees performing duties by way of temporary agency work, as well about changes and planned decisions which significantly affect the structure of the organization and the staff.</p>
France	<p>As noted in section 4.1 above, the conclusion of TAW contracts is limited to a number of objective reasons that justify this form of atypical work (mostly contained in arts. L1251-5 to L1251-8).</p> <p>In addition, the French Labour Code contains a list of express prohibitions to the use of TAW in the following cases:</p> <ul style="list-style-type: none"> • Art. L1251-9 prohibits the conclusion of TAW contracts to address the user company's surge in activity if within the previous six months the company dismissed workers for economic reasons (the prohibition applies in respect of the vacancies produced by the dismissal in question). This rule is however set aside for very short, and non-renewable, TAW assignments lasting less than three months and when the surge is due to an exceptional order by a foreign client, subject to prior consultation of the local works council or workers' representative, and subject to the rules applicable under art. L1233-45 in respect of the rehiring of redundant workers. • Art. L1251-10 prohibits the conclusion of a TAW contract to replace workers taking industrial action, to perform a number of activities that are considered particularly hazardous by means of existing regulations, or to replace an occupational physician. <p>French law also restricts the ability of employers to conclude a new TAW contract to fill the same vacancy previously filled through a temporary contract (including a fixed-term contract) before the expiry of a period (<i>délai d'attente</i>) of at least 1/3 of the overall duration of the previous contract (if the previous assignment had lasted over 14 days) or at least half the duration of the previous contract (if shorter than 14 days). This requirement is waived in the case of TAW contracts concluded to replace an absent worker or one of the managerial positions referred to in al. 4 and 5 of art. L1251-6, or to perform emergency repair works in the user company.</p>
Germany	<p>Sectoral restrictions on TAW are in place for the construction sector (§1b AÜG), as well as certain parts of the transport sector (art. 1(2) no. 3 Sentence 1 of the Road Haulage Act (<i>Güterkraftverkehrsgesetz</i>)).</p> <p><i>Temporary work</i> restrictions more broadly include the stipulation that contractual clauses regarding the fixed-term character of the arrangement have to be in written form, §14 Abs. 4 TzBfG.</p>
Hungary	<p>The duration of assignment may not exceed five years, including any period of extended assignment and re-assignment within a period of six months from the time of termination of the worker's previous employment, irrespective of whether the assignment was made by the same temporary work agency or by a different one.</p> <p>If the temporary employment is established by a fixed-term contract, then the five years limit and the other above restrictions shall apply as well. However, these restrictions are rather weak and flexible, which was indeed the aim of the legislation when these rules were passed.</p>

Restrictions on the use of temporary agency work (contd.)

Member State	Information provided by national experts
	<p>The assignment of workers is not allowed:</p> <ul style="list-style-type: none"> • in the cases specified by the relevant employment regulations; • with a view to replacing workers on strike; • beyond the duration of five years. <p>The use of temporary agency work is similarly limited in the public sector, where it cannot be performed for basic tasks of the given institution, as defined by ministerial decree.</p>
Italy	<p>Restrictions and prohibitions of various kinds are provided in both the statutory instruments and the collective agreements regulating TAW. To a certain extent, the “causal” justifications for concluding a TAW contract, loose as they may be in practice, could be seen as falling into this category. As for the main statutory prohibitions, they are contained in art. 20(5) of LD 276/2003 and apply in the following circumstances:</p> <ul style="list-style-type: none"> • replacement of workers exercising the right to strike; • companies that, in the previous six months, have made workers with an equivalent job description collectively redundant, subject to three exceptions (replacing absent workers, recruiting long-term unemployed and other classes of “disadvantaged workers” for a maximum of 12 months, and recruiting temporary agency workers for less than three months); • user companies that have not complied with the statutory health and safety assessment requirements prescribed by law; and • any other limits prescribed through a collective agreement . <p>Some collective agreements do provide limits to the use of TAW. For instance the agreement concluded in 2012 for the banking and financial sector⁹⁷ prohibits the use of open-ended assignments (preliminary remarks to the agreement) and limits fixed-term assignments to a maximum of 5 per cent of the workforce of the user company (or 8 per cent if its workforce exceeds 1,500 workers).</p>
Netherlands	<p>Compulsory registration was introduced on 1 July 2012. This means that all companies involved in the supply of workers to a third party in Dutch territory, for the purpose of carrying out work under the third party’s direction and supervision, must be registered in the Trade Register of the Chamber of Commerce. Furthermore, the registration must include that this company is involved or jointly involved in the supply of workers. User companies may only hire workers from a company registered with the Chamber of Commerce. Companies established abroad and mobile private employment agencies are also required to register. Companies that supply workers on the grounds of, inter alia, reintegration or providing outsourcing as a secondary activity must register under WAADI. To register, they should contact the Chamber of Commerce which will then place a tick by the company’s name enabling it to appear on a public list (www.kvk.nl/waadi). Public institutions involved in the supply of workers are also required to register.</p> <p>If this obligation is violated, employment agencies can be fined €12,000 per employee by the Inspection Service of the Ministry of Social Affairs and Employment. If a similar second violation is established within five years, the fine is doubled for both the employment agency and the party hiring manpower. For repeated violations thereafter, fines are tripled.</p> <p>As required by Article 4 of EU Directive 2008/104, a review has taken place with respect to restrictions or prohibitions on the use of temporary agency workers, in both laws and collective agreements. However, since hardly any of such restrictions were detected, this has so far not resulted in actual changes.</p>
Portugal	<p>Restrictions on TAW are contained in arts. 173 and 175 CT. Of course, agencies must be lawfully authorized, and cannot supply workers to other agencies to be “re-supplied”. In these cases, the worker will be considered to have an open-ended contract with the temporary work agency and with the enterprise that hires the worker, respectively.</p>

97. Contratto collettivo nazionale di lavoro (CCNL): *Per i quadri direttivi e per il personale delle aree professionali dipendenti dalle imprese creditizie, finanziarie e strumentali*, 19 Gennaio 2012. Available at: http://www.cnel.it/application/xmanager/projects/cnel/attachments/shadow_schede_contratto_corrente_attachment/files/000/615/020/14832.pdf

Restrictions on the use of temporary agency work (contd.)

Member State	Information provided by national experts
	<p>According to art. 175 CT, no temporary agency workers can be used for dangerous jobs for health and safety reasons, “except if that is his professional qualification”. It is not possible for an employer to use the services of a temporary work agency to replace a worker whose contract finished in the 12 previous months through collective redundancy or economic individual dismissal.</p> <p>Art. 179 CT contains rules resembling those contained in art. 149 CT concerning the duration of this type of contract.</p> <p>Finally, according to art. 178(2) CT, the maximal duration of a temporary agency contract, including renewals, cannot be longer than the grounds that justify it, nor more than two years. Special limits of six and 12 months are established for the contract to fill a vacancy during the selection process for that job and the increase of activity, respectively.</p>
Slovenia	<p>A temporary employment agency may not supply workers to a workplace of the user enterprise, and the user shall not use posted workers in:</p> <ul style="list-style-type: none"> • workplaces for which the user’s risk assessment shows that those working there are exposed to dangers and risks due to which measures are provided for reducing and/or limiting the time of exposure; and • cases laid down by branch collective agreements, if they ensure greater protection of workers or are dictated by the requirement for the safety and health of workers. <p>The same applies also in the following two cases:</p> <ul style="list-style-type: none"> • replacement of workers who are on strike; and • when the user has during the period of the past 12 months terminated employment contracts to a large number of workers. <p>Before concluding the agreement between the employment agency and the user enterprise, and during its implementation, the user must within eight days inform the employment agency of the existence or creation of the following circumstances: replacing workers on strike, and termination of employment contracts of a large number of workers.</p>
Spain	<p>Temporary agency work has its own specific restrictions, established in art. 8 LETT. According to this provision, no contract can be made:</p> <ul style="list-style-type: none"> • to replace strikers in a legal strike; • to carry out dangerous work as described in Additional Disposition 2 of the same LETT: jobs concerning ionizing radiations; jobs exposed to carcinogens, mutagens or toxic agents, or to biological agents. Further restrictions can be imposed through collective bargaining in the industries of construction, mining, marine platforms and some other sectors listed in Additional Disposition 2, para. 2; • when in the 12 previous months the undertaking has carried out unfair dismissals, has been condemned under art. 50 ET (for breach of contract) or has used “objective” grounds (those listed in arts. 51 and 52 ET, which include economic redundancies, justified absenteeism, non-guilty ineptitude and lack of adaptation to modification in the working process) to dismiss workers; • to supply workers to another agency. <p>Before the recent reforms in the economic crisis, there were greater restrictions on the use of temporary work agencies, for example in public administration. But a great deal of flexibility has been introduced following Act 35/2010 (formally transposing EU Directive 2008/104) and many previous obstacles have been removed.</p>
Sweden	<p>There are no specific statutory restrictions applicable to the conclusion or renewal of temporary agency work contracts. Because employment in a temporary work agency is regulated by the Employment Protection Act, along with most other employment, the only restrictions that might be relevant for the conclusion or renewal of a temporary agency work contract are those that follow from that Act; i.e. in the provisions limiting the conclusion of fixed-term contacts.</p> <p>In the user undertaking, one statutory limitation in the use of temporary agency work is the provisions in the Employment (Co-determination) Act on negotiation and union veto. The implications</p>

Restrictions on the use of temporary agency work (contd.)

Member State Information provided by national experts

of these provisions are as follows. First, before deciding to take on a temporary agency worker, every employer is obliged to negotiate with the union to whom the undertaking is bound by a collective agreement. The obligation applies even if the work is of a short-term and temporary nature, and it also includes a duty to provide any information that the union may require in respect to the planned work (The union cannot prevent the employer from taking on the agency worker by requiring detailed information which is not available for the employer at the time of the negotiation; cf. Labour Court judgement AD 2012:26.) Second, the union may block – veto – the engagement of temporary agency workers if it can be assumed that such engagement would violate law or collective agreement, or that it would conflict with generally accepted practices of the collective agreement (Sections 38 and 39 of the Employment (Co-Determination in the Workplace) Act (1976:580)).⁹⁸ Here, it should be said that it is extremely rare – or basically unheard of – that the union exercises this right. As almost all temporary work agencies are bound by a collective agreement, and thus accepted as serious employers, it is very unlikely that the criteria for applying the union veto would be met. In the event that the union has exercised the right of veto, even though it lacked grounds for its position, the union may become liable for damages claimed by the employer. On the other hand, if the employer ignores the union's opinion in a case where the union are entitled to exercise the preferential right of veto, the union can claim damages from the employer, according to Sections 54 and 55 of the Employment (Co-Determination in the Workplace) Act (1976:580).

In the inquiry preceding Swedish implementation of the EU Directive, the provisions on negotiation and union veto in the Employment (Co-determination) Act were found to constitute a restriction in the sense of Article 4(1) of the Directive (Government White Paper SOU 2011:5, 129). However, the inquiry also found that this restrictive effect of the provisions could be justified, partly because these two provisions are the only statutory regulation for controlling temporary work agencies in Sweden, and partly because the restrictive effect was deemed to be of a limited nature.

Regarding statutory provisions, two other limitations in the use of temporary agency work have been discussed. Thus, the ambiguous and unclear practices regarding the right of temporary agency workers to unemployment benefit, particularly in cases of part-time unemployment, are regarded as problematic, but this has not led to any legislative changes.

In fact, it is in the area of collective agreements that we find the question that clearly has attracted most attention in terms of barriers to temporary agency work: the recent and much-debated new practice in collective agreements of restricting the possibilities of replacing workers made redundant with temporary agency workers. Such replacements have been tried by the Labour Court in two cases as alleged violations of the redundant employees' right to priority for re-employment.⁹⁹ The question was resolved in different ways in different collective agreements, but there are still agreements where the question is not touched upon at all. Furthermore, the legislation that preceded the newly adopted Temporary Agency Work Act required a six-month waiting period before a worker who had terminated his or her employment in order to take up a post in a temporary work agency could be assigned to work for his or her previous employer. This provision was abolished, as it was deemed to be incompatible with the EU Directive, but similar provisions are still included in some current collective agreements.

In the industrial sector, the collective agreement now has clauses on a reinforced right to priority for re-employment, normally during six months after the end of the notice period. During these six months the possibility to use temporary agency workers is limited to a total of 30 days. Another solution, mainly chosen in the Swedish Trade Union Confederation sector, includes clauses that reinforce the union's right to negotiate, along with clauses on arbitration in disputes concerning the use of temporary agency workers. An employer who intends to take on temporary agency workers for a period that exceeds certain time limits specified in the agreement is obliged to initiate negotiations with the relevant union before the final decision on the matter can be made. Ultimately, the arbitration tribunal decides whether the employer shall be allowed to use temporary agency workers or if that would be in conflict with the rule of priority for re-employment.¹⁰⁰

98. Available in an unofficial English translation at the government website: <http://www.government.se/sb/d/5807/a/174131>.

99. Swedish National Mediation Office: *Annual report 2010 (Medlingsinstitutets årsrapport 2010)* (Stockholm, 2011), p. 156.

100. *Ibid.*, pp. 157ff.

Restrictions on the use of temporary agency work (contd.)

Member State	Information provided by national experts
	Mainly as a result of the collective agreements on the use of temporary agency workers in the case of redundancy, the Swedish Staffing Agencies, which is the temporary work agencies' employer federation, has filed several complaints with the European Commission regarding the Swedish Government's failure to take action against collective agreements that restrict the use of temporary agency work. The Commission has not yet replied to these complaints (There are altogether four complaints, of which the latest two were made in June 2013.)
United Kingdom	There are no restrictions or prohibitions upon the use of TAW contained in the 2010 Regulations or in collective agreements. The Conduct of Employment Agencies and Employment Businesses Regulations 2003 contain but a very limited number of restrictions, such as the restriction on providing agency workers to replace permanent workers involved in industrial disputes (reg. 7) and restrictions on charges (reg. 10).

4.4 Relevance of collective agreements to the regulation of TAW

This is perhaps the area where the differences between the various Member States covered in this report are most noticeable and marked. The involvement of the social partners and the relevance of collective agreements in regulating TAW varies from countries such as Sweden where, in effect, the regulatory framework is predominantly of a collective nature, to countries such as Estonia, Hungary or the United Kingdom where collective agreements are practically non-existent. As noted above, there is a core of continental European countries, such as France, Germany, Italy and the Netherlands, where the social partners are involved in the regulation of TAW at a sectoral/intersectoral/industry and company level. Detailed comparative information is provided in the following table.

Relevance of collective agreements to regulation

Member State	Information provided by national experts
Belgium	<p>While the core of the prerequisites for the use of temporary work and the basic working conditions are set by the Law of 24 July 1987, more detailed rules are currently laid down by the National Labour Council in collective agreement No. 108 of 16 July 2013, including the procedures that have to be followed by the user company (e.g. agreement of workers' representation) and the duration of temporary work.</p> <p>Collective labour agreements concluded in the Joint Committee No. 322 for temporary agency work is, just as any other joint committee established at the level of the sector, competent to establish wages and working conditions for temporary workers. Such collective agreements establish, for example, the right to a 13th month pay for temporary agency workers having worked at least 65 days during the period of a year.¹⁰¹</p>
Estonia	No impact.
France	There has been a main national collective agreement applicable to direct employees of the temporary work agencies since 1986, ¹⁰² as well as a number of intersectoral agreements regulating various aspects of the employment relationship of temporary agency workers. The most recent examples of such agreements are the <i>Accord du 10 juillet 2013 portant sur la sécurisation</i>

101. See for example collective labour agreement of 5 December 2013 establishing a 13th month for temporary agency workers. Available at: <http://www.emploi.belgique.be> > Concertation sociale > CCT.

102. Available at: <http://www.legifrance.gouv.fr/affichIDCC.do?idConvention=KALICONT000005635905>, and successively modified and updated.

Relevance of collective agreements to regulation (contd.)

Member State	Information provided by national experts
	<p><i>des parcours professionnels des salariés intérimaires</i> adopted on the basis of the earlier <i>Accord national interprofessionnel du 11 janvier 2013</i> and discussed in section 4.1 above, and the <i>2012 Accord du 21 septembre 2012 relatif à la formation professionnelle tout au long de la vie</i>.¹⁰³ There are also relevant sectoral and enterprise level agreements.</p>
<p>Germany</p>	<p>For <i>temporary workers</i>, the possibility for deviations (to the detriment of employees) by collective agreements is limited to specific instances: §22 TzBfG. An example is the collective agreement for the public sector (<i>Tarifvertrag der Länder, Länder - TV-L</i>), following §15 Abs. 3 TzBfG, which grants the option for social partners to negotiate the possibility of termination with notice during the fixed-term period (normally precluded by the Act).</p> <p>For <i>temporary agency work</i>, the principle of equal treatment, in particular as regards pay, is subject to significant qualifications due to the provisions in §9(2) AÜG, which stipulates that collective agreements can be used to bring about differential pay levels. A broad framework agreement between the relevant social partners (the Confederation of German Trade Unions (<i>Deutscher Gewerkschaftsbund</i>, DGB) on the union side, and the Federal Association for Temporary Agency Work and Staff Services (<i>Bundesverband Zeitarbeit Personal-Dienstleistungen</i>, BZA) representing temporary work agencies) soon came under attack through an attempt at circumvention by questionable collective agreements launched by the Bargaining Unit of Christian Unions for temporary work and personnel agencies (CGZP). The working conditions stipulated for agency workers within these collective agreements undercut the main (DGB and BZA) collective agreements in the field, providing notably for significantly lower pay than the wages of non-agency workers; until a BAG decision (1 ABR 19/10) in 2010 declared them invalid, given the CGZP's lack of formal bargaining power. A follow-up decision in 2012 (1 ABN 27/12) clarified that any agreements entered into by the CGZP were also void retroactively.</p> <p>More successful examples of sectoral collective agreements include the metal and electrical industries, through <i>IG Metall</i>. The agreement includes provisions both on general conditions for TAW (such as the role of the works council in relevant decision-making; a duty to offer a contract of employment to agency workers after 24 months with the end user; a prohibition on contracting with agencies who do not agree to the collective agreements of the DGB or <i>IG Metall</i>); and specific wage supplements (from 15 to 50 per cent) depending on the duration of the temporary agency worker's assignment to a client undertaking. In the case of <i>Volkswagen</i>, <i>IG Metall</i>'s collective agreement of May 2012 stipulates equal pay for temporary agency workers after the 10th month on assignment, with the offer of a permanent employment contract after 36 months. Key terms of the <i>Volkswagen</i> agreement now also appear increasingly to be applied to other manufacturers in the automobile industry.¹⁰⁴</p> <p>The main limitation on all such deviations is that they are only possible if the remuneration agreed exceeds certain minimum wage levels: §9 No. 2 AÜG, which refers to the so-called notion of a lower wage limit (<i>Lohnuntergrenze</i>) in §3a AÜG. This is set by the social partners DGB and VBZ and enacted by the Government; the current levels were agreed on 17 September 2013 as €8.50 for West Germany and €7.80 for the former East German <i>Länder</i>, and are due to rise to €9 and €8.50 respectively by 2016.</p>
<p>Hungary</p>	<p>No impact.</p>
<p>Italy</p>	<p>There is a main national collective agreement, concluded in 2008 by the largest and most representative social partners and about to be renewed on the basis of a recent agreement.¹⁰⁵ Several sectoral collective agreements applicable to the relevant user companies also regulate the rights of TAW and often restrict their use. For instance art. 90(2) of the 2010 collective agreement for</p>

103. Available at, respectively: <http://www.legifrance.gouv.fr/affichIDCC.do?idConvention=KALICONT000027944712&fastReqId=962430423&fastPos=34&oldAction=rechConvColl>; http://www.cfdt.fr/upload/docs/application/pdf/2013-01/ani_du_11_janvier.pdf; and <http://www.legifrance.gouv.fr/affichIDCC.do?idConvention=KALICONT000027162609&fastReqId=962430423&fastPos=35&oldAction=rechConvColl>.

104. The *IG Metall* collective agreement was announced on 22 May 2012 and is valid until the end of 2017. For the *Volkswagen* agreement, see <http://www.igmetall.de/SID-0609EBF8-D6A3CD37/ig-metall-und-volkswagen-einigen-sich-auf-tarifergebnis-1784.htm>; and for other manufacturers, e.g. the Sitech-*IG Metall* agreement of December 2013.

105. Available, respectively, at: <http://www.nidil.cgil.it/files/Ccnl%20somministrazione.pdf> and http://www.felsa.cisl.it/sites/default/files/Assolavoro_Accordo_27_settembre_2013_rinnovo_ccnl.pdf.

Relevance of collective agreements to regulation (contd.)

Member State	Information provided by national experts
	<p>the tourism sector, concluded between FILCAMS, FISASCAT, UILTUCS and the employers' organization affiliated to Confcommercio-Turismo, introduces a cap on the use of TAW amounting to 8 per cent of the user company's workforce.¹⁰⁶</p> <p>In 2009 the Italian Ministry of Labour produced <i>Circolare n. 13 del 2009</i>¹⁰⁷ with a view to clarifying the relationship between the national and the sectoral collective agreements in respect of the various rights and entitlements applicable to TAW (especially in matters of pay).</p> <p>There are also company level and regional level agreements, for instance the Nidil and Adecco Padua agreement.¹⁰⁸</p>
<p>Netherlands</p>	<p>Regarding the social partners involved in TAW, on the employers' side temporary employment agencies have structured themselves into a separate sector. On the employees' side there are no separate unions for agency workers. Employees are mainly organized in three sectoral unions: FNV Allies, affiliated to the Netherlands Trade Union Confederation (<i>Federatie Nederlandse Vakbeweiging</i>, FNV); De Unie and CNV services union, affiliated to the National Federation of Christian Trade Unions (<i>Christelijk Nationaal Vakverbond</i>, CNV). Jointly they organize about 7 per cent of agency workers. Employers are organized in the Federation of Private Employment Agencies (<i>Algemene Bond Uitzendondernemingen</i>, ABU) and the Dutch Association of Intermediary and Temporary Employment Agencies (<i>Nederlands Bond van Bemiddelings- en Uitzendondernemingen</i>, NBBU). ABU represents more than 65 per cent of the market in turnover and is by far the largest employers' organization within the private employment agencies industry.</p> <p>As already noted, it is possible by means of collective labour agreements (CLAs) to deviate from a number of the provisions laid down in the Civil Code (as most of the measures are) under the condition that they are not of a fully mandatory character. The Dutch Civil Code permits social partners to deviate from mandatory law by collective agreements also <i>in peius</i>. It concerns the so-called three-quarter mandatory stipulations.</p> <p>Besides the two statutory changes described in section 4.2 above, in 1999 two new CLAs were agreed, and subsequently evaluated and renewed in 2004, 2009 and very recently, in 2012. The main CLA is a result of bargaining between the ABU, representing the employers, and the sectoral trade unions, representing the employees. This ABU Collective Labour Agreement for Temporary Agency Workers (ABU-CLA) is as a rule declared generally binding and covers (without extension) more than 60 per cent of TAW.¹⁰⁹ The second collective agreement, concluded between employers' organization NBBU and the sectoral trade unions covers about 25 per cent of TAW. This CLA is not extended. Both CLAs may be seen as a sectoral follow-up to the national flexicurity package deal: at the same time that the social partners agreed upon the flexibility and security legislation, the employers and trade unions in the temporary agency sector made a gentlemen's agreement (covenant) on how to deal with the new legislation.¹¹⁰ One major difference between these two agreements is that the NBBU binds only those who are exempted from the ABU-CLA and are members of its organization. Below, we only refer to the ABU-CLA.</p> <p>What are the most important deviations? First of all, there is a deviation from the law stipulating that flexible workers are entitled to a permanent contract after three years or after three consecutive fixed-term contracts (art.7:668a Civil Code). This stipulation was transformed in the ABU-CLA by introducing a so-called "phases-system" that agency workers have to pass through before becoming for an indefinite period of time employed by the temporary employment agency. Another important deviation is the extension of the period that an agency worker is lent out under mere agency work conditions. The law states that this period should be a maximum of 26 weeks, but it is possible to deviate from this provision in a collective agreement.</p>

106. Available at: [http://www.filcams.cgil.it/info.nsf/656c7837a0039af4c1257a910040233b/\\$file/CCNL_TURISMO_2010_2013.pdf?OpenElement](http://www.filcams.cgil.it/info.nsf/656c7837a0039af4c1257a910040233b/$file/CCNL_TURISMO_2010_2013.pdf?OpenElement).

107. Available at: <http://ebitemp.it/files/MINLAV-Circ-13-2009.pdf>.

108. Available at: <http://www.nidil.cgil.it/files/adecco%20-%20nidil%20padova%2013luglio09.pdf>

109. See <http://www.abu.nl/abu/organisatie> and <https://www.nbbu.nl/pagina/over-nbbu>.

110. W. Plessen and A. Muntz: "Rechtspraak in Uitzendland, over complexe regels en immanente discussiethema's", in *SMA: tijdschrift over arbeid en sociale zekerheid* (2003), pp. 203–213.

Relevance of collective agreements to regulation (contd.)

Member State	Information provided by national experts
	<p>In the ABU-CLA, the system is currently divided into three phases.¹¹¹ The agency employee stays in phase A until he or she has worked 78 weeks for the agency. In this phase the agency employee may have an unlimited number of contracts. When an interruption of 26 weeks between two contracts occurs, the counting of the 78 weeks starts again. The employee in phase A works under a so-called <i>agency or employment clause</i>. This has several consequences. One is that the contract with the agency in principle ends when the contract between agency and user firm ends. After three months of work, the user firm has to give notice before terminating the contract with the agency. This notice period increases with the duration of the work. The employment clause also gives the employee the right to stop working with one day's notice. Phase B starts after the period of 78 weeks and lasts two years (or eight consecutive contracts, whichever comes first). In this period the employee may have a maximum of eight fixed-term contracts. If the agency employment contracts in phase B are interrupted by a period of less than three months, the period of interruption counts as part of the total duration of phase B. During phase B, the temporary employment contract ends on the agreed expiry date. The employment clause may no longer be included in the employment contract. This means that if the user firm ends the contract with the agency, the temporary employment contract of the employee with the agency does not automatically end and the agency has to find a suitable job for the agency worker and pay for the period in between jobs whilst the contract is not yet ended. The period of notice is also longer for the agency worker. From phase B on, the agency worker starts building up pension rights. After two years or eight consecutive contracts, the agency worker reaches phase C. In phase C the agency employee receives a contract for an indefinite period of time with the agency. The period of notice is now one month for both the agency and the worker. However, before giving notice, the agency is obliged to look for suitable replacement jobs for a couple of months in case the user firm has ended the contract for a worker in stage C with the agency. Meanwhile, the worker is entitled to continued pay. Moreover, the temporary agency, like any regular employer in the Netherlands, needs a permit to fire the worker.</p>
Portugal	No impact.
Slovenia	Some sectoral/company collective agreements define in detail the rights of agency workers (wages, reimbursement of expenses for meals during work, travel expenses, etc.) in order to provide equal rights to all workers at all levels and with the aim of avoiding social dumping.
Spain	<p>Historically speaking, collective agreements have been relevant in several ways, mostly in terms of restricting the use of temporary work (whether in bilateral relationships or through agencies) in a number of sectors. Relevant examples include:</p> <ul style="list-style-type: none"> • The collective agreement for furniture shops in the province of A Coruña establishes that a minimum of 75 per cent of the employees in an undertaking must have an open-ended contract, but 50 per cent in those with four employees or less. • The collective agreement for iron and steel industries in the province of Lugo establishes the mandatory transformation of 20 per cent of all <i>contratos eventuales</i>, when they finish, into open-ended contracts. • The collective agreement for sport installations and gymnasiums in the region of Galicia establishes a maximum duration for <i>contratos eventuales</i> of nine months in a period of 12 months. • The collective agreement for the fur trade in the province of Ourense recommends against the usage of <i>contratos de obra</i>, considering that they are not suited for the sector. • The collective agreement for cement by-products in the provinces of Pontevedra and A Coruña only allows this kind of contract for the fabrication of concrete for a specific building, non-habitual damages and their reparation and other limited scenarios. <p>Before 2011, many collective agreements included rules concerning the usage of temporary work agencies. After the “liberalization” of these agencies in the reform of 2010, many of these limits must be considered as repealed. In effect, the “reviewing” of restrictions has been understood as a requirement to remove them.</p>

111. See art. 13 of the recently concluded ABU-CLA 2012–2017. An English text of this collective agreement is available at: <http://www.abu.nl/engels/brochures/brochures>.

Relevance of collective agreements to regulation (contd.)

Member State	Information provided by national experts
Sweden	<p>The Swedish TWA industry is well-regulated and almost entirely covered by collective agreements, both for workers and civil servants. The Swedish Staffing Agencies is the main employer (and trade) federation for temporary work agencies. In order to become a member of the Swedish Staffing Agencies, the employer must meet certain requirements; for example, it must be bound by collective agreement and have an established gender equality plan. The federation also runs the industry's internal system for authorization, and all members must seek and acquire authorization within a maximum of 12 months. The Swedish Staffing Agencies are bound by collective agreements, for example with all organizations within the Swedish Trade Union Confederation (which is the central organization for workers) with Unionen (Sweden's largest trade union for professionals in the private sector) and with the Union for Professionals (<i>Akademikerförbundet SSR</i>), the Swedish Municipal Workers' Union (<i>Kommunal</i>, Sweden's largest trade union), the Swedish Medical Association (<i>Sveriges Läkarförbund</i>), and the Swedish Association of Health Professionals (<i>Vårdförbundet</i>).</p> <p>The collective agreement concluded with the Swedish Trade Union Confederation states that the wage of the temporary agency worker must be equal to what is paid on average for comparable work in the user undertaking. For temporary agency workers with a permanent contract, all the collective agreements ensure a guaranteed wage during periods in between temporary assignments, provided that the employee is available for work during the period. The guaranteed wage is 90 per cent of the employee's average wage in the preceding three months. Regarding pension and insurances, the conditions are basically the same as for employees in other private companies bound by collective agreements. Thus, the collective agreements cover insurances for occupational pension, work injuries, occupational diseases and sickness along with life insurance, and a combined redundancy payment insurance and career readjustment insurance. The employer pays the premiums for these collectively agreed insurances.</p> <p>Furthermore, the collective agreement expands the employer's duties in relation to the Employment Protection Act when it comes to the duty to seek to avoid redundancy by providing the employee with other work, if this could reasonably be required. Whereas the duty stemming from the Employment Protection Act relates to other work in the employer's services, the collective agreement requires the employer to seek other work (i.e. assignments) for the employee in all the user undertakings in which the employer has an engagement.</p>
United Kingdom	<p>There is little activity of the social partners, with only a few company-level agreements (PCS and Adecco, for instance) playing a (marginal) role in the regulation of the terms and conditions of UK temporary agency workers.</p>

4.5 Ability of companies to avail themselves of TAW

There is a sense among the national experts contributing to the present report that the legal frameworks of the Member States covered permits companies to avail themselves of temporary work both in general terms (i.e. under various contractual arrangements) and TAW in particular. The comparative information contained in the following table provides an indication of the implementation of TAW laws in practice. This is of course subject to the various restrictions discussed in the previous parts of this section.

Implementation of laws on temporary agency work

Member State	Information provided by national experts
Belgium	<p>In 2011, 547,259 temporary agency workers were placed by 1,356 temporary work agencies. For a small country, these figures seem to indicate that employers have sufficient opportunities to hire workers on a temporary basis.</p> <p>The Law of 24 July 1987 on Temporary Work also nails down the rights and obligations of the user, making the use of temporary workers legally straightforward for the user. In order to have the maximum guarantee that the firm will respect its obligations to its temporary workers as well as the users, the Law also provides that temporary work agencies can operate in Belgium only after a licence has been granted (the requirements for obtaining a licence as a temporary work agency are based on regional legislation within the country).</p> <p>As mentioned earlier, in order to avoid abuse, temporary work has been prohibited or limited in some particular sectors of industry, based on sector-level collective bargaining agreements. These prohibitions were to be reviewed in the light of Article 4 of Directive 2008/104 by December 2011. Both the Belgian social partners and the Government are of the opinion that these limitations are justified in light of EU legislation.</p>
Estonia	<p>Estonian labour laws enable the hiring of workers on a temporary basis.</p>
France	<p>With a figure of temporary agency workers that is the third largest in the European Union (behind only Germany and the United Kingdom) and with temporary agency workers occupying roughly 2 per cent of the overall French labour market (above the EU average), there is little doubt that TAW is a readily available and used recruitment option for French businesses seeking to employ temporary workers. It is interesting to note that TAW in France is, at the same time, popular amongst employers and relatively (and comparatively) stringently regulated, to a certain extent demystifying the simplistic assumption that stringent regulation of atypical work inevitably results in its scant popularity amongst employers.</p>
Germany	<p>The TzBfG provides two specific mechanisms to protect employees from an excessive use of fixed-term contracts by the employer:</p> <ol style="list-style-type: none"> 1) There should be a reasonable, objective ground. As examples, a list of grounds is found in §14 Abs. 1 TzBfG; however, a non-listed ground needs to be as severe as the listed ones (BAG decision of 09.12.2009 - 7 AZR 399/08). Collective agreements can also add further grounds. 2) Fixed-term contracts without an objective ground are only permissible for a maximum of two years (deviation by collective agreement possible), and if there has not been an employment relationship between the contracting parties within the last three years (BAG decision of 06.04.2011-7 AZR 716/09). Renewals do not count as a new contract as long as they are concluded before the expiration of the previous contract. <p>There are exemptions regarding temporary work without an objective ground for employees over the age of 52, and for recently founded companies.</p> <p>If no time limits are stipulated in the recruitment of temporary workers, the works council may refuse its consent to the hire (BAG decision of 10.07.2013).</p>

Implementation of laws on temporary agency work (contd.)

Member State	Information provided by national experts
Hungary	Temporary agency work was initially (in 2001) an extremely flexible employment contract, which was designed to facilitate the conclusion of such contracts as an alternative to indefinite term contracts. The recent implementation of the Temporary Agency Work Directive has not changed substantially this feature of the Hungarian provisions. In particular, it did not modify the “soft” provisions on equal treatment and the essentially temporary nature of temporary agency work contracts.
Italy	In spite of the limits to the use of TAW present in both statute and collective agreements, Italian businesses are capable of accessing TAW and, perhaps more so, temporary workers in general to satisfy temporary staffing needs. Most limits do not apply (or apply more liberally) to the long-term unemployed. The upper quantitative limits for the conclusion of TAW contained in most sectoral collective agreements (usually around 8 per cent, with some exceptions) exceed by far the EU figure for TAW as a share of the labour market, so there is no doubt more potential for further growth of TAW, which Directive 2008/104 still regards an exception to the general form of employment relationship, open-ended contracts of employment.
Netherlands	<p>Currently, the total Dutch TAW market amounts to more than 734,000 agency workers, 1.4 million placements and a turnover of more than €10 billion annually. The sector thus plays a prominent role in the Dutch economy, society and labour market.¹¹² The largest volume of temporary work through agencies includes rather low-skilled jobs for manufacturing, transport, cleaning and administrative work, although most large temporary work agencies also have specialized departments for outsourcing nurses, secretaries, managers and other professional medical or technical staff; activities deployed by specialized agencies too.</p> <p>The TAW sector has continued to professionalize through policy development and institutionalization of training (<i>Stichting Opleiding en Ontwikkeling Flexbranche, STOOF</i>), occupational health and safety (<i>Stichting Arbo Flexbranche, STAF</i>) and monitoring compliance with the collective labour agreement (<i>Stichting Naleving cao voor Uitzendkrachten, SNCU</i>). Besides the Collective Labour Agreement for Temporary Agency Workers, there exists a Social Fund for the Temporary Agency Work Sector Collective Labour Agreement (<i>Stichting Fonds Uitzenbranche, SFU</i>); all temporary employment organizations have to pay a fixed percentage for STOOF, STAF and SNCU. In addition, public–private collaboration and self-regulation are being used increasingly to combat <i>mala fide</i> practices (Labour Standards Association, SNCU, Labour Inspectorate, the tax authorities, etc.) and are being used in public–private partnerships in job placement services (with the Institute for Employee Benefit Schemes (UWV) and municipalities).</p>
Portugal	According to the statistics available, temporary agency work is an increasingly common form of work (with some 161,000 TAW contracts signed in the last semester of 2011, up 4,1 per cent on the previous year) and one that user companies can access at a reasonable cost (the average pay being €591/month). ¹¹³
Slovenia	In the aim of reducing possible abuses by users and employment agencies, the ERA–1 has defined in greater detail the obligations of the employment agencies and users vis-à-vis temporary agency workers. Further changes in the existing legislation are expected in the months to come, with the aim of further reducing abusive practices. The new laws currently being discussed will clarify further the distinction between the activities of providing temporary agency workers to users and the intermediation activities under civil contract arrangements (most abuses have been in the latter case). In addition, the existing fines will be increased.
Spain	Spanish companies can readily avail themselves of temporary workers, directly or through intermediaries. This is even more so in recent years, with the progressive deregulation of temporary work. The Minister for Economy and Competitiveness announced in the first week of December 2013 a new labour reform (“second generation reform”) that will further enhance flexibility. No legal measures have been adopted yet.

112. ABU: “The temporary agency work sector in the Netherlands”, online article (Feb. 2012). For more information in English about the TAW sector see: <http://www.abu.nl/engels/brochures/brochures>.

113. See http://www.iefp.pt/estatisticas/MercadoEmprego/analisesectortrabalhotemporario/Relatoriossemestrais/Documents/Relat%C3%B3rio_ETT_2sem11_final1.pdf.

Implementation of laws on temporary agency work (contd.)

Member State	Information provided by national experts
Sweden	While temporary agency workers tend to comprise a relatively small share of the domestic labour market (approx. 1.4 per cent in 2011, just below the EU average), it must be noted that Swedish employers tend to satisfy their need for temporary work through the recruitment of fixed-term workers. Such contracts comprise a relatively large (and comparatively speaking larger) share of the labour market (approx. 16 per cent in 2012).
United Kingdom	<p>The United Kingdom is arguably the EU country where employers are granted most leeway in using both temporary work and temporary agency work. The key concern pertains to the vulnerability of most temporary agency workers (most of whom, as noted above, are in any case excluded from the application of the ETP contained in the 2010 Regulations as they operate on TAW contracts lasting less than three months).</p> <p>In gauging the size of the TAW sector in the United Kingdom today it is rather difficult to obtain accurate data, as agency work is not always distinguished as such in published statistics riddled with curious exceptions, and because issues of classification tend to lead to significant underestimates.¹¹⁴ In 2008, the number of agency workers was put at a mid-point of 1.3 million, with other sources reporting figures as high as 1.5 million. The industry has continued to undergo rapid growth in subsequent years,¹¹⁵ despite brief stagnation in the early period of domestic recession.¹¹⁶ By 2013, the TUC estimated that the number of temporary agency workers had risen by at least 15 per cent since the onset of the recession, “faster than any other form of employment”.¹¹⁷ Indeed, a report commissioned in 2014 by the Recruitment & Employment Confederation, an industry representative body, suggested that “24% of the British population [have] worked as a temporary agency worker at some point in their working life”,¹¹⁸ and an international comparison published in the same year put the number at 1.13 million.¹¹⁹ Relative to the overall size of the labour market, the agency industry is therefore larger in the United Kingdom than anywhere else in the European Union.</p>

4.6 The law on TAW in the EU Member States surveyed: A comparative assessment

The Member States covered by this report have implemented Directive 2008/104 in ways that are considerably different from each other and that, in various senses, reflect their pre-existing attitudes to and traditions in the regulation of atypical work in general (and agency work in particular), as well as their models of industrial relations and employment relations. This was to be expected; such diversity is, in many ways, explicitly contemplated by the Directive itself, which – as noted in Section 3 of this report – is a minimum harmonization instrument, and thus by design fairly limited in both its material and personal scope.

The scope of the Directive is such that a number of activities performed by employment agencies or employment businesses beyond that of the temporary assignment of workers employed by the user companies are likely to be outside its range and *ratione materiae* scope (e.g. personnel selection and training services, or subcontracting arrangements).

114. E. Markova and S. McKay: *Agency and migrant workers: Literature review*, TUC Commission on Vulnerable Employment (COVE) (London, Working Lives Research Institute, London Metropolitan University, 2008), p. 6.

115. C. Forde, G. Slater and F. Green: *Agency working in Britain: What do we know?*, CERIC Policy Report No. 2 (Leeds, Centre for Employment Relations Innovation and Change, University of Leeds, 2008).

116. C. Forde and G. Slater: *Survey of non-regular employment in Europe and the US: Report on the United Kingdom*, Report prepared for the Japan Institute of Labour Policy and Training (JILPT) (published as G. Slater: “Non-regular employment in the United Kingdom”, in JILPT: *Non-regular employment: Issues and challenges common to the major developed countries*, JILPT Report No. 10 (Tokyo, 2011).

117. TUC: “TUC lodges complaint against Government for failing to give equal pay to agency workers”, press release (2 Sept. 2013).

118. Recruitment & Employment Confederation (REC): *Flex appeal: Why freelancers, contractors and agency workers choose to work this way* (London, 2014), p. 5.

119. CIETT, *Economic Report*, 2014 edition, op. cit. pp. 15, 17.

The spirit of the Directive has been understood by some as amounting to a quid pro quo between the improvement of the working conditions of TAW and the progressive liberalization of its provision (traditionally tightly regulated in most EU Member States).¹²⁰ By and large, all Member States have sought to comply with what is arguably the key protective provision contained in Directive 2008/104, the equal treatment provision in respect of basic working conditions. The extent to which the use of the Article 5(4) exception, as implemented by the United Kingdom, is compatible with the letter of the Directive and the ETP, on the other hand, is currently the subject of a complaint by the TUC to the Commission under Art. 258 TFEU.

The other key provision of the Directive is arguably Article 4, which requires that existing restrictions and prohibitions upon the use of TAW (apart from those excepted by Art. 4(4)) had to be reviewed and reported to the Commission by 2011. Article 4 also provided that such restrictions and prohibitions could be justified on the grounds of the general interests listed in its paragraph 1. The exact legal implications of this provision in respect of the existing restrictions is as yet unclear, and in part the subject of a reference currently pending before the CJEU (Case C-533/13, AKT). The evidence from the analysis carried out above is that a significant majority of Member States maintain restrictions and prohibitions on the use of TAW. Some of these restrictions are contained in legislation and some in collective agreements, and may fall within the ambit of Article 4 of Directive 2008/104. There is a sense that some Member States may have understood the concept of “review” of these restrictions as synonymous with “removal” (see, for example, the comments of our Spanish expert), even though this is not immediately apparent from the wording of Article 4. It is worth recalling that, in any case, under Article 4(1) these restrictions may be justified by an interest in protecting temporary workers and their health and safety, the need to ensure that the labour market functions properly, and the need to prevent abuses, and, moreover, that the Directive also contains a non-regression clause in Article 9(2).

There is a view that Recital 22 of the Directive ought to be understood as requiring that even those restrictions and rules falling outside the scope of Article 4 would still have to be consistent with the CJEU’s jurisprudence on free movement of services and market access.¹²¹ This may well be arguable. But it is also possible that the provisions in Article 4 (and Article 4(4) in particular) could be seen as providing a sufficiently express justification to uphold proportionate restrictions upon the “market access” principle embodied in Article 56 TFEU, and as granting a considerable leeway to national authorities seeking to justify such restrictions (in particular in purely domestic situations).¹²²

It has also been claimed,¹²³ furthermore, that prohibitions upon offering open-ended contracts to agency workers should be removed, as the EU Directive on TAW “explicitly recognizes the opportunity” to employ agency workers on open-ended contracts. Such prohibitions, however, at the time of writing Section 4 of this report, remain in place in Belgium and France, as noted above in Sections 3 and 4. While this may be an arguable point, so is the alternative view suggesting that Article 5(2) of the Directive simply recognizes a “possibility” for Member States to allow the employment of agency workers on open-ended contracts (the provision reading “where temporary agency workers who have a permanent contract of employment with a temporary-work agency”), without actually creating a legal obligation for such contracts to be introduced.

It is worth noting that some Member States which maintain, through legislation or collective agreement, various restrictions or limitations upon the use of TAW (e.g. France, Germany, Italy) have a relatively high (and higher than the EU average) TAW share of the labour market. The United Kingdom would appear to present a distinctive case, with some statistical analyses indicating a very low incidence of TAW and other analyses an above average incidence.¹²⁴ But statistics aside, the analysis carried out in this section has pointed out that more than half the United Kingdom’s temporary agency workers operate outside the material scope of application of Article 5 of the Directive because of the application of the 12-week qualifying period (on this point, it is arguable

120. See European Commission, *Transposition of Directive 2008/104/EC on temporary agency work*, op. cit., p. 30.

121. Ibid.

122. Case C-384/93, *Alpine Investments* [1995] ECR I-1141.

123. EUROCIETT: *Transposition of EU Directive 104/2008/EC on temporary agency work: Unbalanced implementation hampers the industry’s contributing to job creation, participation and integration in the labour market* (Brussels, July 2013), p. 4, fn. 10, also including Poland, Luxembourg and Greece in this group of countries. The authors of the present report believe that Greece has been included in error.

124. See the opening paragraph of Section 2 above.

that qualifying periods should only be regarded as compatible with the Directive “provided that an adequate level of protection is provided for temporary agency workers”, as the opening line of Article 5(4) suggests). So it is difficult to argue that UK temporary agency workers enjoy a sufficient level of protection in terms of their pay and basic working conditions (which is, according to some, the “do ut des/quid pro quo” implicit in the Directive for prohibitions and restrictions to be loosened or removed). Conversely, some countries with relatively restrictive or protective regulatory frameworks (e.g. France, Italy) tend to have a flourishing TWA industry.

Regulating temporary work and temporary agency work in Greece

5

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Greek labour law has traditionally been drafted with a permanent and personal work relationship between the worker and the employer in mind. Although temporary employment was a pre-existing (if limited) practice, it was operating until 2001 in the absence of a specific institutional framework and was instead regulated by the general provisions of the Civil Code (arts. 361, 651 and 648). Prompted by the rise in contractual flexibility in temporary placements through private intermediaries and by the desire to promote labour market flexibility, the Greek Parliament passed a new law on employment services in October 2001. Law 2956/2001 laid down, for the first time, specific rules on the establishment, operation and obligations of intermediaries and the employment rights of temporary agency workers.¹²⁵ When the EU Directive was adopted in 2008, the parliamentary committee of the then centre-right government in the European Parliament stated that Greek legislation in the form of Law 2956/2001 guarantees “from the first day of employment, the equal treatment of temporary workers with the employees of the user undertaking”.¹²⁶ However, a number of reforms have since taken place. In summary, Law 2956/2001 was amended by art. 3 of Law 3846/2910¹²⁷ and art. 17(4) of Law 3899/2010. Later, Directive 2008/104 was adopted and transposed into Greek law by Law 4052/2012.¹²⁸ More recently, significant amendments were made in 2014 by Law 4254/2014,¹²⁹ which was adopted in the context of the financial assistance programme received by Greece. This section provides an overview of the current regulation of TAW in Greece, focusing in particular of those areas of regulation that have been explored in the comparative Section 4, above, in respect of the other EU Member States covered in this report.

5.1 Contractual forms through which temporary agency work is available in Greece

As it stands, art. 113(2) of Law 4052/2012 reproduces Article 2 of the Directive, stating that the aim of the legislation is “to ensure the protection of temporary agency workers and improve the quality of temporary agency work by ensuring equal treatment between temporary agency workers and those directly employed by the indirect employer, and by establishing a suitable framework for the use of temporary agency work by recognizing temporary work agencies as employers with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working”. A temporary agency worker is defined as “a worker with a contract of employment or in an employment relationship with a temporary-work agency with a view to being assigned to an indirect employer to work temporarily under his supervision and direction” (arts. 115(b) and (c)). It is useful to add here that the term “indirect employer” is used in Greek legislation in place of the term “user undertaking” adopted by the Directive in its Article 3(1). In terms of the scope of the legislation, Law 4052/2012, art. 114 reproduces Article 1(1) of the Directive but omits paragraph 2 of the latter, which provides that the Directive applies to public and private undertakings which are temporary work agencies or user undertakings engaged in economic activities, whether or not they are operating for gain. With respect to the possibility that the Member States may not apply the Directive to employment contracts or relationships concluded under a specific public or publicly supported vocational training,

125. Arts. 20–26. Two ministerial decisions (30342/2002 and 30434/2002) by the Ministry of Labour and Social Security (as it was then) focused on the conditions for the creation and the terms of operation of temporary employment intermediaries. Law 3144/2003 referred to the administrative matters related to the operation of temporary employment agencies.

126. Parliamentary Team of New Democracy in the European Parliament: “Better late than never for temporary workers”, press release (2008) (in Greek).

127. Article 3 of Law 3846/2010 amended arts. 20, 22, 24 and 25 of Law 2956/2001. Appendix IV of Law 3845/2010 had indicated that the Government would amend the legislation with the intention of facilitating the use of temporary and part-time employment.

128. Arts. 113–133, as amended by para. IA.8 of Law 4093/2012. Law 4052/2012 adopted the provisions of Law 3846/2010.

129. Law on measures for the support and development of the Greek economy in the framework of implementation of Law 4046/2012 and other provisions, FEK A 85/7.4.2014. For the purposes of the present report, reference is made to Law 4052/2012, as amended by Law 4254/2014.

integration or retraining programme, Law 4052/2012 provides that the legislation does not apply to employment contracts or relationships concluded in the framework of art. 2(5) of Law 3845/2010.¹³⁰

It should be added here that Law 3919/2011 abolished the requirement for an administrative licence to be issued for the operation of temporary work agencies.¹³¹ At present, service providers (natural or legal persons) that wish to operate a temporary work agency should notify the Directorate of Employment of Ministry of Labour and Social Security that they are a practising temporary worker agency (art. 123 (1) and (2) of Law 4052/2012). The applicant should prove that he or she fulfils the specific preconditions and rules of functioning. If the applicant does not meet the necessary criteria, the competent authority can ban the operation of the temporary work agency within a three-month period (art. 123(2)). Temporary work agencies may not carry out any other activity, except for the following: (i) mediation for finding jobs, for which there has been notification at the Directorate for Employment and the exercise of such activity has not been prohibited; (ii) human resource assessment or training; and (iii) consultancy and career advice (art. 122(1)). In the case of non-compliance with the provisions concerning the establishment and operation of the temporary work agencies,¹³² sanctions include the imposition of fines, temporary or permanent suspension of the operation of the agency and even imprisonment of up to two years, as well as pecuniary compensation (art. 128).¹³³ Administrative fines range from €3,000 to 30,000 depending on the gravity of the infringement (art. 128(1)). Specific provisions are in place with respect to issues related to the health and safety of temporary agency workers: in such cases, arts. 71 and 72 of the Code of Laws for the Health and Safety of Employees, which was ratified by art. 1 of Law 3850/2012, apply.

5.2 Substantive protections and rights accorded to temporary agency workers in Greece

While the previous legislation in Law 2956/2001 included some provisions that were informed by the principle of equal treatment, it did not stipulate any general clause establishing it. Law 3846/2010 amended art. 22 of Law 2956/2001, including for the first time specific provisions prohibiting discrimination of temporary agency workers in relation to terms of employment, including pay. Now, art. 117(1) of Law 4052/2012 stipulates that the basic terms of employment (including pay) at the time of the assignment should be at least those that would be applicable if the workers had been employed to occupy the same position directly by the indirect employer. The meaning of the basic terms of employment is provided in art. 115 of Law 4052/2012; this is in line with Article 3(1)(f) of the Directive. Law 4052/2012 also provides (in art. 117(2)) that the provisions concerning the protection of pregnant women and women on maternity leave, the protection of children and young people as well as those concerning equal treatment between men and women and any action against discrimination on the basis of gender, race, disability, ethnic origin, religion, age, beliefs or sexual orientation are also applicable in the case of temporary agency workers.

No use has been made of Article 5(2) of the Directive, which allows for exemptions to be made to the principle of equal treatment, where temporary agency workers who have a permanent contact of employment with a temporary work agency continue to be paid in the time between assignments. This is the case even though Law 4052/2012 regulates the method of payment of agency workers who are employed on a permanent contract in the time between assignments. Nor does Law 4052/2012 provide, on the basis of Article 5(3) of the Directive, that the social partners be

130. Law 3845/2010 allowed the intermediation of temporary employment agencies in the public sector with respect to certain categories of unemployed persons (see also section 5.3 below).

131. Under art. 1(2) of the Ministerial Decision 30342/2002, a temporary employment agency could be established only in the form of a public company with share capital of at least €176,083. For its establishment and operation, a special licence had to be obtained from the Minister of Labour and Social Security, after an opinion from the special Temporary Employment Monitoring Committee. In order to be granted a licence, every agency had to submit two letters of financial guarantee from a bank, the first to guarantee the wages of agency workers and the second to guarantee their insurance contributions. Monitoring mechanism provisions were in place and inspections were carried out during the operation of agencies by the Labour Inspectorate or the Ministry of Employment and Social Protection.

132. Article 127 of Law 4052/2012 specifies that the Labour Inspectorate is responsible for the monitoring of the conditions for the operation of the agencies.

133. The General Confederation of Greek Workers (GSEE) believes that the fines together with the penalties cannot be considered to be effective, proportionate and deterrent; see, in general, Schömann and Guedes, *Temporary agency work in the European Union: Implementation of Directive 2008/104/EC in the Member States*, op. cit.

given the option of upholding or concluding collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of such workers which may differ from those referred to Article 5(1) of the Directive.

While there is no specific reference to Article 11 of ILO Convention No. 181 and the principle of “adequate protection” of temporary agency workers, Law 4052/2012 includes a number of provisions to a similar effect. Aside from the basic terms of employment, art. 118(4) transposes Article 6(4) of the Directive; it provides that temporary agency workers shall be given access to the amenities or collective facilities in the indirect employer, in particular any canteen, child-care facilities and transport services, under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reasons, such as with respect to any differences in the working time or the duration of the employment contract. Temporary work agencies should also facilitate the access of temporary agency workers to children’s nurseries that they offer, even in the periods between assignments, and should provide appropriate training opportunities to enhance the skills and professional progress of the workers (art. 118(5)). Article 125(2) stipulates that workers with a temporary employment contract or relationship should have access to the same level of protection with respect to health and safety as that provided to the other employees of the indirect employer. The indirect employer, unless specified by a joint liability contract, is solely liable for the conditions under which the worker performs the work and for any work accidents that may occur. Article 125(2)(e) provides some further duties of the indirect employer related to health and safety issues, including the requirement to employ an occupational health physician. In this context, the temporary work agency should also cooperate with the indirect employer in safeguarding the health and safety of the temporary agency workers.

Article 118(1) reproduces Article 6(1) of the Directive, stipulating that “temporary agency workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment. Such information may be provided by a general announcement in a suitable place in the undertaking for which, and under whose supervision, temporary agency workers are engaged”. Further, similar to Article 6(2) of the Directive, art. 118(2) provides that any provision that hinders the permanent employment of the temporary agency worker is null and void. The same applies in the case of provisions that hinder directly or indirectly the collective rights of workers or affect their insurance rights.¹³⁴ In line with Article 8 of the Directive, article 120 of Law 4052/2012 stipulates that the indirect employer must provide suitable information on the use and number of temporary agency workers, the relevant section of the user employer’s business plan on the use of temporary agency work, and the possibilities of recruiting temporary workers directly to bodies representing workers (trade unions or work councils or, following recent reforms, “associations of persons”). Regarding the representation rights of temporary agency workers, such workers shall count for the purposes of calculating the thresholds applicable in the case of bodies representing workers at the temporary work agency as well as at the indirect employer (art. 119). But no specific criteria are defined in Law 4052/2012 concerning the establishment of workers’ representatives, and the provisions of the relevant legislation apply.

Article 124(1) of Law 4052/2012, as amended by Law 4254/2014, stipulates that the pay of agency workers for the period in between assignments should not be lower than the national minimum wage.¹³⁵ On the basis of this, it is deduced that the employment relationship is active during the time the agency worker is not on assignment and that the worker is on call.¹³⁶ Article 124(5)(a) provides that temporary workers, during their employment availability to the temporary work agency, as well as during their employment by the indirect employer, are covered by the health care and sickness benefits of the Social Insurance Institute – General Employees’ Insurance Fund (IKA-ETAM), but also by the supplementary pensions’ social institution (ETEAM), with the exclusion of all those covered by another main or supplementary social security institution.¹³⁷

134. In a similar manner, the previous legislation (Law 2956/2001) did not deal much with the issue of the collective rights of temporary agency workers, either in the context of the temporary agencies or in the context of the indirect employer. A general provision only (art. 22(7)) was included, stipulating that any clause which directly or indirectly hindered the collective rights of the worker would be void.

135. Before the 2014 amendments, reference was made to the wage levels set by the national general collective agreement.

136. A. Kazakos: *Labour law* (Athens-Thessaloniki, Sakkoulas, 4th ed. 2013), p. 87 (in Greek).

137. The social security contributions are paid by the agency to the relevant bank account of IKA-ETAM.

5.3 Key restrictions and prohibitions on the use of TAW in Greece

The basis for the relationship in the case of TAW is the employment contract between the temporary agency and the worker. According to the legislation, this is a regular employment relationship and the agency has all the obligations and rights of a regular employer. The worker is recruited by the temporary work agency and belongs to the workforce of the latter. The employment contract between the temporary agency worker and the agency can be either be a fixed-term contract or an open-ended one (art. 115(a) of Law 4052/2012). The legislation does not prohibit the combination of temporary work with part-time employment, and in any case, permanent employment is possible on the basis of an agreement between the indirect employer and the worker (art. 118(2)). The contract of employment shall be in writing and its content is stipulated as follows: the terms and conditions as well as the duration of the employment by the agency, the terms of the provision of labour to the indirect employer(s), the terms of pay and insurance, as well as any other issue that, according to good faith and the circumstances, the agency workers should know concerning the provision of their labour (art. 124(1)).¹³⁸

With respect to the relationship between the temporary agency worker and the indirect employer, these are regulated by their agreement, the terms of the written employment contract, which are binding on both parties, and the limitations set out in the relevant legislation (art. 124). The employment of an agency worker by the indirect employer is only permitted on the basis of the conclusion of a contract of services with the temporary agency. The contract concluded in writing between the temporary employment agency and the indirect employer specifies the pay and insurance of the employee for the place and the time that he/she provides services to the indirect employer (art. 124(3)).¹³⁹ The indirect employer must define in advance (before the assignment of the worker) the professional criteria or abilities and the specific characteristics required for the post. The temporary employment agency must notify the temporary agency worker of these details (ibid.). Article 124(4)(a) provides that the temporary agency and the indirect employer are jointly and severally responsible for remuneration and social insurance contributions. The responsibility of the indirect employer is suspended if the contract provides that the person liable for the remuneration and social security contributions is the direct employer and the salary and pension rights of temporary workers employed can be satisfied by the forfeiture of letters of credit (subsidiary obligation of the indirect employer). The legislation does not stipulate the level of remuneration but prohibits any charges made to the temporary agency worker (art. 128). No attempt has been made to stipulate specific conditions with respect to foreign companies or temporary agency workers (e.g. activities of foreign agencies).

Article 4(1) of the Directive limits any restriction or prohibition on the use of agency workers to “grounds of general interest relating in particular” to “the protection of agency workers”, “health and safety”, or “the need to ensure that the labour market functions properly and abuses are prevented”. In the past, the Greek legislative framework in the area of temporary agency work was quite liberal and encouraged in practice the growth of temporary employment, as employers were allowed to have recourse to the use of agency work without the need for any justification. Law 3846/2010 introduced for the first time the requirement that temporary agency work would be generally allowed where it covered temporary, seasonal or extra needs for employment of the indirect employer.¹⁴⁰ However, Law 4052/2012 (art. 39, subparagraph IA.4(3)) reverted back to the pre-existing framework of allowing the use of agency work without the need for justification. Beyond this, the use of temporary agency work is prohibited in the following cases: (i) when TAW substitute employees on

138. If, at the time the contract is concluded between the temporary work agency and the temporary worker, the identity of the indirect employer or the timeframe for the assignments is not known, the contract should provide the framework of terms and conditions for the provision of employment to the indirect employer (art. 124(1) of Law 4052/2012). Art. 39, subparagraph IA.4(4) repealed the previous requirement to refer to the reasons for the use of agency workers in the contract between the temporary work agency and the worker.

139. Art. 39, subparagraph IA.4(5) repealed a requirement to refer to the justification for the use of agency workers in the contract between the temporary work agency and the user undertaking.

140. This approach was retained by Law 4052/2012 (art. 122(3)). Lixouriotis suggests that the introduction of this requirement contravenes Article 2 of Directive 2008/104/EC, which stipulates that the objective of the legislation is to promote employment creation and the development of flexible forms of employment; see I. Lixouriotis: “Special types of employment, part-time and temporary work in the provisions of the recent Law 3846/2010”, in *Bulletin of Labour Legislation* (2010, Vol. 6), p. 648 (in Greek) However, this interpretation does not take into account the objective of protection of temporary agency workers, which is also recognized in Article 2 of the Directive.

strike;¹⁴¹ (ii) when the indirect employer has dismissed employees of the same occupational category for economic reasons during the last three months, or has proceeded to collective dismissals of the same occupational categories during the last six months;¹⁴² (iii) when the indirect employer is subject to the provisions of Law 2190/1994 (A'28) or to the provisions of art. 1(3) of Law 2527/1997 (A'206), as applicable, with the reservation of art. 2(5) of Law 3845/2010;¹⁴³ (iv) when the employment by its nature exposes the employees to health and safety risks;¹⁴⁴ and (v) when the individual is subject to the specific provisions concerning insurance of construction workers, with the exception of workers employed in construction projects of €10,000,000 and above, which are financed or co-financed by national funds and take place following the award of a contract by a public authority in the broader public sector.¹⁴⁵

Article 117 of Law 4052/2012 provides that the duration of an assignment of a worker with an indirect employer, which includes any renewals made in writing, shall not be greater than 36 months.¹⁴⁶ There is no restriction on the number of renewals of assignments with the indirect employer.¹⁴⁷ Where work for the indirect employer continues following the expiry of the 36-month period, the existing TAW contract is automatically converted into an open-ended contract with the indirect employer and the employment relationship with the temporary agency is terminated (art. 117(3)(b)).¹⁴⁸ "Existing contract" means the contract between the temporary work agency and the worker. Whether the continuation of employment takes place immediately following the end of the previous placement or after a short period of time is irrelevant; the legislation stipulates a period of 23 days for the latter case (art. 117(4)(a), as amended by para. IA.8(4) of Law 4093/2012). However, the conversion of the contract into one of indefinite duration between the worker and the indirect employer is not applicable in the case of workers in the hotel and catering sectors, when they are on assignments for social events in the last few days (art. 117(4)(b)).

141. Vayias suggests that this exception should only be applicable in cases where the industrial action is lawful; see A. Vayias: "Temporary employment in Greece and in the European Union (Directive 2008/104/EC)", in *Revue de Droit du Travail* (2012, Vol. 71), p. 1109 (in Greek).

142. These stipulations are recent amendments under Law 4254/2014. The previous legislation (art. 116(b) of Law 4052/2012) stipulated a period of six months for dismissals for economic reasons and 12 months for collective dismissals.

143. This means that individuals may not be employed through temporary work agencies where the Civil Service Staffing Council (ASEP), an independent administrative authority, is competent to fill the jobs in question. This excludes groups such as staff of the Presidency of the Hellenic Republic and the Hellenic Parliament, members of the judiciary, most of the staff of the Legal Council of State and the medical coroners, and research staff employed by institutions. However, art. 2(5) of Law 3845/2010 allows the intermediation of temporary employment agencies in the public sector with respect to certain categories of unemployed persons. Vayias (op. cit.) suggests that this is in contradiction to Article 2(1) of the Directive.

144. The categories of employment included here are determined in a decision by the Minister of Employment and Social Insurance following the opinion of the Council of Health and Safety of Employees (SYAE), in line with article 26 of the Code of Legislation for the Health and Safety of Employees, which was ratified by art. 1 of Law 3850/2010 (A'84), and with article 25 of Presidential Decree 368/1989 (A' 163), as amended. See also Article 5(1) of Law 91/383/EEC.

145. In the case of agency workers in construction, the temporary work agency has the duty of submitting a report to the authorities and paying the social security contributions. The previous legislation (art. 116(e) of Law 4052/2012) stipulated that the use of agency workers was prohibited when the individual was subject to the special provisions concerning the insurance of construction workers.

146. Under the previous regime (art. 22 of Law 2956/2001), the length of time a worker could work for an indirect employer could not be longer than eight months. There could be a renewal for the same indirect employer, on condition that the total duration of the renewal did not exceed eight months. In case the duration of employment exceeded the eight plus eight (16 in total) months by two more months, the contract of employment had to be converted into a permanent one and the worker was to be considered part of the workforce of the indirect employer. Lixouriotis (op. cit., p. 643) suggested that more than one successive renewal could take place as long as such renewals did not together exceed the maximum period of eight months. However, a purposive interpretation of the legislation would suggest that only one renewal was allowed; see K. Papadimitriou: *Temporary employment* (Athens-Thessaloniki, Sakkoulas, 2007), p. 147 (in Greek). In Decision 2019/06, the Single Court of First Instance (Athens) accepted that a worker who had provided temporary work to different companies within the same group provided in fact employment of indefinite duration. The Court found his dismissal to be unfair and ordered his return to his job with pay, including from when his employment was unlawfully terminated.

147. GSEE believes that this prolonged period of 36 months is excessive and that it allows the use of abusive practices in order to circumvent the protective provisions of the legislation of temporary workers (see Schömann and Guedes, *Temporary agency work in the European Union: Implementation of Directive 2008/104/EC in the Member States*, op. cit.).

148. See Court of Appeal of Athens 3943/2007, in *Revue de Droit du Travail* (2007, Vol. 66), p. 1484 (in Greek).

5.4 The role of collective agreements in the regulation of TAW in Greece

There has been limited public debate on the subject of temporary agency work in Greece, and collective organization or trade unionism among temporary agency workers is very limited. Public opinion considers TAW not as a separate sector but as a provider of services in the context of other sectors. The public also considers such work not as a regular form of employment, but rather as a transitional stage in a bilateral employment relationship and a measure implemented by employers in order to reduce labour costs and avoid compliance with the law on dismissals.¹⁴⁹ With respect to the conclusion of collective agreements regulating aspects of temporary agency work, no such agreements were reported in the period up to 2008.¹⁵⁰ There is no evidence of concluding collective agreements in this area either in the period between 2009 and present. In this respect, it is helpful to add that on the workers' side, the Pan-Hellenic Union of Employees Providing Labour to Third Parties (Πανελλήνιος Σύλλογος Υπαλλήλων με Παραχώρηση Εργασίας σε Τρίτους, PASYPET) consists of about 70 members. The union was established by temporary agency workers working for the National Bank of Greece, and intended to include as well workers of the same status employed in other sectors. On the employers' side, the Association of Temporary Employment Agencies (Ένωση Ιδιωτικών Εταιρειών Απασχόλησης, ENIDEA), which was founded in 2002 and has nine company members, is not an employer organization but an association whose objective is to inform public opinion and promote temporary agency work in Greece. The following companies are members of ENIDEA: Adecco, ICAP, In Group, ISS Human Resources, Kluh Human Resources, Manpower, Optimal Business Action, Randstad and Trenkwalder Job Centers. ENIDEA is member of the International Confederation of Private Employment Agencies (CIETT) and of EUROCIETT (the European branch of CIETT). According to PASYPET, if one includes companies whose activities extend to the provision of other services, there are more than 11 temporary work agencies in Greece.

5.5 The availability and accessibility of TAW in Greece

A 2008 study published by Eurofound on TAW in Greece reported a significant increase in the total number of temporary work agencies between 2003 and 2004: in the second half of 2003 the number of people doing temporary agency work was 2,851; in the second half of 2004 the number was 5,323, a relative increase by 83.4 per cent.¹⁵¹ In addition, the number of temporary employment contracts increased in 2004 compared to 2003: the temporary employment contracts concluded in 2004 went up by 6,936 in absolute numbers compared to 2003, i.e. by 109.3 per cent. According to estimates by a representative of ENEPASE (now ENIDEA), user undertakings contacted temporary employment agencies mainly for the following reasons: to meet needs arising in labour-intensive periods, for cases requiring large numbers of staff immediately, to replace staff on leave (regular, sick leave, maternity leave, etc.) even for one day and during holiday periods.

The *2012 Global Report* by CIETT¹⁵² reported that the daily average number of agency workers in Greece in 2010 was higher than in 2008, at 5,000, amounting to 0.1 per cent penetration rate. In terms of average working time, Greece was one of the countries with the highest number of hours, arguably reflecting the long working hours culture that is evident in the case of full-time directly employed persons. In terms of the average length of agency work assignments, the majority were medium-term ones (ranging from one to three months), followed by long-term (exceeding three months). In terms of gender balance, slightly more women (around 52 per cent) than men were employed under TAW relationships. In terms of age characteristics, there was an even split between the age groups 21–25 and 26–30. In terms of educational attainment, the largest group was that

149. See S. Lampousaki: *Greece: Temporary agency work and collective bargaining in the EU*, European Observatory of Working Life Country Profile (Luxembourg, Eurofound, 2008). Available at: <http://www.eurofound.europa.eu/eiro/studies/tn0807019s/gr0807019q.htm>.

150. *Ibid.*

151. *Ibid.*

152. CIETT: *The agency work industry around the world* (Brussels, 2012).

with medium education levels (completed secondary education). A very interesting finding was reported in terms of sectoral distribution: in contrast to a number of countries where the distribution is more equally balanced, a considerable share of Greek temporary agency workers were concentrated in the services sector (around 75 per cent). A different study by ICAP focused on the TAW sector in Greece also suggested a significant increase in the use of temporary agency work and all forms of flexible work in the period 2009–10.¹⁵³ According to this, there were around 8,100 temporary agency workers in 2010, with an 11.8 per cent increase in activity.

More recent data from the 2014 report by CIETT suggests some very interesting changes with respect to TAW in 2012. First, there was a significant increase (more than double) in the total number of agency workers, from 5,000 in 2010 to 12,000 in 2012. There was a corresponding increase in the daily average number of agency workers, from 5,000 in 2010 to 6,900 in 2012 (average penetration rate of 0.2 per cent). The 2014 CIETT report also found that TAW is mostly used by medium-sized and large firms.¹⁵⁴

5.6 Temporary agency work in Greece: Concluding remarks

As seen from the analysis above, the regulatory framework regarding temporary agency work has been subjected to a range of significant reforms since the early 2000s. Until 2001, there was no specific regulatory framework for TAW, providing thus significant scope for the use of such work practices. The legislator decided finally to intervene and Law 2956/2001 regulated the main aspects of TAW. Law 2956/2001 laid down for the first time specific rules on the establishment operation and obligations of agencies and the employment rights of temporary agency workers, including importantly some provisions that were informed by the principle of equal treatment of temporary agency workers with the employees of the user undertaking. Against the context of the economic crisis and the commitments of the Greek Government to proceed to amendments in the regulation of TAW, Laws 3846/2010 and 3899/2010 were adopted and were intended primarily further to facilitate the use of TAW. Following increased use during the first period of the crisis, the legislation was further amended in 2012.

The 2012 amendments were partly driven by the need to comply with EU Directive 2008/104, but also aimed at the further liberalization of the provision of TAW. As a result, the amendments provided companies with increased flexibility when using temporary agency workers, primarily by increasing the time limits placed on the duration of the assignments (from 18 to 36 months under art. 117(3) of Law 4052/2012). In this respect, Greece is similar to some other EU Member States that have understood the spirit of the Directive as amounting to a *quid pro quo* between the improvement of the working conditions of TAW and the progressive liberalization of its provision. At the time of the adoption of Law 4052/2012, different interpretations were made with respect to the compatibility of the legislation with EU law. Vayias suggested that Law 4052/2012 safeguarded the equal treatment of temporary agency workers vis-à-vis not only directly employed workers of the indirect employer, but also with the workforce of the temporary work agency. However, the second aim of the Directive, i.e. the establishment of a suitable framework for the use of TAW with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working, was, in his view, marginalized. This was because of the requirement imposed on employers to justify the recourse to temporary agency work and the vagueness and legal uncertainty concerning the areas where the use of temporary agency workers was prohibited.¹⁵⁵ On the other hand, it was considered that the regulatory framework still provided plenty of scope for detrimentally affecting the level of protection afforded to temporary agency workers.¹⁵⁶

153. Reported in *Imerisia*: “Temporary employment increased by 9 per cent”, online article, 27 April 2012 (in Greek). Available at: <http://www.thepressproject.gr/article/18621/uksithike-kata-9-i-prosororini-apasxolisi>. See also ICAP: *Business services: a) Call centre services; b) Debt management services; c) Temporary employment* (London, 2011).

154. CIETT, *Economic Report*, 2014 edition, op. cit., p. 41.

155. Vayias, “Temporary employment in Greece and in the European Union (Directive 2008/104/EC)”, op. cit.

156. Kazakos, *Labour law*, op. cit., p. 85.

The 2012 changes were followed by legislation in 2014 that scaled down or removed a number of the protective elements of the previous legislation. As noted above, restrictions related to the reasons for using TAW have been removed and regulation limiting the agency work in cases of redundancies has been eased. Furthermore, some essentially discriminatory measures with regard to blue-collar workers have been removed. Finally, restrictions on the use of TAW in certain construction contracts have been also abolished. These changes, in conjunction with the 2012 increase of the time limits, are progressively eroding, if not dismantling, the understanding that temporary agency work is meant satisfy needs of the employer that are, by their very nature, temporary, as arguably the spirit and the letter of both the EU Directive and national legislation (arts. 114 and 115 of Law 4052/2012) would seem to suggest. In effect, following the recent amendments it is hard to see in what ways temporary agency work can still be seen as an exception to what the Directive refers to as “employment contracts of an indefinite duration” which should be seen as “the general form of employment relationship”.¹⁵⁷

157. Advisory Committee to the Parliament on Law-making: *Report on the draft legislation on measures for the support and development of the Greek economy in the framework of implementation of Law 4046/2012 and other provisions* (Athens, Hellenic Parliament, 2014).

Concluding comments: Summary and implications for Greece

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This report has sought to offer an assessment of Greek legislation on temporary agency work in a comparative and supranational context. The following paragraphs conclude the report, seeking to recapitulate the main findings emerging from each of its five previous sections and to offer a more rounded assessment of Greece's regulation of temporary agency work in a European and comparative context.

6.1 Prevalence, trends and social effects of temporary agency work

Section 2 of our report presented the growing trend in the use of temporary agency workers in most EU Member States, with most statistical studies suggesting that in countries such as France, Germany and the Netherlands, TAW is an increasingly common form of employment that has by and large withstood the labour market shockwaves produced by the 2008 economic crisis and, if anything, been further fuelled by subsequent labour market developments. That section however also commented on the challenges surrounding the sourcing of reliable and consistent data on TAW in Europe. This point is perhaps best exemplified by the study produced for the European Parliament in 2013, highlighting that while according to CIETT the 2010 figure for TAW in the United Kingdom was 3.1 per cent, the equivalent figure in the European Labour Force Survey only amounted to 0.4 per cent.¹⁵⁸ This important issue aside, the section also noted that younger workers and workers employed in less-skilled occupations are far more likely to find themselves in TAW than older and more skilled labour market participants. This is not problematic per se, but since these workers are typically associated with groups or individuals with weaker bargaining power in the labour market, and thus more vulnerable to a possible deterioration in working conditions, it calls for a heightened regulatory attention on the part of legislators across Europe. This is particularly the case in the face of mounting evidence which suggests that TAW is often associated with relatively higher rates of accidents at work, deskilling processes, lower wages, and fragmented and discontinuous work relations. Whether temporary agency work helps or hurts workers will continue to be the subject of much debate. On the whole, the studies explored find that temporary agency work can be helpful in bringing previously inactive or unemployed persons into the labour market; at the same time, however, there is little if any evidence of TAW constituting a stepping-stone into regular employment, at least for the less skilled. What is clear, all the same, is that more policies are needed to ensure that workers' safety and health is a priority, regardless of the form of labour market engagement.

6.2 The supranational regulation of collective dismissals in Europe: Equal treatment, adequate protection, and protective lacunae

For much of the 20th century, the majority of European countries, with the notable exception of the United Kingdom, maintained several restrictions on, and even complete prohibitions of, the operation of TWA. This approach was very much reflected at the ILO level by the two Fee-Charging Employment Agencies Conventions of 1933 (No. 34) and 1949 (No. 96), which provided for a stringent regulation of temporary work agencies and their activities. But as national attitudes towards flexible forms of work and temporary work in general began to change, so did the approach of the ILO, whose Convention No. 181 represented, in the words of CIETT, "a dramatic U-turn of the [Organization's] position regarding the private employment services industry: from prohibition (Conventions n°34 and n°96) to legal recognition and support of the development of the activities

158. Eichhorst at al., *The role and activities of employment agencies*, op. cit., p. 25.

of private employment agencies”.¹⁵⁹ While this may not be an inaccurate depiction of Convention No. 181, Section 3 of this report has noted that its core provisions are tasked with making sure that temporary agency workers benefit from the “adequate protection” and enjoyment of a number of fundamental rights at work, including freedom of association and collective bargaining (Article 4), equality of opportunity and treatment (Article 5), and, “in accordance with national law and practice”, the protection of personal data (Article 6), and the protection and enjoyment of minimum wages, working time and working conditions, statutory social security, access to training, health and safety, and maternity and parental rights (Article 11). In addition, it is worth noting that Article 2(4) (a) of Convention No. 181 provides that governments, having consulted with the relevant social partners, can “prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to” in the Convention. It is noted that only 12 EU Member States have ratified Convention No. 181.

While the core protective principle enshrined in Convention No. 181 is the principle of “adequate protection” by reference to a number of fundamental rights at work, the worker-protective aspiration of EU Directive 2008/104 hinges upon the principle of “equal treatment”; more specifically, on the principle of equal treatment in respect of “basic working and employment conditions” (defined in Article 3(1)(f)), between temporary agency workers and workers who are directly employed by the user company to which they are assigned (Article 5). The analysis carried out in Section 3 above also notes the presence and relevance of Article 4 of the Directive, ostensibly permitting a number of national restrictions on, and prohibition of, temporary agency work. However, Section 3 also notes the narrow personal and material scope of the equal treatment principle (and of the Directive as a whole), as well as the existence and role of a number of qualifications and possible exceptions and derogations contained in Articles 1(3) and 5(2)-5(4) of the instrument. These protective lacunae pose serious questions on the ability of the Directive to provide an adequate level of protection to those European workers occupied through private employment agencies. In any case it is worth noting that Directive 2008/104 is a minimum harmonization instrument accompanied, in Article 9(2), by a “non-regression clause”.

6.3 Regulating temporary agency work in Europe: Equal treatment and persisting restrictions

The comparative analysis carried out in Section 4 of the report has revealed a highly diverse range of national approaches in the regulation of TAW. This is due partly to the “minimum harmonization” nature of Directive 2008/104, and partly to the fact that all the Member States covered by this report had sought to regulate, at times quite restrictively, TAW prior to the coming into force of the EU instrument. All in all, there is quite a wide diversity between Member States with regard to the level of restrictions placed upon TAW, the level of TAW which occurs in practice, and, interestingly, the correlation between the level of restriction and the level and spread of actual TAW itself (or a lack thereof). Nevertheless, there are also important commonalities amongst the countries covered.

By and large, all Member States have sought to comply with what is arguably the key protective provision contained in Directive 2008/104, the equal treatment provision in respect of basic working conditions. The extent to which the use of the Article 5(4) exception, as implemented by the United Kingdom, is compatible with the letter of the Directive and the ETP, is currently the subject of a complaint by the TUC to the Commission under Art. 258 TFEU. The other key provision of the Directive is arguably Article 4, which required that existing restrictions and prohibitions upon the use of TAW (apart from those excepted by Art. 4(4)) had to be reviewed and reported to the Commission by 2011. Article 4 also provided that such restrictions and prohibitions could be justified on the grounds of the general interests listed in its paragraph 1. The evidence from the analysis carried out in Section 4 is that a significant majority of Member States maintain restrictions and prohibitions on the use of TAW. Some of these restrictions are contained in legislation and some in collective agreements, and may fall within the ambit of Article 4 of Directive 2008/104.

159. CIETT website, at <http://www.ciett.org/index.php?id=47>.

There is a sense that some Member States may have understood the concept of a “review” of these restrictions as synonymous with their “removal” (see notably the comments by our Spanish expert), even though this is not immediately apparent from the wording of Article 4.

It is also worth noting that some Member States which maintain, through legislation or collective agreement, various restrictions or limitations upon the use of TAW (e.g. France, Germany, Italy) have a relatively high (and higher than the EU average) TAW share of the labour market. According to some statistics (but see the important caveat introduced in the opening paragraphs of Section 2, as well as the statistics included in the relevant comparative tables in Section 4) the United Kingdom could have one of the lowest shares of temporary agency workers in the European Union as a whole, even though it is arguably the most lightly regulated system. But even if those statistics supporting the opposite view that the United Kingdom is actually the EU country with the highest share of TAW were true, it would be difficult to suggest that other EU Member States should embrace the UK approach to TWA regulation. It was noted that more than half of the United Kingdom’s temporary agency workers operate outside the material scope of application of Article 5 of the Directive because of the application of the 12-week qualifying period and it is thus difficult to argue that UK temporary agency workers enjoy a sufficient level of protection in terms of their pay and basic working conditions, which is, according to some, the “do ut des/quid pro quo” implicit in the Directive for prohibitions and restrictions to be loosened or removed. Conversely, some countries with relatively restrictive or protective regulatory frameworks (e.g. France, Italy) tend to have a flourishing TAW industry, making it difficult to establish any evident correlation between regulatory framework and recourse to TAW.

6.4 Temporary agency work: Summary and implications for Greece

The analysis carried out in Section 5 above has revealed that Greek legislation on TAW has been the subject of a series of recent regulatory interventions aimed at facilitating the recourse by employers to this particular form of work. Even as this report was being written, the Greek Parliament adopted Law 4254/2014, a far-reaching instrument that was explicitly seeking, as its heading suggested, to “support and develop” the Greek economy, and sought to do so, inter alia, by liberalizing further the activities of temporary work agencies and the conclusion and regulation of TAW contracts, in particular through the removal of the restrictions related to the reasons for concluding TAW, and by easing regulation limiting the recourse to agency work in cases of redundancies.

The authors of this report are of the view that, in effect, the successive reforms of TAW adopted in Greece since 2010, as detailed above in Section 5, have in effect “normalized” the use of temporary agency work, meaning that in Greece, as in other EU Member States, it is now possible to conclude TAW contracts with a degree of ease that is comparable to the conclusion of bilateral employment contracts of an indefinite duration. If this “normalization” was what was being sought when asking Greece to adopt “reforms [that] will ease interpretation of and foster compliance with labour laws with a view to bring legislation in line with EU best practices, and to this end a review will be carried out [...], comparing Greek regulations on temporary employment, scope of temporary employment agencies [...] with those in other EU member states”,¹⁶⁰ then the view of the authors of this report is that this objective has been abundantly achieved. If anything, as noted in the concluding paragraphs of Section 5, it is now hard to see in what ways temporary agency work can still be seen as an exception to what the Directive refers to as “employment contracts of an indefinite duration” which should be seen, according to the Directive itself, as “the general form of employment relationship”.¹⁶¹

160. European Commission Directorate-General for Economic and Financial Affairs, *The Second Economic Adjustment Programme for Greece, Third Review – July 2013*, op. cit., p. 7.

161. Paragraph 15 of the Preamble to Directive 2008/104.

6.5 Conclusions: The promises of “flexicurity” and the premises for decent temporary agency work

The primary purpose of this report has been to provide an overview of the regulation of temporary agency work at a supranational European level and in 12 EU Member States (plus Greece), with a view of assisting Greece in assessing its own national legal framework on temporary agency work in a comparative and EU perspective. This exercise was linked to the ongoing labour market reform process encouraged by a number of supranational institutions, and in particular the European Commission, the European Central Bank and the International Monetary Fund, in the context of the financial support provided to Greece through what is known as the Economic Adjustment Programme. As this report was being produced between December 2013 and October 2014, it became clear that Greece was embarking on a series of reforms aimed at facilitating and liberalizing further the activities of temporary work agencies and the use of TAW. As noted in Section 4 of this report, the Greek reforms are part of a more generalized trend towards a greater use of what are often defined as “atypical work relations” in European labour markets, a trend that has gained further momentum since the adoption of Directive 2008/104 and, more recently, in connection with a series of national and supranational efforts aimed at assisting the economic recovery in Europe.

These reforms, and more generally EU and national policies in the area of “atypical” work relations, have embraced the regulatory trade-offs implicit in the concept of “flexicurity”. The promises of flexicurity are abundant,¹⁶² and have been analysed at length, often in a critical vein, by numerous academic commentators.¹⁶³ Section 3 of the report noted that in the context of TAW, and by reference to Directive 2008/104, these trade-offs have been understood by some¹⁶⁴ as amounting to a quid pro quo between the improvement of the working conditions of TAW (mostly by reference to the ETP) and the progressive liberalization of the provision of TAW, mostly for the purposes of job creation and overall economic performance.¹⁶⁵

The comparative analysis carried out in Section 4, and the analysis of Greek law in Section 5, point towards an emerging idea of “flexicurity” in the TAW context where temporary agency work arrangements are progressively being “normalized”. The worker-protective preoccupations that have traditionally motivated and justified a restrictive regulatory approach in respect of TAW are progressively fading, to a large extent due to the protective promises inherent to the ETP. But arguably, fundamentally important as this principle is, there are a number of risks emerging from it being considered as tantamount to a new *lapis philosophorum*, capable of addressing all the worker-protective concerns inherent to temporary agency work. Even leaving aside the more technical questions pertaining to the identification of a “suitable comparator” or to the narrow scope of application of Directive 2008/104, it is fair to say that “equal treatment” does not address some of the concerns inherent to TAW, and may even obscure them with its presence. As noted by Davies, “the focus [of the relevant EU Directives] on equal treatment makes objection more difficult because it is hard to be against equality”, whilst at the same time producing “a tendency to blind us to the on-going disadvantage faced by non-standard workers even in a situation of equal treatment. For example, although an agency worker might be entitled to a rate of pay equal to that paid by a directly hired worker, he or she is still at a disadvantage because of the inherently insecure nature of agency work”.¹⁶⁶

162. See in particular European Commission: *Flexicurity pathways: Turning hurdles into stepping stones*, Report by the European Expert Group on Flexicurity (Luxembourg, 2007).

163. See the recent collection of essays in M. Keune and A. Serrano (eds): *Deconstructing flexicurity and developing alternative approaches: Towards new concepts and approaches for employment and social policy* (London, Routledge, 2014). Also, cf. S. Fredman: “Women at work: The broken promise of flexicurity”, in *Industrial Law Journal* (2004, Vol. 33, No. 4), pp. 299–319.

164. See European Commission, *Transposition of Directive 2008/104/EC on temporary agency work*, op. cit., p. 30.

165. Some of the arguments developed along these lines can be found in EUROCIETT: *The contribution of private employment agencies to flexicurity and a better functioning labour market in Europe*, leaflet (Brussels, undated); and EUROCIETT: *Europe 2020 from strategy to action: Ensuring inclusive growth* (Brussels, 2010).

166. Davies: “Regulating atypical work: Beyond equality”, op. cit., pp. 243–244.

In conclusion, then, while the equal treatment principle can play an essential role in the quest for an adequate level of protection of TAW, it cannot be seen as sufficient to achieve this end, certainly not on its own. Assigning specific protections to atypical workers in general, and to temporary agency workers in particular, and doing so in a way which addresses the specific insecurities inherent in these work relations, is arguably equally essential in order to anchor TAW firmly within the principles of “decent work” and “adequate protection” which, to a large extent, ILO Convention No. 181, and ILO action more broadly, seek to secure. Securing these principles, however, may well require maintaining in place many of those restrictions to TAW which are currently being dismantled, partly under the auspices of EU Directive 2008/104 and EU policy action,¹⁶⁷ as well as introducing special additional rights and entitlements¹⁶⁸ in terms of additional training, additional payments and additional benefits, aimed at compensating TAW for the inherent precariousness associated with their working lives.

167. It should be noted that even some EU documents on flexicurity suggest a role for these restrictions, for instance by reference to “limit[ing] the consecutive use of fixed-term contracts and temporary work agency assignments; see European Commission, *Flexicurity pathways: Turning hurdles into stepping stones*, op. cit., p. 29.

168. In a similar vein, see Davies, “Regulating atypical work”, op. cit., pp. 243–245; and Countouris, *The changing law of the employment relationship*, op. cit., p. 143.

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