

UNIVERSITE CATHOLIQUE DE LOUVAIN

Institut des Sciences du Travail



**INSTITUTIONAL REPRESENTATIVENESS OF EMPLOYERS' AND WORKERS' ORGANISATIONS IN THE TEMPORARY  
AGENCY WORK SECTOR**

**SUMMARY**

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Commission

## INTRODUCTION

This report was drawn up within the framework of a study on the institutional representativeness of the social partners in the European Union UE15 and the situation of trade unions and employers' organisations in the new member States and in the candidate countries. The study is carried out by the Institut des Sciences du Travail de l'Université catholique de Louvain (IST) at the request of the European Commission's DG Employment and Social Affairs (Call for tenders No. VT/2002/83).

This report aims to examine the process of social dialogue and the representativeness of the social partners participating in that dialogue in the temporary agency work sector in the countries of the European Union UE15. The study focuses on social dialogue and organisations in the countries member of the European Union before the 1<sup>st</sup> of May 2004.

### Context of the study

This study takes place in the context of the European Commission's promotion of social dialogue at Community level.

The question of the representativeness of European organisations emerged within the framework of the promotion of social dialogue at Community level. In a Communication published in 1993<sup>1</sup>, the European Commission set out three criteria determining the access that employers' and workers' organisations had to the consultation process under Article 3 of the Agreement on Social Policy. According to the terms of this communication, the organisation must: *(1) be cross-industry or relate to specific sectors or categories and be organised at European level; (2) consist of organisations which are themselves part of Member States' social partners structures and with the capacity to negotiate agreements, and which are representative of all Member States, as far as possible; (3) have adequate resources to ensure their effective participation in the consultation process.* In 1996, the Commission adopted a consultation document<sup>2</sup>, with the objective of launching as wide as possible a debate in order to find ways to promote and strengthen European social dialogue. Given the fact that the social partners, at European level, were (and still are) in the process of restructuring and accepting new members, the European Commission launched, at that time, a study on the representativeness of inter-professional and sectoral organisations in the European Union. In a new Communication published in 1998<sup>3</sup>, the European Commission set out the means it intended to use to adapt and promote social dialogue at European level. On this occasion, it specifically reasserted the three criteria, laid down in the Communication of 1993, for European organisations to be recognised as representative in terms of the consultation process under Article 3 of the Agreement on Social Policy. The organisations must: *(1) be related to specific sectors or categories and organised at European level; (2) consist of organisations which are themselves an integral and recognised part of Member States' social partner structures and with the capacity to negotiate agreements, and which are representative of several Member States; (3) have adequate resources to ensure their effective participation in the consultation process.* Lastly, in 2002 the European Commission reasserted its commitment to reinforcing the European social dialogue in its Communication *The European social dialogue, a force for innovation and*

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<sup>1</sup> COM(93) 600 final of 14 December 1993, Communication from the Commission concerning *the application of the Protocol on Social Policy.*

<sup>2</sup> COM(96) 448 final of 18 September 1996, Communication from the Commission on *the development of social dialogue at Community level.*

<sup>3</sup> COM(98) 322 final of 20 May 1998, Communication from the Commission on *adapting and promoting the social dialogue at Community level.*

*change*<sup>4</sup>. In the respect of the three criteria set up by the Commission, as had been observed in previous studies<sup>5</sup>, *the changes focus on the disappearance of demands relating to the inter-sectoral nature of organisations and on the fact that they are established in all Member States; the new rules have not been formulated in a very restrictive manner, they only require employers' and workers' organisations to represent "several" Member States. This relaxation of the implementation condition might pose a demarcation problem in the sense that there is no criterion setting out a minimum number of Member States to activate it.*

Against this background, it is clear that one of the main issues at the moment, for the Commission, is the enlargement of the European Union and its impact on the process of social dialogue at Community level. The development of social dialogue, therefore, formed part of the *acquis communautaire*: *The Treaty requires that social dialogue be promoted and gives additional powers to the social partners. The candidate countries are, therefore, invited to confirm that social dialogue is accorded the importance required and that the social partners are sufficiently developed in order to discharge their responsibilities at EU and national level, and to indicate whether they are consulted on legislative drafts relating to the taking over of the employment and social policy acquis... Therefore, the development not only of tripartite structures but also of autonomous, representative bipartite social dialogue is an important aspect for the future involvement of the candidates countries' social partners in the social dialogue activities developed at European and national level*<sup>6</sup>. Enlargement will have consequences on social dialogue, both at inter-sectoral and at sectoral levels. In particular, it will have consequences on the European social partners and their institutional representativeness. Social dialogue, and employers' organisations and trade unions in the new member states (and in the candidate countries) have not been touched on in this study. The question of the representativeness of the European organisations is consequently limited to the 15 states member of the European Union before the enlargement of the 1<sup>st</sup> May 2004.

## Research approach and comments on methodology

For the purposes of this study, a network of University researchers throughout the 15 European Union Member States taken into account was set up. These researchers are independent of both the European Commission and employers' and workers' organisations. Each researcher was charged with drawing up a report based on a common template. A questionnaire tailored to the specific realities of the public sector was elaborated to that effect (cf. annex). The IST took charge of coordinating the study and drawing up the summaries. The IST wishes to stress its independence with regard to the political consequences and decisions which may be made on the basis of this study.

The research process, in its design, comprises a phase of collection of quantitative and qualitative data on the players and the social dialogue in which they participate, but also an *active approach embracing the building of a consensus, which is an integral part of the process of social dialogue itself*. Thus, whereas in a good number of cases the data collected do not permit total objectification of the role played by the

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<sup>4</sup> COM(2002) 341 final of 26 June 2002, Communication from the Commission: *The European social dialogue, a force for innovation and change* (summary).

<sup>5</sup> Spineux A., Walthery P. et al., *Report on the representativeness of European social partners organisations*, Report coordinated by the Institut des Sciences du Travail of the Université catholique de Louvain, for the European Commission, Directorate General for Employment, Industrial Relations and Social Affairs, Louvain-la-Neuve, 1998.

<sup>6</sup> *Enlargement of the European Union. Guide to the negotiations. Chapter by chapter*, European Commission, DG Enlargement, June 2003.

organisations, the contacts made during the data collection and the discussions with the different players concerned should be an *integral part of a process of mutual recognition*<sup>7</sup>. The main sources used within the framework of this study were thus the social players themselves.

As regards delimitation of the scope of the study, the main criteria defined *a priori* with a view to determining the organisations to be taken into account are their role in the negotiation processes in the sectoral collective bargaining.

The interviews with the organisations and the drafting of the national reports took place during February-June 2004.

Lastly, a few words on the consultation process involving the European social partners. The following organisations have been consulted (they also elected to send us their comments, and those of their members, on the draft report): EFCI and UNI-Europa. This consultation took place during the months of October and November 2004. We accordingly received comments on the national summaries, and we have tried to include as many as possible. These observations have been incorporated in different ways, depending on the kind of information received: the comments have been inserted in the form of footnotes or in the main body of the text, depending on the kind of information received.

## The national summary reports

The national summary reports presented in this report depict the situation in the 15 European Union Member States, under the following headings:

- For each country, delimitation of the range of activities included in the temporary agency work sector
- Description of the general characteristics of the sector (employment, enterprises)
- Overview of the social dialogue at the sectoral level: structures, collective agreements, principal topics of negotiation, and players.
- Description of the trade union organisations and of the employers' organisations that operate in the social dialogue in the temporary agency work sector: representativeness and recognition of the organisations; participation in collective bargaining; national, European and international affiliations.

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<sup>7</sup> *Reply to Call for Tenders VT/2002/83. Studies on the representativeness of the social partners at sectoral level in the European Union and monographs on the situation of the social partners in the candidate countries*, Institut des Sciences du Travail, UCL, 2002.

## THE TEMPORARY AGENCY WORK SECTOR IN THE EU15

### Definition and delimitation of the sector

A definition of temporary agency work is “one whereby the temporary agency worker is employed by the temporary work agency, and is then, via a commercial contract, hired out to perform work assignments at the user firm. This definition is a workable definition of agency work in all Members States with the exception of Ireland and UK where the contractual status of agency workers is often unclear”<sup>8</sup>.

Legislation in some countries like Belgium, France and Luxembourg identifies situations in which a temporary worker may be used, and also specifies cases where such employment is banned; other countries simply refer to activities and/or situations in which the use of temporary workers is banned (usually by law, but sometimes also, as in Belgium, under the terms of collective agreements): the most common example of this is an enterprise on strike. It is worth noting that on 8 October 2001, Euro-CIETT signed a Joint Declaration with UNI-Europa whereby employment agencies may not make workers available to a user enterprise to replace workers of that enterprise who are on strike.

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<sup>8</sup> Source: Donald STORRIE (2002) *Temporary agency work in the European Union*, Dublin: European Foundation for the Improvement of Living and Working Conditions, p. 1.

Country	Forbidding to use of TAW <sup>9</sup>
Austria	The law prohibits non-permanent contracts in contractual relationships between the lessor and the temporary worker, excludes certain kinds of work from the definition of hiring-out (e.g. moving an employee from one subsidiary to another within a group), and bans hiring-out in certain sectors (i.e. the public sector, agriculture and forestry): it includes special provisions pertaining to the latter two sectors, but there are no hiring-out regulations referring specifically to the public sector. The law prohibits hiring-out in certain circumstances, for example when an industrial dispute is taking place in an enterprise. There are also company agreements limiting the use of TAW to 10%.
Belgium	The law stipulates that user firms may only avail themselves of temporary agency work in three settings: as a replacement for permanent workers, during temporary and exceptional peaks of work, and for the performance of unusual work. Moreover, by law or under the terms of a collective agreement, temporary agency work is banned, for example, in the public sector to replace civil servants in certain circumstances, in work involving the use of explosives, in the employment of the works doctor, or in case of a strike or lock-out.
Denmark	There are no restrictions.
Finland	There are no restrictions.
France	The law refers to three broad cases of temporary work: as a replacement of absent employees, during temporary peaks in an enterprise's activity, and for the performance of temporary duties that are inherently temporary. The use of TAW is banned by law for the replacement of striking workers or a medical adviser, for the performance of particularly dangerous tasks, and during the six months following redundancy if the use of temporary work is triggered by a temporary increase in activity.
Germany	Temporary agency employment is allowed in all sectors except in the construction industry (this exception was laid down by the Federal Constitutional Court). There are no situations or cases in which TAW is outlawed.
Greece	Public sector jobs are excluded as the recruitment procedure there is ruled by special legislation, and user companies cannot employ a worker recruited by a TWA to replace regular personnel that are on strike, or if the company has collectively dismissed workers with the same qualifications in the previous year.
Ireland	There are no restrictions.
<b>Italy</b>	The law states that TWAs may be used to replace absent workers, to perform interim tasks that cannot be performed by the user firm's permanent workforce, and to provide skills not available within the user firm during periods of peak activity, and in other circumstances established by sectoral collective bargaining. In addition, TAWs may not be used to replace workers on strike, to carry out dangerous jobs, and in firms that have laid off workers during the previous 12 months.

<sup>9</sup> Sources: National reports and Annex II of the CIETT document.

Luxembourg	The use of TAWs is permitted as follows: to replace an employee who is temporarily absent from work, or whose contract of employment has been suspended; in seasonal employment; in jobs in certain sectors of activity for which it is normal not to use contracts of indefinite duration; in the performance of occasional, once-and-for-all tasks that do not come within the framework of the enterprise's current activity; during exceptional peaks of work; and to carry out urgent work for the prevention of accidents and the integration of job-seekers. It is forbidden to use TAWs to do work linked to the user enterprise's normal, permanent activity on a permanent basis.
The Netherlands	The law prohibits the lending out of personnel to a firm where there is a strike or a lock-out, and in the sea-going sector.
Portugal	The law bans the use of TAWs to perform tasks that are particularly dangerous to their safety or health.
Spain	The law excludes the use of TAWs to replace workers on strike in the user enterprise, to perform tasks and activities that are especially hazardous to workers' safety and health, to replace jobs that have been eliminated by the user enterprise during the previous 12 months, and to provide other TWAs with temporary workers. The Contracts of Employment Act (LCT) also prohibits public administrations from being contracted users of TWAs except for surveys, data collection and similar services. The construction sector cannot use TAWs at all.
Sweden	There are no restrictions, but there are Swedish national labour market board restrictions whereby a temporary agency worker that has part-time employment in a TWA enterprise does not qualify for compensation from the national unemployment fund for the period when he/she is not employed. All other part-time employees in Sweden have that right.
United Kingdom	There are no restrictions, but electrical contracting does not use TAWs.

The statistics and activities for the sector are sometimes (e.g. in Ireland) incorporated into a larger sector, that of private recruitment agencies. TWAs focus their activities not only on the placement of workers but also on the insertion of target groups: for example, in France, the state concludes special agreements with temporary work agencies, and in the Netherlands, about 175,000 people from target groups are covered by the sector; it sometimes happens, for instance in Italy, that private agencies are believed to be more efficient than public placement agencies. All countries have liberalised the sector with regard to the establishment of temporary agencies within their territory, but that is not to say that the market is regulation-free: in practice, either the market is self-regulated, or, as in Italy, Greece, Luxembourg and Ireland, there is legislation that imposes minimum conditions through the awarding of licences. Where there is self-regulation, but no laws regulating access to the market, for example in Finland and the Netherlands, employers' organisations sometimes compel their members to comply with certain economic, or practical and ethical, criteria.

## Socio-economic features of the sector

Currently<sup>10</sup>, over 7 million workers are employed by the agency work industry in EU countries alone; a daily average of 2.8 million workers (1.9% of the EU working population) worked through agencies in 2002. Agency work participation in the labour market varies significantly from one Member State to the next, depending on the legal approach to agency adopted. Percentages of workers employed through agency work range from 4.5% in the Netherlands, 3.2% in the UK and 2.5% in France to 0.7% in Spain and an even smaller percentage in Italy, where the industry was legalised in 1998. Between 1990 and 2000, the daily average number of temporary agency workers rose by an average of over 9% per year, more than doubling in total<sup>11</sup>. Independent analysts predict that given the right legal framework, this trend is likely to continue. The sector is strongly influenced by the general economic situation: in 2002, for example, a slowdown led to a reduction in the number of temporary agency workers in France, Italy, Denmark and Luxembourg.

Looking at the different kinds of temporary work agency, turnover is usually dominated by large enterprises, and often by multinationals (e.g. 70% of market share in France, 90% in Sweden and 60% in Spain). This is not to say that some small enterprises (e.g. in Italy) are unable to exploit a specific segment of the market, for example, in geographical terms.

The general profile of temporary agency workers in most countries is of people aged under 30 years who are unskilled and blue-collar. The gender distribution is more or less balanced in Spain, for example, but not in some other countries such as France, Luxembourg and Germany, where men account for a large proportion. By contrast, 60% of temporary agency workers in Sweden are women.

Contracts are mostly temporary, but some countries like Greece and Italy go in for unlimited duration contracts, although it is not common even there. In Sweden, temporary agency workers qualify for permanent employment in TWA-enterprises after six months whether they are on assignment or not; they also receive a salary during the trial period (i.e. the first six months). At least 10% of temporary agency workers in the Netherlands have unlimited time contracts.

With regard to user firms, as the table below shows where data are available, a large number of clients are small and medium-sized enterprises. The best represented sectors of activity are industry and services.

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<sup>10</sup> Source: Euro-CIETT

<sup>11</sup> According to CIETT

Country	Type of user firm – main sectors of activity <sup>12</sup>
Austria	No data.
Belgium	Majority of small and medium-sized enterprises mainly active in industry (49.3%) and services (35.3%).
Denmark	No data. In healthcare, production/storage/chauffeurs and administration.
Finland	No data. In office, accounting and information technology services (43%) followed by sales and restaurant work.
France	No data. In industry (49%), construction (17%) and services (13%).
Germany	Only 6% of all small firms (fewer than 10 workers), but in 39.8% of all large firms (more than 1,000 workers) in western Germany and 22.2% in eastern Germany use temporary agency workers: unskilled labour activities without any specified occupation or task (31.6%), mechanics (16.7%) and office and administrative personnel (9.4%).
Greece	No data. In the rural sector, followed by the service industry, trade and manufacturing.
Ireland	No data.
Italy	Most user firms are medium-sized, although the percentage of smaller companies is growing. Mainly in industry (engineering), then trade and services.
Luxembourg	No data. The construction sector employs most temporary-employment agency workers (25% on average since 1999); next come the hotels, restaurants and café and financial intermediation sectors
Netherlands	Industry (30%); services to businesses (18%); public administration and social security (15%); trade, repair, and consumer businesses (12%); healthcare and social services (12%); transport and logistics (10%).
Portugal	Well established in small and medium-sized enterprises: construction, hotels, clothing, shoes, foodstuffs, wood, cork and furniture.
Spain	Most user-enterprises are medium-sized and large: services (57%), industry (35%) and agriculture (5-6%).
Sweden	No data. In administration and management (50%), industry and inventory maintenance (25%), healthcare (5%) and others (20%).
United Kingdom	

## Social dialogue and social legislation

The development of social dialogue specific to the temporary agency work sector varies considerably from one country to the next: in Greece and Portugal, it is poorly developed, not to say non-existent; in Ireland and the UK, there is no organised “social dialogue” in the sector in the continental European sense; in Austria (for blue-collar workers), Belgium, Italy, France, Germany, Luxembourg, the Netherlands and Sweden, the social partners conclude collective agreements that deal exclusively with the sector; and in other countries, apart from specific collective agreements, general agreements include provisions for temporary agency workers (e.g. in Denmark and Austria for white-collar workers); in

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<sup>12</sup> Sources: National reports

Ireland, temporary agency workers do not have specific collective agreements, but temporary agency workers are named or included in, or added to, agreements instead; in some countries such as Belgium and Spain, complementary legal provisions are set out in labour law together with collective agreements; and finally, in some other countries like Finland, there is have social legislation dealing specifically with temporary agency workers (TAWs), although they do have collective agreements covering the sector. In general terms, “[g]iven that agency workers (and perhaps also their firms) are difficult to organise, the sector is new to many countries; and there is potential for rivalry between the agency and workers at the user firm; one might expect collective bargaining would be relatively undeveloped... However, there are exceptions [like] Sweden... [and] the Netherlands.”<sup>13</sup>

In the absence of legislation or specific collective agreements, it is normal for the principle of equal treatment to be universally applied, that is to say TAWs come under the same law or collectively agreed regulation as all other workers. Temporary agency workers must therefore be able to obtain the same conditions as workers in the user-company for the same kind of work. The reference point is the collective agreement(s) in force in the user-company, and then, depending on the country, as indicated above, special collective agreements are signed between the social partners with a view to complementing, and adapting to, the objective features of temporary agency work.

As for the coverage rate of sectoral collective agreements, there is usually (e.g. in Italy and in Luxembourg, where the *erga omnes* principle applies) no departure from the general extension principles in force. The rate is quite high in Sweden (80%) because large enterprises are affiliated to the sector’s representative employers’ organisation. The same situation is to be found in Denmark, where over 80% of workers are covered by collective agreements, and TAWs are not excluded. In the Netherlands, despite a relatively low rate of unionisation, the high rate of coverage (80%) is explained by a powerful employers’ organisation coupled with the option open to the government to extend collective agreements. In Luxembourg, the rate is 100%, and Belgium, Germany and France are approaching that figure fast.

Collective bargaining and collective agreements deal with a large number of issues, and each country focuses discussion on its own distinctive features, and on the degree of social protection offered to TAWs.

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<sup>13</sup> Source: Donald STORRIE (2002) *Temporary agency work in the European Union*, Dublin: European Foundation for the Improvement of Living and Working Conditions.

Country	Social dialogue and collective agreements <sup>14</sup>
Austria	TAWs are covered by the user firms' collective agreements, but the Labour Constitution Act applies a "no worsening" principle: in practical terms, this means that if the collective agreement covering the user firm is less favourable to TAWs, the collective agreement directly binding the TWA becomes valid even during periods of hiring-out. Blue-collar workers have a collective agreement that is specific to the sector and includes an actual pay-clause, whereas the most important bargaining objective for white-collar workers is that their salary agreement too should include an actual-pay clause.
Belgium	The same treatment with regard to terms and conditions of employment and all supplementary payments are agreed at enterprise level, as they are for other workers in the user firm doing comparable work. There are also specific sectoral negotiations and agreements on such matters as training, mobility and safety.
Denmark	TAWs are protected by law at the same level as other employees, and in some cases, as long as the job exceeds eight hours a week. There is an important exception, though: TAWs are not covered by the legislation protecting salaried employees (white-collar workers) despite the fact that this type of work is typical TAW employment. The general agreements emphasise that wages and working conditions follow those applied as a minimum by the user company, whereas social issues (e.g. pensions) are covered by the temporary work agency, which is deemed to be the employer. A protocol is also added to general agreements, and specific collective agreements covering such matters as pay, working hours and pension contributions have also been developed.
Finland	Agency work must comply with mainstream labour law, and the TWA is obliged to apply the collective agreement at the user company to TAWs (the principle of equal treatment) but this does not mean that the level is as high as it is for the permanent workers, although it is as high as the level for TAWs in the sector. There are also specific collective agreements covering such issues as wages, maternity leave and employment security.
France	The law focuses on equal treatment, safety under common law provisions, and the principle of equal treatment. TAWs have their own collective agreements (covering issues like overtime, flexible working hours, vocational training and time-credit schemes), which basically consist of a series of sectoral collective agreements, and are handled by temporary agency worker representatives within the TWA and the temporary agency work branch (i.e. the branch that is the level where nearly all agreements concerning TAWs are signed).
Germany	Legislation seeks to guarantee the principle of equal pay and equal treatment. There is bipartite and centralised collective bargaining, and six sectoral collective agreements and some company agreements. Features specific to the sector include payments for employees who have to travel more than 1.5 hours to the user firm, and different wages paid if the worker is "free" (i.e. s/he is not in a user firm, but is still employed by the TWA).
Greece	With regard to wages, the remuneration of TAWs cannot be lower than the basic rates laid down in the sectoral occupational

<sup>14</sup> The term "sectoral agreement" should be understood as applying to all temporary agency workers, irrespective of the sectors of activities where they are working. In a sense, it is a kind of "interprofessional" or "national" agreement. Sources: National reports

	agreement, or else in the agreement that applies to staff normally working in user firms. There is no specific collective agreement in the sector, and social dialogue is very limited.
Ireland	There is no specific labour legislation covering TAWs. The sector is primarily regulated by voluntary agreements, which do not have the same force of law as in other EU countries. TAWs do not have specific collective agreements, but are named or included in, or added to, agreements. Tripartite dialogue on centralised collective bargaining is well established.
<b>Italy</b>	A specific interprofessional agreement, which complements the legislation and is subsidiary to sectoral bargaining, provides minimum standards on pay and defines the specific terms of the employment of TAWs through national industry-wide agreements. There are therefore no real differences in term of wages and working conditions between TAWs and salaried workers doing similar work, although there are significant sector-by-sector differences between TAWs themselves.
Luxembourg	The principle of equal treatment applies. There is also a specific sectoral agreement covering such matters as training and occupational health and safety.
The Netherlands	The law states that TAWs shall receive the same remuneration as workers employed by the hiring firm, unless the law or collective agreement specify otherwise. Conditions are mainly regulated by specific sectoral collective agreements (rights in the case of illness and disability or the absence of work, pension arrangements, and the period of notice before terminating the contract).
Portugal	The sector and working conditions are mainly regulated by law. Collective bargaining deals with issues such as salary scales, meals subsidies and occupational health and safety. There is one specific sectoral collective agreement.
Spain	The law and the national collective agreement for TAWs contain the principle of equal treatment. It follows that temporary agency workers' conditions of employment are regulated by the user company's collective agreement. There is an increasing tendency for a large number of collective agreements in many sectors of activity to include guarantee clauses for workers provided by a TWA.
<b>Sweden</b>	There is no specific labour regulation for TAWs. There are two specific sectoral collective agreements (one for white-collar workers and the other for the blue-collar workers): the main bargaining issues are salary levels, particularly the reference salary, and the compensatory salary level when employees are not on assignments.
<b>United Kingdom</b>	There is no specific legislation concerning the working conditions of TAWs. Social dialogue in the sector is poorly developed: there is no industry-wide bargaining in the sector except in the construction and contracting industries.

Depending on the national situation, it is possible to identify important issues for discussion and negotiation between the social partners. These include the calculation of seniority (e.g. in Denmark and France); maternity leave combined with short periods of employment (Finland); discrimination against workforce delegates (France); the desired duration of a temporary contract, and the extent of restrictions imposed by legislation on temporary agency work (Greece); problems concerning the entitlement and disentanglement to social security services, and the setting up of a sectoral fund to manage such matters as end-of-year bonuses and actions linked to training and safety (Luxembourg); interpretation of the law and compliance with it (e.g. disagreements over compliance relating to working hours, holiday pay, pay on national holidays, and payments due when the contract terminates) (Portugal); the elimination of statutory limitations, restrictions and added costs laid

down by current legislation on security and quality of contracts, professional development policies and wage policies (Spain); the determination of hourly wages and pay (Germany); and the European Directive on temporary agency work (Ireland).

However, notwithstanding points of friction, the industrial relations climate is generally deemed to be relatively constructive and positive, which is not to say that there have been no disagreements: for example, in Italy, the climate is described as positive with very good relations between the social partners (consolidation of social dialogue); in Luxembourg, the two partners draw attention to the high quality of social dialogue; in Finland, no disputes are likely to take place between the social partners in the coming years, and the climate has even improved; and in France, social dialogue is considered to be constructive, despite the fact that some trade unions, for example, are afraid that collective bargaining is focusing increasingly on certain less important issues in the sector.

This relatively peaceful social climate does not mean that some countries are not facing some very serious obstacles in terms of the development of social dialogue. In Portugal, for example, according to the social partners in the sector, the main obstacle is the fact that work is so precarious, and that representativeness is weak as a result. They also say that the employers themselves have weak structures, and that there should be an interlocutor who represents all temporary agency work enterprises so that collective bargaining can be more effective. And in Germany, the main obstacles to the development of the sector's newly established social dialogue are firstly the fact that employers' organisations fear a loss of competitiveness if the sector becomes highly regulated by collective agreements and laws, and secondly that trade union attitudes towards temporary agency work used to be rather negative because work conditions and pay were worse than for regularly employed workers; it has not been possible to eliminate this situation through recent agreements.

### **Social dialogue at European level**

Euro-CIETT and UNI-Europa jointly form the Social Dialogue Committee for the temporary agency work sector. Since the Committee was established, social partners in the temporary agency work sector have concluded Joint Declarations on the Social Dialogue on Agency Work (2000) and on the Objectives of the European Directive on Private Agency Work (2001). The Social Dialogue Committee is currently working on a training project that will examine the reintegration into the labour market of "difficult categories of workers" (training of outsiders) and the role that agencies play in this area. According to the OECD definition, the notion of "difficult categories of workers" encompasses people like older and younger workers, disabled workers, ethnic minorities and women.

"The social partners at EU level [UNICE and ETUC] have already concluded framework agreements on part-time work, and fixed-term contract work, which have been implemented through Council directives, but not on temporary agency work. Negotiations on temporary agency work failed in May 2001, but only after one year of discussion by social partners. It is thus clear that the social partners were both genuinely looking for an agreement and believed that agreement might be possible until negotiations ended. As the social partners failed to agree under the procedure provided for in Article 138 of the EC Treaty, the Commission had to take the political decision whether or not to table a draft proposal

for a directive. The legal basis for the draft directive is Article 137(2) of the EC Treaty (on the basis of the reference in Article 137(1) to improvement of ‘working conditions’)<sup>15</sup>.

In March 2002, the Commission accordingly proposed that temporary agency workers and other staff doing the same job in a user company should, in principle, be given equal treatment (including pay), but in 2003, this key Directive giving minimum protection to temporary agency workers (and at the same time, opening up the sector in those countries with restrictions on the use of temporary workers in order to create jobs) failed to be adopted by the Council. The main obstacles to agreement were:

- The length of a “grace period” during which the principle of equal treatment of temporary agency workers (on the question of pay) would not apply: the Commission proposed six weeks in order to avoid excessive bureaucracy for the shortest temporary contracts, but the Parliament and a majority of Member States are calling for equal treatment (also including pay) to apply from the first day of the first temporary contract. A minority of Member States are seeking a considerably longer period of grace.
- The “hardness” of the Member States’ promise to open up their restrictions on the use of temporary agency workers: the Commission had suggested re-examining restrictions on the use of temporary agency workers, with a view to eliminating them where they are not objectively justified, but a number of Member States are still reluctant to accept a “hard” promise to look again at such restrictions.<sup>16</sup>

## European employers’ and employees’ organisations and their affiliates

### The (Euro-)International Confederation of Temporary Work Businesses (Euro-(CIETT))

CIETT (International Confederation of Temporary Work Businesses) was founded on 17 May 1967 in Paris and is funded exclusively through members’ contributions. It brings together the national federations of employment businesses in 30 countries and six of the largest companies world-wide. CIETT membership is open to national associations of agency work and to individual companies that meet certain criteria, notably membership of at least five CIETT national federations. CIETT does not restrict its activities to those countries where employment agencies are organised in a national federation. In countries where such federations do not exist, individual companies may apply for associate membership; like full members, associate members must comply with the CIETT Code of Practice.

Euro-CIETT is a CIETT Committee. It is made up of CIETT Council Members from European Union, European Economic Area and EFTA countries. Euro-CIETT is actively involved in European legislation and policy, and oversees all CIETT contributions to the European debate on employment and other policy areas that may impact on the industry. Euro-CIETT is recognised as the Social Partner for the temporary agency work sector by the European Commission within the framework of the European Social Dialogue. The Euro-CIETT Committee is made up of all

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<sup>15</sup> The European Commission (Employment and social affairs), March 2002 ([http://europa.eu.int/comm/employment\\_social/news/2002/mar/062\\_en.html](http://europa.eu.int/comm/employment_social/news/2002/mar/062_en.html))

<sup>16</sup> The European Commission, press release (IP/03/796), 3 June 2003.

Euro-CIETT members. Each member has one vote, and decisions are formally reached unanimously and/or by a qualified majority, depending on the nature of the issue, although Euro-CIETT works by consensus.

The main CIETT and Euro-CIETT objective is to seek greater recognition for the contribution that agency work makes to labour markets. To this end, they seek to:

- stimulate the formation of federations in countries where no such federation exists;
- facilitate the exchange, centralisation and distribution of information and literature of direct or indirect interest to agency work for the benefit of members, and for the information of the public, official bodies, social partners, the media, and other interested parties;
- engage in negotiations on agency work with international institutions and organisations, and with national governments or official national organisations, at the request of, and in co-operation with, its member federations;
- enhance the prestige of the profession to ensure a permanent place for it in society, to support the efforts of its members in any action designed to protect the interests of agency workers, and to work towards harmonisation of the status of agency workers;
- work towards the universal acceptance of the principle that temporary agency workers are the employees of employment agencies (within the boundaries derived from the fact that legal or social conditions in certain countries may preclude the establishment of an employer/employee relationship between agency work businesses and agency workers).

The organisations affiliated to Euro-CIETT are listed in the following table. It is worth noting that methods of calculating the density of companies, the density of TAW and the year of reference vary from country to country. For more details, please read the national reports. At all events, the percentages should be treated with caution. A low level of enterprise density does not automatically mean that that company's impact in the sector is weak: it may be, for example, that the employers' organisations cover only a small number of enterprises, but in terms of turnover and the number of assignments, they may claim a large share of the market, and this will *de facto* strengthen an employers' organisation's position in terms of representativeness. Moreover, in some countries like Belgium and Denmark, organisations cover activities that are not solely limited to temporary agency work, and include sectors linked to recruitment.

Some general observations by group of countries on the subject of the representativeness of organisations that are members of Euro-CIETT are set out below (for more details, please read the national reports):

- countries where representativeness is high and exclusive, and including bargaining power: France, Luxembourg, Portugal and Sweden;
- countries where representativeness is high, and including bargaining power: Belgium, Finland, the Netherlands and Spain;
- countries where there are several quite large representative employers' organisations that take part in collective bargaining, but some of them are not members of Euro-CIETT: Italy and Germany;
- a country where there are other employers' organisations that are not directly representative of the sector, but which also have bargaining power in the sector: Denmark;
- countries where the members' organisations have no bargaining power: Austria, Greece, Ireland and the United Kingdom.

### The Union Network International Europa (UNI-Europa)

UNI-Europa is the European regional organisation of Union Network International (UNI). It was established on 1 January 2000 following the merger of four international trade union organisations; it is chiefly financed by the affiliation fees of its affiliated unions, which are decided on by its four-yearly conference. Responsibility for the temporary agency work sector falls to the organisation's IBITS (Information, Business, Information Technology, Services) sector.

UNI-Europa is structured as follows:

- the highest governing body is the Regional Conference: it is held every four years, and all affiliates are represented;
- the Regional Executive Committee is responsible for the organisation's affairs during the periods between Regional Conferences: this Executive Committee meets once a year, and it is empowered to appoint sub-committees to assist it in its work;
- the Regional Management Committee is appointed by the Executive Committee; its responsibility is to "assist in the management of the region in between Regional Executive meetings". The President, Vice-President and Regional Secretary are members of the Regional Management Committee<sup>17</sup>.

UNI-Europa plans to contribute to the development of a fair, social Europe. A network of European Works Councils already exists, and UNI-Europa is campaigning for unions to have a much more clearly defined role in the operation of those councils. UNI-Europa also has an important and active role to play in the European Trade Union Confederation (ETUC). Other priorities include:

- developing equal opportunities;
- assisting trade unions in Central and Eastern Europe;
- representing highly qualified and professional staff;
- pressing for better training at work;
- reaching out to new work areas (e.g. call-centres), and to young people.

The rate of unionisation in organisations in most countries is hard to determine precisely because of features that are peculiar to the sector. By definition, temporary agency workers tend to be sent out on assignments in different kinds of sector of economic activity, and this makes it very difficult to calculate the number of members. What is more, few trade unions offer temporary workers a structure that welcomes them and specifically focuses on their needs. As with employers' organisations, the calculation of membership density varies from one country to the next (for more details please refer to the national reports), and furthermore is often unavailable.

As for the representativeness of organisations that are members of UNI-Europa, they are active in the sector in most countries. All representative organisations of active workers in the sector are directly or indirectly members of UNI-Europa in Belgium, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom. The situation in Austria is very similar: although there is another non-affiliated trade union in the sector (for blue-collar workers), but UNI-Europa enjoys effective hegemony over almost the entire country. In fact, both trade unions belong to the same confederation, which alone has the power to conclude collective agreements. UNI-Europa has no active member organisations in the sector

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<sup>17</sup> UNI-Europa. *Statutes*, Articles 6-10.

in Greece, Ireland and the United Kingdom. In other countries, several organisations that are not UNI-Europa members play a role in the sector. It is not possible to make an accurate assessment of their influence using available data.