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Short summary

Representation of Agency Workers RAW

The representation of agency workers in Europe at national and local level in France, Netherlands, Sweden, Poland and the UK.

by

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Preface and acknowledgements

This project is the result of the joint efforts by researchers, project leaders and social partners with an interest in improving the conditions in the temporary work agency industry. The Representation of Agency Workers project ran from December 2007 to November 2008. The members of the international steering group and authors of this report were from France: Christophe Teissier; Sweden: Associate Professor Kristina Håkansson and Dr. Tommy Isidorsson; Netherlands: Associate Professor Els Sol; Poland: Dr. Joanna Unterschütz, and the UK: Richard Pond. Fabrice Warneck from Uni-Europa represented a pan European perspective. Tommy Isidorsson was overall project leader.

Each partner organisation formed national advisory boards consisting of social partners representing employers, employees and public authorities who contributed with valuable comments at different stages of the project.

This is a short summary of the 150-page final report *The representation of agency workers in Europe at national and local level in France, Netherlands, Sweden, Poland and the UK* including the project's policy recommendations. This short summary is available in English, Swedish, French, Dutch and Polish. The individual chapters in the final report have been discussed at workshops in Paris, Göteborg and London during the course of the project. Different constellations of authors have been responsible for different chapters and the authors' names are listed under each chapter heading in the final report.

The Final report and the national version of the *Short summary and Policy recommendation* are accessible on the websites of the partner organisation. All reports are accessible at University of Gothenburg, www.av.gu.se. The project group also produced a 25-minute film *Agency work* with examples of temporary agency work in four countries in Swedish, French, English and Dutch. The film is accessible through streaming video in four languages at the University of Gothenburg website:

English mms://wms.it.gu.se/gutv/agencywork_eng.wmv

Swedish mms://wms.it.gu.se/gutv/agencywork_swe.wmv

French mms://wms.it.gu.se/gutv/agencywork_fr.wmv

Dutch mms://wms.it.gu.se/gutv/agencywork_nl.wmv

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Göteborg, Sweden 25 February 2009

Tommy Isidorsson
International project leader.

The representation of agency workers

This is a short summary of the 145-page final report “The representation of agency workers in Europe at national and local level in France, Netherlands, Sweden, Poland and the UK” including the project’s “Policy recommendations”. The final report is written by Associate professor Kristina Håkansson, Dr Tommy Isidorsson, Richard Pond, Associate professor Els Sol, project manager Christophe Teissier and Fabrice Warneck This short summary is also available in Swedish, French, Dutch and Polish.

Aims of the project

This project had several aims. The main focus was on the representation of agency workers at European, national and local workplace level. and its impact on issues such as pay, work environment (health and safety) and (vocational) training.

The project sought to promote knowledge in the area of agency work representation. We aimed to explore the nature of national, sectoral and company-level agreements that cover temporary agency workers, but also the reality of representation and organisation at company and workplace level. Above all the project aimed to promote dialogue among the social partners and different stakeholders at European, national and local level and to generalise examples of best practice and union capacity in this area.

It also aimed at promoting a wider discussion on the situation of temporary agency workers by producing a documentary film that was seen as an important way of disseminating information beyond the time limit of this project.

Short description of the project

Each partner organisation formed national advisory boards consisting of social partners although the exact form differed somewhat between countries. In Sweden there were monthly meetings while those in other countries met at different intervals and through other media.

There were two national workshops in each country and three international workshops. Participants in the workshops included the national advisory boards and other key experts from the social partners. Up to five social partner representatives and researchers from each country participated in the international workshop hosted by one of the participating countries. The organising country invited between eight and 14 social partners. The national workshops aimed at exchanging experiences and facilitating discussions between the social partners and were an important part of the project. The international workshops focused on exchanging cross border experiences in line with the so-called Open Method of Co-ordination, OMC, adopted by the EU in 1997 (European Employment Strategy).

A third and final international dissemination workshop was held at the end of November 2008 in London. Experiences from the different workshops, the main results from the international report and draft policy recommendations on temporary agency work were discussed by key national and European actors.

Project methods

The project design was qualitative and based upon documentation of union strategies and activity and upon case studies. Methods were continuously improved by discussions with practitioners from the social partners. The main forums for this dialogue were the national

advisory board meetings but also the national and international workshops, all with a majority of social partners. The main idea has been that researchers facilitated the dialogue between the social partners. This was done in several ways. In each country, the researchers co-operated with social partner experts, forming national advisory boards. There were recurrent national meetings with the national advisory boards to discuss experiences and findings carried out by the researchers; hence the researchers role is to facilitate the social dialogue by relevant input in the workshops and other meetings. The advisory boards also planned the national and international workshops. The work in the international steering group was accomplished by monthly video conferences.

The project collected information on the representation of temporary agency workers in five European states representing different labour market systems and also pan-European agreements and legislation. The project had comparative elements and a wider European Union context. This broader European analysis was based upon secondary sources and informed the outcomes of the project and allowed for conclusions on the representation of temporary agency workers.

The project collected and analysed national and international collective agreements and legislation covering temporary agency workers and examined available documentation on existing representation in the agencies themselves and local collective and other agreements in user firms, i.e. local unions and works councils.

There were also a number of interviews with key actors from national as well as local employee and employer organisations, but also managers in agencies and user firms and workers. These interviews were aimed at finding out about current representative arrangements for temporary agency workers and how individual and collective grievances are addressed. We have also been in contact with pan-European organisations such as Euro-CIETT, the International Confederation of Private Employment Agencies. UNI-Europa the European industry federation for temporary agency workers was a partner in the project.

The two national case studies from each participant country were an important part of the project, reflecting concrete issues arising from the representation of agency workers. These case studies covered companies using temporary agency workers, so-called user firms, and the temporary work agency providing the user with temporary agency workers itself. The case study method was felt to be conducive to capturing in-depth data relating to factors underlying the representation of temporary agency workers; the motivations of the actors, that is temporary agency workers and permanent workers; the specific role of the agencies themselves, user organisations and unions. In particular, it highlights the specific context of the national framework and demonstrates how the law and collective agreements affect the behaviour of the parties.

Conclusions

The different regulations in each country imply differences in conditions regarding pay and other working conditions for agency workers. Agency workers also face different possibilities regarding representation by unions or works councils and to get vocational training or have their health and safety concerns dealt with.

In Sweden, employees at temporary work agencies get the same type of contract as employees in other industries. The standard form of employment should, according to Swedish law, be permanent employment. However, employers in all industries can use fixed-term contracts for

up to two years. This is, however, more strictly regulated in the temporary work industry through the blue-collar collective agreement. This states that a fixed-term contract can only be extended beyond six months on the basis of a local agreement and then only to a maximum of 12 months. Our case studies reveal that employers in the agency work industry use fixed-term contracts as a routine for the first six months. Thereafter, temporary agency workers get a permanent contract at the temporary work agency. Due to the high turnover, the share of fixed-term contracts is probably considerably higher in the agency work sector than in other sectors. Besides Sweden, temporary agency workers can get a permanent contract in the Netherlands where this is possible after two years or eight consecutive contracts. In France, Poland and the UK, a temporary contract is the only alternative for the temporary agency worker. In all countries apart from the UK, temporary agency workers are paid the same as equivalent employees in the user firm. This is either a legal right or regulated by collective agreements. In the Netherlands, there is an exception for the first 26 weeks, according to the sectoral collective agreement.

Despite the differences, there is at least one common issue across the five countries: union membership among agency workers is very low. There are hardly any local unions at the agencies as it is obviously difficult to gather people from different user firms and organise meetings and other activities. This is especially a problem in Sweden and Poland where the representation system requires local unions at the agencies. In France (to a certain extent), the Netherlands and the UK agency workers can be represented by worker representatives at the user firm, in the UK by the union and in the Netherlands by work councils or as in France by either of them.

Representation of temporary agency workers and right to vote in elections

At national or sectoral level temporary agency workers in Europe currently do have formal forms of representation by trade unions and by collective labour agreements. At company level temporary agency workers can be represented by local trade union organisations and by works councils. In general the institutional framework for representation differs from country to country. The Netherlands and France have a dual representation model consisting of a strong sectoral level regulation and sectoral collective labour agreements in combination with representation at company level by works councils. In France, agency work is not considered as a trade but as a form of employment likely to be found in any sector. Agency workers may thus be represented through national trade union confederations or by sectoral federations. There are also works councils in Poland but they only have rights to information and consultation. The representative organisations are trade unions. Collective agreements are concluded mostly at company level. However, in Poland trade unions may exercise their rights at a company level only if they represent at least 10 employees. In the UK, there are very few sectoral agreements and the representation structure for temporary agency workers tends to be at local level and will depend very much on the level of union organisation and whether the union is recognised by the employer. In general the Swedish representation system is characterised by strong union organisations at both local and national level. At a national level, trade unions and employer organisations sign a national collective agreement. The implementation at local level is then ensured by local trade unions

Temporary agency workers in Sweden and Poland can only be represented by workers' organisation at the work agency, i.e. the employer, in Sweden by trade unions and in Poland by trade unions or work councils. In the Netherlands, France and the UK, temporary agency workers can be represented by workers' organisation at both the agency and the user firm, in the Netherlands and France by works councils or trade unions, in the UK representation is

mainly by trade unions although works councils are growing in number following the implementation of European legislation on information and consultation in 2004.

In countries with a works council system a major aspect of representation is the worker's right to vote in elections for work councils or to be eligible to stand in these elections. In general legal regulations require an employment relation of longer duration. That is why works councils in the Netherlands are now in the process of creating additional flexible forms of representation like "flex panels" and new ways to get access to temporary agency workers.

According to previous research, we can identify four different possibilities for how trade unions respond to temporary agency workers and the temporary work industry: exclusion, regulation, replacement and engagement (Heery 2004). In all countries trade unions today definitely act in favour of temporary agency workers and accept the temporary work agency industry and can therefore be classified as pursuing "engagement". Trade unions have become more conscious of the importance of union membership for temporary agency workers but at the same time, due to the inherent difficulties of getting access to temporary agency workers, union membership remains low. Unions at temporary work agencies try to inform and support temporary agency workers, but find it difficult to recruit them.

Explanations for lower levels of union membership among temporary agency workers is the fact that they tend to be younger, where union membership generally is lower, and that they are more mobile than average workers. However, our research points out that the most important explanation for lower trade union membership among agency workers is a trade union organisational structure ill-suited to their recruitment and representation. The triangular relationship between *temporary work agency–user firm–temporary agency workers* poses major challenges for some trade union structures.

According to the regulation in France, unions at the user firm can represent agency workers through the different structures devoted to employees' representation. In the French case however, there is no real evidence that unions at the user firm really approach and support the agency workers. The duration of an assignment in France is three days on average. The incentive for the union to engage in agency workers is therefore probably quite low.

In the Netherlands, trade unions focus strongly on collective agreements and not so much on the representation on the work floor. The work councils represent the agency workers at the workplace, but the agency worker is not allowed to vote on work council representation at the agency for the first 6 months' employment and at the user firm for the first 12 months. The Dutch case reveals that the work council prioritises matters relevant to permanent employees. Agency workers tend not to turn to the work council to deal with their complaints, but go in the first instance to co-workers.

In Poland, agency workers are excluded from being members of works councils at the agency for the first 12 months of employment. Given that the maximum period of employment at one agency may not exceed 12 months, agency workers are *ex lege* deprived of this right. However, in the Polish cases, the union in the user firm embraces them in its work. This representation is informal. In Sweden, agency workers who are members of a trade union should be represented by the union at the agency or by an ombudsman (union officer) at regional level. The union at the user firm does not have a mandate to represent agency workers. The Swedish cases show several weaknesses with this regulation. As the union at the user firm has no mandate, new agency workers get no union information and the union fails to recruit new agency workers to membership. Bluecollar unions at the agencies are rare and the

Swedish cases were no exception. When an agency worker needs union support, he or she has to turn to an ombudsman at regional level and if agency workers belong to different trade unions, which is not unusual, they have to turn to different regional trade union ombudsmen.

Work environment and health and safety

In all countries, the responsibility for health and safety for temporary agency workers on assignment is shared between the user firm and the agency. The user firm is responsible for the direct work environment and health and safety but the work agency is responsible for informing temporary agency workers about work environment and risks. In France, the agency covers any costs arising from occupational accidents and is responsible for the compliance with national provisions related to health surveillance of agency workers. Also in Poland, the responsibility for health surveillance lies with the temporary work agency. In the Netherlands, the social partners have established a foundation to ensure sickness benefits for temporary agency workers. According to Swedish law, the temporary work agency (the employer) is responsible for rehabilitation and for securing the health and safety of temporary agency workers.

In all countries, the safety representative takes part in the risk assessment process by analysing all jobs at the workplace. In all countries except Sweden, the safety representative at the user firm has the right to act on behalf of the agency workers. In Sweden, only the safety representative at the agency has this right and safety representation for blue-collar workers is extremely rare. In France, shop stewards elected at the user firm have a mandate to represent the temporary agency worker.

Vocational training and competence development

Our national reports show that national collective agreements on vocational training and competence development vary from country to country. In Poland and in the UK, training is not influenced greatly by collective bargaining. In the UK, unions have tried to push the issue of vocational training up the collective bargaining agenda but it is still rare to find the issue of training covered in any detail in collective agreements. The low level of collective bargaining coverage (35 per cent of employees) is another factor in the scarcity of collective agreements on training.

In France, Sweden and the Netherlands, training is covered by sectoral collective bargaining, even if differences remain. In Sweden, collective agreements for both white and blue-collar workers mention competence development for temporary agency workers. The agreements are formulated in quite general terms and talk about the need for training as a competitive issue and that the employer should offer training, but there are no specific obligations on the employer. The collective agreement for white-collar workers states that if the employer requires the employee to participate in training then it should be regarded as work and compensated for. In the Netherlands, collective bargaining in the temporary agency work industry is clearly important. For instance, the ABU 2004-2009 collective agreement contains provisions on training for employees in phases B and C (after 78 weeks of employment). Even if this device is to be replaced by others in the future, it shows that the Dutch representation system deals with workers' vocational training because this is a concern for both unions and employers' representatives.

In France, both laws and sectoral collective agreements regulate vocational training, which is clearly an important issue for the social partners. One of the major outputs of sectoral social dialogue is the creation (in 1983) of a specific fund jointly run by employers and employees' representatives: the Temporary Work Training Insurance Fund. This fund is financed by

contributions from French employment agencies and supports any training undertaken as part of sectoral agreements. Generally speaking, sectoral collective bargaining has been trying to adjust general provisions related to vocational training to the specific situation of agency workers.

At workplace level, our case studies show that access to training by temporary agency workers is limited. In all our cases, they are used for simple work tasks. Training is thus limited to what is necessary to perform the job. In addition, temporary agency workers get a short introduction to the workplace in all our cases (even if longer in the Swedish example) and health and safety is more an issue for information rather than training.

Migrant agency work

The evidence from the UK is that, while acknowledging the existence of employers and temporary work agencies with good practices, there are also disreputable agencies that repeatedly infringe employment legislation and exploit agency workers (TUC 2007). Migrant workers are often more vulnerable to exploitation by these kinds of agencies because of language difficulties, their lack of knowledge of employment rights and the pressure they may feel in needing to keep their job at all costs in order to remain in the UK. Where migrant agency workers are in a better position to exert their rights then the two crucial elements are knowledge of employment and health and safety rights and language training. One way of improving conditions for migrant agency work is greater co-operation between trade unions in the country where they work and their country of origin.

Strengths, Weaknesses, Opportunities and Threats for union representation at local level

All partners have summarised the representation at workplace level by an analysis of Strengths, Weaknesses, Opportunities and Threats. There are some striking similarities between the countries. The common weakness is the low level of real representation, partly because union density is very low but also because it is very difficult to organise temporary agency workers. There is a gap between representation in theory and practice. Even if temporary agency workers could be represented by unions according to law or collective agreement, the lack of effective union organisation at local level makes it very difficult to ensure that they are represented.

A strength in the representation issue is the unions' switch to a more constructive attitude towards temporary agency work with unions lobbying to improve working conditions. This is foremost a phenomenon at national level. A weakness might be the discrepancy between unions at national and local level in this regard. Our study reveals that the unions are convinced of the need for a constructive attitude towards temporary agency work and many unions make an effort to influence unions at local level in this direction.

The common threat for temporary work agencies and workers is the existence of unscrupulous agencies, which compete with reliable agencies on the basis of lower pay and poor working conditions.

Opportunities to improve the representation of temporary agency workers come under two headings - firstly adapt organisational union structure to the triangular employment relationship in the temporary work industry, i.e. the differentiation between employer and the temporary agency workers workplace; and secondly more and better information and procedures in the use of agency workers including information to user firm union/work council and temporary agency workers.

Policy recommendations on the representation of temporary agency work

In looking at the current state of agency worker representation in (five countries in) Europe, there are positive conclusions to be drawn in terms of a growing awareness of the importance of the issue. However, the overall assessment is negative because of the lack of representation in practice.

Considering these developments from a European perspective in relation to both trade union and works council representation, this research results in the following seven recommendations :

- 1. Unions should put more effort into organising temporary agency workers. In response to the difficulties involved in organising temporary agency workers it is important to actively recruit them and include agency workers' perspectives in trade union activities.**
- 2. Unions should, for the purpose of facilitating representation of temporary agency workers, be prepared to adapt their structures and try to overcome any conflicts of interests between and within unions that result from unions organising along sectoral or industrial lines. This might imply a wider representation mandate exceeding the traditional borders between different union affiliations.**
- 3. Improve information to temporary agency workers and the communication between the workers at the user firm and the agency and of the trade union and the works council with the aim of providing better information and guidance to agency workers.**
- 4. Trade unions, legitimate employment agencies, employer organisations and governments must take action to eradicate unscrupulous and exploitative temporary work agencies since they prevent trade unions from providing proper representation to agency workers and undermine fair competition in the temporary work agency industry.**
- 5. Temporary agency workers should have opportunities for competence development and vocational training. This could be achieved by sectoral training funds if there are sectoral funds (France, Belgium, Spain, Italy, Netherlands), or by assuring vocational training in collective agreements or by employers' liability.**
- 6. Ensure a good working environment and health and safety for temporary agency workers by clarifying the shared responsibility between agency and user firm.**
- 7. Migrant agency workers tend to be more vulnerable to some of the worst practices in the employment agency sector and should therefore have access to better information, guidance and provisions and wherever possible in their own language.**