

TUC Commission on Vulnerable Employment (CoVE)

**Agency and migrant workers
Literature review**

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July 30 2008

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1. Introduction

Temporary work exists in a variety of forms. The most traditional form is casual labour, which remains common, especially for low-skilled work in sectors such as construction and agriculture. Increasingly familiar is direct employment on fixed-term contracts, often associated with white-collar work as well as regular seasonal employment in other occupations. However, the fastest growing form of temporary employment in many countries is temporary agency work (TAW). TAW involves a triangular arrangement in which an agency intermediates between the worker and the client organisation in arranging temporary employment assignments (Mitlacher and Burgess, 2007).

Employment in temporary agency work has at least doubled throughout Europe over the last decade. In Scandinavia, Spain, Italy and Austria, temporary agency employment has increased at least five-fold, accounting for 1.3 per cent of the agency employment in the European Union by the end of the decade (Malo and Munoz-Bullon, 2006).

2. Methodology

The first section of the report analyses recent trends in temporary agency work in Europe, USA, Canada and Australia based on available statistical data from the International Database on Employment & Adjustable Labour (IDEAL) of 2004, the CIETT (International Confederation of Private Employment Agencies) database (1999, 2000, 2006) and data from the national surveys on temporary agency work in the EU, prepared for the European Industrial Relations Observatory in 2005; it is supplemented by relevant academic articles (i.e. Burgess, J. and L.W.; Mitlacher and Burgess, 2007; Lowe and Schellenberg, 2001; Fuller and Vosko, 2007).

The second section outlines the profile of temporary agency workers, utilizing the results of an investigation by the European Foundation for the Improvement of Living and Working Conditions of 2006 (Arrowsmith, 2006) and IDEAL (Berkhout *et al.*, 2006), combined with data obtained from the national surveys on temporary agency work in the EU in 2005 mentioned above. Data on the USA, Australia and Canada was obtained from academic articles (i.e. Mitlacher, 2006; Hall, 2006 and Fuller and Vosko, 2007 respectively); academic papers also supplemented the analyses on the Netherlands, Germany and Portugal (i.e. Tijdens *et al.* 2006; Mitlacher and Burgess, 2007; Mitlacher 2007; Boheim and Cardoso, 2007).

The next section examines motives for using agency labour, considering both employers' and agencies perspectives. Analysis here is based on recent relevant EU, American, Australian and Canadian literature (i.e. Stanworth and Druker, 2006; Hakansson and Isidorsson, 2007, Garcia Hernandez, 2007 etc.).

The section on the international experience of agency work utilizes the findings of empirical studies on the use of agency work as a labour market policy tool (i.e. Jahn and Ochel, 2007) and the conditions of agency employment (i.e. Stone, 2007; Granford *et al.*, 2006).

The analysis in the section on the legal issues of temporary agency work is based on academic studies on the Directive (i.e. Nedegaard, 2007), recent surveys on the possible effects of the Directive in the UK conducted by the CBI and CIPD, and academic studies, as well as national surveys on temporary agency work in the EU, conducted in 2005 for the European Industrial Relations Observatory. Analysis on the legal framework in the USA and Australia is based on academic research (i.e. van Jaarsveld, 2006; Hall, 2006).

The analysis in the last section on the employment rights of undocumented workers benefited enormously from data and materials available through the database of the Migration Policy Institute in Washington (MPI), the World Refugee Surveys of 2006 and 2007, the annual SOPMEI Reports on Trends in International Migration available through the OECD as well as national empirical studies on labour laws and enforcement mechanisms in Austria, Belgium, Italy and Spain.

3. Statistical data

Agency work is rarely distinguished in official statistics, which renders international comparisons difficult. Eurostat and OECD databases cannot be used to assess the impact of agency work on the economy. Part of the difficulty stems from the fact that different definitions of agency work are used. There are also differences in the way data are collected in different countries and by whom, resulting in a lack of consistency between the statistics on agency workers in different countries.

For example, the UK Labour Force Surveys are likely to undercount the number of agency workers mainly because of definition problems. The LFS asks respondents whether their work is not permanent in some way and if so whether they are in seasonal work, working on contract for a fixed period or on a fixed task, doing agency work, casual work, or not permanent in some other way. Some workers, who are supplied by agencies, will be classified as fixed-term workers or self-employed rather than as agency workers. The LFS will also miss those workers who are supplied by an agency but paid by the user and also those individuals who self-assess themselves as employees of the user firm when they are in fact agency workers.

Similarly, in Australia the official estimation of agency employment is also problematic: first, there are potential differences in employee status as some agency workers may be employed on a self-employment contracts basis, which can result in understating agency employment; second, agency assignments can be very short, just a few hours or days. This is usually the case for professional assignments or in construction. Since the national Labour Force Survey takes stock employment estimates at one point in time on a monthly basis, it can potentially miss short-term assignments associated with agency employment (Mitlacher and Burgess, 2007).

In Canada, there is no clear legal definition of temporary work, in particular, of agency employment. Especially problematic in this regard are agency jobs, where individuals may have continuous employment over an extended period with a single agency. Lowe and Schellenberg (2001) argue that even though these individuals may work at different

clients' job sites, perhaps experiencing some uncertainty about future assignments, their employment may be no more precarious than that of permanent employees. As result, some workers employed through an agency may not consider themselves to be 'temporary'. This creates potential measurement error, given that the Labour Force Survey and many other surveys on employment trends in Canada rely on self-reported status to classify employees as either permanent or temporary (ibid). Similar problems are encountered in the UK Labour Force Surveys where data on agency employment is based on self-reports (for example, inadequately differentiating self-employment and fixed-term contracts) (Arrowsmith, 2006).

The presence of TAW can be measured in various ways: absolute and relative number of employees, number of active firms and overall economic value. The International Database on Employment & Adjustable Labour (IDEAL) measures agency work calculating the agency work 'penetration rate', defined as the average daily number of agency workers as a percentage of total employment (Berkhout *et al*, 2007). This gives an overview of the relative importance of agency work in the national labour markets (Table 1).

Table 1: Agency work penetration rate, 1998-2006, [%]

	1998	1999	2000	2004	2006
Austria	0.7	0.7	0.8	1.2	1.2
Belgium	1.6	1.6	1.7	1.8	1.9
Denmark	0.1	0.2	0.3	0.2	0.6
France	2.0	2.0	2.6	2.3	2.4
Germany	0.6	0.7	0.8	1.1	0.9
Hungary	-	-	-	1.4	-
Ireland	0.5	0.6	1.5	1.3	1.3
Italy	0.0	0.2	-	0.7	-
Luxemburg	-	-	-	3.8	2.2
Netherlands	3.9	3.9	3.4	1.9	2.1
Poland	-	-	-	1.2	-

Portugal	0.9	1.0	-	0.9	0.8
Spain	0.7	0.8	0.7	0.9	0.8
Sweden	-	0.5	0.9	0.8	0.8
Switzerland	-	0.9	-	1.1	1.3
UK	3.2	3.6	4.9	5.1	4.3
Canada	-	1.7	1.8	-	-
USA	-	1.5	1.6	1.8	2.1
Japan	-	0.5	0.6	1.3	1.6

Source: Berkhout *et al.*, 2007, 2007; p. 41, Table 2.7

Calculations by Berkhout, Dustman and Emmer (2007) based on the CIETT Database (1999, 2000, 2006)¹ and the International Database on Employment and Adaptable Labour (2004)².

- denotes data not available

Based on the agency work penetration rate, Table 1 shows that agency work is most common in the UK, followed by the Netherlands, Belgium and France. Already in 1998, agency work was quite common in these countries. In Italy, it is a new phenomenon covering 0.7% of all employees. However, in spite of the limited importance of agency work in Italy, due to the absolute size of the Italian workforce, the absolute turnover of the agency business in this country is already higher than in Belgium (Berkhout *et al.*, 2007).

The UK Labour Force Survey reports a figure of 256,000 agency workers in spring 2005. This is likely to underestimate the numbers of agency workers mainly for the reasons mentioned above. The Recruitment Employment Confederation (REC) suggests there are over a million agency workers in the UK but the REC survey has a fairly low response rate (DTI, 2007). Today, the Communication Workers Union puts the figure of agency workers in the UK at 1.4 million³.

¹ www.ciett.org

² www.seo.nl

³ <http://www.personeeltoday.com>: "Agency workers equal rights passes second reading in Parliament" of 22 February 2008

The size of the agency workforce differs between countries mainly because of differences in national legislation regulating TAW. For example, Greece regulated its TAW first time in 2001; before then, private recruitment agencies had been operating in the country outside the law and supplying labour - mainly undocumented migrants - to the underground economy; thus, data on TAW could not be registered in official statistics.

In the USA, agency work has also been growing in the last decade and now accounts for 2.6% of total employment according to data by the Bureau of Labour Statistics. The number of temporary agency workers increased from about one million in 1992 to 2.9 million in 2005 (Mitlacher, 2007, P. 582, citing ASA, 2006). In Canada, between 1997 and 2003, temporary jobs accounted for almost one-fifth of overall growth in paid employment, growing twice as fast as permanent employment. In the late 20th century, full time permanent employment declined from 67% of total employment in 1989 to 63% in 2005 (Vosko, 2006, cited in Fuller and Vosko, 2007) – in Canada. In the past ten years, the number of temporary agencies in the country has grown dramatically. Today, there are over 500 TWAs in Toronto alone.

Table 2 provides relevant data on the agency employment in the EU15 and Norway, provided by the European Foundation for the Improvement of Living and Working Conditions.

Table 2: TAW employment, companies and turnover in the EU15 and Norway, 2004

Country	Number of agency employees	Proportion of total workforce (%)	Number of companies	Number of branches	Turnover, million EUR
AT	44,125	1.4	380	1,424	-
BE	75,131	2.2	127	1,013	3,089
DE	399,789	1.2	4,526	7,153	-
DK	6,341	0.3	-	645	440
EL	3,503	-	-	-	-
ES	150,000	0.8	341	1,953	2,450
FI	14,000	0.6	-	400	-
FR	569,314	2.1	1,000	6,299	18,400
IE	25,000	-	366	-	1,300
IT	153,000	0.6	75	2,400	4,000
LU	7,135	1.6	40	-	150
NL	157,000	2.5	1,250	4,200	6,500
NO	22,784	1.0	-	632	654
PT	45,000	0.9	247	-	650
SE	35,000	1.0	550	-	929
UK*	(a) 600,000 (b) 1,434,098	(a) 2.6 (b) 5.1	6,500**	10,000	34,693

Source: Arrowsmith, 2006; p. 6, Table 1

Note: Direct comparability of TAW employee numbers and proportion of the workforce is limited as several figures may refer to absolute numbers whereas the number of companies in some countries is expressed in terms of full-time equivalent workers.

* Two figures are offered for the UK because of the unreliable official data. In terms of agency employee numbers, the Official Labour Force Survey has a figure of 264,000 workers in 2004, but it is likely to underestimate significantly the extent of TAW employment as the data are based on self-reports. Therefore, the author offers two sets of figures: (a) DTI estimated that around 600,000 people were working as temporary agency workers in 2002 (b) The Recruitment and Employment Confederation (REC) estimates that there are currently 1.4 million agency workers in the UK; however, these figures also include people being recruited on a permanent basis through a TWA. Both figures for the UK are taken from the national report on Temporary Agency Work in the UK, prepared by David Winchester for the European Industrial Relations Observatory in 2005.

** On the basis of a survey and other research, the DTI estimated that in 2002 there were about 6,500 employment agencies in the UK, three quarters of which operated from one establishment. Estimates of the

total number of agency premises vary from 9,000 to 15,000. A further complication is that the figures often refer to branches of agencies (outlets) and not actual businesses (Winchester, 2005).

- denotes data are not available

Table 2 reveals that where figures were provided, the smallest proportionate users appear to be Denmark, Finland and Italy, supporting the aforementioned IDEAL data. In Greece, the official data revealed marginal use of agency labour by only 0.3% of enterprises in 2002, while TAW received a boost in the country in 2004 during the staging of the Athens Olympic Games. These data also confirm that the biggest users of agency labour are the UK, the Netherlands, Belgium and France. Luxemburg is a very interesting case where because of its geographical position some 80% of the agency workers are 'frontier workers' who do not reside in the country. In 2001, around 70% of agency workers in Luxemburg were French nationals, 8% were Belgian and only 2.8% were Luxemburg citizens.

TAW has expanded rapidly in most of the countries, especially in the mid-to late 1990s. Storrie (2002) argues that in Portugal, in 1999, TAW comprised about 1% of total employment in the country, below the 1.4% European average. However, in terms of growth, although employment in the sector more than doubled between 1995 and 1999, its growth has been modest when compared to other European countries.

In Austria, there were 593 agencies in 1996 supplying 14,548 workers to 4,190 user companies. By 2004, following growth that was sustained throughout the preceding eight-year period, the number of agencies and workers had almost trebled and the number of user companies had grown to 14,341; sectors that are currently expanding their use of agency labour include the metal and electronics industries, with increases of 32% and 27% respectively in 2003-2004. Other countries that have also registered growth since 2000 include Ireland, where a 5% GDP annual growth contributed to a 68% growth in TAW between 2002 and 2003; Finland, where TAW employment doubled between 2001 and 2003; and Luxemburg where the number of agency workers doubled between 1998 and 2003. However, a strong rate of TAW growth does not necessarily mean a significantly bigger presence in the economy as a whole. For example, in Denmark, the

number of agency workers rose by 60% between 1999 and 2004 but this represented an increase of only 0.1% in terms of the proportion of total employment accounted for by TAW. In Belgium, the proportion of the labour force employed by agencies remained steady, from 2.09% in 2000 to 2.14% in 2004 (Arrowsmith, 2006).

Today, the temporary agency market in the Netherlands is dominated by six large internationally operating agencies namely, the Randstad Group (of Dutch origin), United Services Group (a merger between Start and Unique), Adecco (Swiss-based), Vedior (French), Manpower (USA) and Content (owned by the Belgian Solvus Group) (Tijdens *et al.*, 2006). According to Statistics Netherlands, the number of agencies in the country dramatically increased between 1995 and 1999, and really exploded after the relative liberalization of the industry in 1998-99; the licensing system was abolished together with a number of restrictions related to placements, maximum placement duration, limitations on the ability of TWAs to obstruct TA employees from entering into direct employment contracts with the user firms; other rules remained such as the prohibition on posting workers to user firms which were on strike; the dual responsibility of user firms and agencies for the payments of social premiums and taxes, and an equal wages clause for TA workers. Compared with the rest of the Dutch population, migrants appear to be more often employed through an agency. In 2000, the total share of migrants in the temporary agency workforce was 33% compared to 18% in the total workforce. Official statistics point to the fact that female temps in the country are doing more hours of part-time work than their male colleagues; for example, in December 2004, 39% of the male temporary agency workers worked over 35 hours; the corresponding figure for female temps was 24% (Tijdens *et al.*, 2006).

In many countries, the steep growth observed in the second half of the 1990s slowed down from the turn of the decade. For example, in Germany, in 2005 443,949 persons were employed on average as temporary agency workers, which is a remarkable increase compared to the average number of 134,443 in 1994; the overall proportion of agency work increased from 0.5% of the workforce in 1994 to 1.4% in 2004 but it is still at a moderate level, showing no indication that agency work is substituting regular jobs

(Burgess and Mitlacher, 2007). In France, the average growth of TAW in terms of employment was just over 2% annually between 1999 and 2004, though the peak year was 2000 where there were increases of 9.6% in construction, 16.6% in the industrial sectors and 23.2% in services. In the Netherlands, employment in TAW grew by 3.8% in 2000 but the rate of growth has since slowed down to reach 2.5% in 2004 and 3% in the third quarter of 2005 (Tijdens, K. et al. 2006). This cyclical effect was particularly evident in Norway where the number of agency workers peaked in 2001 and then fell in absolute terms by around 15% in the subsequent two years, although the number of agencies has continued to grow following deregulation in 2001.

4. The demographic characteristics of temporary agency workers

This section reviews the demographic characteristics of TA workers on the supply side, and the sectoral distribution of TAW on the demand side. Table 3 captures the results of a recent investigation by the European Foundation for the Improvement of Living and Working Conditions (Arrowsmith, 2006). It shows that in most countries temporary agency workers are more often men, with the exception of Greece, Italy and Sweden. In Austria and France, only 17% and 28% respectively of the agency workforce is female. This can be partially explained by the sectoral use of the temporary agency work. In Germany, Austria and France, agency labour is mainly used in manufacturing and construction while in Sweden it is extensively used in the health care sector.

For example, in Germany, at the end of 2005, more than 50% of all agency workers were employed in manufacturing while only 15.5% were employed in the service sector (Mitlacher and Burgess, 2007; Mitlacher, 2007). In contrast to Germany, a higher share of the temporary agency workforce in the USA is employed in the service sector and as a consequence, some 53.8% of the agency labour in the country is female. American agency temps are also well qualified, with only 16.9% holding less than a high school diploma and 32.4% holding a college or equivalent degree (Mitlacher, 2007). Fuller and Vosko (2007), utilizing data from the 2004 Survey of Labour and Income Dynamics, found that agency workers in Canada are much more likely than other employees to have failed to complete high school; however, agency and seasonal workers are also more likely to have a university degree or certificate than permanent employees (20% vs. 23%).

Even though age categories are not discrete and are measured in different ways, on average most agency workers appear to be under the age of 30, with a substantial share of workers aged less than 25. In the Netherlands, Belgium and Spain almost half of the agency workforce is younger than 25, reflecting the fact that today many young people combine their studies with work, often through an employment agency.

Employer-employee data from the Ministry of Employment in Portugal depicts TAW workers as being on average four years younger than the workers in the rest of the private

sector, where the average age is 36 years (Boheim and Cardoso, 2007). In the Netherlands, agency workers are typically young, even relatively younger than the workforce of any other large industry branch. For instance, in December 2004, 68% of the registered temporary workers in the country belonged to the 15-34-age bracket, with more males than females in it; 18% were between 35 and 44 years of age and only 14% were 45 or older (Tijdens *et al*, 2006). However, countries such as the UK, Germany, France and Canada have a higher share of older workers (Table 3).

Table 3: Temporary agency workforce by sex and age, EU15, Norway and Canada*, 2004

Country	Gender		Age (%)			
	Female (%)	Male (%)	< 25 years For Canada:<24 years	< 30 years	< 35 years	> 45 years
Austria	17	83	-	-	-	-
Belgium	42	58	45	64	-	-
Germany	24	76	Average = 37.5 years			
Greece	53	47		86		4 [refers to >40]
Spain	44	56	45	70	83	5
France	28	72	34	54	68	12
Italy	53	47	-	-	-	-
Luxemburg	22	78	-	-	-	-
Netherlands	44	56	50	-	-	9
Norway	50	50	-	-	70	-
Portugal	40	60	29	-	-	24 [refers to >40]
Sweden	60	40	27	45	41	-
UK	48	52	36	62	-	21
Canada*	56	44	24	-	59	32

Source: Arrowsmith, 2006, Table 5, p. 10

*Data for Canada: own calculations based on Fuller and Vosko (2007), Table 2, p. 10.

- denotes data are not available

The two tables below, Table 4 on the distribution of temporary agency worker assignments, and Table 5 on their occupational distribution, are taken from the same source (Arrowsmith, 2006). In Austria, Germany, France, the Netherlands and Portugal,

TAW is most common in manufacturing, while in Spain, Sweden and the UK it is more likely to be found in the services sector. Belgium, Denmark, Finland, Italy and the Netherlands exhibit a relatively more mixed sectoral distribution of agency labour. For example, in Italy, the recent growth in commerce has shifted TAW beyond its traditional metalworking sector. The public sectors in Denmark, the Netherlands, Norway and the UK makes significant use of agency labour.

Table 5 reveals that most TAW is concentrated in lower skilled jobs in the services sector, manufacturing and in the clerical and administrative occupations. However, some countries such as France, Germany, Italy and the UK also make a substantial use of skilled technical and engineering professionals while Denmark and the UK also use public service and other professionals.

Recent research by IDEAL (Berkhout *et al*, 2006) offers two possible explanations for the relatively low-skills of the temporary agency workforce in Europe. First, if workers were still in education, their skill levels would not be measured correctly by 'highest successfully completed education' because they would not have finished their education yet. Second, early school-leavers cannot get easily permanent jobs, as they would lack the minimum qualifications required.

In Australia, TAW is spread across every industry and occupation. In two industries - communications and utilities - more than one in ten workers is an agency worker. However, the biggest users of agency labour are the manufacturing industry (trades and related workers), business services (technicians, consultants, IT professionals, and health and community services (nurses, technicians and hospital support workers) (Table 4). The occupational distribution shows a clear pattern, agency work in the country is more common in lower skilled occupations, even though it is widely spread across all sectors and includes significant numbers of professionals, trades workers, and higher and intermediate level clerical, sales and service workers (Hall, 2006).

In the USA, temporary agency workers are mainly employed in the services sector (Mitlatcher, 2006).

In Canada, temporary agency workers are most likely to work in occupations unique to processing, manufacturing and utilities (43%), and in management, administrative and other support industries (48%).

Table 4: Distribution of temporary agency assignments by sector, EU 15, Norway, Australia* and Canada, 2004**

Country	Sector
Austria	48% manufacturing; 32% craft, trade and services; 6% transport/telecoms; 5% commerce; 0.7% bank/insurance
Belgium	45% manufacturing; 43% services; 5% construction; 4% agriculture, etc.; 3% gas, electricity, water
Denmark	35% manufacturing; 12% private services; 14% other private sector; 37% public sector; 2% private households and other
Spain	59% services (17% hotel/catering; 6% wholesale/retail); 33% manufacturing (8% food, drinks, tobacco); 6% agriculture, etc.; 2% construction
France	Nearly half (47.9%) of TAW is in manufacturing, 32.1% is in services and 19.3% is in construction
Italy	Almost half of TAW contracts are accounted for by metalworking; these are now matched in importance by services, particularly commerce
Netherlands	31% manufacturing; 9% government and education; 18% trade, hotel and catering; 13% services; 12% transport; 10% health; 3% construction; 2% ICT; 1% agriculture; 1% others
Portugal	40% manufacturing; 13% commerce; 12% services for companies; 9% hotel/catering; 9% transport/communication; 8% construction
Sweden	74% services; 22% manufacturing; 4% health care
UK***	43% government, education, health; 17% distribution, hotels/catering; 13% banking, finance, insurance; 9% manufacturing
Norway	TWA personnel used in 38% of private sector and 20% of public sector organizations; higher proportions in manufacturing, wholesale, finance and transport
Australia*	11.7% in electricity, gas and water supply; 10.9% communication services; 7.2% labourers and related; 6.6% mining; 6.1% manufacturing
Canada**	48.3%-management, administrative and other support industry; 17.7%-manufacturing; 7.7% health care and social assistance

Source: Arrowsmith, 2006, p. 7, table 2.

*Data for Australia was taken from Hall, 2006, p. 161.

** Data for Canada was taken from Fuller and Vosko, 2007, p. 8

***Data from the LFS of Spring 2004, cited in the national report on Temporary Agency Work in the UK, prepared by David Winchester for the European Industrial Relations Observatory in 2005.

Table 5: Distribution of temporary agency assignments by occupation, EU15, Norway, and Canada*, 2004

Country	Sector
Austria	83% blue-collar; 17% white-collar; generally low-skilled; two in three workers in low-skilled jobs are TAW
Belgium	63% blue-collar; 37% white-collar; 15% low educational standard; 53% average; 28% higher education
Germany	31% in low-skilled jobs of no further description; 18% metalworkers or mechanics; 7% electricians; 9.5% administration/clerical
Denmark	31% production, storage, chauffeurs; 31% health care (of which a quarter are nurses); 28% administration; 5% catering; 2% sales and demonstration; 35 other
Spain	64% low-skilled workers; 14% workers in catering, personal services, protection and sales staff; 10% administrative staff; 8% plant and machine operators and installers; 35 craft workers and skilled workers in manufacturing, construction and mining, except plant and machine operators; 69% basic or low education; 16% secondary education and similar; 6% diploma or degree; 9.5% had received vocational training
France	44% low-skilled manual; 36% skilled manual; 13% clerical; 65 intermediary occupations; 1.6% managerial
Italy	23% skilled workers; 21% generic workers; 9% administration; 7% sales or cash desk staff
Netherlands	32% lower secondary or primary education; 48% middle secondary; 19% higher secondary or higher scientific
Norway	40% university-level education; traditionally dominated by office work (strict regulations prior to 2000); reportedly still less common for blue-collar work; recent expansion into health sector and construction
Portugal	45% in jobs requiring no qualifications (28% in construction, manufacturing, mining, transport; 17% in services and commerce); 13% in administrative work; 4%-6% as receptionists, sales staff, metal workers, technical staff
UK**	25.7% secretarial and clerical; 11.1% technical and engineering; 9.8% professional/managerial; 8.5% financial; 6.9% computing/IT; 6.6% hotel/catering; 2.6% nursing/medical; 2.5% blue-collar; 1.2% education; 0.6% drivers, and 24.2% others
Canada*	43%-occupations unique to processing, manufacturing and utilities; 27.5%-business, finance and admin occupations; 16.2%-trades, transport and equipment operators and related occupations; 7.9%-sales and related occupations

Source: Arrowsmith, 2006, p. 8, table 3.

* Data for Canada was taken from Fuller and Vosko, 2007, p. 8.

** Data is taken from surveys conducted by the REC, cited in the national report on Temporary Agency Work in the UK, prepared by David Winchester for the European Industrial Relations Observatory in 2005.

5. Motives for using agency labour

The literature (Gramm and Schneck, 2001; Allan, 2002; Hakansson and Isidorsson, 2007) on employers' decisions to use agency labour distinguishes several motives:

Flexibility

The first motive is to gain flexibility or adaptability to changes in demand or to gain flexibility in buffering against market turbulence. Here, Heywood, Siebert and Wei (2006) add an extra element in that the provision of family friendly working conditions such as parental leaves may reduce organisations' flexibility in terms of their core workforce, increasing the need for agency workers as buffers. Duran, Criado and Torre (2007) distinguish between business flexibility and labour flexibility. Business flexibility is defined as the general ability of a company to adapt to changes in order to maintain/improve its competitiveness. Of interest to our research is labour flexibility, which, from a management point of view, would be "the way of efficiently adapting the available human resources and the organization of the work to the service & product demand variations – in quantity and quality - as well as to the diversification of products" (ibid, p. 7). The use of temporary agency work is one of the main ways of achieving labour flexibility.

For instance, research on UK users of agency labour provides examples of firms who had moved or were moving towards substitution and away from complementarity; they had initially been forced to take on agency labour following downsizing but now they were deliberately using agency workers as permanent buffers against uncertainty. In contrast, several other firms were deliberately restricting their use of temporary labour, believing that too high a proportion of agency workers would undermine company's reputation (Stanworth and Druker, 2006). Similarly, a recent survey of employers of agency labour in the UK and Sweden shows that some employers in both countries would recruit agency labour regularly, instead of only during peak periods, as a buffer against market turbulence, usually connected to company mergers, massive privatizations or reorganizations in which extensive reductions have taken place (Hakansson and Isidorsson, 2007).

In the USA, Garcia Hernandez (2007) argues that temporary agencies provide workers on demand, allowing user firms to get workers on short notice and as a result, user firms avoid paying for more workers than they need at any given time. For example, hospitals in the country are increasingly using temporary agency nurses to deal with fluctuations in demand for health care (Goodman-Bacon and Ono, 2007). The UK hospital sector has experienced a similar increase in the agency use. The Audit Commission (2001, cited in de Ruyter, 2007) estimated that there were approximately 43,000 registered nurses working through private employment agencies on some basis; responding to the growth in agency medical staff, the NHS has even established an in-house agency, NHS Professionals (De Ruyter, 2007).

In Australia, the use of agency workers has been one of the key motives for employers' search for flexibility since the 1980s. This motive, Hall (2006) argues, is consistent with trends of downsizing and moves towards minimum complementarity of permanent workers supplemented by temporary workers, including agency staff.

Cost

Using agency labour offers a greater degree of flexibility in the allocation of payroll costs, which in turn can maintain productivity and competitiveness levels by reducing personnel costs. For example, much of the day-to-day management of temporary agency workers such as payroll and administration falls upon the supplying agencies. This attraction was emphasized by a number of agencies in Australia, who take responsibility for the personnel management of all of their agency workers at a client firm (Hall, 2006). Research on UK businesses using agency labour provides examples of agencies increasingly taking on tasks that were traditionally carried out by the HR department or the line manager in the client firm, for example candidate shortlisting and day-to-day management of agency workers (Stanworth and Druker, 2006). Another significant finding of the research was the growth of agency employment amongst technical and other professionals, who were provided with little or no training by the client firm but who were expected to be very competent from the start of the assignment; the

responsibility for, and the cost of specialist training for agency workers had been transferred to the workers, with agencies taking little or no responsibility (ibid). Mangers may also use agency labour to reduce the cost of recruitment, selection and basic training. This is particularly true where jobs are routine in nature and require basic training only.

Interestingly, Heywood et al. (2006), in an analysis based on Spanish and American data, argue that while potential to save on wage and benefits costs exists, such savings have not been generally identified by employers as the most important factor in using agency labour. Even though UK evidence suggests that agency workers earn around 20% (TUC, 2007)⁴ to 22% (Forde and Slater, 2005)⁵ less than similar core workers and US evidence puts the figure at 3% less, these differences, according to the authors, seem unlikely to translate to cost savings for firms in either country. In other European countries, such as Greece, it was also found that cost was not the primary reason for using agency labour (Voudouris, 2004). However, for the case of the USA, Garcia Hernandez (2007) argues that user firms benefit enormously from the legal characterization of the agency as the temporary worker's employer because such characterization allows user firms to avoid expensive legal obligations; for example, user firms do not pay temporary agency workers unemployment insurance or pay them less workers compensation insurance than core workers; also, agency workers in the USA are not covered by the National Labour Relations Act, the nations principal collective bargaining legislation.

Access to specialist skills

Other motives for employers to use agency workers are the need for specialist skills and occasional difficulties in recruiting personnel. For example, in a recent survey in Sweden and the UK, some 11% of the Swedish employers and 12% of the British employers mentioned the need for specialist skills; difficulties in recruiting were mentioned by 8% of the Swedish user firms and 19% of the British user firms.

⁴ The report uses LFS data from the summer of 2006; however, the sample size for agency workers was too small to obtain rigorous statistical results.

⁵ The econometric analysis is based on consecutive Spring to Winter 2000 LFS data sets; it shows an average hourly pay rate of £6.84 per hour (Spring 2000 prices) for agency workers, compared to £8.81 per hour for permanent workers, a wage gap of 22%. Stark differences in pay were also observed between men and women – male agency temps earn 36% below the average hourly pay for male permanent workers while female agency workers earn 4% below the average hourly pay for permanent female workers.

Legal factors

Legal factors also play an important role in companies' decisions to employ agency labour. A number of authors point out dismissal protection rules as having a significant impact on employers' decisions to use agency labour. For example, in Germany, dismissal protection rules are relatively restrictive. Employers are obliged to submit objective reasons to justify dismissals and need to observe procedural regulations, which provide for long notice periods (Mitlacher, 2007). Therefore, the main advantages for employers using agency labour in Germany are claimed to be that employment contracts may be terminated without notice, firing costs can be reduced and labour disputes can be avoided (Antoni and Jahn, 2006).

Some countries such as Spain, Belgium and France have legally determined 'reasons of use' of agency labour. For example, in Spain, when the Law for Temporary Work Agencies of 1994 was amended in 1999, to impose the requirement that temporary and permanent workers must be paid the same rate for the same jobs, valid reasons for the companies' use of agency labour were also set out; these are to carry out specific work or services; to replace workers with job reservation rights or to cover a vacancy temporarily. In Belgium, federal legislation states that employers can only employ agency workers for three reasons: to replace a permanent worker; for temporary and exceptional peaks of work; or, for unusual work (Arrowsmith, 2006). In France, current restrictions refer to a short list of reasons related to the user company and to facilitate the recruitment of disadvantaged, unemployed people (such as older workers, disabled people, young people and those who are low skilled). The latter was regulated in the Social Cohesion Framework Act of 2005. The Act emphasized 'reasons for use', related to the temporary workers' personal situation rather than the needs of the client firm. However, the European Confederation of Private Employment Agencies (2007) expresses concerns that the legal restrictions on agency labour use in some countries are seriously damaging TAW. They consider such restrictions as barriers that have to be lifted in order for more employers to opt for agency labour recruitment.

Avoiding unionism

Some research has claimed that employers can also use agency labour to avoid unions. The Australian Council of Trade Unions (ACTU, 2000, cited in Hall, 2006) has claimed that some employers have replaced unionised permanent employees with non-unionised agency workers in order to secure a more compliant workforce. Similarly, in the USA, client firms can either recruit agency workers because of their practical inability to become unionised or because they can easily terminate their relationship with an employment agency when there is a threat of agency workers' unionization (van Jaasveld, 2005). In contrast, comparative research on the luxury hotel industry in Australia and the UK provides an example of a successful partnership between the Australian trade unions and the employers of staff in luxury hotels; as a result, the hotel industry in Australia, unlike in the UK, appeared to be associated with progressive employment practices that have led to positive outcomes for employers and employees, such as increased productivity, reduced labour costs, increased rate of temporary-to-permanent transitions for agency staff and their exposure to a variety of work tasks (Knox and Nickson, 2007).

6. International experience of agency work

Agency work as a labour market policy tool

Since 1994, temporary agency work in Germany has been used as an active instrument of labour market policy. The pilot project came to an end in 1996, with a successful integration rate of 27% (Jahn and Ochel, 2007). The idea to use TAW as a stepping-stone for integrating the unemployed into the labour market was taken up once again in 2003. All 180 public local employment offices are required by the Government to set up at least one personnel service agency (PSA), whose task is to quickly integrate jobseekers into the labour market by assigning them temporarily to a client firm.

Similar experiments with using temporary agency work as an instrument of active labour market policy were made in the Netherlands and Sweden but both of the pilot projects were discontinued. In 1998, Australia, replaced its Public Employment Service (PES) with a private 'Job Network' of approximately 200 firms; performance is remunerated with state premiums based on placements. In 2000, the Netherlands followed Australia's example (Struyven and Steurs, 2005, cited in Jahn and Ochel, 2007). In the same year, the British Government also started to commission private employment agencies to assist with the integration of hard-to-place workers in both directly employed and temporary agency jobs. In order to involve private actors in employment services, Denmark abolished any restrictions regarding the types of activities that can be used to reintegrate the unemployed into the labour market (Bredgaard et al., 2005, cited in Jahn and Ochel, 2007).

Conditions of agency employment

Recent empirical research in Australia portrays agency employment as marginal and inferior, according to the sampled agency workers. It shows that agency work may provide flexibility to the client firms but does little to enable workers to manage work and non-work commitments; only a small proportion of agency workers manage to get permanent employment, and around half are offered back-to-back agency engagements, according to the agencies. Agency workers reported 'high insecurity' as their main work problem (Hall, 2006). Given that agency workers are usually employed as casuals, they

have very low trade union membership and they are usually excluded from many non-wage benefits such as paid holidays (Mittlacher and Burgess, 2007).

A similar picture on agency labour in the USA is portrayed by Garcia Hernandez (2007). He claims that all the benefits of temporary work are directly correlated with disadvantages for agency workers; for example workplace safety protections are eroded as firms attempt to cut costs. Stone (2007) claims that, since 2004, the Labour Board in the USA has reinterpreted the National Labour Relations Act in ways that practically deny legal protection to temporary, part-time and low skilled professional workers, including agency workers, restricting the rights of all these categories of workers to engage in collective activity. In the USA, social insurance is generally linked to employment and it is the employers rather than the state that provide workers with health insurance, pensions, disability, long-term care and other forms of social insurance. Even most forms of state provided insurance benefits, such as unemployment compensation and workplace accident insurance, require a worker to have an employment relationship with a specific employer in order to qualify for such benefits.

Recent empirical research in Canada (Fuller and Vosko, 2007) depicts agency work as increasingly precarious. Their survey results show that next to casual employment, agency employment offers the lowest wages, Canadian agency workers also have the lowest levels of unionization among workers in all different types of employment, confirmed by policy and qualitative research (Vosko, 2000; Granford et al., 2006, cited in Fuller and Vosko, 2007). Given the 'triangular character of agency employment', many agency workers lack health insurance, paid vacation, family leave pensions, job security and training and promotional opportunities. Stone (2007) argues that the long declining rate of union density amongst the employed in the economy - from a peak of 34.7% in 1954 to less than 9% in 2006 - is due to the deteriorating job security and the growing share of temporary employment, including agency work.

In relation to Germany, Mitlacher and Burgess (2007) offer examples that illustrate agency work as precarious. The length of agency assignments is rather short, as 75% of all assignments last less than three months and only 5% more than a year. German temporary agency workers earn between 22% and 40% less than permanent staff. The wage gap is more significant for low qualified workers as their salaries were only 60% of the salaries of core workers in the Western part of Germany; the wage penalty for white-collar workers is somewhat smaller, as they earn 71% of the wages of regular employees.

7. Legal issues of temporary agency work (TAW)

Proposals for a European directive

In the EU, discussions on temporary agency work started in 1990, when it was seen as one of the three different types of atypical work, the other two being part-time work and fixed-term work contracts. Agreements were reached on part-time work and fixed-term work contracts in 1997 and 1999 respectively, and these agreements were transformed into EU directives. However, the third negotiation process about temporary agency work did not succeed because of “disagreement on how much should be included in the concept of ‘working conditions’ in a framework agreement for temporary workers” (Nedergaard, P., 2007). The overall aim of the proposal for a directive on temporary work⁶ was to implement the principle of non-discrimination and give temporary agency workers the same rights as permanent workers in the user company regarding a wide range of terms and conditions such as holidays, parental leave, wages, resting periods and gender equality in the labour market (article 5 in the proposal for a directive). At the same time, the proposal for a directive aimed to reduce a number of restrictions in many Member States concerning the use of temporary workers in various job functions (article 4). The issue with the implementation of the principle of non-discrimination led to worries in many Member States for two main reasons: first, collective agreements between social partners within the Member States generally ought to overrule the regulations of the directive (at least in cases when the working conditions had a ‘satisfactory level’⁷); second, there was a waiting period of six weeks after the start of the job as a temporary wage earner before the conditions in the directive should count. Subsequently, the length of the waiting period became the main turning point for most of the debate on the directive in the years that followed. From the very beginning, this debate demonstrated that a minority of Member States (Germany, Denmark, Ireland and the UK, known as ‘the Gang of Four’) wanted a longer waiting period, while a majority was either satisfied with the six-week period or wanted even a shorter period. After the 2004 enlargement, a new set of decision-making rules and a new distribution of votes

⁶ The original name was ‘Directive on Working Conditions for Temporary Workers’ but the name was changed in October 2002 (ibid, p. 701).

⁷ Denmark and Sweden were especially concerned as to what was meant by ‘satisfactory level’ and the courts would interpret the concept (ibid, p. 701).

entered into force, potentially threatening the blocking power of the ‘Gang of Four’. However, four of the new Member States, Poland, Malta, the Slovak Republic and Lithuania appeared to be very skeptical about the directive, thus offering blocking support to the ‘Gang of Four’. At that point in time, the network of the blocking minority countries turned into a stable core of a new and extended network, which demonstrated its power in the second half of 2004 by keeping the issue on the agenda of the Council of Ministers in spite of attempts by the presidency to adopt the directive (ibid).

From the very outset, the UK position reflected the fundamental understanding of the UK Government that employing temporary agency workers represents a vital element in creating and sustaining a flexible labour market. Previous research on motivations for using temporary labour showed that one of the advantages of using temporary workers was the relative ease of dismissing them without the cost implications compared to dismissing permanent staff. Investigating this issue, the professional body of employment agencies in the UK researched the possible impact of new agency worker legislation on employers; it surveyed 190 employment agencies that had contacted their clients regarding the issue and found that 39 percent of organizations would not employ agency workers under new regulations that required them to fully match the agency workers’ benefits to that of a permanent worker (REC, 2002, cited in Biggs; Burchell and Millmore, 2006). Further evidence was cited from the Confederation of British Industry that surveyed 210 companies and found that 57 percent of organizations would reduce their use of agency workers if the proposed legislation were passed (ibid). In the 2007 CBI/Pertemps annual employment trends survey of over 500 firms, which employ about 1.1 million staff, 58% of the surveyed employers said such a law would lead to a significant reduction in the use of temporary workers. The CBI suggested that this would mean that 250,000 jobs would be put at risk and the UK would lose a ‘vital competitive edge’.⁸ A recent CIPD/KPMG survey of more than 1,500 employers found that only 37% of the respondents thought the Directive would have a negative impact on their organization with just two in five (39%) saying it would have an effect on recruitment; of the latter, more than two thirds reported that they would hire fewer agency temps though

⁸ <http://www.cbi.org.uk> (retrieved on 26 February 2008)

one third expected that as a consequence they would hire more workers on permanent contracts; overall, 47% of the surveyed employers were of the opinion that the Agency Workers Directive would make the process of hiring agency temps more bureaucratic while 61% thought it would increase labour costs.

Others have countered these views. For example, highlighting that following the introduction of equal treatment rights for part-time workers no significant job losses were reported (TUC, 2007). OECD evidence also questions the correlation between employment protection legislation and job creation (OECD, 2004).

The regulation of employment contracts

According to Storrie (2002), there are two main legal aspects to agency work: the regulation of the agency business itself, and the labour law regulation of contracts and assignments. Regarding the employment contract, in most countries an agency worker is legally employed by the agency, and then hired out to perform work assignments at the user firm. An employment relationship between a worker and an agency is also stipulated in the 1997 ILO Convention on Private Employment Agencies (Vosko, 2007). The Convention also defines private employment agencies as “employing workers with a view to making them available to a third party, which assigns their tasks and supervises the execution of these tasks” (ILO 1997, Art. 1.1b, cited in Vosko, 2007). Storrie argues that this applies to all European countries except the UK and Ireland: in Ireland, the situation appears unique in that the user firm assumes all the rights and obligations of an ordinary employer, according to section 13 of Ireland’s Unfair Dismissals (Amendment) Act 1993, while in the UK, the employment status is rather complex as the temp usually has a ‘contract for services’, which does not immediately give rise to an employee relationship in law. In the UK, there is no single statutory definition of TAW or of an agency worker. The 1973 Act offers perhaps a rather confusing distinction in today’s terminology between an ‘employment agency’, which is defined as an organisation that finds persons (permanent) employment or looks for such workers on behalf of employers, and an employment business, e.g. temporary work agency (TWA), which supplies workers in its own employment to work under the control of others. The word

employment is widely defined and includes employment either under a 'contract for services' as well as under a 'contract for employment'. However, in most instances, TWAs engage their temporary labour on the former basis. In the case of *Brook Street Bureau (UK) Ltd v Dacas* [2004] EWCA Civ 217; [2004] IRLR 358, the Court of Appeal had appeared to open the door to agency worker claims against the end user employer, by stating that while the individual in this case was clearly not an employee of the agency (since it did not exercise control over her work) there was no reason in principle why she might not have been able to show an implied contract of employment between herself and the end user employer. However, this potential method of guaranteeing employment protection rights to agency workers has, in general, been removed as the result of a more recent ruling (February 2008) again from the Court of Appeal. In the case of *James v London Borough of Greenwich* [2008] EWCA Civ 35, Case No: A2/2007/0368, the court has ruled that an individual who had worked through an agency for one employer for a number of years and who was then dismissed was not able to sue the end user employer for unfair dismissal. The court held that there was no automatic principle for the creation of an implied contract between worker and end user employer, no more than there was an automatic assumption that the reverse would be the case and that all agency workers were in law self-employed temporary workers. The result of the ruling is to leave temporary workers sourced through agencies in a very uncertain position: their contractual relationships are not well established and it is not clear whether they have any right to claim statutory employment rights.

In Canada, a temporary agency is the legal employer because, among other things, it does the hiring, finds the job, pays the worker, and, if necessary terminates the contract with the worker. During the assignment, the client is considered the temporary worker's legal employer if the organisation takes on responsibilities including supervising the worker and providing work space and equipment for the job (Personnel Policy Service, 2008).

It is only in Sweden that a TA worker is regarded as an employee with a permanent or open-ended contract, although, according to reports by the German employer's

organisation, it is normal practice there to employ agency workers on an unlimited contract (Arrowsmith, 2006).

In the Netherlands, the national collective agreement stipulates that after three and a half years of continuous employment, an agency worker has the right to a permanent contract.

Denmark, Greece and Finland are examples of countries where TAW is generally provided in the form of fixed-term contracts (ibid).

The Labour Placement Act of 1972 in Germany limited the maximum duration of an assignment to three months. However, in 2001, the maximum period increased up to 24 months; from the 13th month of an assignment, the principle of equal treatment applied. The Act was again modified in 2003. In Germany since modification of the law in 2003, TWAs have been allowed to assign an agency worker without time limits. At the same time, the equal treatment of temporary agency workers applies from the very first day of an assignment. However, this can be avoided by the agency for up to six weeks if the agency worker has previously been unemployed; in this case, the agency is permitted to pay the worker at a pay rate equal to the unemployment benefits. The contracting parties can also circumvent the principle of equal treatment if a sectoral collective agreement applies and as a result, many collective agreements were signed in the temporary work sector in 2003, reducing the principle of equal treatment in practical terms for most temporary agency workers (Arrowsmith, 2006; Antoni and Jahn, 2006).

Developments in national legislation regulating agency work

Today all Member States as well as Norway have a specific regulatory framework for TWA based on national legislation. Some European countries such as Belgium, Denmark, France, Germany, Ireland, the Netherlands, Norway and the UK, first attempted to regulate TAW in the 1960s and 1970s. For example, in 1965, the Dutch Government introduced a permit system via the Act on the Provision of Temporary Labour, as a response to the growing number of illegal labour brokers. It was subsequently abolished (Arrowsmith, 2006). In the UK, the Employment Agencies Act

was introduced in 1973. Its main objective was to license employment businesses to protect the public interest but this requirement was removed by the 1994 Act. Other countries such as Austria, Portugal, Sweden, Spain, Luxemburg, Italy, Finland, first regulated their TAW in late 1980s and 1990s, with Greece passing its first legislation as late as 2001.

As the TWA segment has grown, many countries have amended and/or significantly revised their legislation with a view of extending employment protection or liberalising the circumstances in which TWA can be used. For example, one of the significant changes in the Dutch labour law was the adoption of *the Flexibility and Security Act* in 1999. The Act determined the legal position of the temporary employee as a standard labour contract between the temporary employee and the TWA, and also introduced participation rights for TA workers in the user enterprise (Arrowsmith, 2006). The Dutch regulation has improved workers' rights while maintaining flexibility for user firms. For example, employment rights and wages increase with the increase of the length of time a worker spends in the temporary agency work sector, and after a certain period and certain conditions, the agency must offer the worker a permanent contract (e.g. if a person has been employed on three consecutive temporary contracts, the fourth contract will automatically be a permanent one; the same happens if the duration of more than one temporary contract exceeds 36 months) (Tijdens et al., 2006). About a quarter of all agency work is performed by workers on a permanent contract.

In Germany, TAW is regulated by the Labour Placement Act, which came into force in 1972 and requires agencies to register and receive authorization by the German Federal Employment Agency.

Denmark, UK and Sweden can be given as examples of countries with relatively liberal regulations on TAW.

In Denmark, in 1990, the statutory regulation system (*Act on Employment Exchange and Unemployment Insurance* – law no. 114/1970) was removed in favour of regulation by

collective bargaining (Arrowsmith, 2006). In the UK, little legislation covered temporary workers until recently. During the 1980s and mid to late 1990s, temporary workers were afforded protection against discrimination on the basis of sex, race, disability and trade union membership. However, these workers still do not have any protection against unfair dismissal or redundancy rights. In 1999, directly employed temporary employees were granted the right to no less favourable employment, as a result of regulations implementing the EU directive on fixed-term workers. However, these do not extend to protect agency-sourced workers, for whom the principle entitlements are contained in the *Conduct of Employment Agencies and Employment Businesses Regulations* of 2004, which require all parties to agree on the employment status of an agency worker at the beginning of an assignment (Biggs, Burchell and Millmore, 2006). In Sweden, state legislation was first introduced in 1993 with the adoption of the Private Job Placement and Hiring-Out of Labour Act. It has undergone minor changes since then. The Act consists of only seven paragraphs and there is no specific regulation of the temporary agency sector; agencies are treated as any other business in this respect. The lack of specific regulation is explained by the Swedish tradition of labour market regulation, which gives the social partners responsibility for regulation through collective agreements and voluntary self-regulation (Berg, 2005; Hakansson and Isidorsson, 2007).

In Australia, there is no national regulation of TWAs. The regulations that do exist are confined to the State Government jurisdiction. TWAs must apply for a license and be licensed at the state level. Apart from that, TAWs are subject to the same regulations that govern other commercial enterprises. In 1999, the Queensland Act established the temporary agency as the employer and the agency worker as the employee. In Australia, there are no reporting obligations, financial bonds do not need to be posted by the agencies and there are no limitations on the occupations and industries that can be supplied with agency labour. In the past, trade unions had sought to place limits on companies employing agency workers through inserting a limitation clause in collective agreements. However, the Work Choices Act of 2006 made it illegal for Federal collective agreements to place any limitations on the use of agency labour and other types of temporary employment.

Unlike the UK, Australia and the USA, agency work in Italy is highly regulated. The protective attitudes of the Italian Government are explained by the political structure in the country and cultural norms (Degiuli and Kollmeyer, 2007). In Italy, TAW was first regulated in 1997 by a law that established the framework for when, where and for what reasons agency labour could be used. It introduced a certification scheme and declared that TA workers have the same pay and social rights as permanent workers in the user company. Amendments to the law in 2003 actually extended the list of permissible reasons for using agency labour to include needs related to the user company's routine activities, and permitted TWAs to engage in broader job placement services (Arrowsmith, 2006).

Reasons for use of agency labour

Regarding the type of assignments that are allowed, many countries still impose the condition that there must be an 'objective reason' for using agency workers. Such 'objective reasons' usually refer to a temporary increase in workload or the need to replace a temporarily absent worker. For example, the present legislation in Norway, the revised Worker Protection and Working Environment Act (AML) 1977, introduced in 2000, permits TAW only in situations where the law permits fixed-term contracts, for instance, in connection with absences, extra workload etc (Arrowsmith, 2006). Some countries prohibit the use of agency workers in specific situations such as to replace workers who are on strike, in the case of dangerous work or following dismissals for economic reasons. Also, in some countries, certain sectors (especially construction and public administration) are legally excluded from using agency labour. For example, in Spain, the 1999 reform of the law prohibited the assignment of workers to dangerous occupations, to other agencies, and in public administration (except for carrying out opinion polls). In Portugal, according to the 1989 Law for Temporary Work Agencies (decree law 358/89, last modified by law 146/99), TAW are not allowed to work in dangerous sectors, which includes construction. In France, there are no specific sectoral restrictions, although in practice TAW are rarely found in the public sector. In Germany, until 2004, TWAs were not allowed to supply workers for blue-collar jobs in construction

(ibid). In some countries, such as the UK, Ireland, the Netherlands, restrictions on the use of TAW refer in particular to prohibiting placements in establishments where there is a strike. In Finland, while there are no formal legal restrictions the employer organisation code of conduct states that as a consequence of international practice, agencies must not hire personnel to a company where legal industrial action is taking place, unless the parties to the conflict agree to the hiring of personnel. In Germany, a temporary worker is not required to work for a user enterprise which is directly affected by an industrial dispute; in the event of such an occurrence, the agency must inform the workers of their right to refuse to perform the work. Other countries impose a maximum duration on the length of time an agency workers can undertake an assignment for a user firm. Strict limits on assignment duration apply in Greece, where a user company may not employ a TA worker for over eight months. If this period is exceeded, the contract between the TA worker and the TWA automatically transforms into an open-ended employment contract between the TA worker and the client firm. In Luxemburg, the duration of an assignment may not exceed 12 months for a given worker in a given post, within which up to two renewals may be included, except in relation to seasonal work contracts. Similarly, any breach of these provisions means that the contract is deemed to be open-ended. In some countries, a detailed contract must be presented to the worker for each assignment. On the whole, assignments between agencies and user firms are often subject to many specific regulations. Only Denmark, Greece, Ireland, the UK and the Netherlands have little sector-specific regulation in this respect. In the UK there are no restrictions on the circumstances under which temporary workers can be provided or on the length of their contracts (Hegewisch, 2002).

Licensing and monitoring

Data from the International Database on Employment and Adaptable Labour (IDEAL) (Berkhout, Dustmann and Emmder, 2007) reveals that the most important statutory requirements imposed on temporary work agencies (TWA) in several EU countries are the requirements to apply for a license or similar kind of authorisation to set up a business, to provide proof of financial solidity or financial guarantees, to fulfill reporting obligations, and to respect limitations on scope and activities (Table 6). For instance, in

Greece, a TWA may only be established in the form of a corporation with share capital of at least 176,000 EUR. In order to be licensed by the Employment Ministry; two separate bank guarantees must be lodged to cover pay and social security obligations, which are forfeited in the event of any late payment. However, it's worth mentioning that Greece compared to the other EU countries was quite late in regulating the use of TAW; the first legislation was passed in 2001 (law 2956/2001) prompted by the proliferation of employment agencies operating outside the law and supplying undocumented migrant labour. Similar concerns in Finland, Portugal and the Netherlands have led to calls for tighter licensing and enforcement mechanisms. In Portugal, where TAW is tightly regulated, permission to operate is granted by the Ministry of Employment and Social Security. Candidates must show proof of a clean criminal record, previous compliance with labour law, tax and social security duties and technical capacity (e.g. a qualified director with experience in human resource management and supporting administrative staff) as well as creating a fund linked to the national minimum wage, or presenting a bank guarantee, which will be used for wage payments if the company does not pay its workers (Boheim and Cardoso, 2007). In the Netherlands, the Government recently proposed the re-introduction of the licensing scheme, although this was rejected by the Lower House in May 2005 following objections from employers and politicians of the governing coalition. The proposal was rejected on the grounds that it would damage the regular agency businesses, without ruling out illegal businesses. However, a financial warranty scheme still exists in the Netherlands; and, the current legislation guarantees temporary agency workers progressively more secure employment and better pay and social security entitlements, with longer employment at the TWA. Since January 2005, the Labour Inspectorate – responsible for controlling the illegal activities of employment agencies – has assumed stronger authority to sanction firms illegally employing workers; fines have been increased from 1,000 EUR to 8,000 EUR per illegally employed worker. (Tijdens et al., 2006).

In a few countries (such as France and Luxemburg), TWAs must also submit regular details of their activities to the authorities.

Countries without licensing schemes include Norway, Sweden (in lieu of a social partner scheme established in 2004) and three countries that revoked their licensing schemes in the 1990s: Finland, the Netherlands and the UK where the gangmasters' licensing scheme now sets out requirements for agencies operating in specific sectors. In Denmark, only two occupations require licensing: agencies employing nurses need a license from the health authorities, and drivers also have to be certified to work on a temporary agency basis (Arrowsmith, 2006).

TABLE 6 (see Annex)

It is important to note that in most European countries, labour inspectorates monitor compliance with labour standards, and cover TWAs. Their scope of action may be restricted to health and safety or more broadly to labour law. The ILO has been promoting an integrated labour inspection system, where different parts of the Government are involved in labour inspections. This can offer the advantages of a more holistic approach to different aspects of work, not just health and safety. Spain is an example of such an integrated system, where the Labour and Social Security Inspectorate deals with all aspects of labour relations, including working hours, rest periods, employment contracts, strikes, workers' participation rights, and undocumented employment; it also decides on the renewal of permits granted to employment agencies. There are about 772 inspectors that oversee roughly 2,000 companies each. In Portugal, the operation of TAW is regularly monitored by the Bureau of Labour Inspection and agencies must present records of workers supplied to client firms every six months. However, the Portuguese press often publishes cases of non-compliance with the law where TWA owner associations demand stricter controls by the Bureau, arguing that those firms that follow the law are subjected to unfair competition by firms that do not comply with the law, especially regarding the payment of taxes and social security contributions. Trade Unions also often claim that workers' rights are not respected and demand stricter monitoring. The Bureau of Labour Inspection claims that TWAs are subject to strict controls and argues for higher legal sanctions to increase compliance. In France, the labour inspectorate is responsible for all violations of employment legislation,

including the legislation on temporary agency work. In Germany, the Federal Employment Service monitors the activities of TWAs. In Luxemburg, TWAs are monitored by the Employment Service and the Labour and Mines Inspectorate. In Slovenia, the Labour Inspectorate oversees implementation of laws, regulations, collective agreements, and the employment of all categories of workers, including agency workers and workers at home, and abroad. The largest proportion of inspections is performed on the basis of referrals, made by the police, trade unions, tax and administration authorities and increasingly by the Human Rights Ombudsman.

The normative content of collective agreements

Collective labour agreements between agencies and trade unions exist in a few European countries. For example, from 1 July 2006, all building and construction workers employed by the temporary work agency Adecco are covered by a collective agreement in Norway. The agreement is the first of its kind for temporary agency workers in the country, and it emerged as a result of increasing trade union membership among the company's Polish workers (Nergaard, 2006). A piece of Swedish legislation, the Act on Employee Consultation and Participation in Working Life of 1976, offers an interesting example in this respect. The Act places explicit obligations on employers to inform unions holding collective agreements at the workplace about such work before employing agency labour. In some cases, there is a right for unions to veto the use of agency workers (Hakansson and Isidorsson, 2007).

Van Jaarsveld (2006) argues that private-sector labour law in the United States limits temporary agency workers' access to collective bargaining. Temporary agency workers fall outside of the National Labour Relations Act (NLRA) definition of an 'employee' for two reasons: first, they generally lack a long-term relationship with an employer at a single worksite; second, the involvement of the temporary recruitment agency as a labour market intermediary in the employment relationship between an agency worker and a client firm further complicates the situation, by creating a triangular employment relationship that is inconsistent with the traditional NLRA model. While NLRA does not prohibit agency workers from organizing and bargaining collectively, these workers in

practice face significant obstacles in gaining representation. For example, temporary agency workers can form a bargaining unit and enter into a bargaining relationship with their employment agency. However, given the nature of temporary work and the fact that a temporary agency generally includes workers who may experience different working conditions, depending on the client firm where their work is located, this option appears to be unrealistic. A client firm can also terminate its relationship with a temporary employment agency and can do so without repercussions. Thus, a client firm could potentially avoid the organizing of temporary agency workers by simply severing its relationship with the temporary agency. The client firm can do so without penalty given that if it is related to workers' organizing it does not have to inform workers or the agency of the reason for termination.

8. Undocumented workers: status and employment rights

Migrants and access to employment rights

In many countries, national employment legislation distinguishes between different categories of migrants as certain groups have different employment rights.

The employment of migrants in Australia is regulated under the Alien Employment Law. In principle an employer may only employ a foreigner if they have been granted an employment permit by the Austrian Employment Service or if they possess an entitlement according to the Alien Employment Law (e.g. work permit, certificate of exemption, confirmation of freedom of movement etc.) or the Residence and Settlement Act (e.g. unlimited settlement permit, “permanent residence – European Community” etc.) (FBA, 2007).

With regard to the legal employment framework in Spain, there are many different measures that can be classified into three main groups. First those related to access to employment, second those related to promotion of employment, and third, regulations and policies related to training and employment (Cristóbal, 2006, cited in Gabinet d’Estudios Socials, 2007). However, these measures are rather similar for migrants and the indigenous population, as working migrants in Spain are regulated by the same Law as the indigenous population. The main difference arises before migrants acquire full work permits. It is very difficult for migrants to acquire a full work permit, but once a permit is acquired the rights and obligations are the same for both nationals and foreigners. Hence, in Spain, the main debate is not about the rights of migrant workers but about the right to access work permits, and about the legal framework in this regard. In Spain migrants’ access to employment is based in the following requirement: “The need to cover working positions, and with the exceptions of situations proved by exceptional circumstances of a stepping stone from a situation of residency for investigation or studying to a situation with a specific authorisation of residency and work, the immigrants that wish to develop a working activity should arrive from origin

with a visa that specifically allows them to work or search for work”⁹. As Aguilera (2006) pointed out in her recent study the objective of this legislation is to use migrant workers only for employment that nationals do not want or cannot cover. However, in practice there are many migrants that enter and remain undocumented in Spain, and work without having the legal documentation. This provides evidence of the failure of the national policies on immigration.

Access by foreigners to the labour market in Belgium has been regulated since 1936, and there is a clear distinction between the private and public sectors. Public sector employment was strictly reserved for the Belgian citizens although EU citizens have had access to these jobs since 1968 (Ouali, 1997). Since 1994 it is not only European citizens who are entitled to access to education, health and civil service employment. At the regional level the Ordinance of 11 July 2002 opens access to regional civil service employment to foreigners. It offers non-EU citizens the opportunity to work for the Brussels administration, although there are some exceptions for jobs related to finances and the armed forces, for example.

Private sector employment is regulated by two laws, one for salaried and the other for self-employed workers. The royal decree n°285 of 31 March 1936 regulated foreigners’ access to the labour market until 1999, when the legal framework for foreigners’ access to the labour market was reformed (Ouali, 2000) and implemented in 2003 by two ordinances¹⁰, which simplified procedures and facilitated access to the labour market for migrants and refugees. The main changes concerned the link between the right to stay and the right to work: foreigners who have the right to stay for an unlimited period automatically obtain the right to work without the need for a work permit. All other migrants, such as regularized migrants or victims of human trafficking, obtain a limited work permit for a maximum of 12 months. Another change is the creation of a new work permit: permit C (valid for all employers and for a maximum of one year). Three categories of work permit now exist: *permit A*, a long term permit valid for all employers

⁹ Regulation Decree 2393/2004, cited in Gabinet d’Estudos Sociais, 2007.

¹⁰ Arrêté royal of 6 February 2003 (MB 27 February 2003) and Arrêté royal of 2 April 2003 (MB 9 April 2003).

and all sectors, *permit B*, a short term permit for one or several employers, and *permit C*, a one year permit only for one employer. The later is available to those staying legally and temporarily in Belgium for a reason other than work (i.e., eligible asylum seekers or students). Work permit exemptions have been given to foreign spouses of Belgian citizens and, since 2006, this has been extended to specific categories such as researchers, international company managers, and experts on short assignments in Belgium (Ouali, 2007). For self-employed workers, according to the 19 February 1965 Law, non-EU foreigners need a professional card (*carte professionnelle*) issued by the Ministry of Economy for a maximum of five years (renewable). This card indicates the economic activity that can be undertaken. Some foreigners are exempted from the obligation to hold the professional card including refugees and foreigners with a long-term residence permit (*bid*). In Italy, the employment of both foreign and indigenous workers is regulated by the same laws namely Law 196 of 1997 and Law 30/2003 (the Biagi Law), designed to increase the flexibility of labour market hiring mechanisms by introducing employment-agency jobs, extending the use of temporary and part-time contracts, and lengthening the duration of job-training contracts in depressed areas (Cillo and Perocco, 2007).

In 2004-05, in Canada a regulatory change was introduced allowing foreign workers who are citizens of visa-exempt countries and who have a confirmed job to apply for a work permit at a port of entry. In the same year, Citizenship and Immigration Canada (CIC) signed agreements with several provinces to allow international students to work after graduation (SOPEMI, 2006).

Government policies on the informal economy

Regarding labour migration, it is the undisputed view that undeclared work is the only option for undocumented workers. A major reason for documented migrants and local workers to deliberately engage in undeclared work is to avoid tax and social security burdens.

Belgium, the Netherlands and Germany have implemented some of the most innovative initiatives in Europe in an attempt to facilitate the formalization of undeclared work. Rather than trying to eradicate it by tightened enforcement measures, these policy

reforms seek to introduce new institutional arrangements, which can transfer undeclared work into the formal economy. For example, the Belgian Government has introduced service vouchers as a means of paying for everyday personal services. A household can buy a voucher of 6.70 EUR and pays with it for an hour's work, provided by a certified company. These companies offer jobs to unemployed people. At first, the contract between the agency and the unemployed person can be very short-term and flexible. After six months, however, the company must offer a permanent contract for at least part-time employment if the person has been previously registered as unemployed. The activities that an employee of these certified companies could do are restricted to housecleaning; washing and ironing; sewing; running errands; and preparing meals. In 2005, these vouchers cost 21 EUR. The difference is paid to the company by the federal Government. The household can claim back 30% of the price of the voucher in their tax return forms. Evaluation studies of the programme revealed that some 28,933 jobs were created by the end of 2005, exceeding the Government target for 25,000 jobs; some 25% of the households using the service vouchers reported that the work most probably would have been done on an undeclared basis if there had not been vouchers (Renooy, 2007).

Belgium has experienced increased labour migration since the 2004 EU enlargement; much of this employment is outside legal norms, especially in sectors such as construction and transport. In the summer of 2005 the social partners in the building sector, in co-operation with the federal Government's Employment, Labour and Social Dialogue Service, set up an 'unfair competition' working party to address possible abuses related to labour migration from the new EU member states. The labour inspection services are also increasing their efforts to combat fraud in the area (van Gyes, 2005).

In Belgium, a significant recent development concerns the institutionalisation of the fight against the illegal work and social services fraud through several instruments. The law of 3 May 2003¹¹ provides a coordinated institutional framework for policies to combat illegal work and social services fraud through, for example, a focus on prevention measures, the presentation of propositions to Ministers, and the establishment of recommendations for legal changes in relation to the fight against illegal work. Also, a

¹¹ MB 10 June 2003.

law of 2006¹² introduced a new system of registration in order to better control the employment of foreign workers (self-employed; employees, students or trainees) who come to Belgium for a short time for work. Declarations have to be made to the National Office of Social Security (ONSS) before the start of the work (Ouali, 2007).

In 2002, the German Government adopted the Harz Committee's 'mini jobs' proposal, which was particularly geared at fighting undeclared work in the household sector. The income limit for mini jobs was set at 400 EUR; within this limit, mini jobs enjoyed a reduction of social security contributions to 23% and a lump sum tax rebate of 2%; also, there were no working time restrictions¹³. In order to facilitate the transfer from minor (mini jobs) to normal employment, the Government introduced a transition income zone of 400 EUR to 800 EUR, thus allowing gradual increase in employees' social security contributions (ibid).

However, evaluating the outcomes of the aforementioned initiatives, Renooy (2007) argues that these schemes in Belgium and Germany, in which Government subsidies lower formal wage costs for domestic work, are not a panacea for undeclared work. As an alternative measure, in 2006, the Dutch Government brought to an end its scheme that previously helped households to use subsidized cleaners, replacing it with new tax rules on domestic services. These new rules allow households to employ domestic helpers for cleaning, childcare or gardening without the obligation to pay tax on wages and a premium on social security. Workers do not therefore have any incentives to undertake undeclared work. These new rules are expected to make a significant contribution to the registered market for personal services in the Netherlands.

In sum, these are fascinating examples of government approaches that move away from the tight enforcement in combating undeclared work.

¹² Loi-programme (I) du 27 décembre 2006, Moniteur belge du 28 décembre 2006, 3ème édition.

¹³ A major change of the 2003 reform was the lifting of the working time restriction of 15 hours per week.

The USA Government has introduced an E-Verify Participation system that allows employers to check whether newly hired workers are authorized to work by checking their names and social security numbers against a federal data base. Although federal law does not mandate participation in the E-Verify, a new Arizona law requires all employers in the state to use it (Chishti and Bergeron, 2008).

Regularisation of undocumented immigrants

A few European states, including Belgium, France and Luxemburg, have attempted to regularize the status of their undocumented migrant population for humanitarian reasons, or to facilitate migrants' economic and social integration into their countries. The sheer number of migrants currently living and working in irregular situations in Europe requires policy attention. At a conservative estimate there are over 5.5 million undocumented migrants living within the European Union, with a further 8 million living in the Russian Federation (Council of Europe, 2007). As shown earlier, these migrants often live in substandard accommodation, denied access to health care and other social benefits, and their children may face barriers in attending schools.

The Council of Europe (2007) puts forward humanitarian concerns as a main justification for regularization, referring to international human rights' instruments that provide clear statements on migrants' rights, regardless of their status, particularly with regard to non-discrimination on the basis of national origin. Such international human rights instruments include the Universal Declaration of Human Rights (UDHR), Article 2 and 7; the International Covenant on Civil and Political Rights (ICCPR), Article 26; the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2; the European Convention on Human Rights (ECHR), Article 14; and, the Protocol 12 of the ECHR. The most significant development in the protection of the rights of migrant workers is the UN Convention on the Rights of all Migrant Workers and their Families (ICMW), which came into force in April 2003. The ICMW has a broad range of purposes such as to improve the conditions of migrant workers and their families by expanding international law, emphasizing the hardship they face, and recognising the rights of

irregular migrants. Nevertheless, only Azerbaijan, Bosnia and Herzegovina and Turkey have ratified the convention.

The Parliamentary Assembly of the Council of Europe is particularly concerned with protecting undocumented migrant rights and specifying the rights that they enjoy. As a result, the Assembly adopted Resolution 1509 in 2006 and Recommendation 1755 on irregular migrant rights in the same year, recognizing the benefits of regularization programmes in safeguarding the rights of migrants in undocumented situation.

Previous regulations that only provided temporary work or residence permits have encountered numerous challenges related to the planning and the implementation stages. The most common included: reversion to undocumented status (many programmes, especially in Greece, led to a large percentage of migrants, previously legalized, moving back into illegality; often legalized migrants would fail to qualify for renewal of their permits because of employers unwilling to pay their social security contributions; insufficient administrative support to handle the legalization programmes (this led to backlogs and slow application processing in countries such as Italy, Greece, Spain and Belgium); lack of publicity amongst migrant communities, resulting in low turnout (this occurred in regularization programmes in Spain, Italy, Spain and the UK) – although strong publicity and coordination with migrant organizations and the media have also led to success, for example leading to high turnouts of migrants in the 1981-82 programme in France and in the 2005 programme in Spain; corrupt officials and application fraud: given that many migrants work illegally or without documents and may have entered countries on false passports or without any identification documents, providing proof of long stay in the country or proof of employment can be impossible, which, in turn can result in falsification of documents and, generally, weak programme outcomes.

Table 7 summarizes the main characteristics of previous legalization programmes, held in France, Belgium, Greece, Italy, Luxemburg, Portugal, Spain, the UK and the USA.

TABLE 7 (see Annex)

Asylum seekers and access to employment rights

EU countries usually give refugees free access to the labour market but restrict it for asylum seekers, and persons granted subsidiary protection. For example, Germany does not allow persons holding *Duldung*, or tolerant status, to work. Germany grants *Duldung* to persons who are unable to return, often to conflict areas, therefore potentially excluding persons in need of protection from access to the labour market. However, in the Netherlands, asylum seekers are allowed access to the labour market for 13 weeks per year.

The EU Reception Directive, effective in February 2005, and a Directive on Refugee Status and Subsidiary Protection, which members had to incorporate in October 2006, allow such labour restrictions. The directives mean that member states only have to grant asylum seekers access to the labour market if they have not made a decision, in the first instance, within a year, and then only under the conditions that the state itself decides (US Committee for Refugees and Immigrants, 2006). EU states can also restrict labour market access to holders of subsidiary protection depending on the situation of the labour market (*ibid*).

In the UK, until July 2002, asylum seekers were entitled to apply for permission to work regardless of the status of their application. However, in July 2002, the right to apply for a work permit was removed for all new asylum seekers. However, those who applied for permission to work prior to July 2002 can still work but under the EU Reception Directive of February 2005, and asylum seekers who have waited for more than a year for an initial decision on their asylum application may apply to the Home Office for permission to work.¹⁴

In Canada, refugees can apply to work following the filing of their asylum claims and a medical exam. Obtaining a work permit requires the submission of a considerable number of documents including a completed Determination of Eligibility Form, an

¹⁴ <http://www.gla.ac.uk/rg/eright03.htm>

application for a Social Insurance Number, and a completed Personal Information Form. Officers from Citizenship and Immigration Canada (CIC) can alter or cancel conditions on work permits, including the type of employment, the employer, location, and hours worked (US Committee for Refugees and Immigrants, 2006).

The United States allows refugees to work but the Government has ceased issuing refugees admitted for resettlement with work permits upon arrival. Instead, they receive them by post, and sometimes they can wait more than the official limit of 30 days to receive them. The validity of work permits has also been extended from one to two years. Asylum seekers, however, have to wait 180 days after filing an application for asylum before they are eligible to apply for a work permit (US Committee for Refugees and Immigrants, 2007).

The Australian Government permits refugees to work. The Government assists them to find jobs through its Job Network programme. Asylum seekers who are not detained (because they have arrived with a valid visa) and who have spent fewer than 45 days in the previous 12 months in Australia before applying for asylum can work while their claim is being processed, assuming their original visa allows them to work. Those whose visas do not allow them to work have to apply for permission to work, and have to demonstrate a need to work. The Government also suspends work rights when it rejects claims, even if the asylum seeker files a request to the Government to stay on humanitarian grounds. Refugees in Australia have full protection under Australia's labour law (US Committee for Refugees and Immigrants, 2006; US Committee for Refugees and Immigrants, 2007).

Enforcement mechanisms

In Austria, the Central Task Force for the Prevention of Illegal Employment (KIAB) is responsible for the identification of illegally employed workers as well as for tax and social insurance fraud. Especially in the construction sector, the problem of fictitious companies avoiding dues and social insurance contributions as well as the problems of unpaid wages for undocumented foreign workers are extensive. The Chamber of Labour

has been supporting victims in making claim for the remuneration of unpaid wages. In 2004, the Chamber of Labour represented 2,300 employees (including undocumented foreign workers) who had become victims of fictitious companies in the construction sector. Currently, combating social fraud is on top of the agenda of social partners: in an amendment of the General Social Insurance Act (ASVG) the right of employers not to register an employee until day seven of his/her first workday was removed. For the future, the registration of employees for social insurance is obligatory from day one of employment. Until 2002, the Inspectorate of Labour in Austria controlled worksites for the employment of undocumented foreign workers and documented their number by employment branch and nationality. Since July 2002, however, KIAB no longer keeps data on the nationality of undocumented foreign workers. Catering (26%), the building industry (21%) and sub-contracting (17%) are among the branches with the highest share of undocumented labour. However, it must be borne in mind that the controls are only carried out in companies and not in individual households where migrant workers are in jobs as live-in carers or houseworkers (FBA, 2007).

In Spain, enforcement measures focus on security rather than on the protection of migrants. In 2005, for instance, the Government ordered the construction of a militarised 15-metre-high razor wire fence around the Spanish enclaves of Ceuta and Melilla in North Africa. That was the same year that the Government increased radar installations and surveillance satellites along Spain's southern coast to detect and turn back anyone trying to sail across the narrow seas that separate Spain from Morocco and Algeria. These measures and the strengthened border patrols, carried out by both African countries after pressure from the EU, have forced migrants to set sail from Mauritania and Senegal further south. However, most experts in the field argue that these measures have only led smugglers to adopt new routes, and also have resulted in technical and organisational changes on the part of the smugglers (Gabinet d'Estudis Socials, 2007; Carling, 2007).

It is also interesting to note that the latest amendment to the Foreigners Law in Spain introduced business fines of up to 60,000€ for employers of undocumented migrants and established that those working without current authorisation could be deported within 48 hours.

Once undocumented migrants are in Spain and undetected by the police, there are two ways they can acquire documentation and become compliant with the law. The first one is a procedure that was introduced with the law LO 4/2000 (art 31) in 2001, that grants the concession of a special temporary residency and work permit, after a long period of irregular stay in Spain, when settlement can be proved (based on length of stay and family links established in the country). The second and more common way is through the so-called regularisation processes, of which the most recent took place in 2005 (ibid).

In the USA, cities and states have been taking immigration matters into their hands since 2006, in response to perceived federal level failures. The town of Hazleton, Pennsylvania passed its illegal Immigrant Relief Act (IIRA) in July 2006. Since then, 90 localities have proposed more than 100 similar ordinances that sanction employers and landlords of undocumented immigrants and 35 have passed. Action at a state level reached a milestone in 2007, when, for the first time, all 50 states introduced measures regulating undocumented immigrants. States' bills have focused overwhelmingly on employment and driving licenses and other forms of ID, but also on health, education, law enforcement, public benefits, human trafficking and voting. Not all state and local measures are punitive towards immigrants. California, for example, enacted a new law in October of last year that makes it illegal for cities to require landlords to check the legal status of tenants, making it the first state in the country with such a law. Over the summer of 2007, New Haven, Connecticut, began offering municipal ID cards to residents regardless of status. In November 2007, San Francisco passed a local law allowing unauthorized immigrants to obtain municipal IDs (Migration Information Source, December 2007)¹⁵.

Since 27 March 2008 because of a new rule introduced by the Department of Homeland Security (DHS) and Department of Justice (DOJ) employers in the USA with unauthorised immigrant workers will have to pay increased fines. It is the first increase in fines since 1999. The minimum penalty for knowingly hiring undocumented workers will rise 36%, from \$275 to \$375, and the maximum fine for a first-time offender will rise

¹⁵ <http://www.migrationinformation.org/Feature/display.cfm?id=654>

45%, from \$2,200 to \$3,200; the new maximum fine for repeat offenders, \$16,000, is 45% higher than the previous fine of \$11,000. Immigration and Customs Enforcement (ICE) is the investigative branch of DHS (DHS was created in 2003) and is responsible for the enforcement of the US immigration law (Chishti and Bergeron, 2008; Terrazas, Batalova and Fan, 2007).

Other measures to protect undocumented workers

Unionising undocumented workers

Indisputably, organizing migrant workers in unions is a major step forward in combating exploitation. Nevertheless, unions in many countries are prevented from providing support to undocumented workers. Employers also use different strategies against workers to prevent them from joining a union. The USA is a good example of such practices. American employers will hire lawyers to combat unionisation attempts; this affects all workers, not only undocumented workers.

In the Nordic countries unions have been reluctant to engage with and organize undocumented workers, perceiving this as being outside the state defined legal framework. For example, in Finland, union representatives have been involved in raids on construction sites, together with labour and tax inspectors.

It should also be recognized that in some European countries unions that operate as significant and respected social partners do not perceive a need to put any efforts in recruiting new members in general, let alone undocumented workers. According to Dirk Kloosterboer, Researcher at Dunya Advies, organizing in general has a very low priority amongst the Dutch trade unions compared to the Anglo-Saxon countries (PICUM, 2005, p. 48).

In contrast, in some other countries, unions have shown strong commitment to organising undocumented workers. In Portugal, the the Confederacao Geral dos Trabalhadores Portugueses – Intersindical Nacional (CGTP-IN) has had a pro-immigrant worker policy since its inception in 1970. The union's database does not even distinguish between legal

or undocumented workers so that members can have trust in a secure system. There are also some examples of unions that have undertaken concrete initiatives to protect undocumented workers. For instance, in Italy the Confederazione Generale Italiana del Lavoro (CGIL) has established a permanent relationship with the Associazione Studi Giuridici sull'Immigrazione (ASGI), an association of lawyers that works on immigrant issues; CGIL and ASGI organize seminars that provide union members with training on immigration issues. Similarly, the Athens Labour Centre (EKA) in Greece, through volunteer immigrant lawyers, provides undocumented workers with free consultancies on immigration and labour issues.

However, unions who choose to organise undocumented workers also face challenges. For example, workers are often employed in sectors that have not been traditionally unionized. Another issue is that workers can be hard to reach because they are working in isolated places; unions can find that it is difficult to locate employers in order to intervene.

Working with employers to prevent exploitation and advocating for laws to hold them accountable to fair labour standards

An example of this, in the food processing sector in the UK, is the Gangmasters Licensing Act of 2004. This involved employers and unions working together to lobby for legislation to better regulate working conditions for workers (who were often migrants) in their sectors.

Similarly, in the 1990s, in Portugal, the Uniao dos Sindicatos de Lisboa (USL) started a campaign calling for legislation to protect the rights of migrant workers who were increasingly employed in industries with high levels of sub-contracting, such as construction. Through the efforts of USL, the “social responsibility” law was passed in 1998; the law stipulates that if a worker files a case for an alleged exploitation or abuse, the blame is put on the person who contracted the worker.

Asserting undocumented workers' rights in the legal system

Undocumented workers face numerous obstacles to obtaining legal protection when needed. The greatest obstacle is fear. As mentioned earlier, workers may fear making a formal complaint because by providing personal data, their undocumented status can become known to the authorities and they can be deported. It is also difficult for an undocumented worker to submit proof of employment in order to support a formal claim.

In Spain, the Comisiones Obreras (CCOO) trade union has been able to win indemnities for immediate family members killed while working in Spain. A lawyer for the CCOO said that the first case that the union waged on behalf of an undocumented worker was for an industrial accident. In Germany, undocumented workers are entitled to accident insurance and in some cases have even been awarded compensation (PICUM, 2005, p. 78). In Ireland migrant workers are also entitled to employment rights regardless of their immigration status. This allows the state the possibility of prosecuting the employers of undocumented workers for violating labour law (ibid).

9. Conclusion

The first conclusion of the report is that there is a lack of statistical sources dealing with the concept of temporary agency work, which renders international comparisons difficult. Part of the problem is that different definitions of agency work are used. There are also differences in the way data is collected and temporary agency work features as a distinct classification in only a few of the national Labour Force Surveys..

In most countries temporary agency workers are more often men, with the exception of Greece, Italy and Sweden. This is partially explained by the sectoral use of agency workers. In Germany, Austria and Sweden agency labour is mainly used in manufacturing and construction while in Sweden it is extensively used in the health care sector. On average, most agency workers appear to be under the age of 30, with a substantial share younger than 25. Countries such as the UK, Germany, France and Canada have a higher share of older workers. Most of TAW in Europe is concentrated in lower skilled jobs in the services sector, manufacturing and in the clerical and

administrative occupations. In the USA, temporary agency workers are mainly employed in the services sector while in Canada they are most likely to work in processing, manufacturing and utilities.

The literature identifies several motives that explain employers' decisions to use agency labour. Some employers use agency labour to gain flexibility or adaptability to changes in demand or to gain flexibility in buffering against market turbulence. Others use it out of particular cost considerations, to reduce the cost of recruitment, selection and basic training. Some employers use agency work in order to access specialist skills; others are affected by legal factors in their decision to recruit agency workers. Some researchers claim that employers use agency labour to avoid unionism. This has particularly been reported to be the USA experience.

Some Governments have used agency employment as an active instrument of labour market policy. For example, in Germany, personnel serviced agencies have been established by the Government in an attempt to integrate the unemployed into the labour market. Denmark, in order to involve private sector actors in the employment services, has abolished restrictions on the types of activities that can be used to reintegrate the unemployed into the labour market.

Recent empirical studies on agency employment in Australia, the USA, Canada and Germany portray agency employment as increasingly precarious, offering low wages and low levels of unionisation.

Regarding the regulation of TAW, most countries operate a licensing, registration or similar approval system. These normally stipulate minimum standards in terms of business premises, infrastructure, clear criminal records of directors; set financial requirements such as a bond to cover taxes and wages in case of business failure. Countries without licensing schemes include Norway, Sweden (in lieu of a social partner scheme established in 2004) and three countries – Finland, the UK and the Netherlands - that revoked their existing licensing schemes in the 1990s.

In all the countries surveyed, legal migrants require a valid work permit to access the host country labour market.

EU countries usually give refugees free access to their labour markets but restrict it for asylum seekers and persons granted subsidiary protection. The EU Reception Directive of February 2005 and the Directive on Refugee Status and Subsidiary Protection of October 2006 do allow for such labour restrictions. The Australian Government permits refugees to work and even assists them in finding jobs through its Job Network programme; under certain conditions, asylum seekers can also work. In Canada, refugees can apply to work following the filing of their asylum claims and a medical exam. In the USA, refugees could work legally, but the Government has ceased issuing permits on arrival to refugees it had admitted for resettlement.

In all the countries surveyed, the enforcement measures focus increasingly on security rather than on the protection of migrants. Some argue that such measures can only lead smugglers to change routes and adopt more sophisticated organisational and technical strategies. Some countries have also recently imposed increased fines for employers of undocumented workers.

Regularisation of undocumented migrants appears to be the most commonly used policy measure to protect migrant workers. In the USA (1986-88) and France (1981-82 and 1997-98), the regularisation took the form of a 'one-off' programme providing permanent residence to the regularized undocumented migrants. The southern European countries of Greece, Spain, Italy and Portugal have also applied multiple regularization programmes since the 1980s, but only granted undocumented migrants only temporary status, which could not always be renewed. Nevertheless, such programmes can turn into a very useful policy tools for undocumented workers' protection, particularly when used in conjunction with other policy measures, or when used as an alternative to more draconian measures such as mass deportation of immigrants and increased border security.

Annex: Tables 6 and 7

Table 6 TAW Licensing Schemes

Country	License	Monitoring	Financial requirements	Other requirements
1. Norway	No licensing scheme			
2. Sweden	No licensing scheme However, an authorization agreement was signed in 2004 between the Swedish Association of Staff Agencies (SASA) and the Trade Unions. The agreement specifies that temporary agency workers who want to become authorized must be a member of SASA, follow its ethical rules and accept being linked to a collective agreement.			The authorisation also requires that a yearly assessment of temporary agency work is acquired carried out by SASA.
3. Finland	Revoked the existing licensing scheme in 1994 A permit system was introduced in 1984 because the public employment exchange system			A new temporary work agency has to notify the occupational safety and health authorities, but otherwise the procedure is the same as for

	found it difficult to cope with short-term employment demand. This was abolished on the grounds of bureaucracy and limited evidence of positive results			starting any other company.
4. The Netherlands	Abolished its licensing and authorization procedure in 1998 (the permit system was originally introduced in 1965). The Government recently proposed to reintroduce a licensing scheme on the grounds that many TWAs are supplying illegal migrant labour, although this was rejected by the Lower House following objections from employers.	The Foundation of Financial Checking monitors the payment records of the TWAs annually. The Association of Registration Enterprises monitors whether agencies if they comply with employment law and regulations.	Guarantee account system: the taxes and social security contributions due to temporary agency workers are deposited into a special blocked account held by the agency.	
5. UK	Licensing for TWAs, introduced in 1973, was withdrawn in 1994, considered to be unnecessary bureaucratic barrier to entry. However, under the Gangmasters Licensing Act 2004 and Regulations, that came into effect in 2006, employment businesses supplying	Supervision by the Employment Agency Standards Inspectorate of the Department of Trade and Industry; this carries out routine inspections of agencies.	An agency must keep records to show that it has complied with the requirements of the Employment Agencies Act and subsequent Regulations. Client accounts for employment agencies operating	An agency must not supply a temp worker to replace an individual from the user firm taking part in an official strike.

	labour into agriculture, shell fishing and processing and packaging activities of produce derived agriculture and shell fish, must be licensed.		in the entertainment sector must be inspected by an independent person (e.g. an accountant).	
6. Ireland	A licensing scheme has operated since 1971 requiring all applicants and holders to be 'of good character and repute', and to operate from suitable premises; also police clearance is required ensuring that applicants or holders of licenses have no criminal convictions. The new system of registration includes a statutory code of practice, drawn up with social partner involvement by a monitoring committee.			
5. Austria	The Temporary Employment Act (AUG), adopted in 1988 and amended in 2002, stipulates that a license is required for employment agencies specialized in the hiring out of labour. In 2005, the Nursing Act was amended to	The Minister of Economy and Labour, after consultation with social partners, can issue a directive limiting the number of agency workers or the duration of their employment in any particular industry or province, if their share has surpassed 10%.		TAWs can charge clients for employment services but must be free-of-charge for employees.

	permit TAW in hospitals and nursing homes, subject to a maximum proportion of 15% of staff.			
6. Greece	A license is required by the Ministry of Employment and Social Security.	Companies are inspected before a license is granted and they must satisfy the authorities that they have the appropriate business premises and technical infrastructure in place, and employ at least five operating staff.	Capital of 176,000 EUR is required before a license will be issued. Two separate bank guarantees must be lodged to cover pay and social security obligations to workers, which are forfeited in the event of any late payment to workers.	
7. Spain	TWAs require a license from the Provincial Directorate of Work and Social Security (PDWSS). TWAs must demonstrate: an organizational structure; exclusive dedication to temp work; a guarantee of pay liabilities and social security liabilities; no debts with inland revenue or social security; that they have not been penalized with suspension of activity on two or more occasions; and	At the request of the PDWSS, the Labour and Social Security Inspectorate will draw up a report to determine that the conditions for renewing authorization have been maintained; the labour authorities may also ask the workers' representatives in the TWAs for a report.	The TWAs must provide the labour authorities that issue the license with a financial guarantee equal to 25 times the annualised national minimum wage (or 10% of the annual wage bill of the previous financial year on renewal). It will be returned if the TWA stops operating if it has no pending liabilities of compensation, pay or social security payments.	TWAs must be entered in the Register of TWAs of the local authorities that grant licenses. They must guarantee to provide any training necessary to enable workers to undertake their jobs. .

	investment in training of the 1% of the salary mass.			
8. Italy	TWAs must be authorized and enroll in a register maintained by the Ministry of Labour and Social Security. They must demonstrate that they have suitable premises, cover at least four regions, and have paid-up capital of at least 600,000 EUR.			
9. Portugal	TWAs must be authorized by the Employment and Technical Training Institute.	The operation of TAW is regularly monitored by the Bureau of Labour Inspection and the agency must present records of workers supplied to clients every six months.	A guarantee is required equivalent to 200 times the national minimum wage (i.e. about 74,000 EUR).	
10. Belgium	TWAs need authorization from one of three Regional Approval Commissions, on which the social partners have representation. Agencies have to demonstrate that they comply with social legislation and owe no money to the National Office of Social Security; Flemish approvals are indefinite while those		TWAs must contribute to a Social Fund, managed by representative workers' organizations and representative employers' organizations in the temp agency work sector and in the user firms. The Fund is involved in paying the end-of-year bonus, trade union benefits and	Temporary agency work is prohibited under the terms of collective agreements in the house removal and furniture storage sectors, and in harbour-based enterprises, excluding those in the port of Antwerp; it is also prohibited in certain jobs such as asbestos removal and work

	in the Walloon region may be either for two years or an indefinite time; the Brussels region issues licenses for four years if the company is established in Brussels, otherwise for one year.		the salaries and allowances for which temp workers qualify in the event of an agency going bankrupt.	involving the use of explosives. In the construction sector its use is also limited to the temporary replacement of workers whose contracts have been suspended, and to dealing with exceptional peaks of work.
11. Germany	TWAs must obtain a permit from the Federal Employment Service (FES); this lasts for one year before it must be renewed. TWAs receive an unlimited permit after three years. Without a permit, any contracts are invalid and, if a worker is placed with a user company, they are deemed to have an employment relationship with that company from the commencement of their work.	FES monitors the activities of TWAs.	A guarantee fund exists to provide payment of wages in case of bankruptcy.	Fees may not exceed 2,500 EUR. Bi-annual reports must be provided to FES with information on employees, assignments and user firms.
12. France	TWAs must be registered with the Labour Inspectorate.	Monitored by the Labour Inspectorate.	A financial guarantee of compensation and social security contributions is required.	TWAs must submit monthly reports of contracts made and terminated to the unemployment insurance fund UNEDIC (national

				union for the employees in the industries and commerce) and must submit quarterly information on social security contributions.
13. Luxemburg	TWAs must obtain two licenses: one from the Ministry of Labour and Employment, which is advised by the Employment Service and by the Labour and Mines Inspectorate; and another from the authorization from the commerce section of the Ministry of the Middle Classes. Both should be renewed annually.	TWAs are monitored by the Employment Service and the Labour and Mines Inspectorate.	A financial guarantee is required to cover potential salary and tax liabilities of the TWA; the sum is fixed in relation to the turnover of the company.	The TWA must provide detailed data on contracts and assignments on a monthly basis. The person managing TAWs must present evidenced of trustworthiness and professional competence. The license is issued on the condition that TWA activity is carried out to the exclusion of all others.
14. Denmark	Only two occupations require licensing: TWAs employing nurses need a license from the health authorities, and drivers also have to be certified to work for temporary agencies.			There are no national restrictions placed on the services of the agency or the length of assignments that workers can undertake.
15. USA	Regulations regarding TWAs exist in four states –			

	Massachusetts, North Carolina, New Jersey and Rhode Island. They place stipulations on agencies regarding licensing, together with registration and some other requirements regarding the business entity.			
16. Australia	TWAs must apply for a license and be licensed at a state level; apart from that, TWAs are subject to the same regulations that govern other commercial enterprises.		Financial bonds do not need to be posted by agencies.	There are no reporting obligations and no limitations on the occupations and industries that can be supplied with agency labour.

Source: National Surveys on Temporary agency work in an enlarged European Union of 27 May 2005; Pedersini, R., 2007.

Table 7: General Characteristics of Regularization Programmes in Europe and the United States, 1981-2005

Country	Year of programme	Number applied	Number regularised	Rate of approval	Type of permit offered	Main programme requirements
France	1981-82	150,000	130,000	87%	Permanent residence	Presence before 1 January, 1981; proof of stable employment or work contract – eventually expanded to include many other categories.
	1997-98	150,000	87,000	58%	Permanent residence	Continuous residence in France for seven years and real family ties OR letter with employer’s intention to hire, real family ties and five years of residence in the country.
Belgium	2000	50,000	NA	NA	Long-term residence	Presence in the country before 1 October 1999 and to have a long-time pending asylum application; OR not to be able to return home for humanitarian reasons, serious illness; and to have lived in the country for six yrs.
Greece	1998: ‘White Card’ [1 Jan. 1998- 31May 1998]	376,000	370,000 (‘amnesty’)	100%	Six-month residence	Presence in Greece prior to 28 Nov. 1997.
	‘Green Card’	228,000	220,000	96%	One to five years work and residence permit	‘White card’; 40 days of social security contributions at minimum wage; work contract since Jan. 1998.
	2001	368,000	NA	NA	One to three years work and residence permit	Continuous presence in the country for one year.
	2005	139,000	NA	NA	One year residence	Proof of employment & social security contributions.
Italy	1986	NA	118,700	NA	Temporary work permit	Employer sponsor; Presence in Italy prior to 27 Jan. 1986.
	1990	NA	235,000	NA	Two years residence	Workers and students present in the country before 31 Dec. 1989.

	1995	256,000	238,000	93%	One to two years residence	Residence in Italy; employed during past six months or job offer from employer; 3 months of paid social security contributions.
	1998	308,323	193,200	63%	Temporary work permit	Presence in Italy prior to 27 March 1998; proof of housing; proof of 3 months pension contribution; proof of continued employment; employers required to pay taxes on wages.
	2002	700,000	634,728	91%	Temporary work permit	Proof of 3 months of pension contributions; proof of continued employment.
Luxemburg	2001	2,894	1,839	64%	Six-month residence permit to allow applicant to find employment, after which there is a possibility of longer-term residence being permitted.	Presence in the country prior to 1 July 1998; or working illegally prior to 1 Jan. 2000; or if the person is a refugee, to have arrived before 1 Jan. 2000.
Portugal	1992-93	80,000	38,364	48%	Temporary residence.	Open to workers who had been in the country prior to 15 April 1992.
	1996	35,000	31,000	89%	Temporary residence.	Proof of involvement in professional activity; basic ability to speak Portuguese; housing; having a clean criminal record.
	2001	NA	170,000	NA	One year residence permit with possibility of renewing up to four times; after five years the applicant becomes	Presence in the country; valid work permit.

					automatically eligible for a permanent residence.	
Spain	1985	44,000	23,000	52%	One-year renewable residence & work permit	Presence in the country before 24 July 1985; proof of job offer.
	1991	135,000	109,135	81%	Three-year residence permit	Residence & employment in Spain since 15 May 1991; asylum-seekers whose applications had been rejected or were pending.
	1996	25,000	21,300	85%	Five-year residence	Employment in the country since prior 1 Jan. 1996 OR having had a residence or work permit issued after May 1996 OR being a member of the family of a migrant living in Spain before Jan. 1996.
	2000	247,000	153,463	62%	One-year temporary residence/work permit.	Residence before 1 June 1999 OR having had a work or residence permit in previous 3 years OR Application for work or residence permit.
	2001	350,000	221,083	63%	One-year temporary residence/work permit.	Residence in Spain before 23 Jan. 2001; proof of labour market participation, family ties with a Spanish citizen or with foreign residents; and no pending charges.
	2005	691,655	577,159	83.4%	Initial one year residence & work permit followed by two-year renewal permit, after which permanent residence is possible	<i>For immigrants:</i> Proof of registration with a local municipality in Spain before 7th August 2004 and presence in the country at the time of application; proof of work contract; clean criminal record. <i>For employers:</i> Evidence that they are enrolled in and paying into Social Security; proof that they have no history of breaking immigration laws in the

						previous 12 months; proof that they have not been sanctioned for violating the rights of workers or immigrants.
United Kingdom	1998 Domestic Worker Regularisation Programme	NA	200	NA	One year temporary work permit	Entrance into the UK before 23 July 1998; valid passport; current employment as domestic workers; proof of ability to support oneself.
United States	1986 – General Regularisation Programme	1.7 million	1.6 million	94%	Permanent legal residence	Continuous residence in the country before 1 Jan. 1982
	1986 - Special Agricultural Workers (SAW)	1.3 million	1.1 million	85%	Permanent legal residence	Residence in the country and participation in agricultural work for 90 days before 1 May 1986

Source: Council of Europe (2005), pp. 18-22; Levinson (2005), pp. 3-5.

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