

Eurociett/Uni-Europa Joint Declaration
within the framework of the “Flexicurity debate”
as launched and defined by the EU Commission

Brussels, 28th February 2007

- 1 In the frame of the Social Dialogue Committee, UNI-Europa and Eurociett would like to participate in the current debate on “flexicurity” launched and defined by the E.U. Commission as “flexibility combined with employment security”¹.
- 2 Temporary Agency Work is an increasingly significant form of employment in the European Union. In 2004, it accounted for around 1.5% of total employment in the former EU15 countries, involving between 2.5 to 3 million agency workers (full time equivalent) and more than 7 million workers in total, employed by approximately 20,000 firms, in a sector with an annual turnover in excess of €75 billion. In the new EU Member States, where data is available, employment levels range from 0.5% in Poland, Slovakia and Slovenia, to 1.4% in Hungary².
- 3 Temporary agency work is a growing sector which is heterogeneously regulated in most Member States through a mix of legislation, collective labour agreements³ and self regulation.
- 4 In 2001⁴, for the first time, Eurociett and UNI-Europa expressed in a joint-declaration the importance of reaching a fair balance between the protection of agency workers and enhancing the positive role that agency work may play in the European labour market. This document stressed on one hand the necessity to identify and review obstacles of a legal or administrative nature, which may limit the opportunities for agency work to operate, and, where appropriate, eliminate them. On another hand, it recognised the necessity of certain restrictions to prevent potential abuses, such as potential undermining of employment conditions of workers in the user enterprise and/or any other worker in non agency employment.
- 5 Temporary work agencies refuse to compete to the detriment of workers’ rights and working conditions.

¹ Cf letter sent by Bernhard Jansen to European social partners on July 12th, 2006

² See EIRO Foundation report on “Temporary Agency Work in an enlarged EU” published in March 2006, which provides a comprehensive snapshot on regulation, level of collective bargaining, self regulation and market developments in the EU 25 as well as Norway, Bulgaria and Romania.

³ EU Green Paper “Modernising labour law to meet the challenges of the 21st century” – 2006 - page 12

⁴ Eurociett/Uni-Europa Joint Declaration : Objectives of the European Directive on Private Agency Work, October 2001

- 6 Temporary agency work can at different degrees contribute to:
 - 6.1 *Creating pathways between unemployment and employment* for e.g. by helping jobseekers entering or re-entering the labour market.
 - 6.2 *Facilitating the transition between education and work*. In most of the EU Member States, almost half of the agency workers are under 25 year old⁵ and a significant proportion of them were students prior to their first assignment. When assignments correspond to their wishes and skills, working through temporary assignments can provide them with their first access to professional life and an opportunity to gain work experience. Temporary work agencies offer possibilities for students who work alongside their studies to finance them partly or entirely.
 - 6.3 *Smoothing transitions in the labour market*. Temporary work agencies can facilitate the matching of supply and demand of the labour market. Because of the nature of the temporary work agencies' business, it is in the interests of these agencies to facilitate transition between assignments and jobs. In several Member States, temporary work agencies and trade unions have established bi-partite training structures and invest in agency workers vocational training
 - 6.4 *Promoting conversion between different types of work contracts*. Temporary work via an agency can assist in a transition from a temporary agency contract to fixed-term or open-ended contracts. This stepping stone function to non-agency employment can be enhanced by relevant vocational training programmes and guidance provided by temporary work agencies. Furthermore, in several Member States, agencies can provide both temporary contracts and permanent placement services.
 - 6.5 *Improving life work balance*. By providing flexible working time arrangements (e.g. part-time work, no working period during school holidays) to those households who wish so, temporary agency work allows for a better balance between work and life.
- 7 In order to reach a fair balance between the protection of agency workers and to enhance the positive role that agency work may play in the European labour market, Eurociett and UNI-Europa would like to draw attention to a list of topics that should be taken into account:

⁵ See EIRO Foundation report on "Temporary Agency Work in an enlarged EU"

- 7.1 To enhance the quality of agency work by establishing the principle of equal treatment, at two levels:
 - 7.1.1 the equal treatment obligations which arise from the employment relationship between an employer and the worker, being the agency and the agency worker;
 - 7.1.2 the equal treatment obligations which arise from the fact that agency workers are assigned to work for and under the control of a user-enterprise.
- 7.2 In accordance with national law and practice, existing rights and benefits provided to temporary agency workers are derived from different levels; they result from legal obligations, the equal treatment principle (as defined in 7.1) and where relevant from those specifically provided by temporary work agencies. These rights and benefits should be articulated.
- 7.3 Temporary work agencies and user companies shall not replace workers who are on strike by temporary agency workers.
- 7.4 The need to state clearly that agency workers are employed by the temporary work agencies, that agencies have the obligations of an employer and that agency workers are protected by applicable labour legislation⁶.
- 7.5 To ensure transparency of benefits: the social partners' bi-partite management of some of the benefits (e.g. complementary pension schemes, vocational training) can provide a positive benchmark to the sector where appropriate.
- 7.6 In order to improve the employment and social protection of workers, efforts should be made to provide for continuity of rights between assignments.
- 7.7 To facilitate access to vocational training for agency workers.
- 7.8 To promote cooperation with public employment services, in order to help unemployed people to reintegrate the labour market.
- 7.9 To promote the ratification of ILO Convention 181 as a relevant international framework for regulation on temporary agency work.

⁶ *The British and Irish recruitment federations which are members of Eurociett do not support point 7.4 in its entirety. Agency workers are not usually employees of temporary work agencies in these countries. However the primary relationship is between the temporary agency worker and their employment agency; agencies have the obligations of an employer in most respects and workers are protected by all applicable labour legislation.*

- 7.10 Eurociett and Uni-Europa are against any form of unfair competition, illegal practices and undeclared work. This can be fought - where relevant - through systems of licensing (which can include financial guarantee), certification, inspection or registration schemes. In any cases, these national provisions should be proportional, non-discriminatory and objective and should not aim at hampering the development of temporary agency work.
- 7.11 To promote sectoral social dialogue at national level: collective labour bargaining is one appropriate means to organise the regulatory framework of the temporary agency work industry. In addition, the recognition of temporary agency workers' right to freedom of association should be respected at all levels and the right which they have to information, consultation and participation should be respected and facilitated regarding the specificity of the sector.
- 7.12 To ensure that each of the parties entering into the triangular relationship (agency workers, temporary work agencies and user-companies) contracts on a voluntary basis. This rule shall not be used to discriminate against any kind of workers.
- 7.13 To review on a regular basis the restrictions or prohibitions on the use of temporary agency work and lift the ones that are not justified, objective or proportional.
- 7.14 To review and lift any excessive administrative burdens and red tape that hamper the development of services provided by temporary work agencies.
- 7.15 To prevent any discriminatory measures against the industry compared to other forms of non open-ended contracts, including length of assignments and renewal of contracts. Eurociett and Uni-Europa recognise and respect the role of public sector to fund programmes aimed at unemployed workers.
- 7.16 To ensure that the existing national rules of the sector provide measures of implementation. If not, these national rules should be amended and enforced.
Supervisory authorities must have more resources, most notably at European level, to control and coordinate their actions.
- 7.17 To ensure a deeper understanding of the reality of the industry by carrying out complementary field research and collecting compendium of best practices.

- 8 For some of these topics, some examples of initiatives that already exist in different EU Member States are listed in the appendix of the joint-declaration.
- 9 Eurociett and UNI-Europa recognise that if there is no national regulation existing on temporary agency work in some EU Member States, the rights and obligation of each of the three stakeholders (temporary agency, temporary agency worker and the user company) should be clarified, using ILO Convention 181 as a guidance. This should be the case particularly concerning the protection of agency worker's health and safety where user-companies have a specific responsibility to play in coordination with temporary work agencies and their agency workers.
- 10 On the basis that agency work may play a positive role in the labour market, the sectoral social dialogue Committee will continue to work towards improving the employment and working conditions of agency-supplied workers.

Annemarie Muntz
President
Eurociett

Bernadette Ségol
Regional Secretary
UNI-Europa

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Appendix

The good examples

- Within the framework of national sectoral social dialogue, **national employers federations of temporary work agencies and trade unions have set up national training funds for temporary agency workers** in several EU Member States (Belgium, France, Italy, Netherlands, Spain). Managed as bipartite bodies, the objective of these training funds is to help temporary agency workers to improve the level of their skills through training programmes and therefore increase their opportunities to get job assignments. They are also aiming at fighting national labour shortages by training workers to gain skills, which companies are desperately looking for.

- **In many EU Member States (Belgium, France, Germany, Italy, Lithuania, Luxembourg, Netherlands, Poland, Sweden, UK), national federations of temporary work agencies have developed cooperation agreement with the national Public Employment Services.** Four different types of relationships between public employment services & private employment agencies can be identified:
 1. Co-operation – in the field of information sharing and basic matching services;
 2. Complementarity – in labour market segments or through projects aiming at specific categories of workers;
 3. Competition – in providing services to employers with the possibility of fee-charging by public employment services.
 4. Services providing – in subcontracting certain projects or services (e.g. skill assessment, re-inclusion of unemployed people) to private employment agencies.

- In different EU Member States (Belgium, France, Netherlands) within the framework of the sectoral social dialogue, **national employer federations of temporary work agencies and trade unions have established a social fund for temporary agency workers**. Its purpose is to bring further social benefits to the temporary agency workers: e.g. subsidies to support scholarship and university fees for their children, financial guarantee to get a housing, security to obtain a consumer credit, complementary private health insurance.

- **In several EU Member States (Belgium, France, Germany, Netherlands), national employers federations of temporary work agencies and trade unions** have signed collective labour agreements to grant some extra benefits for temporary agency workers (e.g. pension schemes which complement the national public one, providing agency workers further retirement protection whatever the user company they are assigned to).
- **Bipartite bodies have been set up in various Member States to monitor the implementation of sectoral collective labour agreements (Belgium, Netherlands, France).** In several Member States, trade unions are also represented in bodies that review quality standards compliance defined by the industry (e.g. UK, Sweden).

The bad examples

- In some EU Member States, because **temporary work agencies are not allowed to offer open-ended contracts to job-seekers**, a company looking for a permanent position will not be able to use the services and expertise of a temporary work agency to fill this job vacancy. This lack of flexibility creates less work opportunities for job-seekers and prevents them from accessing a further path to enter the labour market.
- **Due to excessive and non-objective provisions regarding licensing systems**, a delay of almost 6 months in getting a license, made a 4 to 6 month cross-border placement non-viable and mean less job opportunities for workers.
- **Restricted access to social benefits compared to permanent workers:** in several Member States, the pre-requisite conditions to access unemployment benefits, holidays and/or social security schemes are stricter for temporary agency workers than for permanent workers. These are discriminatory measures against the agency workers and therefore reduce their access to social benefits and work security.
- **Identification and enforcement of health and safety regulation applying to migrant workers.** Two (migrant) workers suffered from accidents at work. In both cases, the lack of coordination between EU Member States' social protection authorities makes it difficult for the workers to identify which rights they were entitled to and therefore delayed the social security coverage they were supposed to get.
- **During industrial action, the management of agency workers present in the end user enterprise where the action is taking place can be complex.** It is recognised in ILO Recommendation 188 on Private Employment Agencies and in many national laws that agency workers cannot be used to replace striking workers. Whilst this is the case many difficulties remain regarding ensuring that the work of an agency worker does not in anyway replace that of a striking worker. This is especially the case where agencies have pre-existing contracts with the end user before the strike is called.