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Technical annexes

Accompanying the document

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMANT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**on the application by Member States of Directive 2008/104/EC on temporary agency
work**

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TABLE OF CONTENTS

| | | |
|----|--|-----------|
| 1. | Annex 1: Overview of the replies to the questionnaire on options chosen by Member States for the implementation of the Directive into national law | 4 |
| | Question 1 | 4 |
| | Question 2 | 6 |
| | Question 3 | 8 |
| | Question 4 | 10 |
| | Question 5 | 12 |
| | Question 6 | 14 |
| | Question 7 | 16 |
| 2. | Annex 2: Overview of the reports of the Member States on the results of the review of restrictions and prohibitions on the use of temporary agency work | 18 |
| | Austria | 19 |
| | Belgium | 21 |
| | Bulgaria | 26 |
| | Cyprus | 27 |
| | Czech Republic | 28 |
| | Germany | 29 |
| | Denmark | 31 |
| | Estonia | 32 |
| | Greece | 33 |
| | Spain | 36 |
| | Finland | 38 |
| | France | 40 |
| | Croatia | 42 |
| | Hungary | 43 |
| | Ireland | 45 |
| | Italy | 46 |
| | Lithuania | 48 |
| | Luxembourg | 49 |
| | Latvia | 50 |
| | Malta | 51 |

| | |
|----------------|----|
| Netherlands | 52 |
| Poland | 56 |
| Portugal | 59 |
| Romania | 62 |
| Sweden | 64 |
| Slovenia | 67 |
| Slovakia | 69 |
| United Kingdom | 70 |

Annex 1: Overview of the replies to the questionnaire on options chosen by Member States for the implementation of the Directive into national law

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| Question 1 | Pursuant to Article 1(2), the Directive applies to public and private undertakings which are temporary-work agencies or user undertakings <i>engaged in economic activities</i> (italic characters added) whether or not they are operating for gain. Does your Member State also apply the Directive to user undertakings which are not engaged in economic activities? Please explain. |
| Austria | Yes, generally, but personnel under the Development Worker Act is exempted from certain provisions of the AÜG (§§ 10–16a) because it is not considered to be an economic activity. |
| Belgium | Yes: Law of 24 July 1987. |
| Bulgaria | No. |
| Cyprus | No. |
| Czech Republic | Yes: Employment Act. |
| Germany | Yes. |
| Denmark | No. |
| Estonia | Yes: Employment Contracts Act. |
| Greece | Yes: Law 4052/2012. |
| Spain | Yes: Law 14/1994. |
| Finland | Yes. |
| France | Yes. |
| Croatia | Yes: Labour Act. |
| Hungary | Yes. |
| Ireland | No: Protection of Employees (Temporary Agency Work) Act, 2012. |
| Italy | Yes: Decree No 276/2003. Public administrations are covered. |
| Lithuania | Yes: Law on Temporary Agency Employment. |

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| Luxembourg | No. |
| Latvia | Yes. |
| Malta | No: Temporary Agency Workers Regulations. |
| Netherlands | No. |
| Poland | Yes. |
| Portugal | Yes. |
| Romania | No. |
| Sweden | Yes: Agency Work Act, 2012. |
| Slovenia | Yes: Labour Market Regulation Act. |
| Slovakia | Yes. |
| United Kingdom | No: Agency Workers Regulations 2010 refers to engagement in economic activity. |

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| Question 2 | Article 1(3) allows Member States to provide that the Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme. Does your Member State make use of this provision? If so, please explain. |
| Austria | Yes. Certain provisions of the AÜG (§§ 10–16a) do not apply to the supply of personnel as part of a specific public or publicly supported vocational training, integration or retraining programme. |
| Belgium | No. |
| Bulgaria | No. |
| Cyprus | Yes, to encourage agencies to participate in public or publicly supported actions aimed at specific target groups. |
| Czech Republic | No. |
| Germany | No. |
| Denmark | Yes. |
| Estonia | No. |
| Greece | No. |
| Spain | No. |
| Finland | No. |
| France | No. |
| Croatia | No. |
| Hungary | Yes. Employment regulations may provide that in cases falling under Article 1(3), no agency workers may be employed. |
| Ireland | Yes, notably for work carried out pursuant to a placement under the Irish National Training and Employment Authority. |
| Italy | No. |
| Lithuania | No. |
| Luxembourg | No. |
| Latvia | No. |

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| Malta | Yes: Regulation 3(3) of the Temporary Agency Workers Regulations. |
| Netherlands. | No. |
| Poland | No. |
| Portugal | No. |
| Romania | No. |
| Sweden | Yes. Employees who are employed for work with e.g. special employment support or in sheltered employment are excluded from the scope of the Swedish law, but only regarding the principle of equal treatment. However, provisions regarding e.g. access to amenities and collective facilities and information about vacant posts in the user undertakings are applicable. |
| Slovenia | No. |
| Slovakia | No. |
| United Kingdom | No. |

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| Question 3 | Does your Member State resort to the possibility of derogation provided for in Article 5(2)? If so, please explain. |
| Austria | No. |
| Belgium | No. |
| Bulgaria | No. |
| Cyprus | No. However, the employment contract must include the amount which will be paid during the period between assignments. |
| Czech Republic | No. |
| Germany | No. The option of derogating from the principle of equal treatment provided for in the AÜG does not derive from Article 5(2). |
| Denmark | No. |
| Estonia | No. |
| Greece | No. |
| Spain | No. Temporary agency workers do not have permanent contracts of employment. |
| Finland | No. |
| France | No. |
| Croatia | No. When an agency worker is not assigned to a user, he is entitled to salary compensation equal to the average salary paid to him over the preceding 3 months. |
| Hungary | Yes. As regards wages and other benefits, equal treatment applies as of the 184 th day of employment at the user enterprise with respect to any temporary agency worker who is employed for an indefinite duration and paid even in the absence of any assignment to a user enterprise. |
| Ireland | Yes. The pay between assignments must be 50% of the agency worker's most recent assignment and in any event not lower than the National Minimum Wage. |
| Italy | No. |
| Lithuania | No. |

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| Luxembourg | No. |
| Latvia | No. |
| Malta | Yes: Regulation 5(1) of the Temporary Agency Workers Regulations. |
| Netherlands | No. |
| Poland | No. |
| Portugal | No. When an agency worker has an open-ended contract and does not provide work to the employer, compensation must be paid, as laid down in a collective labour agreement or equal to 2/3 of the last salary or to the guaranteed minimum monthly salary. |
| Romania | No. |
| Sweden | Yes: Agency Work Act, 2012. |
| Slovenia | No. |
| Slovakia | No. |
| United Kingdom | Yes. The rate of pay between assignments must be at least 50% of on assignment pay, at least the National Minimum Wage and calculated using a reference period, usually the 12 weeks immediately preceding the period of pay between assignments. |

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| Question 4 | Does your Member State apply Article 5(3) of the Directive? If so, please explain. |
| Austria | Yes, if this does not prejudice the overall protection of temporary agency workers. |
| Belgium | No. |
| Bulgaria | Yes. |
| Cyprus | No. |
| Czech Republic | No. |
| Germany | Yes: paragraph 3(1)3 AÜG. |
| Denmark | Yes. |
| Estonia | No. |
| Greece | No. |
| Spain | No. |
| Finland | Yes. There are only a few normally or generally binding collective agreements binding temporary-work agencies. Therefore, the minimum working and employment conditions of temporary agency workers are usually determined according to the collective agreements binding user undertakings. |
| France | No. |
| Croatia | No. |
| Hungary | Yes. |
| Ireland | Yes, provided the overall protection of agency workers is ensured. |
| Italy | Yes. |
| Lithuania | No. |
| Luxembourg | No. |
| Latvia | No. |
| Malta | No. |
| Netherlands | Yes. |

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| Poland | No. |
| Portugal | No. |
| Romania | No. |
| Sweden | Yes. The collective agreement must respect the overall protection of temporary agency workers. |
| Slovenia | No. |
| Slovakia | No. |
| United Kingdom | No. |

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| Question 5 | Does your Member State resort to the possibility of derogation provided for in Article 5(4)? If so, are occupational social security schemes, including pension, sick pay and financial participation schemes, included in the basic working and employment conditions referred to in Article 5(1)? |
| Austria | No. |
| Belgium | No. The national law system enables collective agreements to be declared universally binding. |
| Bulgaria | No. |
| Cyprus | No. |
| Czech Republic | No. |
| Germany | No. |
| Denmark | No. |
| Estonia | No. |
| Greece | No. |
| Spain | No. |
| Finland | No. |
| France | No. The French legal system enables collective agreements to be declared universally binding. |
| Croatia | No. In the Croatian legal system it is possible to extend the provisions of a collective agreement to all similar undertakings in a certain sector. |
| Hungary | No. Not applicable. |
| Ireland | No. |
| Italy | No. |
| Lithuania | No. |
| Luxembourg | No. |
| Latvia | No. |
| Malta | Yes. A qualifying period of 4 weeks applies to the pay of agency workers who are not paid between assignments, if an assignment lasts |

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| | 14 weeks or more. Occupational social security schemes, including pension, sick pay and financial participation schemes, are not included in the basic working and employment conditions. |
| Netherlands | No. The Netherlands have a set of legal arrangements for declaring collective labour agreements universally applicable. |
| Poland | No. |
| Portugal | No. |
| Romania | No. |
| Sweden | No. |
| Slovenia | No. |
| Slovakia | No. |
| United Kingdom | Yes. Qualifying period of 12 weeks. |

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| Question 6 | Does your Member State make use of the provision of Article 6(4) which allows to derogate from equal access to the amenities or collective facilities in the user undertaking if the difference in treatment is justified by objective reasons? If so, please explain. |
| Austria | Yes, if objectively justified. |
| Belgium | Yes, if justified by objective reasons. |
| Bulgaria | No. |
| Cyprus | Yes, if justified by objective reasons. |
| Czech Republic | No. |
| Germany | Yes, only where justified by objective reasons, e.g. if providing access would imply for the user undertaking an organisational or administrative burden which is disproportionate to the duration of the workers' assignment. |
| Denmark | Yes. |
| Estonia | No. |
| Greece | Yes, if justified by objective reasons, such as differentiated working hours or the duration of the employment contract. |
| Spain | No. |
| Finland | Yes, if justified by objective reasons. The user undertaking is not obliged to financially support the temporary agency worker for using amenities or collective facilities. |
| France | No. |
| Croatia | No. |
| Hungary | No. |
| Ireland | Yes, if objective grounds. Objective justification cannot be based on economic considerations, but would allow e.g. for a rota system/waiting list applicable to direct employees for particular facilities to be also applied to agency workers. |
| Italy | No. |
| Lithuania | Yes, if justified by objective reasons. |

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| Luxembourg | No. |
| Latvia | Yes, if justified by objective reasons. Every situation should be evaluated individually. |
| Malta | Yes, if justified by objective grounds. |
| Netherlands | Yes, if justified by objective reasons. |
| Poland | No. |
| Portugal | No. |
| Romania | No. |
| Sweden | Yes, if there are special reasons. |
| Slovenia | No. |
| Slovakia | No. |
| United Kingdom | Yes. Cost may be taken into account but is unlikely to alone justify different treatment. Practical and organisational considerations could be a factor. Even if there is objective justification, hirers may consider whether agency workers could be granted certain access to facilities on a partial basis. |

| Question 7 | For the implementation of Article 7 (Representation of temporary agency workers), are temporary agency workers taken into account in your Member State in the temporary-work agency (as provided for in Article 7(1)), in the user undertaking (as provided for in Article 7(2)), or in both of them? What are the conditions under which temporary agency workers are counted? | | |
|-----------------------|---|---------------------|---------|
| | In agency | In user undertaking | In both |
| Austria | | | X |
| Belgium | | X | |
| Bulgaria | X | | |
| Cyprus | | | X |
| Czech Republic | X | | |
| Germany | | | X |
| Denmark | X | | |
| Estonia | X | | |
| Greece | | | X |
| Spain | X | | |
| Finland | X | | |
| France | | | X |
| Croatia | X | | |
| Hungary | X | | |
| Ireland | X | | |
| Italy | X | | |
| Lithuania | X | | |
| Luxembourg | | | X |
| Latvia | | X | |
| Malta | X | | |

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|-----------------------|---|---|---|
| Netherlands | | | X |
| Poland | X | | |
| Portugal | | | X |
| Romania | | X | |
| Sweden | X | | |
| Slovenia | X | | |
| Slovakia | | | X |
| United Kingdom | X | | |

Annex 2: Overview of the reports of the Member States on the results of the review of restrictions and prohibitions on the use of temporary agency work

Annex 2 provides an overview showing the diversity of the prohibitions and restrictions to which the Member States' reports refer and indicating the justifications that have been provided for those restrictive measures. It also states how the review of the restrictions and prohibitions and the consultation of the social partners have taken place.

The restrictive measures most frequently encountered mainly fall within the following categories:

- prohibition to use temporary agency workers to replace workers exercising their right to strike (*Austria, Belgium, Bulgaria, Croatia, France, Greece, Hungary, Italy, Poland, Slovenia, Spain*);
- sectoral restrictions, such as the prohibition to use temporary agency workers for work which is particularly dangerous to their health and safety (*Belgium, Croatia, France, Greece, Poland, Portugal, Slovenia, Spain*), restrictions in the public sector (*Belgium, Greece, Spain*) and in the construction industry (*Belgium, Germany, Greece*);
- limitative list of permissible reasons for using temporary agency work (*Belgium, Finland, France, Greece, Italy, Poland, Portugal, Romania*);
- limitation of the duration of assignments (*Belgium, France, Greece, Poland, Portugal*);
- prohibition to use temporary agency workers during a certain period in the case where workers have been dismissed for business reasons by the user undertaking (*Croatia, France, Greece, Italy, Poland, Slovenia, Spain*);
- limitation of the numbers or proportion of agency workers that may work in user companies (*Austria, Italy, Netherlands*).

This document has been drawn up on the basis of the reports of the Member States on the results of the review of restrictions and prohibitions on the use of temporary agency work. Thus, this document is purely factual. Any comments expressed in it reflect the content of the Member States' reports and cannot be considered as representing the position of the Commission.

AT (AUSTRIA)

Restrictions/prohibitions and justifications provided:

- Prohibition to post agency workers to businesses affected by strikes or lock-outs

Justification: it is in the public interest that collective disputes between employers and employees are not influenced or even resolved by external intervention; such influence would exist if employers were able to expand or change their workforce

- Competence of the Federal Minister for Economy and Employment to issue an ordinance stipulating that for certain sectors:

1. the employment of agency workers is only permitted up to a specific proportion of the company's salaried employees, blue-collar employees or white-collar employees
2. the duration for which an employer is permitted to use agency workers is limited
3. the posting of agency workers from Austria to specific countries is permitted

Justification: intended as a labour market policy instrument that offers the opportunity to respond appropriately to detrimental developments in the labour market in relation to agency work, particularly in individual subsectors (there are no restrictions in place based on this legislation)

- Limitation of the proportion of agency workers working as higher grade healthcare and nursing staff to 15 % of care staff

- Limitation of the proportion of agency workers working as carers to 15 % of care staff

Justification: for health policy reasons, to safeguard the quality and continuity of care and assistance within care facilities and externally by restricting this form of professional practice in such a way that the employment of agency workers as care staff is limited to 15% of the workforce at each facility.

- Limitation of the proportion of agency workers working as medical assistants to 10 % of the health care staff of the establishment; in situations which call for continuity of treatment and care or where necessary due to the structure of the establishment, an even lower percentage or no such temporary staff may be allowed

- Midwifery Act: prohibition on the use of agency workers
- Prohibition on the use of agency workers to work as cardiovascular technologists
- Prohibition on the use of agency workers to work as therapeutic masseurs
- Prohibition on the use of agency workers to work as music therapists

Justification: fundamentally justified by considerations of patient safety and quality assurance, and therefore by public health requirements (protection of human life and

health)

Review/consultation of the social partners:

The prohibitions and restrictions on using temporary agency work came into effect following extensive negotiations above all with the affected social partners (*Wirtschaftskammer Österreich* [Austrian Economic Chambers], *Vereinigung der Österreichischen Industrie* [Austrian Industry Association], the *Bundesarbeitskammer* [Chamber of Labour] and the *Österreichischer Gewerkschaftsbund* [Austrian Trade Union Federation]). Furthermore, an extensive "general assessment procedure" gave a wide range of bodies, and in particular also the social partner organisations, the opportunity to express an opinion on the planned legislation on temporary agency work.

Therefore, as regards the provisions in the national legislation setting out prohibitions and restrictions on the use of temporary agency work and the reasons of general interest justifying these provisions, the approval of the social partners can in any case be assumed.

Another referral to/hearing of the social partners before communicating to the Commission the report on the review of the prohibitions and restrictions therefore seemed unnecessary and consequently was not performed.

BE (BELGIUM)

Restrictions/prohibitions and justifications provided:

A general overview of current legislation lists the following provisions:

- Temporary agency work is permitted only for the performance of temporary work (BE states that this does not fall within the scope of Article 4; even if it is deemed to constitute a restriction, it is *justified* on grounds of general interest by the protection of permanent employment)
- Agency work is allowed for the temporary replacement of a permanent worker whose contract of employment has ended (maximum duration of 6 months, with a possible 6-month extension in certain cases; the prior consent of the union delegation at the user undertaking is required), has been suspended or for the temporary replacement of a civil servant
- Agency work is allowed in case of temporary increase in the volume of work (the prior consent of the union delegation at the user undertaking is required; if there is no union delegation, maximum duration of 6 months, with a possible 6-month extension)
- Agency work is allowed for the performance of exceptional tasks (a collective labour agreement defines "exceptional tasks" as "activities which are not part of the usual business activities of the user undertaking" and provides an exhaustive list; in principle, agency work for the purposes of performing exceptional tasks is permitted for maximum 3 months without the need to follow a special consent procedure; in some cases it is necessary to seek the consent of the user undertaking's union delegation or, in the absence thereof, of the joint committee to which the user undertaking belongs)

Justification: the restrictions in the duration of agency work are justified on grounds of public interest associated with the protection of permanent employment on the labour market; the procedure for obtaining prior consent of the union delegation is a means of control which is essential in order to prevent potential abuse

- Agency work is allowed for the provision of artistic services and/or production of artistic works
- Agency work is allowed in the form of employment under a regional scheme for the long-term unemployed and people who are entitled to welfare benefits
- Agency work is allowed for reasons of integration ("motif d'insertion"), with a view to the possible direct recruitment of the worker by the user undertaking; the duration of the employment contract with the temporary-work agency is limited to 6 months, and 3 attempts with 3 different temporary agency workers are possible for each vacant post,

for a total duration of maximum 9 months

- Agency work is allowed on the basis of successive daily contracts in the same user undertaking, to the extent that the need for flexibility can be demonstrated
- Prohibition on the use of agency workers in case of strike or lock-out at the user undertaking

Justification: recital 20 of Directive 2008/104/EC, and justified on grounds of public interest associated with the protection of the right to strike

- Prohibition to use agency workers in the public sector except for the temporary replacement of a worker whose contract of employment has been suspended or has taken a career break in the form of a reduction in working hours or for the provision of artistic services and/or the production of artistic works for an occasional employer/user

BE refers to the following prohibitions/restrictions to be found in sectoral regulations:

D) Private sector

- Certain collective agreements stipulate that the unions be notified of the use of agency work in the sector (such rules do not introduce restrictions and are therefore not contrary to Article 4)
- Certain collective agreements stipulate that the user undertaking must ultimately offer the agency worker a permanent position

Justification: promotes the smooth functioning of the labour market by endorsing the role of agency work as a form of recruitment channel

- In very specific sectors in which hazardous work is carried out and where the number of industrial accidents is very high (mainly maritime sector, fishing industry and dock-based work), separate statutory regulations may provide for prior worker accreditation: on account of health and safety requirements, work in the sector can be carried out only by certified workers

Justification: ensure that the sectors concerned employ adequately qualified workers who have undergone in-depth training; guarantee health and safety in the workplace

A) Prohibitions

- Ban on the use of agency workers in removal firms, furniture storage facilities and associated activities which fall within the competence of the Joint Committee for Transport

Justification: on account, in particular, of the requirements regarding health and safety at work

- Ban on agency work in the inland waterways sector

Justification: for the unions, on account of the requirements regarding health and safety at work; the employers are opposed to the ban

- General ban to perform work which involves breaking up or removing asbestos or to perform activities associated with the use of fumigants

Justification: on account of the requirements regarding health and safety at work

B) Restrictions

- Restriction on the number of situations in which agency workers can be used in the construction industry (only to replace a worker who is unfit for work and in case of temporary increase in the volume of work)

Justification: requirements regarding health and safety at work

- Restriction on the amount of temporary agency work in undertakings covered by the Joint Committee for the Clothing and Textile Industry

Justification: need to ensure that the labour market functions properly and that abuses are prevented

- Ban on the employment of agency workers who have retired in undertakings covered by the Joint Subcommittee for Bus and Coach Transport

Justification: prevention of abuse

- Mandatory conversion of temporary agency contracts into permanent contracts with the user undertaking after 6 months of agency work necessitated by a temporary increase in the volume of work in undertakings covered by the Joint Subcommittee for Textiles Recycling

Justification: need to ensure that the labour market functions properly and to prevent abuse

- Restriction on the functions for which agency workers can be employed in

undertakings covered by the Joint Committee for Printing, Graphic Arts and Newspaper Industries

Justification: for the unions, on account of the requirements regarding health and safety at work; the employers are opposed to the ban

- Collection of an employer's contribution if an agency worker is employed for more than 30 days in an undertaking covered by the Joint Subcommittee for the Operation of Outdoor Gravel and Sand Pits in the Provinces of Antwerp, West Flanders, East Flanders, Limburg and Flemish Brabant (however, the collective agreement expired in 2010)

Justification: on grounds of health and safety at work, the specific nature of the work and the need to ensure that the labour market functions properly

- Restriction on the employment of agency workers on the basis of successive daily contracts in undertakings covered by the Joint Committee for Non-Ferrous Metals

Justification: on grounds of the protection of agency workers, health and safety at work and the need to prevent abuse

II) Public sector

Agency workers can be used only for:

- temporary replacement of a worker whose contract of employment has been suspended
- temporary replacement of a worker who has taken a career break in the form of a reduction in working hours
- artistic services that are provided and/or artistic works that are produced for a consideration for an occasional employer or user

Statutory employment (by unilateral appointment) is the norm; staff may be recruited on the basis of a contract of employment only on an exceptional basis.

However, a debate has been under way regarding a further relaxation on the use of agency workers in the public sector. The coalition agreement of the current government provides that the regions will be authorised to permit the use of agency workers in their government departments and local agencies, and in the context of specific employment schemes.

The Prime minister has been asked by the National Labour Council to perform a review for the public sector (not yet completed however).

Review/consultation of the social partners:

The social partners have been consulted through the National Labour Council ("Conseil national du Travail").

The social partners are currently holding intensive talks at national level over the further modernisation of the legislation governing agency work.

BG (BULGARIA)

Restrictions/prohibitions and justifications provided:

- Temporary agency work contracts can only be concluded for completing a specific task or replacing an absent worker.

- Prohibition to conclude temporary agency work contracts:
 - under the conditions of work category 1 and 2
 - with undertakings relating to national security and defence
 - with undertakings on strike

Justification: general interest grounds relating to the protection of temporary agency workers, the requirements of health and safety at work and the need to ensure that the labour market functions properly and abuses are prevented

BG law "complies with Article 4 with regard to justified restrictions or prohibitions".

No restrictions/prohibitions in BG legislation before 5 December 2011.

Review/consultation of the social partners:

The Act amending the Labour Code to bring it in line with the Directive was passed with the "active participation" of the social partners. The social partners concluded "national agreements" notably on temporary employment agencies and submitted these drafts to the Ministerial Council and the National Assembly for adoption. Employers' and employees' organisations involved were:

- the Confederation of Independent Trade Unions of Bulgaria (KNSB);
- the *Podkrepa* Labour Confederation;
- the Industrial Capital Association (AIK);
- the Bulgarian Industrial Association (BSK);
- the *Vazrazhdane* Bulgarian Union of Entrepreneurs;
- the Bulgarian Chamber of Commerce and Industry (BTPP);
- the Confederation of Employers and Industrialists of Bulgaria (KRIB);
- the Union for Private Enterprise (SSI).

CY (CYPRUS)

Restrictions/prohibitions and justifications provided:

The Directive was transposed through Act on temporary agency work 2012 (No 174(I)/2012) and the Regulations on temporary agency work 2012 (Regulatory Administrative Act 517/2012). This legislation lays down, inter alia, requirements regarding:

- licensing
- certification of premises
- presentation of a bank guarantee of € 100 000
- definition of the academic qualifications of the manager of the temporary work agency and of the secretarial support staff
- maximum period of employment
- minimum staffing numbers
- administrative penalties
- the user undertaking must provide a bank guarantee.

Review/consultation of the social partners:

The draft law was discussed in detail at eight meetings of the Tripartite Technical Committee of the Labour Advisory Board, attended by the employers' organisations OEB (Cyprus Employers and Industrialists Federation) and KEBE (Cyprus Chamber of Commerce and Industry) and the trade union organisations SEK (Cyprus Workers' Confederation), PEO (Pancyprian Federation of Labour) and DEOK (Democratic Labour Federation of Cyprus). The social partners also attended two meetings of the Parliamentary Committee of the House of Representatives at which the draft law was discussed.

CZ (CZECH REPUBLIC)

Restrictions/prohibitions and justifications provided:

- Prohibition on the use of foreign nationals for types of work for which a lower level of education than secondary education is sufficient, or work not listed in the annex to the Government Regulation
- Prohibition on the use of persons who have been issued with a green or a blue card or a work permit and persons with disabilities (the Government has prepared a draft amendment of the Employment Act, withdrawing the prohibition to employ disabled persons as agency workers; this amendment may come into force on 1 January 2014)
- *Justification*: ensure that the labour market functions properly and prevent the illegal working that takes place in practice where foreign nationals are temporarily assigned. For persons with disabilities, there is also the general interest of protecting such employees and requirements of health and safety at work. Prohibition to assign the same employee to work for the same customer for more than 12 consecutive calendar months (this limitation can be waived if the assigned worker agrees or replaces an employee who is on maternity or parental leave)

Justification: expresses the interest in long-term labour relations established directly between the employee and the employer; general interest in limiting the abuse of agency work as an institution, enhancing legal certainty for the employee in employment relationships, and the need to ensure that the labour market functions properly.

After reviewing the legislation transposing the Directive into Czech law, the Ministry finds that the legislation contains no restrictions or prohibitions within the meaning of Article 4 of the Directive other than those set out in points 1 and 2 of Part II of this document, and that the legislation concerned complies fully with the aims and requirements of the Directive.

Review/consultation of the social partners:

A Ministry document aimed at identifying restrictions in Czech legislation and reporting them to the Commission was discussed on 15 December 2011 at the Plenary Session of the Czech Republic's Council for Economic and Social Agreement – a joint body bringing together representatives of government, business and trade unions. It had already been discussed on 9 December 2011 by the Working Party on employment relationships, collective bargaining and employment. The Plenary is constituted by the Czech Prime Minister and seven government representatives, seven trade-union representatives and seven employers' representatives. The government's social partners are currently the *Českomoravská konfederace odborových svazů* [Czech-Moravian Confederation of Trade Unions] and the *Asociace samostatných odborů* [Association of Independent Trade Unions] on behalf of the trade unions, and the *Svaz průmyslu a dopravy České republiky* [Confederation of Industry of the Czech Republic] and the *Konfederace zaměstnavatelských a podnikatelských svazů České republiky* [Confederation of Czech Employers' and Entrepreneurs' Associations] on behalf of the employers.

DE (GERMANY)

Restrictions/prohibitions and justifications provided:

- Prohibition on temporary employment in construction undertakings for the performance of work normally carried out by manual employees, except:
 - where workers are assigned between construction undertakings and other undertakings if the undertakings provide for this in all-embracing collective agreements that are declared to be generally binding;
 - where workers are assigned between construction undertakings if the assigning undertaking has demonstrably been party to the same framework and social fund collective agreements or has been generally bound by such agreements for at least three years

Justification: the restriction in the construction industry is justified on grounds of general interest because it takes into account the organisation of the labour market in the construction sector, ensuring stable employment and social-security conditions for employees and protects the financial stability of social security institutions. Germany also points to previous experience with abuse in this sector. The functioning of collective agreements is also a consideration. In addition, temporary-work agencies would hold a competitive advantage, because they are not obliged to pay to social security funds to the same extent as ordinary construction companies are. The Government and social partners agree that it is not advisable at present to fully lift it; the restriction has been curtailed as far as necessary, since it does not concern the assignment of agency workers to work not normally carried out by manual employees, and the law provides for 2 exceptions; the law takes due account of the protection of agency workers, the positive impact of agency work on employment and the need for undertakings to be flexible.

- Restriction on the deployment of agency workers in own transport under the Goods Transport Act: was lifted in 2011

Besides, the report provides information with respect to measures preventing the abuse of Article 5 of the Directive as well as penalties for the infringement of national implementing legislation.

Review/consultation of the social partners:

Social partners were consulted in connection with the review of the legal restrictions and prohibitions and were requested to review the restrictions and prohibitions laid down in collective agreements.

The following social partners were given the opportunity to express their views in writing at the end of 2010:

- *Bundesvereinigung der Deutschen Arbeitgeberverbände* [Federal Union of German

Employers' Associations] (BDA)

- *Bundesverband der Deutschen Industrie* [Federation of German Industries] (BDI)
- *Hauptverband der Deutschen Bauindustrie* [Umbrella Association of the German Construction Industry] (HDB)
- *Zentralverband des Deutschen Baugewerbes* [Central Association of the German Construction Industry] (ZDB)
- *Deutscher Gewerkschaftsbund* [Confederation of German Trade Unions] (DGB)
- *Industriegewerkschaft Bauen-Agrar-Umwelt* [Trade Union for Construction, Agriculture and the Environment] (IG BAU)
- *Industriegewerkschaft Metall* [Trade Union for the Metal Industry] (IG Metall)
- *Vereinigte Dienstleistungsgewerkschaft* [United Services Industry] (ver.di)
- *Deutscher Industrie und Handelskammertag* (DIHK)
- *Deutscher Handwerkskammertag* [Association of German Chambers of Industry] (DHKT)
- *Zentralverband des Deutschen Handwerks* [Central Association of German Craft Industry and Trades] (ZDH)
- *Bundesverband Zeitarbeit Personal-Dienstleistungen* [Federal Association for Temporary Work and Personnel Services] (BZA)
- *Interessenverband Deutscher Zeitarbeitsunternehmen* [Interest Group of German Temporary Agency Work Undertakings] (iGZ)
- *Arbeitgeberverband Mittelständischer Personaldienstleister* [Association of Medium-sized Undertakings in the Personnel Services Sector] (AMP)
- *Christlicher Gewerkschaftsbund Deutschlands* [Christian Trade Union Federation for Germany] (CGB)
- *Bundesverband Deutscher Dienstleistungsunternehmen* [Federal Association of German Service Undertakings] (BVD) also expressed an opinion.

DK (DENMARK)

Restrictions/prohibitions and justifications provided:

Before the transposition of the Directive, there was no legislation on temporary agency work, nor have any prohibitions or restrictions been laid down in law.

No social partner agreements entailing restrictions or prohibitions on the use of agency work have been entered into.

Review/consultation of the social partners:

There was no need for a review of the legislation.

On 19 September 2011, the Danish Government asked a number of organisations on the Danish labour market to examine the extent to which agreements on restrictions and prohibitions on the use of temporary agency work might have been entered into in collective and other agreements and to review these where necessary.

The following organisations were consulted:

- Confederation of Danish Employers [*Dansk Arbejdsgiverforening*]
- Danish Association of Managers and Executives [*Lederne*]
- Danish Confederation of Employers' Associations in Agriculture [*Sammenslutningen af Landbrugets Arbejdsgivere*]
- Local Government Denmark [*KL*]
- Danish Regions [*Danske Regioner*]
- Danish Employers' Association for the Financial Sector [*Finanssektorens Arbejdsgiverforening*]
- Danish Confederation of Trade Unions [*Landsorganisationen i Danmark*]
- Federation of Civil Servants' and Salaried Employees' Organisations [*FTF*]
- Danish Confederation of Professional Associations [*AC*]
- Agency for the Modernisation of Public Administration [*Moderniseringsstyrelsen*]
- Christian Employers' Association [*Kristelig Arbejdsgiverforening*]
- Christian Trade Union Movement [*Kristelig Fagbevægelse*]
- Danish Central Federation of State Employees' Organisations [*CFU*]
- Association of Local Government Employees' Organisations [*KTO*]
- Health Cartel [*Sundhedskartellet*]

All the above organisations, except The Danish Employers' Association for the Financial Sector, informed that they have no such restrictions and prohibitions in their collective and other agreements. The latter organisation did not reply, but their counterpart replied negatively, according to the Danish authorities which this suggests that there are likewise no restrictions in this area.

EE (ESTONIA)**Restrictions/prohibitions and justifications provided:**

No prohibitions or restrictions within the meaning of Article 4(1).

Restrictions in the Labour Market Services and Benefits Act:

- Necessity to be registered as an intermediary of temporary agency work in the register of economic activities, and to pay a state fee

Justification: adequately protects the interests of agency workers and does not restrict the freedom to conduct a business

Review/consultation of the social partners:

On 7 September 2011, the Ministry of Social Affairs organised a meeting with social partners with a view to transposing the Directive into national law. It was attended by the largest worker and employer federations:

- Confederation of Estonian Trade Unions
- Confederation of Estonian Employees Unions
- Estonian Chamber of Commerce and Industry
- Confederation of Estonian Employers
- Estonian Association of Employment Agencies
- Labour Inspectorate.

The Ministry of Social Affairs had prepared a consultation document dealing with the amendments necessary to transpose the Directive which served as a basis for the debate in the meeting on 7 September 2011. After the meeting the Ministry received feedback from the organisations on the topics discussed. This feedback was taken into account when drafting the legislative text implementing the Directive.

EL (GREECE)

Restrictions/prohibitions and justifications provided:

- Prohibition of temporary employment of agency workers to replace employees exercising their right to strike

Justification: ensure that temporary labour is not used as a means of breaking strikes, i.e. in order to undermine the right to strike; restriction maintained (unanimous agreement of the social partners)

- Prohibition of temporary employment of agency workers when the user undertaking has made workers in the same skills area redundant in the preceding 6 months on financial-technical grounds or made collective redundancies in the same skills area in the preceding 12 months

- *Justification:* avoid disruption of the system of regular employment, i.e. prevent permanent jobs being converted into temporary ones

- Prohibition on the employment of temporary staff when the user undertaking is subject to the provisions of Law 2190/1994 or those of Article 1(3) of Law 2527/1997, with the reservation of Article 2(5) of Law 3845/2010

Justification: to prevent circumvention of the current provisions on public sector recruitment procedures; all staffing needs, even temporary, must be met using workers recruited solely on the basis of the objective procedures laid down in legislation

- Prohibition for work which, by its very nature, involves special risks to the health and safety of employees; defined by a decision of the Minister of Labour and Social Security of 2010) as:

- work at undertakings where employees may be exposed to harmful agents and where the employer is obliged to use the services of an occupational physician
- work included in an indicative table (mining; production of chemical substances; shipbuilding; generation, transport and distribution of electricity; work with radioactive materials; work with asbestos...)

Justification: there should be proper regulation on the health and safety of temporary workers because of the special features of the provision of labour on this temporary basis; these workers must be assured of the same level of protection as that enjoyed by the regular employees of the user undertaking

- Prohibition when the worker is subject to the special provisions on insurance of construction workers

Justification: explicit prohibition of temporary employment on construction and technical projects, on the grounds that there are objective difficulties relating to the

insurance of this category of temporary workers; restriction maintained (unanimous agreement of the social partners)

- Prohibition on the use of agency work when there are no specific grounds relating to exceptional, temporary or seasonal needs

Justification: safeguards the system of regular employment, which might otherwise be largely replaced by temporary employment, thereby undoing fundamental labour rights

- Prohibition for temporary-work agencies to engage in any activity other than that of concluding employment contracts with temporary agency workers in order to place them with user undertakings to work temporarily under the supervision and direction of the latter, with the exception of

- a) acting as intermediaries in the finding of jobs
- b) the evaluation and/or training of human resources
- c) counselling and vocational guidance

Justification: avoid adverse effects on the financial status of a company from its other activities, and ensure that its necessary solvency is not disturbed; at the same time, this prevents temporary employment activities from becoming one of the marginal interests of a composite business; the two activities permitted by way of exception are allowed because of their perceived affinity with the main activity of the employment agencies

- Limitation of the duration of assignment of a worker to a user undertaking, including any renewals made in writing, to 36 months (if this maximum period is exceeded, the contract shall be converted into a contract of indefinite duration with the user undertaking)

Justification: to underline the temporary and exceptional nature of this form of employment; the restriction is used to prevent temporary labour being converted into a mechanism by which permanent positions are filled by the same individuals, employed on a temporary basis

- If a worker's employment with a user undertaking continues beyond the duration of the initial assignment and of any legal renewals, even with a new assignment, without a period of 23 calendar days intervening, then there shall be deemed to be an indefinite-term employment contract between the worker and the user undertaking (does not apply to workers in hotel and catering businesses, when employed for social events lasting just a few days)

Justification: prevent abuse of the system of temporary employment; is a form of sanction against the employer who infringes the regulations on temporary employment

- The term 'Temporary-Work Agency [*etaireia*]' was replaced by the term 'Temporary

Employment Undertaking [*epiheirisi*]', thereby opening up the activities in question to both natural persons and legal entities, which are no longer disqualified by not having a particular corporate legal form (lifting of a restriction)

- Two decisions of the Minister of Labour, Social Security and Welfare determine the specific terms, conditions and procedure for the establishment of a temporary-work agency and for performance of temporary-work agency activity, the conditions and procedure for prohibiting its performance, the qualifications required for its management staff, its required material and technical infrastructure and all other related issues

Review/consultation of the social partners:

The social partners and the Association of Temporary-Work Agencies (ENEPASE) were invited to submit their views in writing. Subsequently, a meeting took place on 1 November 2011 at the Ministry of Labour and Social Security with the following organisations:

- General Confederation of Greek Workers (GSEE)
- Hellenic Federation of Enterprises (SEV)
- General Confederation of Professionals, Craftsmen and Merchants of Greece (GSEVEE)
- General Confederation of Greek Trade (ESEE)

ES (SPAIN)

Restrictions/prohibitions and justifications provided:

Law No 35/2010 of 17 September 2010 providing urgent measures to ensure labour market reform provided that as of 1 April 2011, all restrictions or prohibitions would be removed (notably specific prohibitions on health and safety issues, as well as the prohibition to recruit in the public sector), with the only exception of those established in the law itself. The restrictions or prohibitions which may be established will only be valid if justified on grounds of general interest and the authority laying down the restrictions should clearly justify the reasons.

ES legislation established guidelines for collective negotiation by specifying the criteria that must be taken into account to establish sectoral restrictions. The restrictions should:

- refer to specific occupations or workplaces or to concrete tasks;
- be based on safety and health hazards associated with the relevant jobs;
- be backed by a well-reasoned report which must accompany the documents required for registration of the collective agreement by the labour authority.

The following restrictions established in collective agreements are mentioned:

- amendment of the Fourth General Agreement for the Construction Sector: inclusion of a list of types of employment involving an absolute or relative restriction on agency work on grounds of health and safety
- amendment to the State agreement on the metal sector: types of employment and positions involving electrical risks from high-voltage systems which cannot be performed by agency workers

The restrictions on jobs and occupations traditionally considered to be incompatible with temporary agency work were maintained after collective negotiation.

Besides, ES legislation retains the following absolute prohibitions for particularly dangerous types of employment:

- work involving exposure to ionising radiations
- work involving exposure to substances which are carcinogenic, mutagenic or toxic to reproduction (categories 1 and 2)
- work involving exposure to group 3 or 4 biological agents

ES legislation also prohibits the recourse to temporary agency work:

- to replace workers on strike in the user undertaking
- when, in the 12 months preceding the contract, the enterprise has suppressed the posts which it is seeking to fill by unlawful dismissals or for the reasons specified in sections 50 (wish of the worker), 51 (collective dismissals) and 52, paragraph (c) (objective causes) of the Workers' Statute ("Estatuto de los Trabajadores"), except in cases of *force majeure*

As regards the public sector, Law No 35/2010 removes the prohibition, except with respect to posts or responsibilities reserved for civil servants under the law.

Justification: grounds of general interest

Review/consultation of the social partners:

Prior to the approval of Royal Decree-Law No 10/2010 which made the necessary changes in relevant legislation to transpose the Directive, the General Secretariat for Social Dialogue carried out intense negotiations with the nationally most representative business and trade union organisations at national level. Notably, the Government presented working documents on temporary-work agencies for discussion with the social partners. During the consultation process, the trade unions expressed their opposition to the elimination of the existing restrictions on the use of temporary agency work.

The social partners later participated in the parliamentary procedure leading to the transposition of the Directive. Subsequently, as provided for in ES legislation, the social partners were given the possibility to participate in the evaluation and establishment, when relevant, to restrictions on the use of temporary agency work.

Besides, the National Commission for Safety and Health at Work (CNSST), which comprises a specific working group called "Temporary-work agencies", advises the public administrations on prevention policies and plays an institutional role on issues related to safety and health at work. Among its members are representatives of the most important business and trade union organisations.

FI (FINLAND)

Restrictions/prohibitions and justifications provided:

I) Review of collective agreements

- Use of agency workers is permitted only to manage peak workloads or in work subject to specific time or quality constraints that cannot be carried out by the undertaking's own employees owing to the urgency or limited duration of the work, the skills or special equipment required or for similar reasons
- Obligation for undertakings using agency workers to answer any questions the chief shop steward might have concerning the employment of such workers

Justification: for SAK (trade union), to secure equal treatment of agency workers on the labour market and the fair operation of the labour market

- Obligation to handle any temporary agency work arrangements without reducing or laying off permanent employees

Justification: for STTK, to secure the smooth operation of the labour market

For EK (employers), the provisions in collective agreements do not comply with the Directive, because they do not concern the protection of agency workers or needs based on workers' health or safety at work, nor do they guarantee the smooth operation of the labour market or prevent irregularities.

As regards the collective agreements in force in the public sector (the State, municipalities and the Church), they do not contain restrictions or prohibitions on the use of agency work.

II) Review of legislation

As a rule, there are no restrictions/prohibitions on the use of agency work.

As regards Article 4(4), FI legislation does not contain any requirements for the registration, licensing, certification or financial guarantees of temporary-work agencies.

Review/consultation of the social partners:

The following organisations have been consulted:

- Confederation of Finnish Industries (EK)
- Central Organisation of Finnish Trade Unions (SAK)
- Local Government Employers

- Finnish Confederation of Professionals (STTK)
- Confederation of Unions for Professional and Managerial Staff (Akava)
- Finnish Evangelical Lutheran Church

FR (FRANCE)

Restrictions/prohibitions and justifications provided:

FR mentions the following rules without any reference to restrictions or prohibitions:

- The provision of agency workers to user undertakings is the exclusive activity of temporary-work agencies
- The activity of temporary-work agencies is submitted to an administrative control: obligation of prior declaration and requirement of a financial guarantee

The following restrictions/prohibitions are mentioned:

- Possibility to use temporary agency work only in certain situations enumerated in the Labour Code: to replace a worker or manager, in case of temporary increase of activity, for seasonal work and for jobs for which it is customary not to resort to open-ended contracts
- Prohibition on the use of agency work to replace a worker who is on strike
- Prohibition on the use of agency work to replace an occupational physician
- Prohibition on the use of agency work to carry out dangerous work
- Limitation of an assignment, including renewal, in principle to 18 months (9, 24 or 36 months in certain situations), and only one renewal is possible
- In principle, minimum interval between 2 assignments on the same post, depending on the duration of the initial contract
- Prohibition, in the first 6 months following a dismissal for business reasons, to resort to agency work with a fixed-term contract justified by a temporary increase of activity or an occasional task, except to conclude a fixed-term contract of less than 3 months or in case of exceptional order in view of export

Justification: on grounds of general interest relating in particular to the need to ensure that the labour market functions properly and abuses are prevented, as well as the protection of agency workers and the requirements of health and safety at work

Besides, agency work is authorised in the public sector (State, local administrations and hospitals) since 2009.

Review/consultation of the social partners:

The social partners have given their opinion on the justification of the prohibitions and restrictions at a meeting of the Social Dialogue Committee for European and international issues (CDSEI) on 29 March 2012. This Committee is an information and consultation body

which brings together the administrations dealing with labour issues and 8 representatives of employers' organisations as well as 8 representatives of employees' organisations. Those organisations are, respectively:

- Mouvement des Entreprises de France [Movement of French Enterprises]
- Confédération générale du patronat des petites et moyennes entreprises
- Union professionnelle artisanale
- Centre européen des entreprises à participation publique
- Fédération nationale des syndicats d'exploitants agricoles
- Confédération nationale de la mutualité, de la coopération et du crédit agricoles
- UNAPL-Confédération interprofessionnelle des professions libérales

- Confédération générale du travail
- Confédération française démocratique du travail
- CGT-Force Ouvrière
- Confédération française des travailleurs chrétiens
- Confédération française de l'encadrement - Confédération générale des Cadres.

Bilateral meetings between the Ministry of Labour and each of those organisations had already taken place in June and July 2011.

The Government does not envisage to lift the prohibitions and restrictions provided for in national legislation.

HR (CROATIA)

Restrictions/prohibitions and justifications provided:

- Prohibition to assign agency workers to a user undertaking whose employees are on strike

Justification: to protect the employees' right to industrial action on grounds of general interest

- Prohibition on the use of temporary agency work if the user undertaking has in the last 6 months, due to business reasons, dismissed workers who performed the same jobs for which the assignment of agency workers is requested

Justification: prevention of abuses and protection of workers

- Prohibition on the use of agency work for jobs that fall under Article 4, paragraph 1, of the Labour Act, according to which working hours are shortened in proportion to the harmful effect of working conditions on the employee's health and working ability in jobs in which, despite the application of occupational safety and health measures, it is impossible to protect the employee from harmful effects

Justification: protection of temporary agency workers and requirements of health and safety at work

- Prohibition on the use of agency work in order to assign employees to another agency

Justification: protection of temporary agency workers, ensure that the labour market functions properly and prevention of abuses

- Prohibition on the use of temporary agency work in other cases specified in the collective agreement that is binding on the user (currently there are no prohibitions and restrictions on the use of temporary agency work laid down by collective agreements)

Justification: protection of temporary agency workers, ensure that the labour market functions properly and prevention of abuses

Review/consultation of the social partners:

Consultations with representatives of trade unions and employer organisations have been held at high level within the Social and Economic Council and committees.

HU (HUNGARY)

Restrictions/prohibitions and justifications provided:

- Prohibition on the use of agency work to perform work which is in breach of a statutory prohibition (for example, prohibitions on employment laid down in worker-protection legislation on health protection grounds, prohibition on the pursuit of activities laid down in sectoral legislation...)

Justification: to protect workers on grounds of public interest

- Prohibition on the use of agency workers to replace workers participating in a strike

Justification: to help protect the workers' right to strike in line with recital 20 of Directive 2005/104/EC

- Prohibition on the use of agency work if, through ordinary dismissal on operational grounds or through termination with immediate effect during the probation period, the worker's contract of employment ended within the previous 6 months

Justification: to stop a common practice in temporary agency work in which an employer sets up another company in order to hire its own workers back under the rules for temporary agency work, which are usually less advantageous

- Prohibition on the use of an agency worker on an assignment exceeding 5 years, including assignment extensions and renewed assignments during the first 6 months following the end of a previous assignment, regardless of whether the assignment was made by the same or by a different temporary-work agency

- Prohibition on the use of agency work where it is not limited for a period of time

Justification: to safeguard the protection of workers on grounds of general interest

- Prohibition for a user undertaking to force a worker to work for another employer

Justification: to ensure the lawfulness and transparency of temporary agency work

- Prohibition for temporary-work agencies to assign workers to user undertakings with which they are linked through their ownership

Justification: to prevent large companies from setting up their own temporary-work agency to meet their staffing needs and from gaining any economic advantage in the process

- In the public sector, prohibition to employ agency workers directly in connection with

the employer's basic activity, except where that activity cannot be performed in any other manner (i.e. where immediately filling the post is absolutely necessary for safe continuous operation, and the personnel requirements cannot be met using other work organisation instruments)

Justification: necessary and justified on the basis of the criteria for public sector employment

General justification: the prohibitions and restrictions are designed to protect the 'general interest' referred to in Article 4(1), which includes the protection of the public interest, as well as the interest in protecting the rights of agency workers, enforcing work-protection rules, complying with employment regulations and preventing illegal employment

Review/consultation of the social partners:

Consultations have taken place in April and June 2013 with the Standing Consultative Forum of the Private Sector, a tripartite body composed of the social partners and Government representatives, which has approved the report on the review of prohibitions and restrictions on the use of temporary agency work.

IE (IRELAND)**Restrictions/prohibitions and justifications provided:**

IE has never applied any restrictions or prohibitions on the use of agency work. This is verified independently from the following sources:

- 2009 study by Eurofound entitled "Temporary agency work and collective bargaining in the EU": IE is referred to as having no regulations restricting the use of temporary agency work;
- Eurociett report on the transposition of the Directive on temporary agency work: IE is not referenced in the report, presumably on the basis that it has not, either in law or in practice, ever applied any restrictions/prohibitions.

Review/consultation of the social partners:

The necessary consultation with the national social partners has taken place.

IT (ITALY)

Restrictions/prohibitions and justifications provided:

- Possibility to use open-ended contracts for agency work only in the cases listed in the law (advisory and assistance services in the IT sector, cleaning services, transport services, marketing activities, management of libraries/parks/museums... and in all other cases foreseen by collective labour agreement)
- Possibility to use fixed-term contracts for agency work only where there are technical, production-related, organisational or staff replacement grounds, including if it concerns the ordinary activity of the user
- Possibility for national collective labour agreements to set quantitative limits for the use of fixed-term contracts for agency work

Justification: to protect workers and ensure the proper functioning of the labour market and prevention of abuse; recital 15 of Directive 2008/104/EC ("Employment contracts of an indefinite duration are the general form of employment relationship")

However, a "moderate justification" ("causalità temperata") has been introduced: the two above-mentioned restrictions do not apply where the employment contract provides for the use of certain categories of vulnerable persons (persons receiving social safety net benefits for at least 6 months and workers defined as "disadvantaged" or "severely disadvantaged").

- Prohibition on the use of agency employment for the replacement of workers exercising the right to strike

Justification: aimed at guaranteeing the constitutional right to strike; Recital 20 of Directive 2008/104/EC

- Prohibition on the use of agency employment, unless there are contrary provisions in collective agreements, in production units where, in the previous 6 months, there have been collective redundancies affecting workers carrying out the tasks covered by the agency employment contract, unless this contract is concluded to replace absent workers or unless the contract has an initial duration of no more than 3 months

Justification: to avoid a conduct by the employer which would be in conflict with the principles of fairness and good faith; need to ensure the proper functioning of the labour market and the prevention of abuse

- Prohibition on the use of agency employment for undertakings that have not carried out the risk assessment referred to in the applicable legislation

Justification: to ensure compliance with the existing provisions in the field of health and safety at work

General justification: all prohibitions and restrictions set under IT law are justified on grounds of general interest. They should not be removed.

Legal and financial requirements (which are not technically prohibitions or restrictions within the meaning of Article 4(1)), in particular:

- Requirement for an employment agency to be set up in the form of a joint stock company or (consortium of) cooperative(s), either Italian or from another EU Member State
- Requirement of a paid up capital of at least € 600.000 for generalist agencies and € 350.000 for specialist agencies
- Requirement, for the first 2 years, of a deposit of € 350.000 (for generalist agencies) or € 200.000 (for specialist agencies) with a credit institution, and from the third calendar year, of a bank or insurance guarantee equivalent to at least 5% of the turnover and, in all cases, of at least € 350.000 (for generalist employment agencies) and € 200.000 (for specialist employment agencies).

Justification: justified on grounds of general interest regarding the protection of agency workers

Review/consultation of the social partners:

The main trade unions (CGIL, CISL, UIL and UGL) and employers' associations (ASSOLAVORO, ALLEANZA LAVORO and ASSOSOMM) attended two meetings held on 13 December 2011 and 13 January 2012 at the Ministry of Labour and Social Policy.

LT (LITHUANIA)

Restrictions/prohibitions and justifications provided:

Lithuanian Law does not lay down any restrictions or prohibitions on the use of temporary agency work.

LT mentions the following without any reference to restrictions or prohibitions:

- Temporary-work agencies must send information on the commencement of agency work and the number of agency workers to the State Labour Inspectorate, which supervises compliance by agencies and user undertakings with the law (notifications received from 16 agencies as of 28 March 2012)
- In 2011-2012 the State Labour Inspectorate carried out several checks (notably, 2 agencies were requested to remedy infringements)

Review/consultation of the social partners:

The members of a working party established in March 2010 to transpose the Directive into Lithuanian law were:

- Lithuanian Confederation of Industrialists,
- Lithuanian Trade Union Confederation,
- Lithuanian Labour Federation.

The draft law was tabled at a meeting of the Tripartite Council of the Republic of Lithuania on 23 February 2010, and was endorsed at the subsequent Tripartite Council meeting on 28 September 2010. Trade union representatives were:

- Lithuanian Trade Union Confederation (LPSK)
- LPSK Trade Union of Lithuanian Food Producers
- Lithuanian Labour Federation (LDF)
- LPSK Trade Union of Lithuanian Healthcare Professionals
- LPS *Solidarumas*

Representatives of employers' organisations:

- Lithuanian Confederation of Industrialists (LPK)
- Lithuanian Confederation of Business Employers (LVDK)
- LPK
- Lithuanian Chamber of Agriculture
- LVDK.

LU (LUXEMBOURG)**Restrictions/prohibitions and justifications provided:**

The provisions of Title III of the "Livre Premier" of the Labour Code do not foresee any prohibitions or restrictions on the use of temporary agency work.

Since, in accordance with Article 1(1) of the Directive, temporary agency workers are assigned to user undertakings to work there temporarily, it is for the national legislation to define the duration of the assignment, and this cannot be considered as a restriction. The same goes for the existence of a limitative list of reasons for resorting to temporary agency work, in a context where the scope of the Directive does not allow for the assignment of agency workers to permanent posts.

Therefore, the LU Government considers that the two above-mentioned provisions do not constitute prohibitions or restrictions to agency work, but measures under Article 1(1) of the Directive.

Review/consultation of the social partners:

In the absence of any restrictions or prohibitions, a review would be groundless ("sans objet").

LU does not refer to a consultation of the social partners.

LV (LATVIA)

Restrictions/prohibitions and justifications provided:

No specific legal framework governing the activities of agencies existed prior to the adoption of Directive 2008/104/EC.

Latvian legislation does not lay down any restrictions or prohibitions on the use of temporary agency work, in particular with regard to the duration of assignments or the existence of a list of permissible reasons for using agency work.

LV also refers to information sent to the Commission on 9 July 2010. However, by that time the Directive had not yet been transposed into LV law. LV had indicated by e-mail that:

- agency work is regulated by the Law on Support for Unemployed Persons and Persons Seeking Employment
- temporary-work agencies need a licence
- the general provisions of labour (e.g. the Labour Law) and labour protection (e.g. the Labour Protection Law) are also applicable to agency work
- there are no prohibitions or restrictions on the use of agency work as regards undertakings engaged in economic activities, and at present it is not scheduled to prescribe any restrictions/prohibitions as regards such undertakings

Review/consultation of the social partners:

The legislative amendments passed to transpose the Directive were drafted in close cooperation with

- the Free Trade Union Confederation of Latvia
- the Latvian Employers' Confederation
- the Latvian Temporary Employment Agencies Association.

The social partners' views were taken into careful consideration. They had already been involved in the early stages of developing the draft legislation.

MT (MALTA)

Restrictions/prohibitions and justifications provided:

Maltese legislation does not lay down any restrictions or prohibitions on the use of agency work and does not allow the social partners to include restrictions or prohibitions in collective agreements.

Review/consultation of the social partners:

In the absence of any restrictions/prohibitions, MT considers that it has no obligation to review and report.

NL (NETHERLANDS)

Restrictions/prohibitions and justifications provided:

I) Legislation

- Prohibition on the use of agency workers as bus drivers (Temporary Decree on Bus Drivers, for a duration of 6 years)

Justification: in order to guarantee continuity of supply of bus drivers in the sector, it is important for transport operators and drivers to be directly bound to one another by means of an employment contract; an employment contract is also important to prevent young bus drivers from circumventing the measures put in place as part of the experiment; more effective supervision of the driver by the transport operator can be achieved if there is a direct relationship with the operator

- Prohibition on the use of agency workers as guardianship workers, family supervision workers, youth probation workers and employees carrying out the duties of an advisory and contact point for child abuse (Decree implementing the Youth Care Act) – but exceptions are possible, so that this provision will not quickly lead to restrictions on the use of agency work

Justification: to guarantee continuity, accountability and management of the foundation that maintains the *Bureau Jeugdzorg* [Youth Care Office]; the Youth Care Office must have access to employees with expertise in the assessment and management of psychiatric problems in young people

II) Collective agreements

The review of restrictions/prohibitions in collective agreements is carried out by the social partners. Social partners in the Stichting van de Arbeid [Labour Foundation] (their consultative body at national level) identified the categories of provisions of collective agreements that might be classified as a prohibition or a (potential) restriction. The Foundation then considered which of those provisions are justified *a priori* and in general. Employers and employees did not reach the same conclusions for all categories of provisions.

The Labour Foundation underlined in particular that:

- the inventory was compiled in the knowledge that the Commission supports a review in which all restrictions/prohibitions are identified, even if they can be excluded from a review because they are justified under Article 4(4) of Directive 2008/104/EC
- it looked not only at the explicit purpose of the provisions of collective agreements, but also at their effect; however, there are provisions of collective agreements which have a restrictive effect on the use of agency workers, but for reasons arising from the objectives and provisions of the Directive: many provisions of collective agreements

are a prerequisite

- for the proper functioning of the agency work system.

The following categories of provisions of collective agreements have been assessed by the Labour Foundation:

a) Provisions representing a (potential) restriction or prohibition on the use of agency workers

- capping of the number or percentage of agency workers in a company or sector
- provisions which cap the number of agency workers over a period/for the duration of the assignment, or provisions on the basis of which an enterprise may only take on agency workers at the end of a specified period
- provisions whereby agency workers may not carry out work ‘which due to its nature’ is normally carried out by employees of the user undertaking
- preconditions relating to appointment of staff (many variants: e.g. purely to cope with peaks and sickness or activities that are known to be of a temporary nature; provisions specifying that vacancies in the user undertaking must be filled first with the undertaking’s own employees; provisions specifying that the employment of agency workers must be kept to a minimum)
- provisions on education/training for agency workers (which qualify but also act as a selection criterion)
- provisions which require or recommend use of certified or recognized/*bona fide* temporary-work agencies
- prior information to/approval from trade unions and/or Works Council with regard to the use of agency workers or the number of agency workers to be used
- provisions imposing contributions to a social fund for the relevant sector (for purposes such as training)

b) Provisions in respect of which the opinions of employers and employees differ on whether they constitute potential restrictions or prohibitions

- scope of the respective collective agreements of the temporary-work agency and of the user undertaking
- remuneration and other working and employment conditions (in particular, deviation from the rule according to which the agency worker benefits from the hirer's remuneration after 26 weeks in the same user undertaking and with the same agency, the application of equal treatment being brought forward or postponed)
- duty to verify [*vergewisplicht*] in relation to remuneration (provisions which require the user undertaking to verify that the agency worker is remunerated in accordance with the user undertaking's collective agreement)
- changes to the 'chain provision' [*ketenbepaling*] (provisions relating to the way in which the collective agreement counts consecutive periods in order to establish whether there is successive employment)
- provisions stating that the remuneration provisions in the user undertaking's collective agreement, rather than those in the agency's collective agreement, must be applied to skilled workers (who thereby receive the same remuneration as employees in the user undertaking)

Moreover, the Labour Foundation mentions the following category of provisions by indicating that it is not a restriction:

- provisions whereby agency workers who work in a user undertaking and subsequently take up employment there do not have to undergo a trial period

As regards the review for the public sector, the social partners have identified restrictions relating to the duration to the use of agency workers in a few collective agreements in the education sector. They maintain that these restrictions comply with Article 4 of the Directive since they serve to protect the position of employees in a public service and to prevent abuse; moreover, quality in education calls for continuity in the teaching force. No restrictions have been detected by the social partners in other government sectors.

Review/consultation of the social partners:

The social partners have been involved via the Labour Foundation, which is the consultative body of the following central organisations of employers and employees: Vereniging VNO-NCW, MKB-Nederland, LTO-Nederland, FNV, CNV and Vakcentrale MHP.

With regard to the provisions which both employers and employees consider to be a (potential) restriction and which are not or cannot be classed as justified *a priori*, the Labour Foundation asked the decentralised parties to collective agreements to conduct a review in order to establish whether and on what grounds those provisions are justified or unjustified. However, the Labour Foundation received only a few responses from decentralised parties to collective agreements. Consequently, it was unable to provide an accurate overview of the extent to which the provisions of those collective agreements may or may not comply with Article 4 of the Directive, or of the action taken in this respect by the parties to the collective agreements.

It could be concluded that collective agreements contain hardly any prohibitions or restrictions on the use of agency workers. At the request of the Labour Foundation, the Ministry of Social Affairs and Employment will carry out a factual assessment of provisions of collective agreements concerning temporary agency work. The completion of this assessment is expected by the end of 2013. If justified by the results of the assessment, the Labour Foundation will subsequently hold consultations with decentralised parties to collective agreements.

PL (POLAND)

Restrictions/prohibitions and justifications provided:

- No possibility of concluding a contract for an indefinite period (a temporary-work agency shall employ agency workers on the basis of an employment contract for a specified period, or an employment contract for a period for which specific work is to be performed)

Justification: does not constitute a restriction on the use of agency work; is justified by the nature of temporary agency work, which is only to be used for tasks which are time-limited in nature, seasonal or ad hoc; the statutory exclusion of the possibility of using contracts for an indefinite period in the temporary agency work system is dictated both by the interests of agency workers, and by those of the temporary-work agency

- Restriction on the nature of the tasks which may be assigned to agency workers (only tasks of a seasonal, periodic and ad hoc nature, substitution for an absent worker and tasks which cannot be performed by a deadline by the user undertaking's own employees)

Justification: need to ensure proper functioning of the labour market and to prevent abuses; temporary nature of the tasks which can be carried out as part of agency work; ensure that – in principle – use of workers from a temporary-work agency should not take place at the cost of permanent employment for workers

- Prohibition of particularly hazardous work

Justification: need to protect agency workers from an increased risk of loss of health or life, chiefly through lack of the experience that permanent workers gain as a result of the length of time spent in the specific work environment, and familiarity with hazards that occur during the performance of the work they are allocated

- Prohibition to occupy a position in which a worker of the user undertaking had been employed, and with whom the employment relationship had been terminated, for reasons unrelated to workers, within the last 3 months preceding the envisaged date of commencement of agency work

Justification: prevent advantage being taken of the temporary agency work system to use agency workers to replace a user undertaking's own workers following their prior release from work

- Prohibition on use of agency workers to fill a position in which a worker of the user undertaking is employed during a period while the latter is involved in a strike

Justification: the exclusion plays a protective role in relation to a user undertaking's own workers; under the terms of Recital 20 of Directive 2008/104/EC, 'The provisions

of this Directive on restrictions or prohibitions on temporary agency work are without prejudice to national legislation or practices that prohibit workers on strike being replaced by temporary agency workers’

- Restriction on the period for which agency work may be performed for a single user undertaking: within any continuous period of 36 months, the total period during which an agency worker performs agency work for a single user undertaking may not exceed 18 months (12 months before amendment in 2009); if an agency worker continuously performs agency work for a given user undertaking which is normally performed by an absent worker employed by that user undertaking, the period of performance of agency work may not exceed 36 months; on completion of the performance of agency work referred to above, the agency worker may not again be assigned to the same user undertaking within a period of 36 months

Justification: temporary nature of the tasks performed as temporary agency work, which is a feature of the temporary agency work system adopted in Poland; protective function in respect of agency workers; no restrictions where an agency worker is employed by a single agency for different user undertakings

- Union control of use of agency work (a user undertaking is obliged to inform the representative union organisation of its intention to assign the performance of work to a temporary agency worker; a user undertaking that intends to assign work for more than 6 months to an agency worker must take steps to have this intention approved by the representative union organisations; a user undertaking is obliged to supply union organisations with information)

Justification: intended to reinforce regular monitoring of the use of agency work (but the measure is not covered by Article 4)

- Prohibition on use of an employer’s own worker as an agency worker (an employer may not be a user undertaking in relation to workers who are parties to employment relationships with him)

Justification: aimed at eliminating situations where an employer additionally makes use, via a temporary-work agency, of workers who are currently employed by him

- Duty to repeat preliminary medical tests and to hold repeat health and safety training (restriction indicated by the Association of Employment Agencies)

Justification: ensure that workers have appropriate and safe conditions working conditions, and take account of the requirements of Directives 89/391/EEC and 91/383/EEC (safety and health at work); need to ensure protection of workers – is not a restriction on the use of agency work

Review/consultation of the social partners:

The following social partners (representative organisations under Polish law) were asked to

submit their views on restrictions/prohibitions in force:

a) trade unions:

- Independent Trade Union [NSZZ] ‘Solidarność’
- Ogólnopolskie Forum Związków Zawodowych [Polish National Trade Union Forum]
- Forum Związków Zawodowych [Trade Union Forum]

b) employers’ organisations:

- Polska Konfederacja Pracodawców Prywatnych [Polish Confederation of Private Employers – *‘Lewiatan’*]
- Pracodawcy Rzeczypospolitej Polskiej [Employers of the Republic of Poland]
- Związek Rzemiosła Polskiego [Polish Craft Union]
- Business Centre Club

Comments were also submitted by the Stowarzyszenie Agencji Zatrudnienia [Association of Employment Agencies].

The concerns and proposals expressed by the social partners during the consultation process will be borne in mind during subsequent work to assess how the applicable provisions are working.

PT (PORTUGAL)

Following an agreement with the social partners, the Government approved on 2 February 2012 a draft amendment of the Labour Code, which was submitted to the National Assembly. Since the agreement with the social partners did not include a review of the provisions governing agency work, it is not considered appropriate to seek any changes to them as a result of consulting the social partners.

Besides, the Portuguese Confederation of Industry (CIP) and the Portuguese Association of Private Sector Employment Agencies (APESPE) explained in their opinions that the Government's programme had stated that the following measures would be put in place:

- admissibility of recourse to agency work provided there is a transitory need for work
- possibility of dispensing with justification, provided that certain percentage limits on contracting of this type, in relation to the total number of workers for the company, are respected

Restrictions/prohibitions and justifications provided:

The opinion of the Portuguese Confederation of Commerce and Services refers to a letter from the Directorate-General for Employment and Industrial Relations of 14 October 2011 which identified a series of prohibitions or restrictions on the use of agency work, such as:

- situations where the use of temporary agency work is permitted
- duration of temporary agency work
- use of agency workers in jobs particularly dangerous to their health or safety or in order to meet requirements previously satisfied by a worker whose contract ended within the preceding 12 months as the result of a collective or other redundancy procedure

According to the Working Conditions Authority:

- Requirement for temporary-work agencies to obtain administrative authorisation
Justification: justified, given the special circumstances of agency work, on grounds of general interest and to ensure that the labour market functions properly
- Requirement to provide a financial guarantee, and a specific financial guarantee in order to use workers abroad
- Prohibition on the use of agency work in jobs which are particularly dangerous in terms of health and safety, except if the agency worker is qualified for the job

General justification: the restrictions in the Labour Code are essentially intended to protect agency workers, in particular in relation to health and safety at work, and are justifiable on grounds of general interest relating to the prevention of accidents at work and occupational diseases; the obligations imposed by the legislation also aim at preventing discrimination compared with the user undertaking's workers in all aspects of employment and health and safety and seek to ensure that the market functions properly

According to the Portuguese Confederation of Commerce and Services:

- Limitation of ancillary activities that may be carried out by temporary-work agencies to specific fields of human resources ('perform human resources selection, careers guidance and vocational training, consultancy and management activities ...')
- Temporary agency work and fixed-term employment are not placed on an equal footing (distinction between the situations where fixed-term contracts and temporary agency contracts are permitted; permitted duration for agency work is shorter than for fixed-term employment)

According to the General Confederation of Portuguese Workers (CGTP):

- Temporary agency work may only be contracted for a "fixed-term", either specifying an expiry (*certo*) or for the duration of a specific task (*incerto*)

According to the Portuguese Confederation of Industry (CIP):

- Limitation, through an exhaustive list, of the circumstances in which it is permitted to conclude a contract for the use of agency work; the list does not even include all the circumstances in which the use of fixed-term employment is permitted
- Limitation of the duration of contracts

According to the Portuguese Tourism Confederation (CTP):

- Restriction on the possibility to conclude successive temporary agency work contracts (where the maximum duration of a contract for use of temporary agency work has been reached, an agency worker may not succeed in the same job before a period of one third of the term of that contract, including renewals, has elapsed – exceptions are

possible in specific cases)

- Liability of the user undertaking where it concludes a contract for use with an agency which does not hold a licence to carry out that activity
- Where a contract for use of agency work is concluded by an unlicensed agency, joint and several liability of the user undertaking for amounts owing to the worker arising from the contract of employment or its breach or termination, relating to the last 3 years, and for the corresponding social security contributions
- Obligation for user undertakings to carry out medical examinations of agency workers

According to the Portuguese Association of Private Sector Employment Agencies (APESPE):

Without explicitly referring to restrictions/prohibitions, APESPE formulates a series of "measures and proposals for the Portuguese economy and employment" in the field of agency work, in particular:

- review the upper limits for duration of contracts, which should be increased to 3 years
- in employment contracts of indefinite duration for temporary provision of workers, assignments should no longer be subject to conditions of admissibility and duration
- use of agency work should be permitted in the "objective" situations where fixed-term contracts are permitted
- the "on first demand" surety for the exercise of the activity of temporary-work agency (€ 130.707,50 in 2011) should be changed to a normal surety

Review/consultation of the social partners:

The following social partners have provided their opinions:

- Portuguese Confederation of Industry (CIP)
- Portuguese Confederation of Commerce and Services
- Portuguese Association of Private Sector Employment Agencies (APESPE), a member of the Portuguese Confederation of Commerce and Services
- Portuguese Tourism Confederation (CTP)
- General Confederation of Portuguese Workers (CGTP)

RO (ROMANIA)

Restrictions/prohibitions and justifications provided:

RO refers to a number of amendments brought to the applicable legislation in order to eliminate or reduce certain restrictions or prohibitions. The new provisions stipulate in particular that:

- Users may have recourse to temporary-work agencies for the execution of specific temporary tasks: this provision is retained; however, the prohibition on users having recourse to temporary-work agencies except under certain conditions (to replace an employee whose contract is suspended; to provide certain seasonal services; to provide certain specialised or horizontal services) is lifted
- Temporary-work agencies may sign employment contracts for an indefinite duration (in contrast to the previous provisions whereby agencies signed employment contracts for one or more temporary assignments)

Moreover, Government Decision No 1256/2011 on the operating conditions and authorisation procedure for temporary-work agencies reviews their operating conditions and clarifies a number of aspects (which appear to be unrelated to restrictions and prohibitions: coordination and management of agency workers by the user, principle of equal treatment, rules relating to operating permits...).

General justification: the amendments made to the applicable legislation remove a number of restrictions and prohibitions on the use of agency work so as to protect agency workers and the proper functioning of the labour market, without giving rise to abuses.

Review/consultation of the social partners:

In 2011, in the context of transposing the Directive, the Romanian authorities collaborated with the social partners over the drafting and finalisation of the legislative framework. The Asociația Română a Agențiilor de Muncă Temporară (ARAMT) [Romanian Temporary Agency Workers Association] and nationally representative employers' organisations and trade unions made an important contribution to the drafting of the legislative framework for temporary agency work.

The draft Government decision on conditions for the functioning of temporary agency work and the authorisation procedure for temporary agency work was submitted for debate and approval to the Committee for Social Dialogue within the Ministry of Employment, the Family, Social Protection and the Elderly. The Committee is made up of representatives of the Ministry and of nationally representative employers' and trade union confederations.

The Committee met on 19 April 2011, with the participation of representatives of the following organisations:

- Confederația Patronală din Industria României – CONPIROM [Confederation of Romanian Industrial Employers],
- Confederația Națională Sindicală 'Cartel Alfa' ['Cartel Alfa' National Trade Union Confederation],
- Blocul Național Sindical [National Trade Union Bloc],
- Consiliul Național al întreprinderilor Mici și Mijlocii din România – CNIPMMR [Romanian National Council of Small and Medium-sized Enterprises],
- Confederația Națională a Sindicatelor Libere din România – Frăția [National Confederation of Free Trade Unions of Romania – Brotherhood],
- Confederația Sindicală Națională 'Meridian' [National Trade Union Confederation – Meridian]

The proposals sent by Blocul Național Sindical were discussed and the social partners expressed their views on the draft Government Decision subject to debate. These were recorded in a position paper that accompanied the legislative act throughout the endorsement process.

SE (SWEDEN)

Restrictions/prohibitions and justifications provided:

The Government set up an "Inquiry" to consider and submit proposals as to what steps need to be taken to transpose the Directive; the Inquiry was assisted by a reference group containing representatives of the social partners. The Inquiry carried out a review of the prohibitions and restrictions following from legislation or established practice. Its report of January 2011 was circulated for consultation to a large number of bodies, including the social partners.

In March 2011, the Ministry of Employment asked the social partners to carry out a corresponding review of obstacles in collective agreements.

I) Restrictions and prohibitions in legislation or practice

- Obligation for an employer bound by a collective agreement to negotiate with the employee organisation before deciding to 'allow a particular person to perform certain work' (meaning that the work is subcontracted or entrusted to an external party) on his behalf or in his business

Justification: to prevent the circumvention of employment law and collective bargaining agreements; justified in the public interest, particularly by the need to ensure that the labour market functions smoothly and that abuses are prevented

- Restrictive access of part-time agency workers with undetermined working hours to 'top-up compensation' (covering the difference between the part-time work and the average working hours of the jobseeker prior to unemployment) from an unemployment insurance fund

Justification: the Inquiry did not believe that the obstacle was justified in the public interest; the practice has been altered, so that part-time agency workers are now treated in the same way as other part-time workers as regards access to compensation from the unemployment insurance

- Prohibition to hire out an agency worker to his former employer in the first 6 months after termination of employment with the latter

Justification: the Inquiry found that the provision made the hiring-out of workers more difficult and that it was not justified in the public interest; the waiting period was abolished with effect from 1 January 2013 through changes in the law on private labour supply

II) Restrictions and prohibitions in collective agreements

The employers' ability to use agency workers instead of re-employing employees whose employment was terminated with rights to priority of re-employment under Section 25 of the Employment Protection Act (1982:80) was an important issue in the 2010 collective bargaining round. The social partners in the private sector subsequently agreed on certain provisions, whose details varied from sector to sector. The content of these agreements is commented on in the opinions from the social partner organisations.

The social partner organisations have pointed to the following:

Confederation of Swedish Enterprise and Swedish Staffing Agencies:

It is impossible to perform an inventory of all existing collective agreements, particularly at local level. A large number of regulations in both central and local collective agreements could constitute an obstacle to the use of agency work.

Prohibitions and restrictions to be found in collective agreements are notably:

- Obligation to negotiate on the use of temporary agency workers where there are previous employees with a right of priority to re-employment who would be able to perform the work instead of agency workers (e.g. in the collective agreements for the retail sector, the paper and pulp industry, the construction sector and the energy sector)
- Collectively agreed reinforced right of priority to re-employment: during the period in which workers have such a right, temporary agency work can be used for a total of 30 days where this is justified by the time limit; any other use of agency work requires prior discussions between the undertaking and the shop union
- The agreement for maritime officers and crew specifies that before work duties are outsourced, the shipping company must ensure that a valid collective agreement is in place for the workers / temporary agency workers who are needed
- Some agreements covering pilots stipulate that any use of temporary agency work must be subject to negotiations under the Codetermination Act
- An agreement covering pilots specifies that companies have the right to resort to temporary agency workers, but up to a maximum of 10% of the pilots employed

Reference is also made to the following restrictions:

- Requirement for the temporary-work agency used by an undertaking to have a collective agreement with a particular trade union organisation
- Lists of approved undertakings from which agency workers can be obtained
- Prohibition to give notice of termination during the period in which agency work is being used
- Ceilings for the number of agency workers that may be used.

It is doubtful whether the above-mentioned prohibitions and restrictions can be considered as justified on grounds of general interest.

Swedish Agency for Government Employers:

There are no regulations prohibiting or restricting temporary agency work in the collective

agreement applicable in the state sector.

Swedish Trade Union Confederation (LO):

In the 2010 round of collective negotiations, special negotiation arrangements in relation to the use of temporary agency workers were adopted in a number of collective agreements. These rules, which oblige user undertakings to negotiate with unions, aim at preventing the possibility of circumventing the right of priority to re-employment laid down in the Employment Protection Act by using agency work. It is unclear whether these arrangements are to be considered obstacles, but in any case they can be justified on grounds of general interest, in particular by the need to ensure that the labour market functions properly and that abuses are prevented.

Swedish Confederation of Professional Associations (Saco):

The Saco affiliates carried out a review of the collective agreements to which they are party and did not find any prohibitions or restrictions on the use of temporary agency work.

Swedish Association of Local Authorities and Regions (SKL):

There are no prohibitions or restrictions on the use of agency work in the collective agreements for municipalities, local authorities and regions entered into by SKL.

Swedish Confederation of Professional Employees (TCO):

Obstacles to the use of temporary agency work can be found in the arrangements introduced in conjunction with the 2010 round of collective negotiations. Provisions laying down an obligation to negotiate with unions in order to avoid circumvention of the right of priority to re-employment through the use of temporary agency work are relatively common. Such provisions can be justified on grounds of general interest, in particular by the need to ensure that the labour market functions properly and that abuses are prevented.

Review/consultation of the social partners:

The following organisations have submitted opinions to the Ministry:

- Confederation of Swedish Enterprise and the Swedish Staffing Agencies (joint opinion)
- Swedish Agency for Government Employers
- Swedish Trade Union Confederation (LO)
- Swedish Confederation of Professional Associations (Saco)
- Swedish Association of Local Authorities and Regions (SKL)
- Swedish Confederation of Professional Employees (TCO)

SI (SLOVENIA)

Restrictions/prohibitions and justifications provided:

Prohibition to assign agency workers to another user:

- when this would represent replacement of workers employed with the user who are on strike
- when the user has, during the past 12 months, terminated the employment contracts of a large number of workers employed with him
- in cases of workplaces for which the user's risk assessment shows that workers are exposed to dangers and risks which have resulted in provision being made for measures to reduce or limit exposure time
- in other cases which can be laid down by branch collective agreement if they guarantee greater protection for workers or if required for reasons pertaining to the health and safety of workers; the former possibility of providing for a ban was restricted (previous wording: "in other cases which can be laid down by branch collective agreement") – however, none of the branch collective agreements makes provision for any restriction or prohibition
- when the number of agency workers at the user undertaking would exceed 25% of the number of employees of the user, unless the branch collective agreement states otherwise; this limitation does not include agency workers who have an open-ended contract of employment and does not apply to user enterprises employing 10 workers or less.

General justification: on grounds of general interest (protection of agency workers and requirements of health and safety at work)

Review/consultation of the social partners:

Prior to the legislative procedure, the matter was discussed and coordinated with the social partners. The coordination work/negotiations took place at several meetings between the social partners and at the Economic and Social Council (ESC), a tripartite body gathering the social partners and the Government.

Representatives of employers from the following bodies took part in the coordination work:

- Association of Employers of Slovenia (ZDS),
- Chamber of Commerce and Industry of Slovenia (GZS),

- Chamber of Craft and Small Business of Slovenia (OZS),
- Association of Craft and Small Business Employers of Slovenia (ZDOPS) and
- Chamber of Commerce of Slovenia (TZS).

The workers' representatives in the negotiations were:

- Association of Free Trade Unions of Slovenia (ZSSS),
- PERGAM Confederation of Trade Unions of Slovenia,
- *Neodvisnost* (Independence) Confederation of New Trade Unions of Slovenia,
- *Alternativa* Slovenian Association of Trade Unions,
- *Solidarnost* Association of Workers' Trade Unions of Slovenia, and
- Confederation of Public Sector Unions of Slovenia (KSJS).

SK (SLOVAKIA)

Restrictions/prohibitions and justifications provided:

SK mentions the following, without referring to the existence of any restriction or prohibition on the use of agency work:

a) Regulations laid down in the Labour Code

- No exceptions from the labour law arrangements for employment in temporary-work agencies; only a "positive exception": the restrictions regarding fixed-term employment (on successive fixed-term employment periods: extension or re-negotiation up to 3 times in 3 years) do not apply to employment through a temporary-work agency
- No restrictions or prohibitions relating to temporary-work agencies (i.e. no percentage restriction for employers on the number of agency workers, no restriction on the operations of agencies solely in legally established sectors, no restrictions on the duration of temporary assignments or on the number of successive temporary agency assignments, etc.)

b) Regulations laid down in the Employment Services Act

SK lists a series of provisions which appear to be unrelated to prohibitions/restrictions (principle of equal treatment, right to free assembly and collective bargaining, access to vocational training and to childcare facilities, obligation for agencies to have a permit...).

Review/consultation of the social partners:

In the absence of any restrictions/prohibitions, SK does not refer to a consultation of the social partners.

UK (UNITED KINGDOM)

Restrictions/prohibitions and justifications provided:

The UK Government does not believe that there are any restrictions or prohibitions on the use of agency workers.

Review/consultation of the social partners:

The Government has reviewed the applicable legislation, consulted with social partners and carried out repeated public consultations.