

**XXIst Meeting of European Labour Court Judges**  
**30 September – 1 October 2013**  
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*Topic 1 QUESTIONNAIRE*

**Temporary work agencies:  
Regulation and challenges for Labour Courts**

General Reporter: Professor Alan C. Neal  
Employment Tribunals, United Kingdom

**1. Preliminary**

- 1.1 Is “temporary work” in any form a permissible mode of labour engagement in your country?
- 1.2 (a) Do “temporary work agencies” exist in your country?  
(b) If so, are their activities permitted under the law in your country?
- 1.3 (a) Does the law of your country contain a definition of “temporary work” and/or “temporary work agency” (or some functionally similar phenomenon)?  
(b) If so, please set out that definition and indicate the statutory or other source from which it derives.
- 1.4 Is your country (directly or indirectly) bound by regulatory instruments and/or regulatory practice developed at the level of the European Union (e.g. as an EU Member State; a Member State of the EEA; a “pre-accession” State; or in some other way)?
- 1.5 (a) Is your country (directly or indirectly) bound by regulatory instruments and/or regulatory practice developed in any other supra-national context?  
(b) If so, please indicate what that context (or those contexts) might be, and the manner in which such binding effect comes about.

**2. Labour market context and history**

- 2.1 (a) What general attitudes are there in your country towards the phenomenon of temporary work and the activities of temporary work agencies: (1) on the parts of trade unions or other worker organisations; (2) on the parts of employers and representative organisations of employers; and (3) on the part of your government and lawmakers?  
(b) Please outline whether these phenomena are regarded (more or less) positively or negatively, and indicate any particular issues lying at the heart of those attitudes.
- 2.2 (a) Have these attitudes undergone any changes over time?  
(b) If so, in what particular respects?
- 2.3 (a) Does your country have (or has it had) a historical tradition of not permitting “labour exchange activities” to be undertaken by private organisations?  
(b) If so, has this changed (and what has driven such a change)?
- 2.4 (a) Has your country undergone any significant process of “privatisation” of formerly public

services/activities?

- (b) If so, has this given rise to any increase in the extent to which temporary work features in the labour market and to the emergence/growth of temporary work agencies?
- 2.5
- (a) Have phenomena such as “outsourcing” or “off-shoring” come to prominence in your national labour market in recent years?
  - (b) If so, has this given rise to any increase in the extent to which temporary work features in the labour market and to the emergence/growth of temporary work agencies?

### 3. Extent of the phenomena: Statistical data

- 3.1
- (a) Are there “official” statistics/data published in your country which indicate the extent of the incidence of temporary work and the extent of activities carried on by temporary work agencies?
  - (b) If so, please provide the most recent data (if possible, along with selected historical data indicating modern trends).
- 3.2
- (a) Are there other sources of data depicting the extent of temporary work and the activities of temporary work agencies in your country?
  - (b) If so, please provide the most recent data (if possible, along with selected historical data indicating modern trends).
- 3.3
- In what sectors of the labour market (and in respect of what kinds of jobs/tasks) are temporary work arrangements and temporary work agencies to be found?
- 3.4
- (a) Are there in your country any sectors (e.g. “essential public services”), or particular types of task, or particular circumstances (e.g. in the event of strike or other industrial action) in which temporary work arrangements are not permitted and/or in relation to which temporary work agencies are not permitted to carry on activities?
  - (b) If so, please set out where this might be the case, and indicate what the underlying policy reasons are said to be for this situation.

### 4. Formal regulatory sources: Supra-national

- 4.1
- Has your country ratified ILO Convention No.34 (the *Fee-Charging Employment Agencies Convention*) of 1934, and, if so, when did this take place?
- 4.2
- Has your country ratified ILO Convention No.88 (the *Employment Service Convention*) of 1948, and, if so, when did this take place?
- 4.3
- Has your country ratified ILO Convention No.96 (the *Fee-Charging Employment Agencies Convention (Revised)*) of 1949, and, if so, when did this take place?
- 4.4
- Has your country ratified ILO Convention No.181 (the *Private Employment Agencies Convention*) 1997, and, if so, when did this take place?
- 4.5
- (a) Is your country bound by the provisions in *Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work*?
  - (b) If so, please outline the measures in your country to implement the provisions of that Directive.
- 4.6
- (a) Is your country bound by the provisions of any other instrument(s) at a supra-national level relating (directly or indirectly) to temporary work and/or the activities of temporary work agencies (e.g. ***Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*** or *Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*)?

- (b) If so, please indicate what these might be and the manner in which their provisions impact upon your domestic legal system.

## 5. Formal regulatory sources: National

- 5.1 Has the law of your country drawn inspiration from, or followed particular provisions in (a) *The Employment Service Recommendation, 1944* (Recommendation No.72); (b) the *Employment Service Recommendation, 1948* (Recommendation No.83); or (c) the *Private Employment Agencies Recommendation, 1997* (Recommendation No.188)?
- 5.2 To what extent (if at all) do any of your country's domestic regulatory provisions owe their origins/form to any of the Conventions or Recommendations mentioned in Part 4 above (in particular, ILO Conventions No.88 and No.181)?
- 5.3 To what extent (if at all) do any of your country's domestic regulatory provisions owe their origins/form to *Directive 2008/104/EC on temporary agency work*?
- 5.4 (a) Are your country's regulatory provisions in relation to temporary work and/or the activities of temporary work agencies influenced by the provisions of any other instrument(s) at a supra-national level relating (directly or indirectly) to those matters?
- (b) If so, please indicate what these might be.

## 6. Regulating the temporary work agency

- 6.1 (a) In what way(s) are temporary work agencies established in your country?
- (b) Are they set up and regulated under normal company law rules?
- (c) Are they treated as "special organisations" in any way?
- 6.2 (a) Do temporary work agencies require a licence or any other form of prior authority in order to set up and carry out their business?
- (b) If so, please describe briefly how this authorisation is carried out.
- 6.3 (a) Are temporary work agencies subject to supervision/administration of any particular kind in your country?
- (b) Who is responsible for the tasks of supervision/administration of temporary work agencies and their activities?
- 6.4 (a) Are matters relating to the supervision/administration of temporary work agencies subject to adjudication under the "normal" regulatory arrangements of the Civil Law, under Penal Law, under special regulatory arrangements relating to "Company Law", under special regulatory arrangements relating to "Commercial Law", or under special regulatory arrangements relating to "Labour Law"?
- (b) If so, please indicate what court(s) or other bodies have power to deal with issues arising in relation to the supervision/administration of temporary work agencies?
- 6.5 Where a temporary work agency provides the services of persons to an "end-user" undertaking, what responsibilities (if any) does that temporary work agency have, as regards such persons, in relation to matters such as:
- (a) Checking immigration status, residence permit validity, work permit validity, or similar;
- (b) Payment of (or accounting for) personal tax liability;
- (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, etc.);

- (d) Ensuring health, safety and hygiene at work;
- (e) Payment of wages (including observance of minimum wage requirements);
- (f) Informing and/or consulting with “workers’ representatives” (whether trade unions or any other form of representative) in relation to any particular matters.

6.6 How is the discharge of such responsibilities monitored/policed/reported in your country?

6.7 Do the labour courts in your country have power to deal with disputes or issues arising out of the discharge of such responsibilities by the temporary work agency?

## **7. Regulating the “end-user” of temporary work agency services**

7.1 Where an undertaking makes use of the services of persons provided by a temporary work agency, what responsibilities (if any) does that undertaking have, as regards such persons, in relation to matters such as:

- (a) Checking immigration status, residence permit validity, work permit validity, or similar;
- (b) Payment of (or accounting for) personal tax liability;
- (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, *etc.*);
- (d) Ensuring health, safety and hygiene at work;
- (e) Payment of wages (including observance of minimum wage requirements)
- (f) Informing and/or consulting with “workers’ representatives” (whether trade unions or any other form of representative) in relation to any particular matters.

7.2 How is the discharge of such responsibilities monitored/policed/reported in your country?

7.3 Do the labour courts in your country have power to deal with disputes or issues arising out of the discharge of such responsibilities by the “end-user” of temporary work agency services?

## **8. The worker: Regulating the “triangular relationship”**

8.1 How free are the temporary work agency and the “end-user” to regulate their own commercial relationship (eg. through “freedom of contract”) in your country?

8.2 (a) Are the temporary work agency and the “end-user” in your country free to “divide up” their duties/liabilities/responsibilities in relation to persons who provide services to the “end-user” through the medium of a temporary work agency (including those specifically referred to in Parts 6.5 and 7.1 above)?

(b) If so, are there, nonetheless, any restrictions upon the extent to which this can be done?

8.3 Do temporary work agencies and/or “end-users” in your country make use of “indemnity” or “insurance” arrangements in relation to the discharge of their duties/liabilities/responsibilities relating to persons who provide services to the “end-user” through the medium of a temporary work agency (such as those referred to in Parts 6.5 and 7.1 above)?

8.4 What role do “the social partners” play in regulating or supervising temporary work and the activities of temporary work agencies in your countries?

8.5 (a) Do matters such as the use of temporary work and the activities of temporary work agencies constitute the subject-matter for regulation through collective agreements between “the social partners” in your country?

- (b) If so, how widespread is such collectively agreed regulation, and what powers exist to ensure compliance with the provisions of any such collective agreements?
- 8.6 (a) Has the legal system in your country developed clear rules/criteria for determining who is “the employer” of a person who provides services to an “end-user” through the medium of a temporary work agency?
- (b) If so, what are those rules/criteria?
  - (c) If not, what problems currently arise in this context?
- 8.7 Is a person who provides services to an “end-user” through the medium of a temporary work agency regarded as a worker who enjoys “the normal range” of employment protections and/or social security benefits (such as the right to be paid wages due, the right not to be unfairly dismissed, or the right not to suffer discrimination at work) available to employed persons?
- 8.8 (a) Has the legal system in your country developed clear rules/criteria for determining whether a person who provides services to an “end-user” through the medium of a temporary work agency is a worker who qualified for “employment protections” and/or social security benefits?
- (b) If so, what are those rules/criteria?
  - (c) If not, what problems currently arise in this context?

**9. Access to justice – particularly before the Labour Courts**

- 9.1 To what extent (if at all) do matters of regulation for temporary work agencies fall within the jurisdiction of the labour courts in your country?
- 9.2 To what extent do disputes or other matters touching the “end-user” of services provided through the medium of temporary work agencies all within the jurisdiction of the labour courts in your country?
- 9.3 How common are such cases (having regard to the overall work-load/case-load) in your country’s labour courts?
- 9.4 What issues have emerged recently before the labour courts in your country in relation to the use of temporary work and the activities of temporary work agencies in your countries?
- 9.5 To what extent do those issues reflect current policy-making concerns at the “political” level in your country?
- 9.6 (a) Have the labour courts (or any other courts) in your country recently dealt with particular cases raising matters of general concern in relation to the use of temporary work and the activities of temporary work agencies?
- (b) If so, please indicate in brief outline any such case(s) – and, if available, please append a copy of any judgment/decision emerging therefrom.

**10. Miscellaneous**

- 10.1 (a) Are there any changes/innovations in relation to the use of temporary work and the activities of temporary work agencies currently “in the pipeline” in your country?
- (b) If so, please indicate what these might be and at what stage any such change/innovation might be.
- 10.2 (a) Is there any issue arising in relation to the use of temporary work and the activities of temporary work agencies in your country which has not been touched upon in the questions above?
- (B) If so, please indicate what this/these might be.