Temporary Agency Work: Regulation and Challenges for Labour Courts
Composite Questionnaire Responses

Question 1.1 Is "temporary work" in any form a permissible mode of labour engagement in your country?

Austria	Yes
Belgium	Yes
Denmark	Yes "Temporary work" and/or "temporary agency work" is permitted in Denmark.
Finland	Yes It is legally recognised and regulated.
Germany	Yes
Hungary	Yes "Temporary work" is a permissible mode of labour engagement in Hungary.
Ireland	Yes It is permitted. It should be noted that in Ireland the term temporary work is used to describe not only those whose services are supplied by a temporary work agency but also those who are directly employed on fixed-term or fixed purpose contracts. The term is generally understood in contra-distinction to permanent work or work pursuant to a contract of indefinite duration.
Israel	Yes Subject to the explanations below.

Netherlands	Yes
Norway	Yes See below at 6
Slovenia	Yes Temporary work is permissible mode of labour engagement in Slovenia: primary as temporary work based on employment contracts for fixed time, as temporary work of students and as possibility of performance of temporary work of pensioners.
Spain	Yes
Sweden	Yes Temporary work is permitted in Sweden since the early 1990s.
United Kingdom	Yes

Question 1.2 (a) Do "temporary work agences" exist in your country?; (b) If so, are their activities permitted under the law in your country?

Austria	(a) Yes (b) Yes, if they stick to the rules (e.g. compulsory registration).
Belgium	(a) Yes (b) Yes
Denmark	(a) Yes. Temporary work agencies exist and their activities are permitted in Denmark. b) Yes
Finland	(a) Yes (b) Yes
Germany	(a) Yes (b) Yes, if conditions are satisfied – authorisation of the Federal Employment Office (Bundesagentur für Arbeit - BA) required for commercial supply of temporary workers and, since 2011, in some cases for suppliers not operating commercially (e.g. among companies which belong to the same group - intragroup personnel service companies)
Hungary	(a) Yes, it exists. It means when an employee is hired out by a temporary employment company or a placement agency to a user enterprise for work (hereinafter referred to as "placement"), provided there is an employment relationship between the worker and the temporary employment company or the placement agency. (b) The 'hiring-out of workers' is governed by the Labor Code § § 214-222. Under the EU principle of free movement of services in any EEA Member State registered company engage in supply services, this implies that the rental company is entitled to operate under its own state law.

Ireland	(a) Yes (b) Yes
Israel	(a) Yes (b) Yes, by Manpower Contractors Law 1996, (the "Act of manpower contractors" or "Law").
Netherlands	(a) Yes (b) Yes
Norway	(a) Yes (b) Yes, however, there are strict rules on hiring-in of labour. See our general comments under no. 7. The Working Environment Act (The Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection etc) distinguishes between - and lays down different rules for - enterprises "whose object is to hire out labour" (temporary work agencies) on the one hand (section 14-12), and enterprises that do not have this as their purpose on the other hand (section 14-13) (See 1.3.a below) The hiring of labour from temporary work agencies is restricted. As a general rule, it is permitted to the extent that an employee may be employed temporarily. (See general comments under no. 7.) The hiring of labour from other enterprises - "production enterprises" - is permitted if the employee is permanently employed by the hirer-out. This is typically within the industry sector where the employer for a limited period hires out employees. (There are rules on consultation with the elected representatives.) In the following, we will limit our comments to the typical temporary work agencies- ie enterprises whose object is to hire our labour. The Civil Service Act [The Act of 4 March 1983 No. 3 relating to Civil Servants, etc. The Act applies to employees of the Norwegian Civil Service] also contains similar rules on hiring in of labour. Unless explicitly mentioned we will limit our comments to private sector and the Working Environment Act

Slovenia	(a) Private temporary work agencies exist in Slovenia, their number is even too large. (b) Legal base for founding of TWA was accepted in 1998.
Spain	(a) Yes (b) Yes
Sweden	(a) Yes Temporary agency work exists in Sweden and is permitted under Swedish law. Sweden is considered to have one of the most liberal legislations on temporary agency work in the EU (Ahlberg & Bruun). (b) Yes
United Kingdom	(a) Yes (b) Yes

Question 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.**

Austria	(a) Yes (b) The Law on Employee Assignment (Arbeitskräfteüberlassungsgesetz, AÜG), defines the activities falling under its scope as "the employment of employees assigned to third parties for work performance". According to that law, an "assigner of employees" (temporary work agency) is whoever contractually obliges employees to work for a third party. As a result, the agency is subject to all obligations any other employer would have vis-à-vis their workforce, and to some specific duties set out in the AÜG. The user undertaking has no contractual relationship with the employees it hires in on the basis of its contract with the agency. Nevertheless, it is bound by some obligations as if it was employing these individuals "directly". See questions 7 et seq. for details.
Belgium	(a) Yes (b) Article 1, § 1, of the 24 July 1987 Act on temporary work, temporary agency work and the posting of workers at user undertakings (hereafter: the 1987 Temporary Agency Work Act) defines temporary work as the activity, exercised on basis of a labour contract, with the purpose to ensure the replacement of a permanent employee, or to respond to a temporary increase of work, or to see to carrying out an exceptional task. Article 7, 1°, of the 1987 Temporary Agency Work Act defines a temporary work agency as an undertaking whose activity consists of engaging temporary workers (interim workers) to put them at the disposal of user undertakings with the purpose of performing temporary work that is permitted according to Chapter I.
Denmark	The new legislation on temporary agency work entered into force by 1 July 2013 (lov nr. 595 af 12. juni 2013 om vikarers retsstilling ved udsendelse af et vikarbureau m.v.). It contains a definition of temporary work agency (§ 2. I denne lov forstås ved: 1) Vikarbureau: En fysisk eller juridisk person, som indgår en arbejdsaftale eller et ansættelsesforhold med vikarer med henblik på at udsende dem til brugervirksomheder for midlertidigt at udføre arbejdsopgaver under disses tilsyn og ledelse.)
Finland	(a) Yes (b) A general definition of temporary agency workers is included in Sec. 7, Chapter 1 of the Employment Contracts Act (51/2001). In the provision temporary agency work refers to cases where the employer assigns an employee, with

	the employee's consent, for use by another employer (user enterprise), and the right to direct and supervise the work is transferred to the user enterprise. A similar definition can be found in the Occupational Health and Safety Act (738/2002), Sec. 3.
Germany	(a) See answer 1.3 (b) (b) Relevant German Law: Temporary Employment Act (Arbeitnehmerüberlassungsgesetz - AÜG) "temporary work": no definition of the keyword "temporary" (only "temporary" it is legal) "temporary work agency": - Employer acting as a "lender" (=supplier of labour), making employees available to third parties ("borrower"=user of the worker's services/"end-user") for work performance in the course of his economic activity - Source: § 1 AÜG - „Arbeitgeber, die als Verleiher Dritten (Entleihern) Arbeitnehmer (Leiharbeitnehmer) im Rahmen ihrer wirtschaftlichen Tätigkeit zur Arbeitsleistung überlassen"
Hungary	(a) Yes (b) Our Labour Code contain a definition of hiring-out of workers, lender, borrower, hired worker § 214, and seasonal work which is bound to the special period of the year § 90.
Ireland	(a) Yes The expressions "temporary work" or "temporary agency work" are not specifically defined in Irish law. The expression "fixed-term employee" is defined by s.2 of the Protection of Employee (Fixed-Term Work) Act 2003 as follows: - "fixed-term employee" means a person having a contract of employment entered into directly with an employer where the end of the contract of employment concerned is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event but does not include — employees in initial vocational training relationships or apprenticeship schemes, or

	employees with a contract of employment which has been concluded within the framework of a specific public or publicly-supported training, integration or vocational retraining programme" The Protection of Employees (Temporary Agency Work) Act 2012 defines an "agency worker" as: - "an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency" A temporary work agency is defined by the same statute as: - "[A] person (including a temporary work agency) engaged in an economic activity who employs an individual under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the first-mentioned person"
Israel	(a) Yes (b) Article 1 of the manpower Contractors law defines as follows: "Manpower - person engaged in the provision of manpower services to employees working for others, including private lodge within the meaning of the Employment Service Law 1959, which is engaged in providing manpower services"; Private bureau defined in the Employment Service Law - 1959, ("the Employment Services Act") as follows: "Who whose main business or part is in mediated work" – Law applies, in some of its sections also on service contractors in specific fields (Security and cleaning), which are not providing manpower but a function. Manpower Contractors Law also applies to temporary employment through manpower. Article 12A of the Law provides that the person shall not be an employee of a manpower actual employer / "user" more then nine months. (In exceptional cases, the Minister of Trade and Industry is allowed to extend the term of

	employment, until fifteen months). The article also states that as the employee was employed by the same "user" / actual employer a period higher than nine months, the employee will be considered as an employee of the "User", (with seniority employee during his employment by the Manpower Contractor personnel will be attached to the employee's seniority during his employment with the actual employer). Article 12A of the Law does not apply on an employee of a service contractor, on workers in Computing roles (maintenance, development and implementation of computer systems ,Article 13 of the Law) and on foreign workers in the construction sector (Article 12A (e)).
Netherlands	(a) Temporary work is a general concept and includes all kind of non-permanent work. A contract for a definite period (for a certain period or e.g. as long as a certain employee is ill) is considered to be temporary work. A temporary work agency (TWA) is more specific. Art. 7:690 Dutch civil code (DCC) gives a definition which covers the TWA: Article 7:690 Definition of 'secondment agreement' A secondment agreement (or temporary employment agency agreement) is an employment agreement under which the employer, within the framework of his business or professional practice, places the employee at the disposal of a third party in order to perform work under supervision and direction of that third party by virtue of an agreement for the provision of services between the third party and the employer. (b) See 1.3a
Norway	(a) Temporary work is, as mentioned under our general comments in no. 7, only permitted in certain cases. The Working Environment Act distinguishes between enterprises "whose object is to hire out labour" and those that do not have this purpose. There is no specific definition of "enterprise whose object is to hire out labour" However, in order for an undertaking not to be said to have the object of hiring out labour (and not covered by the strict restrictions that apply to "temporary work agencies), hiring must take pace within the main areas of activity of the hirer out and not more than 50 per cent of the permanent employees of the hirer-out must be engaged in the hiring activity", cf. section 14-13. According to the preparatory work of the provision, an overall assessment must be made. Hiring out of labour is, according to section 25 of the Labour Market Act [Act on Labour Market Services of 10

	December 2004 No. 76], hiring of an employee from an employer (hiring out) to a principal (hiring in) where the hired person is subject to instructions etc by the principal. (b) See above.
Slovenia	(a) There is no exact definitions of temporary work and temporary work agency in legislation. (b) Emphasis is on temporarily or restraint of length of such work in the legal texts: – in accordance with Employment Relationship Act (ERA) employment contract for fixed time as a rule can conclude for at most two years, this restraint applies also for hiring the agency workers, – in accordance with Labour Market Regulation Act (LMRA) pensioners can conclude special contract for performance of temporary work for at most 60 hours/month. Based on provision of Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP that the end of the employment contract or relationship should be determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event, ERA is listing reasons for conclusion of fixed-term employment contract, i.e.: work which by its nature is of limited duration, replacing a temporarily absent worker, temporarily increased scope of work, employment of a foreigner or person without citizenship who was granted a work permit for a defined period of time, performance of seasonal work, preparation or implementation of project-organised work, and other cases laid down in an Act and/or branch collective agreement. Temporary work agency is in accordance with LMRA every legal entity or natural person who concludes employment contracts with workers with the purpose of posting them to user undertakings where they temporarily work under the supervision of and in accordance with the instructions by user undertaking, and such employer is entered at the ministry responsible for labour in the register or in the records of foreign legal entities and natural persons who pursue the activity of posting workers to user undertakings.
Spain	(a) Yes (b) Temporary work = employment relationship for a fixed term Temporary work agency: A) Definition in Temporary Work Agencies Act-14/1994 ("Ley 14/1994, de Empresas de

	Trabajo Temporal") section 1; B) Wording: "A temporary work agency is that which activity consists in providing other user enterprise with temporary workers hired by the former"
Sweden	(a) Yes (b) The Agency Work Act (2012:854) defines temporary-work agency as any natural or legal person who employs temporary agency workers in order to assign them to user undertakings to work under their supervision and direction.
United Kingdom	(a) Yes (b) <u>The Temporary Worker</u> The starting point for identifying protected persons under United Kingdom labour law is normally by way of satisfying the statutory definition of 'employee' – to be found in section 295(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 and (in identical terms) in section 230 of the Employment Rights Act 1996. This stipulates that: "…'employee' means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment." A further group of protections is afforded to the (wider) group who satisfy the definition of 'worker', to be found in section 296(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 – mirrored by section 230(3) of the Employment Rights Act 1996 (which is in the same terms) – such that: "…'worker' (subject to the following provisions of this section) means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work – (a) under a contract of employment, or (b) under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; or (c) in employment under or for the purposes of a government department (otherwise than as a member of the naval, military or air forces of the Crown) in so far as any such employment does not fall within paragraph (a) or (b) above." More recently, both the National Minimum Wage Act 1998 and the Working Time Regulations 1998 have contained a definition of 'agency worker' in terms of an individual who:

	"…(a) is supplied by a person ('the agent') to do work for another ('the principal') under a contract or other arrangements made between the agent and principal; but (b) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal; and (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual." The eventual implementation of the provisions of Directive 2008/104/EC into domestic UK law was undertaken through the enactment of the Agency Workers Regulations 2010, which came into force on 1 October 2011. That implementing instrument reflects – as is normally the case with UK implementation of EU Directive provisions – an attempt to integrate the requirements of the Directive – which has application both in the private sector and across much of the public sector – within the 'natural shape' of existing domestic labour market regulation. Thus, the definitions included in Article 3 of the Directive find their way into the domestic statutory terminology through Regulations 2, 3 and 4, which, in particular, include a definition of 'worker', for the purposes of the Regulations, to mean: "…an individual who is not an agency worker but who has entered into or works under (or where the employment has ceased, worked under) — (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual." This has the consequence that the notion of 'agency worker' (which is defined in Regulation 3) applies, for the purposes of the 2010 regulatory arrangements, without interference from any notion of 'the worker' elsewhere in UK labour law. <u>The Temporary Work Agency</u> For a long time, the UK authorities have been content to regulate the business of temporary agency work provision through regulations designed to cover either what are described as 'employment agencies' or 'employment businesses'. Both have been the subject of regulation since the enactment of the Employment Agencies Act 1973, and are additionally subject to the provisions of the Conduct of Employment Agencies and Employment Business Regulations, which were introduced in 2003. This latter instrument was subjected to amendment by 2007 Regulations, which came into force in the Spring of 2008. The technical scope and form of that regulation is

currently under discussion as part of the UK government's strategies to reform labour market mechanisms in the name of 'growth, competitiveness and employment'.

Section 13 of the 1973 Act defined an 'employment agency' as 'the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them', while an 'employment business' was defined as 'the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity'. Notwithstanding subsequent minor amendment – whereby the expression 'workers' in the definition of an 'employment agency' was replaced by the term 'persons' – those definitions have been retained in the current versions of the statutory rules dealing with this activity.

Thus, in short, the 'employment agency' is seen by the 1973 Act as an organization providing 'services', whereas the 'employment business' is identified as an organization which supplies its own employed persons to a controlling end-user.

The same distinction is utilized in the Conduct of Employment Agencies and Employment Business Regulations 2003. There, the term 'agency' is used, defined by reference to the definition in section 13 of the 1973 Act, and 'includes a person carrying on an agency, and in the case of a person who carries on both an agency and an employment business means such a person in his capacity in carrying on the agency'. The expression 'employment business' features in both instruments, and is similarly defined in the 2003 Regulations by reference to the 1973 Act, while it also 'includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business'.

Since the enactment of the Agency Workers Regulations 2010, which came into force on 1 October 2011, the notion of the 'temporary work agency' is defined by Regulation 4 as the object of regulation under these implementing provisions.

<u>"Gangmasters"</u>

Mention should also be made of a specific regime which operates under the Gangmasters (Licensing) Act 2004 – a regulatory framework introduced in the wake of a tragedy involving cockle pickers off the North-West coast of England.28 'Gangmasters' are individuals or businesses who supply labour to, or who use labour to provide a

	service in, one of the regulated sectors to which the Act extends, and the protected class of 'workers' comprises individuals who do work to which the Act applies. The 2004 statute set up a 'Gangmasters Licensing Authority' to regulate labour providers in the regulated industries, and, with effect from the Autumn of 2006, made it a criminal offence to operate as, or to use, a gangmaster without a license. This regime operates to the exclusion of the 1973 Act and the 2003 Regulations.

Question 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)?

Austria	Yes
Belgium	Yes As one of the six founding EU Member States, Belgium is directly bound by regulatory instruments of the EU such as Directive 2008/104/EC.
Denmark	Yes Denmark is a member of EU and, accordingly, Denmark has implemented Directive 2008/104/EC on temporary agency work.
Finland	Yes As an EU Member State Finland is bound by Directive 2008/104/EC on temporary agency work.
Germany	Yes As an EU Member State (in particular by the Directive on Temporary Agency Work, 2008/104/EC)
Hungary	Yes The Hungarian Labor Code, in line with EU practice, that is EU compliant.
Ireland	Yes Ireland is a member of the European Union
Israel	No

Netherlands	Yes The Netherlands are part of the EU, and therefor bound by all EU rules.
Norway	Yes Norway is bound as a Member State of the EEA. Norway has, according to the Agreement on the European Economic Area (EEA), implemented Directive 2008/104/EC.
Slovenia	Yes As an EU Member State Slovenia is directly bound by regulatory instruments and regulatory practice developed at the level of the European Union.
Spain	Yes Spain, as a Member of the European Union, is bound by the Directive CEE 2008/104
Sweden	Yes Sweden is a member of the EU and thus bound by the Temporary Agency Work Directive (2008/104/EC).
United Kingdom	Yes The United Kingdom is a member of the European Union

Question 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.**

Austria	(a) No (b) n/a
Belgium	If by this question the ILO conventions mentioned in Q 4 hereafter are not meant, the answer is no.
Denmark	No, not as far as temporary agency work is concerned.
Finland	(a) Yes, Finland has ratified the ILO instruments mentioned below in Chapter 4 (b) When necessary, the domestic legislation has been amended so as to correspond to the requirements set out in the ILO instruments. As such, the ILO norms are non-self-executing.
Germany	(a) Yes (b) ILO Convention No. 88 - Convention concerning the Organisation of the Employment Service ILO Convention No. 96 - Convention concerning Fee-Charging Employment Agencies
Hungary	(a) Since 2004 Hungary is the member of the EU: the provisions of the Labour Code shall be construed in accordance with EU law. (Hungarian Labour Code § 5.) (b) The provisions of the Labour Code shall be construed in accordance with EU law. (Hungarian Labour Code § 5.)
Ireland	(a) No (b) n/a
Israel	(a) Yes. Israel is subject to the ratified ILO (see answers to questions 4 and 5). (b) Through regular reports to the ILO.

Netherlands	(a) The Netherlands are part of the EU, and therefore bound by all EU rules. (b) See 1.5a
Norway	(a) See 1.4 (b) See 1.4
Slovenia	(a) Moreover Slovenia is bound also by ratified conventions of ILO, that considered them at preparing national laws on contractual employment relationships and arranging of labor market. (b) n/a
Spain	(a) No (b) n/a
Sweden	In the 1990s Sweden denounced the ILO Convention 96 of 1949 on Fee-charging employment agencies. Sweden has not ratified the ILO convention 181 of 1997 on private employment agencies.
United Kingdom	(a) Yes. (b) The United Kingdom is subject to the provisions of the European Convention on Human Rights 1950, developed within the context of the Council of Europe. Observance of Convention rights is effected through mechanisms contained in the Human Rights Act 1998. The United Kingdom was also a founder member of the ILO, and has drawn inspiration (although arguably less so in recent years) in limited areas of "employment protection" from instruments developed at ILO-level (see below for ratification of relevant Conventions in this specific area).

Question 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.**

Austria	(a) Trade unions as well as works councils in enterprises generally take a strongly critical position, taken the risk that the rights they have achieved for their members may be threatened by the competition of agency employees working for lower wages, who can be conveniently sent back as soon as the undertaking does not need them any more. Naturally, the opposite is true for employers, who see temporary agency work as an essential means for managing fluctuations and unforeseen situations, but also for "testing" employees before deciding on whether to hire them directly. As for the lawmaker, the last reform has proven that there were important concerns of social and economic policy concerning temporary agency work in Austria: this reform introduced some additional restrictions and protective measures, only part of which were actually required by reason of the implementation of the EU Directive on Temporary Agency Work. (b) A survey conducted by the Economic Chamber last year researched attitudes to temporary agency work among the Austrian population; The overall finding was that the prevailing attitude was relatively neutral. Only 14% of the respondents personally knew someone working in the sector; among these, 7.5% reported having been engaged in temporary agency work at some point in their lives themselves, and 2% had already engaged temporary agency workers in their enterprise. Generally, most respondents regarded temporary agency work as a part of modern labour markets, allowing for flexible planning by user enterprises and potentially a stepping-stone for employees into ordinary employment. At the same time, there was a strong feeling that the employees concerned were very frequently exploited and treated as second-class workers. The overwhelming majority declared they would clearly not want to engage into agency work themselves.
Belgium	(a) In Belgium the phenomenon developed in the early 1960s. Traditionally, trade unions were not inclined to promote temporary work and the activities of temporary work agencies, whereas the employers' organisations were attracted by the flexibility the phenomenon can offer. The government basically sought a compromise. (b) For the trade unions, full time employment contracts of indefinite duration are the standard, therefore temporary

	agency work is considered inferior employment. There is also the fear that temporary agency work is used to replace permanent employment in the user undertakings. Another reason why these phenomena are regarded rather negatively by the trade unions is the safety risk. It appears that persons providing temporary agency work are implicated in 10% of the labour accidents whereas temporary agency work represents only 3.3% of the work volume.
Denmark	The general attitude in Denmark regarding temporary agency work is quite mixed. The trade unions view temporary agency work as a possible way of circumventing collective agreements and undermining rights of workers while employers are happy with the flexibility that temporary agency work provides. The government acknowledges both views. It is, however, generally accepted that temporary agency work may be a good way for workers who may have difficulties finding a regular full time job to gain a foothold on the labour market.
Finland	(a) (1) The trade unions are in general concerned about temporary agency work, mainly because they see the worker's situation as vulnerable; (2) The employer side takes the opposide attitude towards temporary agency work, which they see as a form of flexible use of manpower; (3) The government has a more or less neutral view to TAW and merely purports to provide the workers with the necessary protection. (b) See above. The trade unions consider the temporary workers' job protection to be poor, because the workers are normally hired on a fixed-term basis. On the other hand, the use of TAW is seen as a threat to the job security of the permanent staff of user undertakings.
Germany	(a) See answer 2.1 (b) (b) critical position – negative consequences on the situation of employees - shifting of risks to the workforce – replacement of “regular jobs” by temporary work – 20% to 25% less pay despite affirmation of the principle of equal treatment positive position - flexibility instrument considers further expansion of agency work a positive development – criticism of abuse in the individual cases
Hungary	(a) Hiring-out of workers today has grown into a specific industry. The borrowing employer is exempt from administrative duties, the employee will - especially if he is unemployed for a long time - get indefinite or longer fixed-term contract. The rental is possible in a short period of time (during holidays, crisis situation or a project). The advantage of the hiring-out of workers that the qualified workers, but some low-skilled groups (eg, operators,

	skilled workers) remain in the labor market. Another benefit to the borrower by the lender company claiming Labour delegates tasks to the workers problems. The disadvantage mainly occur in the employee's side, because when downsizing employers tend to peak the hired-out workers are the first whose contract is terminated. Hiring-out of workers can be beneficial for experimenting with new staff (try & hire), testing him for a longer period. (b) See above.
Ireland	(a) The attitude of trade unions towards temporary work has generally been negative while employers and employer bodies have generally looked upon temporary work as providing necessary flexibility in the labour market. The position of Government has been to provide a degree of protection to temporary workers while promoting flexibility in the labour market. (b) The attitude of trade unions was largely derived from an absence of legal protection for temporary workers under employment legislation. Historically, temporary workers were generally not covered by collective agreements. Furthermore, in a celebrated case, Minister for Labour v PMPA Insurance [1986] JISLW 215), the Irish High Court held that a temporary worker supplied by an employment agency was neither an employee of the agency nor of the end user. It held that the worker was employed on a contract sui generis. As a result such workers were not employees for the purpose of employment legislation and could not avail of the protection afforded by such legislation. Thus, the use of temporary work was seen as a means of undermining established conditions of employment and making it more difficult for workers to obtain employment on conventional permanent contracts.
Israel	(a) From the perspective of trade union and employers, there is a temporary manpower needed to adjust the scope of the work force requirements to economic changes, technology or business. In addition, some employers prefer to use temporary staffing, reduce costs and replace permanent workers in workers that can be replaced with a short notice. From the point of view of the Knesset, as pointed in the explanatory notes to the bill, in its capacity as a sovereign state, Israel recognized the need of hiring temporary manpower especially in sectors that require high mobility of workers that have temporary jobs, which by their nature are made by Manpower Contractors. However, the Knesset, recognizes that this phenomenon also has negative consequences. Histadrut also recognizes the existence of agencies in the labor market, but also recognized the negative

	implications that can be in the phenomenon, and in this context, as described below questionnaire, she signed a collective agreement which seeks to regulate the subject. (b) To understand whether this phenomenon is considered positive or negative, we will explain first the developed models using employment agencies. "Authentic model" is a model of a company which recruits its workers, trains them if needed different types of work and directs them for temporary works for an employer who uses their services. The Company continues to monitor employees' performance at work for the actual employers, paying the wages of workers and decided to continue their work or dismissal. The essential connection is between company personnel and employees, while between it and the actual employer / "user" is only a regular contract. Pay rolling Model, developed in order to reduce the cost of labor to employers by bypassing employer obligations in collective agreements, collective arrangements and orders expansion. In this model, the amount of third party roles, manpower company, is in signing a contract informally with employees, and payment of monthly salaries in accordance with the contract. "User" raises its own employees, interviewing and decide on acceptance of the job, but directs them to a third party, which will sign the contract of employment and will pay their wages. Social and economic systems in developed society need temporary authentic employment model because they allow the flexibility necessary in a changing environment and tough competition, and enables employers and employees to cope better with situations of uncertainty. In contrast, there is no justification in an advanced society for the other model - the Pay rolling model - since its purpose is to allow employers to circumvent procedures and collective agreements. The Knesset recognizes that to the phenomenon of using employment agencies are related negative consequences. The Knesset notes that employees often suffer from paying low wages and lack of adequate social conditions. The law was enacted in 1996 and amendments over the years, but still there are negative consequences in the labor market, and there are still two types of models. Article 12A of the Law, came into force on 1 January 2008 and reduced the incidence of the Pay rolling model.

Netherlands	(a) Temporary work has an important place in labor law. Nowadays about 25% of all workers are not working on the base of an employment agreement for infinit time. This percentage has increased from about 19.5% in 1996 to 24.4% in 2010 [according to the international definition the percentage grew from 11% in 1996 to 18% in 2008; Labour Market Flexibility in the Netherlands, Centraal planbureau CPB/ROA 2011. Two mean differences between the Dutch and the international definition: in the Netherlands all temp contracts are counted as temp contract, while in the international definition a temp contract longer than one year counts as a permanent contract; other difference is that in de Dutch definition only work for more than 12 hours a week is counted, while in the international definition all work as from one hour a week is counted. Consequences of these differences are clear in Flexibilisering De balans opgenmaakt, pag. 60, fig. 1)]. Recent research even speaks about in increase from temp work from 17% in 2000 to 27% in 2009 (SEO, April 2013,).There are worries about this increase, as it becomes more and more clear that there is a division in the labour market: especially older emplyees have a permanent contract and therefor a strong position; youger people and other newcomers (migrants, women after a break) hardly get permanent jobs. Until 1999 TWA had no official place in Dutch labor law. In the 1960s and 1970s trade unions were quite negative about TWAs. For example in the construction field the CLA stipulated that employers were not allowed to use employees from TWAs. Also in law the use of TWA was quite restrictive. TWAs needed permission. In the 1980s and 1990s the idea grew that TWAs fulfill a usefull role on the labour market. Therefore trade unions were prepared to conclude a CLA with the organisations of TWAs. The so-called Social Agreement in 1996 between the trade unions, the employers organisations and the government was the basis of the 1999 law Flexibility and Security. This law gives the employees of TWAs more rights, but on the other hand allows employers to make use of three succesive temporary contracts, without restriction. So both trade unions, employers' organisations and the government recognize the positive aspect of TWAs. (b) I indicated the positive side. About 25% of the employees who work for a TWA found a permanent job through this way (research 2011; in 2008 this percentage was 15%). The downside is that without TWAs maybe they would have got a permanent job earlier. This percentage varies according to the group the employee belongs to. See also fig. 5 in http://archive.arbeidsconferentie.nl/uploaded_files/contributions/ConceptpaperNAD2011_vanflexnaarvast.pdf On the other hand: employees with a 'normal temp contrtact' have a slightly higher chance to get a permanent job than TWA-employees: SEO April 2013, pag. 13, fig. 3.1 Recent reserach (SEO April 2013) indicated however that employees are staying longer in temp jobs, as it becomes more and more difficult to get permanent jobs. On 18 and 19 March 2013 ILO representative Donna Koeltz (senior specialist in employment services) visited the

	Netherlands, especially TWAs. According to the information of Dutch TWAs, Koeltz was positive about the Dutch situation of TWAs. It was said that 35% of umeployed people found work through TWAs. However, there are also critical notes possible. From the CPB/ROA 2011 report it became clear, that temporary and TWA-employee's in general earn less than 'normal' employees: for employees with only secondary education the differences are 3% (fixed term contract) and 14% (TWA), for higher professionals these differences are 4% and 18% and for university educated employees even 7% and 27%.
Norway	(a) The last years, there has been an increased focus on temporary work agencies - to a large extent due to the hiring of workers from (the new) EU-countries. The trade unions have in general been concerned with the increased use of hired labour and argued that it has led to social dumping. It has been argued that such arrangements undermine the general rule on permanent employment, and that the temporary work agencies have been a channel to circumvent rules and regulations in the Norwegian job market. The General Council in the major trade union, the Norwegian Confederation of Trade Unions, voted on 31 January 2012 against the Directive 2008/104/EC and urged the Government to veto the directive. In connection with the implementation of the Directive, the Government (a majority government representing the Labour Party, the Socialist Left Party and the Centre Party) has adopted rules on, inter alia, right to information and rules on joint and several liability for payment of salary etc. Further, trade unions in the user undertaking (hiring-in undertaking) may file a law-suit in its own name concerning the lawfulness of the hiring-in of workers from temporary work agencies. In the comments to the new rules, the unions emphasised that it was important to maintain the strict rules and restrictions on hiring of labour from temporary work agencies. The employers' organisations have been in favour of the Directive, and argued that the strict conditions for hiring of labour according to Norwegian law were not in compliance with Art. 4 of the Directive. The employers' organisations have been against some of the new rules adopted by the Norwegian government in connection with the implementation of the Directive, including the rules on right for the elected representatives to access information and on joint and several liability. (b) See above
Slovenia	(a) Employers wish for even more wide possibilities of such kinds of employment and work, with free (flexible) hiring and dismissals of workers. On the other side trade unions are against spreading of the possibility and stimulation of temporary works,

	emphasising that this is above all stimulation of precarious employment relationships. They pointed out cases of abuses of employment contracts for fixed time, student work and work of the agency workers. Most typical abuses were next: - TWA signed with workers many contracts for fixed time (each time for one month) for work at the same user; after two years (which is legal restraint for contractual employment relationship for fixed time), temporary employment at another TWA was signed again as contracts for fixed time (monthly), for the same work still at the same user; - "bogus TWA": conclusion of contracts on execution of services but in truth goes only for „lending" of manpower (of workers); Luka Koper for example is carrying out harbour activity with rent of so-called performers of the harbour services, that are assuring Luka only workers (for example crane operators); - replacing regularly employees with agency workers; - ensuring of smaller rights for agency workers as the worker of an user; - demand from a worker the payment for posting him to user undertaking. (b) See above
Spain	(a) (1) on the parts of the trade unions and other worker organisations – Not very friendly (2) on the parts of the employers and representative organisations of employers – Friendly (3) on the part of our government and lawmakers – Watchful (b) Positive: they contribute to a more fluid operating of the labour market in several branches of the economy Negative: (a) the "peripheral" workers of the temporary work agencies are in the user enterprise in a more precarious position; (b) the temporary work agencies contribute to the "splitting" of the staff in the user enterprise

	The "heart" of the negative attitude: the activity of the temporary work agencies casts very clearly the fact that the work (inseparable of the worker) is a commodity or merchandise considered in a very similar way as the common commodities or merchandises
Sweden	Temporary work agencies and private employment services were, until the 1990s, in principle prohibited by law. The prohibition was relaxed in 1991 and temporary work agencies are since 1993 fully accepted in law. Agency work has been fully integrated into the normal industrial relations. The association of temporary work agencies has concluded collective agreements with organisations representing both blue-collar workers and salaried employees. The collective agreements for blue-collar workers and salaried employees respectively are based on two partly different principles. The collective agreement for blue-collar workers assumes that the agency worker's wages are set in relation to the wages of the employees of the user company, whereas for salaried employees, the agency work sector is viewed as a separate sector with its own wage levels. Agency work has, as indicated above, been integrated into normal industrial relations and is a fully accepted part of the labour market. It is, however, debated if temporary work is used to circumvent the right to re-employment after redundancy. According to the Swedish Employment Protection Act, employees made redundant are, subject to certain conditions, entitled to be given preference for being taken back into employment in the enterprise in which they were previously employed during a period of about nine month. If a temporary work is used during this time the right to re-employment could cease. A governmental committee is for the time being investigating this issue.
United Kingdom	(a) The United Kingdom has not historically been a labour market in which strong ideological resistance has been experienced to agency work placement or associated forms of 'private labour exchange'. Unlike countries in which this function has been regarded as a matter properly for 'the State', and in relation to which 'private profit-making' activity has been frowned upon, or even outlawed, a relative freedom has been given to actors within the UK system to develop various forms of staffing arrangements on the basis of commercial contracting undertakings between labour suppliers and 'end-users' of that labour. The totemic declaration in the ILO's Declaration of Philadelphia, to the effect that 'Labour is not a commodity' has, consequently, not been a driving motivation for or against activity in this sector of the economy. At the political/governmental level, the relatively deregulated framework for the United Kingdom labour market had been well established during a period of successive Conservative governments under the leadership of Prime Minister Margaret Thatcher, and the reality of so-called New Labour administrations following electoral success by Tony Blair in 1997 turned out to be a remarkable unwillingness to 'tinker' with the established regulatory status quo. Only with the advent of a 'Coalition government' in 2010 has one been able to discern clear evidence of a more

	ideologically driven approach to labour market and employment regulation – but this comes well in the wake of the confirmation of current arrangements for temporary work and agency placement activity, and is substantially driven by 'the business case' for the perceived 'flexibility' which this form of engagement can bring to the United Kingdom labour market. Indeed, so far as the "employer position" is concerned, much of the support for a continued deregulation of temporary work activity has been expressed in that rather vague 'business case' for perceived 'flexibility' which this form of engagement is said to bring. In relation to the trade union stance, a commonly presented position from the trade union perspective is to the effect that, 'British trade unions are known for their resistance to temporary work agencies ...', although 'their stance in a given firm on hiring agency workers is not clear *a priori* ...'. That ambivalence is, however, very much a modern phenomenon, marking a clear shift from the old historical position adopted in 1928 by the TUC which favoured what was described as the *exclusion* of 'fee-charging employment agencies' in the labour market. Indeed, that antagonistic position was expressly continued after the Second World War, and can be seen in the TUC's enthusiasm that the United Kingdom government should ratify the ILO's Fee-Charging Employment Agencies Convention (Revised), 1949, which called, in its Part II, for 'the progressive abolition of fee-charging employment agencies conducted with a view to profit'. Although that 'abolitionist' stance of the United Kingdom labour movement was maintained for a further three decades, the TUC eventually began to change its position during the 1980s. Faced with a rapidly changing world of work, where a combination of new technology, increasing globalization, disappearance of traditional patterns such as 'lifetime employment' or rigid working routines (whether by reference to location, tasks, or hours worked), and an increasingly hostile regulatory environment, the TUC adjusted its approach to one of calling for 'improved regulation' in relation to the activity of labour placement. Notwithstanding that gradual shift, however, it has been suggested that '... agencies were still considered "parasitic" and agency workers were seen as workers with no legitimate interest in obtaining employment through an agency'. Thus, by 2000, the TUC's reaction to proposals for reforming the private recruitment industry put forward by the recently elected 'New Labour' government provided confirmation of a willingness (however much tinged with 'reluctance') on the part of the TUC to engage in the development of a regulatory framework for this sector (and that position was supplemented by a number of specific calls for additional measures to be introduced, in respect of inter alia a licensing system for agencies, more detailed guidelines for agencies on compliance with the Working Time Regulations, and some detailed measures specific to use of temporary work arrangements in the entertainment industry.

	The United Kingdom labour movement's modern stance in this field was further clarified in TUC documents which identified temporary agency work arrangements as constituting one element in the 'context of vulnerable employment'. While acknowledging that 'many employment agencies operate within the law, and good employers agree with us that more needs to be done to prevent rogue operators from exploiting vulnerable workers', the TUC concluded that: 'being placed in work by an employment agency can in many cases place workers at considerable risk of vulnerable employment'. Indeed, the authors of the TUC Commission's report maintained that 'some of the worst abuses we heard of during our work were experienced by workers whose jobs had been supplied by an agency, a complex employment relationship that currently reduces the employment rights to which a worker is entitled, and can create uncertainty as to whether the supplying agency or the user organisation has responsibility for their treatment'. (b) See above

Question 2.2 (a) Have these attitudes undergone any changes over time?; (b) If so, in what particular respects?

Austria	(a) Concerns of the abuse of temporary agency work for replacing standard employment were reinforced when employee assignment came to constitute an increasingly common phenomenon over the last 1-2 decades. (b) One of the developments considered most alarming is the use of temporary agency workers not only for a temporary situation of urgent or unexpected need of workforce, but as a structural element of an undertaking's hiring policy. The other is the hiring in of employees from abroad, who are not fully covered by the protection of national law and collective agreements (which in the EU context cannot simply be prohibited). Recent years have seen several amendments with the aim of at least alleviating risks of abuse in both respects.
Belgium	(a) Yes (b) The importance of temporary agency work has grown over the years. It has become an established player in the labour market. Most objections of the trade unions are met by the rules laid down in the 1987 Temporary Agency Work Act and the collective labour agreements concluded in execution of some provisions of that Act. Basically, only the concern about safety at work remains, although in recent years some concern has risen about new forms of misuse (discrimination of workers from immigrant origin, the use of consecutive day contracts).
Denmark	Basically the attitudes described above have been in place for quite some time. It could be mentioned, however, that the "social dumping agenda" (the influx of workers from new EU Member States) has perhaps actualized the discussion regarding temporary agency work.
Finland	(a) Very little (b) See above. However, new protective rules have mitigated the worst fears in this area.
Germany	(a) Yes (b) See answer 2.3 (b)

Hungary	(a) Yes. We can observe changes. (b) The work is based on calling-up enables flexible and efficient use of working time. It shows an increase as well the hiring-out of workers.
Ireland	(a) Yes, for the reasons outlined below (b) There were a number of legislative interventions intended to ameliorate the position of temporary workers. In 1971 legislation was enacted to regulate the activities of employment agencies. The Employment Agencies Act 1971 introduced a system of licensing employment agencies and a licence can only be issued if the agency meets certain minimum standards. Further, following the decision in Minister for Labour v PMPA most employment rights statutes now deem temporary agency workers to be employees of either the agency or the end user, depending on which of them is responsible for paying wages. Significantly, the unfair dismissals legislation was amended in 1993 so as to deem temporary agency workers as employees of the end user for the purpose of that Act. Thus, if temporary workers meet the service qualification under that legislation (12 months continuous service) they are protected against unfair dismissal in the same way as all other workers. Consequently, the de facto position is that temporary workers now have a degree of security in employment once they complete 12 months employment. In the case of temporary workers on fixed-term contracts (or fixed-purpose contracts) the applicability of the Act can be excluded by a contractual term where the dismissal consists only of the non-renewal of the contract. However the Act, as amended, provides that if such a contractual term is included solely for the purpose of avoiding the application of the Act, it can be disregarded. In the period in which social partnership arrangements were in place in Ireland (1987-2009) significant progress was made in extending the scope of collective agreements to temporary workers and this, on the one hand, assuaged the concerns of trade unions while also lessening the attractiveness of temporary work for employers. Since the enactment of the Protection of Employees (Fixed-Term Work) Act 2003, (which implemented Directive 1999/70) the protection afforded to temporary workers employed for a fixed-term has been further enhanced. The enactment last year of the Protection of Employees (Temporary Agency Work) Act 2012, (which implemented Directive 2008/104/EC), has further enhanced the protection available to agency workers. Against that background the use of temporary work is now seen as less of a treat to the use of regular permanent contracts of employment.

Israel	(a) No (b) Attitudes have not changed with time, but amendments were added to ensure that its aim is achieved.
Netherlands	(a) See above. (b) See above.
Norway	(a) Yes (b) There has been an increased focus on hiring in from temporary work agencies and social dumping.
Slovenia	(a) Before 1991 in Slovenia wasn't legal base for private temporary work agencies. Ensuring of work and occupation was in competence of Employment Service as State body. Possibility of temporary posting of workers existed based on an agreement (contract) between two employers: longest for six months or till completing works (tasks) because of which worker is posted. A worker could stay in contractual employment relationship at an employer, that posted him, or can sign employment contract for fixed time at employer, he was posted to and during this time contractual employment relationship at the first employer (employment contract) rested. Legal base for work through temporary work agencies was established in 1998 (carrying out this activity based on concession contracts), and ERA accepted in 2002, arranged specialities of position of the agency workers. LMRA, accepted in 2010, already considers Directive 2008/104/ES about work through agencies for ensuring of temporary work, the same new ERA accepted in 2013. Laws, that are arranging contractual employment relationship and rights obligation of employees and employers, are preparing in Slovenia with active co-operation of social partners: of representative trade unions and employers organizations. Some legal solutions are for that reason result of compromise. So is also in case of provision about temporary work and of employment relationship for fixed time and temporary and occasional work of students and of pensioners. (b) n/a

Spain	(a) Yes (b) In my view, the distrust of the temporary work agencies is diminishing
Sweden	(a) See above. (b) See above.
United Kingdom	(a) Yes (b) See above at 2.1

Question 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)?**

Austria	(a) Although an at least partial prohibition of temporary agency work was demanded by many (notably those close to the trade union movement) in the run-up to the drafting of the AÜG in 1980, this was never implemented for "real" temporary agency activities in which the agency continuously functions as the employer. This must be distinguished from job placement activities (where the agency's responsibility stops as soon as it has provided the user undertaking with the employees it needs). The latter was prohibited over the major part of the 20th century. (b) Regarding job placement agencies, the Austrian development largely corresponded to that of many other European states, in the sense that the private structures that developed over the 19th century gradually came to be viewed as exploitative, in that they abused the desperate situation of the unemployed for maximising their profit. This led to the introduction of a concession system with important restrictions in the beginning of the 20th century, and finally their prohibition (with exceptions for minor and non-commercial activities) once the public structures of labour market administration were in place. This prohibition comprised all activities of bringing together employers and employees without shouldering the economic risk of an employer. As the Supreme Court held in 1987, this included not only typical job placement (shift of the risk to the final employer once the parties are brought together), but also a shifting of the risk to the employee. Therefore, temporary agency work without wage payment in the periods between assignments was prohibited already before the AÜG was passed. Since 1993, both job placement and temporary agency work are permitted as a commercial activity but subject to restrictions, as they will be set out in questions 6 et seq. Although Austria was not yet a member of the EU at that time, this liberalisation was significantly driven by the ECJ's jurisdiction on state monopolies for job placement violating EU competition law – and the related argumentation about the insufficient capacities of public institutions to respond to the diverse demands of their "clients".
Belgium	(a) Yes (b) Yes, first of all the development of temporary work agencies has driven such a change. But also EU regulatory instruments such as Directive 2006/123/EC play a roll.
Denmark	Denmark has in general had a tradition of absence of legislative regulation of the labour market and this also applies to

	temporary agency work.
Finland	(a) Yes. Until 1995 private activities involving hiring out workers were subject to permissions issued by the manpower authorities. (b) The old system brought about considerable bureacracy without guaranteeing the protection of workers that was sought for. The changealso partly done in view of the forthcoming association with the European.
Germany	(a) Yes (b) - 1967 the Bundesverfassungsgericht (Federal Constitutional Court) considered the extension of the (meanwhile abolished) employment agency monopolie on supply of temporary staff to be unconstitutional - 1972 first-time regulation of the phenomenon of temporary work – first version of the AÜG - 1982 until 2002 – various prohibitions - e.g. a partial ban of temporary work concerning work in the construction sector - maximum allowed duration of assignment time (1985: 3 to 6 month, 1994: 6 to 9, 1997: 9 to 12, 2002: 12 to 24) - 2003 - withdrawal of any maximum allowed duration of assignment time, various statutory liberalizations – abolition of the prohibition of reemployment - principle of “equal pay” with permanent staff, but with opening clause for collective agreements to the detriment of employees - 2003 – first “collective agreements” for temporary work - on the “trade union side” signed by the “Tarifgemeinschaft Christlicher Gewerkschaften für Zeitarbeit und Personalserviceagenturen” (CGZP) - deviation from the equal pay principle – - the CGZP belongs to the Christian Trade Union Federation (CGB), whose affiliates compete with the affiliates of the Confederation of German Trade Unions (DGB) and conclude “collective agreements” which fall significantly short of those concluded by DGB trade unions - the collective-bargaining capacity (under the Collective Bargaining Act [TVG]) of the CGZP has been disputed from the beginning – after legal disputes, including Federal Labour Court (BAG) decisions, the agreements of the CGZP are found to have been null and void from the beginning – possibility to charge employers retroactively according the principle of “equal pay”

	- 2003/2004 – collective agreements for temporary work - on the trade union side signed by the Collective Bargaining Association of Confederation of German Trade Unions (DGB) - with two large associations of the german temporary work industry– also with deviation from the equal pay principle, but on average 15 per cent above the CGZP agreements – - 2011 important amendments to the AÜG, intending to transpose the Directive on Temporary Agency Work, 2008/104 /EC - Since 1 January 2012 - Regulation of minimum wage level in temporary work in force (Regulation by the German Federal Ministry of Labour and Social Affairs [BMAS], following a proposal of social partners [on the trade union side: DGB- affiliates]) - Since November 2012 in some industries collective agreements with surcharges to be paid after some weeks or months of assignment (to close the gap between pay in comparison to permanent staff) - Intense political and social debate on temporary agency work and other (fast growing) forms of flexible personnel deployment
Hungary	(a) No. (b) n/a
Ireland	(a) No. There have always been private entities of one form or other providing temporary workers to end-users. (b) n/a
Israel	(a) There are "private employment offices" which must be licensed by the Ministry of Industry, Trade and Labor. (b) See answer to 1.3 (b).
Netherlands	(a) See above. (b) See above.

Norway	(a) Until 2000, hiring of labour was more or less limited to clerical work on the basis of a permit system. From 1 July 2000, there were a fundamental change, and temporary work agencies may hire out workers in all sectors of the labour market. (b) After the expansion of EU in 2004, there was an increase in the number of temporary work agencies. From 2004 to 2008 there was a significant increase, and the number was more than doubled during this period. There was a 15-20 per cent decline from 2008/2009. From 2011, there is an increase. See comments under no. 3.
Slovenia	(a) n/a (b) n/a
Spain	(a) Yes. The activities of providing with or supplying workers to enterprises ("cesión de trabajadores"-cession of workers) was expressly forbidden and punishable since a Decree-Law of 1952; the main consequences for the contract of employment (reconstruction of the employment relationship with the "real" employer) were established in a Decree of 1970 (b) The ban of the temporary work agencies was maintained until the Act 14/1994. Several years before these agencies were more or less tolerated
Sweden	(a) See above. (b) See above.
United Kingdom	(a) No. See above at 2.1 (b) n/a

Question 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?**

Austria	(a) Yes (b) Although I could not refer to concrete numbers on the impact on the sector as a whole, there are numerous examples showing that temporary agency work is increasingly advancing into areas that used to be dominated exclusively by the (direct) employment of civil servants under public law. Among recent last-instance court decisions on issues of temporary agency work, one can find e.g. public hospitals as clients of a temporary agency. A specific form of employee assignment occurs when public tasks are privatised (by a legislative act), but the legislator refrains from the highly sensitive measure of depriving the employees concerned of their status as civil servants (which entails privileges such as the virtual impossibility of dismissal). As a result, the servants remain employed by the public body and are assigned to a private undertaking, to which neither they nor their employer have a contractual relationship. Importantly, such a case is explicitly exempt from the scope of the AÜG. In a very recent decision, the Supreme Court held that in this case, the state is liable for any actions of the private undertaking which would violate the duty of care of an employer vis-à-vis own employees. A strategy that seems to become popular among municipalities and other public bodies is to found a company under private law (in which it owns all the shares) with the purpose of employing staff outside the rigidities of the law applicable to public employees, and to assign these employees to the public body at issue.
Belgium	(a) Yes (b) It is difficult to tell. Probably not, not significantly anyway.
Denmark	Some "privatization" has taken place in Denmark. It is not, however, evident that this has had any impact on the use of temporary agency work.
Finland	(a) No (b) The increase in temporary work is the result of other reasons.

Germany	(a) Yes (b) That is a matter of real concern – have found no available data
Hungary	(a) n/a (b) n/a
Ireland	(a) Yes, to an extent. Historically the state operated 'labour exchanges' through which unemployed workers could be directed to employers who sought their services. That has ceased to be the position in practice from the 1960's onwards. Now employers recruit directly or use the services of specialist recruitment agencies. (b) Not as such. The enhanced protection afforded to permanent workers against dismissal has been the biggest single influence in the growth of temporary agency work, although for the reasons previously referred to agency workers now have, in many cases, a degree of security of tenure similar to that of other workers.
Israel	(a) Yes. The State had significant privatization processes in the post office, urban water corporations and more. Other privatized government companies are airline El Al, Bezeq telecommunications company, Zim Navigation Company, and there are more. (b) See answer to question 2.5 (b).
Netherlands	(a) Since some years there is a public private co-operation: twa's who are member of a private council, are treated in a more favourable way. See below, Art. 7:692 DCC. (b) The percentage of the employees who work for a TWA fluctuates according tot the economic climate, but on a long term this percentage remains quite stable, between 2 and 4% of the working population. In 2008 the number of TWA-employees as 205.000 (on a working population of about 7.5 mio), in 2011 this was 172.000. They are not working in very specific areas. So TWA-work has **not** become a permanent alternative for the contract for an indefinite period.
Norway	See above answers to 2.3

Slovenia	(a) n/a (b) n/a
Spain	(a) Yes: (1) Non lucrative placement agencies are permitted under authorisation since 1994 (Ley 10/1994); (2) Lucrative placement agencies are permitted under authorisation since 2010 (Ley 35/2010); (3) Temporary work agencies may develop activities of placement agencies since 2012 (Ley 3/2012). (b) The impact of the permission to the activity of placement for private enterprises and temporary work agencies is too recent in order to make an assessment. The growth of temporary work in Spain since the eighties depends on several factors; one of them but not the most important is the activities of the temporary work agencies
Sweden	Temporary work agencies have not, in any significant manner, changed the position of public employment services.
United Kingdom	(a) The United Kingdom was one of the first economies in which wholesale "privatization" was witnessed – something described by a former Prime Minister as akin to "selling off the family silver". (b) The modern growth of temporary work and TWAs is often linked to this context (especially by commentators reflecting positions within the trade union movement), although there are numerous inter-related factors which are generally regarded as having led to the modern situation in relation to these matters. (See, for example, the comments on "outsourcing" and "off-shoring" – below at 2.5).

Question 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?**

Austria	(a) Yes (b) Certainly. Especially in the construction sector and other sectors typically in need of larger numbers of manual employees, the current trend is one of assigning diverse tasks to a mounting number of sub-contractors. This may frequently result in a practically inscrutable chain of sub-contracting, at the end of which is a worker from a county with a lower wage level, who is engaged either as a (bogus) self-employed or a temporary agency worker. In practice, such constructions can substantially complicate the search for the undertakings in charge when there is a suspicion of a violation of laws in the area of tax, social security, employment of foreigners, working time or health and safety provisions, etc. As for skilled work, activities such as IT services and consulting are particularly concerned both by trends of out-sourcing and by the use of temporary agency workers.
Belgium	(a) Yes (b) It is difficult to tell. Probably not, not significantly anyway.
Denmark	Same as above (2.4.)
Finland	(a) Out-sourcing has for a long time been a common business strategy in Finland. (b) No. Out-sourcing usually results in the use of sub-contractors.
Germany	(a) Yes (b) That is a matter of real concern – have found no available data
Hungary	(a) Yes, we have this phenomena such as out-sourcing. (b) Outsourcing different parts of a business process is becoming more and more popular in Hungary as well. This is especially true for IT out-sourcing services. More and more companies are realizing that out-sourcing means they

	can focus on their core business, but also make their costs to plan, in fact, significantly reduce it. The company does not need to adhere to when the system administrator on holiday, sick leave, or when he can not go to work because of his university exams. In Hungary there is an Association's mission is to promote the country's economic development by supporting the business services sector, through spreading opportunities to increase efficiency offered by organizational innovation and in particular through uptaking the concept of out-sourcing.
Ireland	(a) Yes (b) Not to any appreciable extent
Israel	(a) Phenomena such as outsourcing of functions are common in recent years. (b) Labor Contractors Act (and its amendments), which we will discuss in detail in the answers to the following questions, caused a decrease in the activities of manpower agencies, due to the regulatory established framework as well as the aim to ensure the employee's rights and welfare. However, the law has brought to a by-pass route control transaction, the "contractor services" / "service companies" that the law does not apply to them or that many of its sections do not apply to them. According to the current situation, the number of service contractors only in the security and cleaning is nearly twice the number of agencies.
Netherlands	(a) Yes it has, but employees remain employees. First they were employees of the main company; after the out-sourcing they become employees of the companiy who has taken over the activities. So this has not to do with TWAs. (b) No
Norway	See above answers to 2.3
Slovenia	(a) “Outsourcing“ became frequent manner of “reorganization“ business (firms) after 1991. The outside performers weren't concerned only with contractual transmitting of performance of certain tasks (for example for maintenance of computer equipment etc.). Employer’s performance of certain tasks “rented out“ to former employee, that became self-employed persons (cleaning, transport services, security, diet), or they founded new firm for performance of these tasks, and they posted workers that were doing these tasks.

	(b) Possibility of performance of such tasks with rent of workers from TWA undoubtedly contributed also to enlargement of number of TWA.
Spain	(a) Yes (b) Yes. In our case-law a worker may be hired temporarily by a sub-contracting enterprise for the duration of the assignment
Sweden	There is no clear statistic about outsourcing or off-shoring. However, it has during the last years been reported that in, for instance, the metal industry it has become more common to use temporary agency work as an alternative to employing workers directly, also in the production.
United Kingdom	(a) Yes (b) The United Kingdom is said to be one of the largest scale out-sourcing economies (second only to the USA), following the introduction of the phenomenon, by a Conservative government under Prime Minister Mrs Thatcher, in the early 1980s. At that time, it was seen as “a way to neuter strikes, downsize blue-collar council and NHS workforces, and cut costs. It was seen as a means of rolling back the "bureaucratic" state, and injecting into supposedly moribund services the competition that was needed to drive up quality and make them more responsive”. Coupled with large-scale use of “off-shoring”, this has contributed towards a dramatic re-structuring of businesses in a period of some 30 years.

Question 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.**

Austria	(a) Yes. Temporary work agencies are legally obliged to provide the competent authorities with an annual report containing precise data about the number of employees assigned (incl. gender, nationality and the qualification as white- or blue-collar), the number of user undertakings and that of assignments (incl. their duration). In case of cross-border posting of employees from the EEA to Austria, the user undertaking is obliged to transmit the respective data on them. As from 2014, this provision will be substantially extended, requiring more information about employees and users and a documentation of its development over the preceding year. The reported data are analysed and published yearly by the national statistical office. (b) On 31 July 2012 – the reference date for reporting – there were 2048 commercial temporary agencies registered on the Austrian market, with 78,414 employees currently assigned to a user. A glance at the development of these figures since 1998 (when there were 742 agencies assigning 20,772 employees) shows that both have increased virtually every single year. By exception, and much like in any other country affected by the global crisis in 2008, the number of assigned employees fell after that year (from 68,081 to 57,230). Largely the same trend can be observed regarding the share of temporary agency workers among the national workforce – which continuously increased from 1% in 1998 to 2.4% in 2012, with an exceptional decrease of 3 percentage points between 2008 and 2009. Currently, the majority (78%) of temporary agency workers is male. Blue-collar workers prevail in all categories, most of all in that of foreign employees (where they make up 94%). Around 59% of them are assigned for less than six months, whereas half of the white-collar temporary agency workers are assigned for more than one year. A total of 738 temporary agency workers were posted to Austria from abroad on the reference date. In 2010, the statistical office published a study on atypical employment and low-wage work, which found that temporary agency workers were actually at a lower than average risk of low earnings (defined as less than two thirds of the national median hourly wage) – which of course does not consider the fact that their yearly income is often considerably reduced by repeated periods of unemployment. Other relevant official sources are e.g. the statistics published by social security institutions. For instance, the national accident insurance institution reported for 2011 that temporary agency workers were 2.5 times more at risk to suffer an accident at work than "regular" employees.

Belgium	Not that I know of.
Denmark	No such data available.
Finland	(a) Reliable statistical data on the extent of temporary work is difficult to provide, but in 2008 an official survey on the subject was conducted. (b) According to the survey, the number of temporary workers has been in the increase since the year 2000 and was in 2008 ca. 32.000 calculated in full-time employees, which amounts to 1.4 per cent of all wage-earners in the country.
Germany	(a) Yes, by the Federal Employment Agency (Bundesagentur für Arbeit - BA) (b) The number of temporary agency workers rose steadily and highly dynamic since the 1980s: • 1980: 33.000 • 1985: 41.700 (first reform of the AÜG) • 1990: 119.000 • 1994: 103.300 (second reform of the AÜG) • 1997: 181.200 (third reform of the AÜG) • 2000: 338.000 • 2002: 287.600 (fourth reform of the AÜG) • 2003: 282.400 (fifth reform of the AÜG/ increasing deregulation) • 2012: 908.000 (another source [HBS], using also data from the BA: 751.560) • (2013: 699.000 - HBS, using data from the BA) Development in per cent of the working population: 1991 less than half of one per cent of the working population; 2011 more than two per cent. The number of temporary work agencies 2012: 18.500 (13 per cent of those employing 100 or more temporary agency workers; 35 per cent employing 20 to 100 temporary agency workers)
Hungary	(a) Yes (b) The Hungarian Labour Market Yearbook series was launched in 2000 with the support of the National Employment

	Non-Profit Public Company Ltd. The yearbook presents the main characteristics of Hungarian employment policy and each year features an in-depth analysis of a topical issue. The editorial board has striven, from the beginning, to provide up-to-date results of labour market research and useful information on the Hungarian labour market tendencies as well as the legislative and institutional background of the employment policy of the GO and NGO organizations of the public employment services, local governments, the public administration, educational and research organisations and – last but not least – for both the press and the electronic media. This year we have also created a clearly structured and easily accessible volume that presents the main characteristics and trends of the Hungarian labour market onthe basis of available statistics, conceptual research and empirical analysis. Continuing our previous editorial practice, we selected areas that we consider especially important from the perspective of understanding labour market trends in Hungary and effective evidence-based policy making.
Ireland	(a) The only data produced by the Irish Central Statistics Office relates to the number of workers who have a permanent contract and by contrast the number that do not have such a contract but are in employment. The figures are based on surveys conducted by the CSO. (b) The most up to date data supplied by the Irish Central Statistics Office relate to the 1st Quarter of 2013. They show that the numbers in employment in the labour force stood at 1,527,300. The number in temporary employment of all types stood at 145,100 with 1,364,500 being in permanent employment. Of the number in temporary employment 17,400 were recorded as being in training and 3,800 were recorded as being on 'probation' The figures relating to those on temporary contracts are further classified by type. They show that: o 48,800 were classified as 'casual workers' o 8,500 were classified as 'seasonal work' o 16,900 were classified as 'for a particular task or purpose' o 64,500 were classified as being for a specific duration o 6,400 gave no reason for their temporary classification Of those surveyed 18,100 stated that they did not want a permanent job These figures have changed slightly over time. For example, in the 1st[t] Quarter 2009 those in employment stood at 1,646,000 of which 135,500 were in temporary employment
Israel	(a) Yes, in part, as described below.

	(b) Prior to the Ministry of Industry and Trade (the "Ministry"), the number of contractors licensed personnel, as of 23 June 2013, is 418. Number of workers employed by agencies in Israel, for March 2013, is 129,587 (North - 18,371 employees, Jerusalem - 6,704 employees, the center - 91,434 employees and south - 13,078 employees). Note that these figures do not refer to companies that provide manpower staffing services of foreign workers or foreign workers employed through agencies. In addition, there are agencies operating without a license when detailed data refer only to licensed contractors.
Netherlands	(a) In this link the number of TWA-workers is indicated. www.abu.nl/stream/statement-flex-2.0 The number of TWA-workers remains stable around 160.000. On-call workers are also around 160.000.The number of temporary workers with the foresight of an indefinite contract is 397.000; temporay contract for a period longer than 1 year 155.000; other flexible contracts 233.000 and self employed 710.000. Especially the number of self employed grows substantially. As a whole 24.4% of the population is working on some kind of flexible contract (in 2010; afterwards this percentage has even grown). In 1996 this percentage was 19.5%. According to Eurostat, in the Netherlands a relatively big part of temp contracts is concluded as a kind of probation period (http://archive.arbeidsconferentie.nl/uploaded_files/contributions/ConceptpaperNAD2011_vanflexnaarvast.pdf, figure 1) Figure 4 in this reasearch is temp work without the self employed. So therefore the percentage remains around 15-17% of the working population. (b) See 3.1
Norway	(a) Yes (b) Among all workers - 8.34 per cent are temporary workers (2010). According to CIETT (International Confederation of Private Employment Agencies), 0.9 per cent of all Norwegian workers are agency workers. Figures from Norwegian sources are slightly higher. FAFO has estimated that slightly less than 2 per cent of the workforce is engaged through temporary work agencies. This includes employees hired on a short term basis in Norway.

	In connection with the implementation of the 2008 Directive, the Ministry of Labour obtained two reports on the hiring of labour and temporary work agencies.
Slovenia	(a) Yes (b) According to official statistics/data published by Statistical Office for january 2013 number of workers in employment relationship was 709.000: among them 83.000 with fixed-term employment contract. According to data for May 2013 in register of legal and natural persons for performance of activity of ensuring of workers to other employer was enrolled 195 TWA, in records of foreign TWA 12 persons (4 Austrian, 4 Slovak Republic, 1 Romania and 3 Bulgarian), 27 persons has concession for the ensuring of provisional and occasional work of students. According to data by the Ministry of Labour, the TWA in 2012 provided around 12.000 workers, nearly three times as many as in 2006.
Spain	(a) Yes, the official data are mainly elaborated by a public board named "Instituto Nacional de Estadística" (INE); the most important INE' employment statistics is The "active population poll" ("Encuesta de Población Activa, acronym ENA). Also the Ministry of Employment supplies some special labour statistics/data, obtained mostly from the public offices of employment. (b) Temporary work: (1) Active Population Survey ("Encuesta de Población Activa") First Term 2013 (INE): The rate of temporary work is 22.1%; increased surely in the second term 2013, in which almost all of the new jobs created are temporary workers. (2) The rate of temporary work is diminishing at the pace of the increasing of the rate of unemployment; temporary work in private sector was 25.2% in 2011 and 31.5% in 2007. Overall unemployment rate: 13.91% (2008), 22.85% (2011); 26.2% (second term 2013). (3) The figures of unemployment of the second term 2013 (ENA) are much better then the figures of the first term: the economy seems starting to improve, and the season is also more favourable to employment.

	Temporary work agencies (according the Ministry of Employment): (1) The number of temporary work agencies authorised at the end of 2012 is 298; (2) Along 2012 the number of contracts concluded by these agencies with "user enterprises" was 2.023.195; (3) As average in 2012, the staff of the temporary work agencies amounts to 104.136 employees.
Sweden	There are several reports concerning the statistics about temporary agency work in Sweden. The statics is mainly based on the data from Statistics Sweden, which is an administrative agency. Following deregulation, the market for agency work has expanded considerably and was in 2012 covering around 1.3% of employed persons. Around 130 000 persons was 2012 occasionally employed by a temporary-work agency. The majority of them are white-collar workers.
United Kingdom	(a) Yes (b) On the basis of SORA data, the number of agency workers rose from 550,000 in 1999 to 1,523,000 by 2007. Turning to other data, between 1997 and 2006, according to the REC Census, the number rose from 879,000 to 1,080,000. However, if one looks at the UK government's own Labour Force Survey statistics, the rise between 1998 and 2007 was in a totally different range, from 259,000 to 264,000 (EMAR, *Agency Working in the UK: A Review of the Evidence* (Employment Relations Research Series No. 93) (London, October 2008). The most recent available *Labour Force Survey* (LFS) statistics for the UK (which relate to the period July–September 2012) indicate a total number of temporary employees standing at some 1,646,000, of which just under half are employed part-time (784,000). Within that overall figure, the number employed under 'agency temping' arrangements is put at 303,000 (of which 73,000 are part-time). Other categories of temporary work are broken down into those working under fixed-period contracts, casual workers, seasonal workers, and a 'catch-all' category of 'others'. (Office for National Statistics (ONS), Table EMP07, published 23 Jan. 2013)

Question 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.**

Austria	(a) Studies are being conducted by different organisations with an interest in the sector – see e.g. the mentioned survey by the Economic Chamber on attitudes to temporary agency work (question 2.1.b). (b) See question 2.1.b.
Belgium	(a) Yes, Federgon, the federation of temporary work agencies, published some data on its website. (b) In 2012, a total of 540.434 workers (among them 188.443 students) have made 166,4 million working hours (= minus 5.6% compared to 2011). On average 84.827 persons per day (FTU) have done temporary agency work, this is a penetration level of 2.22% of the total working population. There are 142 undertakings active as temporary work agency, with 1.274 local branches, employing a permanent staff of 6.400 employees.
Denmark	No such data available.
Finland	(a) No (b) n/a
Germany	(a) Yes (b) As far as I can see - no real difference of data
Hungary	(a) Yes (b) Workers who are employed 0-6 months in Hungary (source: KSH MEF)

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<tr><td>Ireland</td><td>(a) There are no other reliable sources of data of which the writer is aware

(b) n/a</td></tr>
<tr><td>Israel</td><td>(a) No other sources describing the current situation in Israel regarding the scope of employment through agencies.

(b) n/a</td></tr>
<tr><td>Netherlands</td><td>(a) See 3.1

(b) See 3.1</td></tr>
<tr><td>Norway</td><td>(a) See above 3.1. Statistics may also be found on the homepage of Statistisk Sentralbyra - Statistics Norway.

(b) See above 3.1</td></tr>
<tr><td>Slovenia</td><td>(a) No

(b) n/a</td></tr>
<tr><td>Spain</td><td>(a) Not known. The “official” statistics/data are considered reliable. Anyway the figures of unemployment in Spain are very probably over-estimated: according to several experts, the number of unemployed (26.2% of the “active population”) ought to be reduced by five or six points because of the “unreported work”

(b) n/a</td></tr>
<tr><td>Sweden</td><td>(a) See 3.1</td></tr>
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	(b) See 3.1
United Kingdom	(a) See 3.1 (b) See 3.1

Question 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?**

Austria	The sectors reporting the largest numbers of agency employees are the metal and machinery industry, construction, crafts, electronics and technology. Together with the automobile and chemical industry, they make up nearly three quarters of the demand for temporary agency work. This trend has remained largely unchanged over the last decade.
Belgium	Of the persons doing temporary agency work, 59.9% is male and 40.1% female. 57.9% are manual workers and 42.1% are intellectual workers. 67.2% of the temporary agency work activity is done in Flanders, 23.5% in Wallony and 9.3% in the Brussels region. Age category spread: - 21: 8.6%; 21-25: 27.0%; 26-30: 18.5%; 31-45: 31.8%; 46+: 14.1% (50+: 8.3%). I have not found data concerning the spread of the activity over the sectors of the labour market or the kind of jobs executed by temporary agency workers.
Denmark	In all sectors.
Finland	Hotel and restaurant business is the most important sector in this respect. Then come commerce, manufacturing industries and construction.
Germany	2012: • metal working/electrics - 32 per cent of all temporary agency workers • transport, logicistics, safety or security – 24 per cent • other manufacturing sector, agriculture – 18 per cent • a lot of other areas Trend: • significant increase of services sector (Call Center, warehouse and transport worker), • significant decrease in metal working/electrics; • ancillary workers/unqualified work: one third of temporary agency workers
Hungary	We do not have exact data, but tourism could be the sector where the most temporary work arrangements and temporary work agencies can be found.

Ireland	Temporary work is prevalent across the economy. The official statistics produced by the Central Statistics Office indicate that temporary work is particularly prevalent in the following sectors of the economy: - (The numbers in ( ) relate to the numbers employed in the first quarter of 2013) • Whosesale and Retail (23,000) • Accommodation and Food Services (14,900) • Education (21,300) • Health Service (20,700) • Other Services Activities (11,700)
Israel	On 16.2.04 a general collective agreement was signed, which we will discuss later. This agreement is broader than the extension order came to regulate the status and rights of workers employed through agencies, and states in Article 5 that manpower agencies will put employee in temporary work only in roles that are deemed to be the following: Replacement worker on maternity leave; replacement worker in an unpaid leave and / or illness and / or accident at work or work disability ; staffing personnel required to perform a project limited in time (when the project period was estimated in advance); unpredictable working pressure; staffing a new activity until it becomes an integral part from the employer; Staffing jobs that require special skills in technology and science.
Netherlands	There are hardly any area anymore where temp work is not be found. In some areas the use of temporary work is more common than in others. Research between 1998 and 2008 gave some indications about the use of temp work without the possibility to get a definite contract: trade and hospitality: 10%, agriculture 8%, transport, commercial services, education 6%, care 5%, construction and industry 3% (source: Flexibilisering, de balans opgemaakt, scietific bureau of trade unions, December 2011).
Norway	The majority of temporary workers are within the hotel and restaurant sector, and within education, health and social service. NHO Service, an affiliate of the Confederation of Norwegian Enterprise (NHO.) has 510 temporary work agencies as members. In 2011, statistics for the temporary work agencies showed that the majority were within traditional clerical

	work, second was building and industry, and as number three and four health/social services and IT respectively.
Slovenia	There is no specific data in relation to which sectors and which activities temporary work arrangements are the most often to be found. As a rule agency workers are less-skilled workers mainly in the construction sector and in low-technology manufacturing industries.
Spain	The above-cited statistics of the temporary work agencies reveal that most of their activity (more than 80%) is concentrated in five branches: hotels, agriculture, manufactures, transport, commerce. The sectors in which the ratio of temporary work is higher are agriculture (more fixed-term contracts than non fixed-term contracts), building (the rate of temporary work is in this sector nearly 45% of the total) and hotels (rate of temporary work about 35%) (source: ENA and Labour Force Survey of Eurostat).
Sweden	(a) See 3.1 (b) See 3.1
United Kingdom	The more frequently listed occupations are “professional, administrative, secretarial, personal services (e.g. social carers, class room assistants and workers in hospitality) and process/plant/machine operations”.

Question 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.**

Austria	(a) Yes, with respect to on-going collective action. By contrast, all sectors and economic activities are theoretically open to temporary work agencies. (b) The AÜG explicitly prohibits the assignment of employees to an undertaking currently concerned by a strike or lockout. Self-evidently, this is to prevent that the balance of powers in industrial disputes is manifestly distorted in favour of the employer, for the latter could simply replace the striking or locked-out workforce by temporary agency workers (instead of being under pressure to resolve the conflict as fast as possible to resume the undertaking's activities). This is a remarkable provision, considering that Austrian law otherwise does not contain any explicit framework for collective action. It shows that the threat of temporary agency work for industrial relations is such an imminent one that even the Austrian legislator felt impelled to intervene in support of the employees' side.
Belgium	(a) Yes (b) Temporary agency work can only be used for the type of temporary work permitted according to Chapter I of the 1987 Temporary Agency Work Act: to replace a permanent employee, to respond to a temporary increase of work, to carry out an exceptional task. For the replacement of a permanent employee whose labour contract is suspended (e.g. because of illness, pregnancy) there is no time limit nor a procedure to be followed. However it is not allowed to replace a permanent employee whose labour contract is suspended because of lack of work due to economic reasons or bad weather conditions. It is also not permitted to post a temporary agency worker if there is a strike or lock-out at the user undertaking. For the replacement of a permanent employee whose employment has ended because of dismissal or otherwise, there is a time limit of 6 months that can be prolonged with 6 months. In case of dismissal of the permanent employee the user undertaking needs approval of the workers representation. If there is no workers representation, the temporary work agency has to notify the Social Fund for the temporary agency workers. If temporary agency work is to be used to respond to a temporary increase of work in a user undertaking with a

	workers representation, the approval of the workers representation is needed. The permission can be granted for repeated periods exceeding 1 month. If the user undertaking has no workers representation, there is a time limit of 6 months that can be prolonged with 6 months. As a rule, no approval or informing of the workers representation is needed If temporary agency work is to be used to see to carrying out an exceptional task, but there are exceptions. The time limit varies from 7 days per calendar year to 6 months that can be prolonged with 6 months depending on the kind of job. At first the use of temporary agency work in the building industry was prohibited. Since 2001 it is permitted but only to replace a permanent employee who is incapable to work or to respond to temporary increase of work. Specific rules are determined by the CLA concluded in the joint industrial committee of the building industry, such as the need for the temporary agency worker to possess a "security pass" certifying that he has followed a security training. The reason for these restrictions obviously is the high risk of labour accidents, often mortal, in the building industry. The use of temporary agency work is still prohibited for inland shipping and for manual work for movers or undertakings that store furniture.
Denmark	There are no limitations specifically with regard to temporary agency work.
Finland	(a) No (b) n/a
Germany	(a) Still ban of temporary work concerning work in the construction sector (§ 1b AÜG) (unclear whether this is in accordance with Directive 2008/104/EC) According to § 11 paragraph 5 AÜG the temporary agency worker is entitled to refuse to work for a "end-user" directly affected by strikes and industrial action. The "lender" has to inform the worker about this right. (b) See answer 3.4 (b)
Hungary	(a) No, there are not any sectors in Hungary.

	(b) n/a
Ireland	(a) There is no such prohibition in Ireland (b) n/a
Israel	(a) Yes (b) Labor Contractors Act, Article 16, prohibits the employment of workers by agencies under the circumstances of a strike or lock-out. Also Article 10 to the General Collective Agreement, prohibits it, detailing the rationale for this, to avoid thwarting the strike. Apart from this prohibition, Labor Contractors Act does not prohibit employment in essential services or specific tasks.
Netherlands	(a) Since the law Flexibility and Security (1999): not any more (with the exception af course that no TWA-work is allowed to break a strike; but as we have hardly any strikes, this is a more academic issue).There is however an actual discussion going around about the restriction on TWA-work. (b) In order to implement EU Directive 2008/104 Dutch Law had to be adapted. This happened too late, only on 13 April 2012. As a result of this, restrictions on the use of TWAs are not allowed anymore. However, lots of CLA's exist, in which there are restrictions on TWA, e.g. that for a company it is only allowed to use 10% of TWA-employees. The organisation of TWAs has asked the Minister of Social Affairs not to declare generally binding these CLA's any more. In some cases the Minister has agreed, and has not declared generally binding these provisions. However, on the website of some organisations, the old text (with the restrictions) still occur.
Norway	(a) Pursuant to section 14-12 subsection 5 of the Working Environment Act, the Ministry may prohibit hiring of certain groups of workers or in certain sectors when so indicated by important social considerations. Such prohibition has not yet been effected. (b) n/a
Slovenia	(a) Yes

	(b) TWA may not assign workers to work with an user undertaking and the user undertaking may not use the work of assigned workers: – in cases when the assigned workers would replace workers employed with the user undertaking who are on strike, – in cases when the user undertaking has during the transitional period of the past 12 months cancelled employment contracts with a large number of workers employed with him, – in cases related to workplaces for which the user undertaking's risk assessment shows that workers working at such workplaces are exposed to dangers and risks due to which measures shall be laid down to reduce and/or limit the duration of exposure, and – in other cases which may be laid down in a branch collective agreement, if these provide for greater protection of workers or are dictated by workers' safety and health requirements. Also quota is chosen for the agency workers: the number of workers assigned to the user undertaking may not exceed 25 per cent of the number of workers employed with the user undertaking, except if otherwise provided by a branch collective agreement. This limitation does not include workers who are employed for an indefinite duration with the TWA. The limitation shall not apply to a user undertaking who is a smaller employer (with less then 10 employees).
Spain	(a) Yes (b) (1) As a general rule, in the event of strike it is not permitted to replace the striking workers; it is supposed a guarantee inherent in the right to strike. The general rule applies expressly in the particular case of the activity of the temporary work agencies (section 8.1 Ley 14/1994). (2) Temporary work agencies are not permitted to several dangerous activities, listed in Royal Decree 216/1999: mines, building, off-shore platforms, explosives industry, activities with high-tension electrical risks. (3) Temporary work agencies are only permitted to temporary work (fixed term contracts).
Sweden	(a) See 3.1

	(b) See 3.1
United Kingdom	(a) Apart from what is said below in relation to industrial action (strikes), there is little or nothing by way of regulatory prohibitions. (b) Where the legislator has intervened, this does not tend to prohibit the activity, but places some restrictions on the way in which it is conducted. Thus, the regulatory regime established by the Employment Agencies Act 1973 includes a general prohibition (subject only to prescribed exceptions) against the making of a demand for, or the receipt of, any payment (fee) for finding employment or for seeking to find employment for any person. So, too, the Conduct of Employment Agencies and Employment Business Regulations 2003, which were made under powers contained in the 1973 Act, introduce a variety of additional restrictions as part of the framework within which labour placement activity can proceed in the UK. In particular, there are general prohibitions against charging fees for the service of labour placement (work finding services), and a broad range of associated provisions which endeavour to ensure that labour placement organizations cannot disguise other charges or services in order to circumvent that fee-charging prohibition. However, as noted, of particular note is the prohibition in Regulation 7 of the 2003 Regulations upon providing labour in the context of industrial disputes – although it may be noted that this does not apply in situations where the action consists of 'an unofficial strike or other unofficial industrial action'. It should also be noted that the Gangmasters (Licensing) Act 2004 introduced a complementary scheme of regulation, and covers certain activities in the context of "(a) agricultural work, (b) gathering shellfish, and (c) processing or packaging — (i) any produce derived from agricultural work, or (ii) shellfish, fish or products derived from shellfish or fish". Once again, however, this does not extend to any outright prohibition upon temporary work arrangements in those sectors.

Question 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?**

Austria	No
Belgium	No
Denmark	No
Finland	Yes 13 January 1936 – not in force. The Convention was, however, denounced upon ratification of Convention No. 96 in 1951.
Germany	No
Hungary	No
Ireland	No This convention was not ratified. It was superseded by Convention 96 of 1949 which was ratified by Ireland in 1972, following the enactment of the Employment Agencies Act 1971.
Israel	No
Netherlands	No It is not easy to find a complete list of all conventions ratified by the Netherlands. I found out that the Fundamental Conventions C029, C087, C098, C100, C105, C111, C138 and C182 were signed, and the Governance Conventions C081, C122, C129, C144, and the Technical C002. That would mean that the others are not signed. (source: ILO, Ratifications of ILO conventions: ratifications for Netherlands). On the up-to-date instruments list 2011 (www.ilo.org/wcmsp5 the conventions 34, 88, 96 and 181 are not mentioned). In 2006 the governement announced that the Netherlands will not ratify the conventions 119, 167, 170, 184 and 187. It will ratify 139 and 148. However in February 2013 the Social Economic council (tri-partite) was asked an advice on the ratifaction of C170. The biggest Trade Union FNV started in 2012 a campaign to ratify convention 189 (on domestic work). The Belgium National Labour

	Council has asked their government on 18 December 2012 to ratify C189.
Norway	No
Slovenia	No
Spain	Yes 27 April 1935
Sweden	Yes 1 January 1936 – not in force
United Kingdom	No

Question 4.2 Has your country ratified ILO Convention No.88 (the Employment Service Convention) of 1948, and, if so, when did this take place?

Austria	Yes – 25 September 1973
Belgium	Yes – 16 March 1958
Denmark	Yes – 30 November 1972
Finland	Yes – 23 November 1989
Germany	Yes – 22 June 1954
Hungary	Yes – 6 June 1957
Ireland	Yes – 29 October 1969
Israel	Yes – 21 August 1959.
Netherlands	Yes – 7 March 1950
Norway	Yes – 4 July 1949
Slovenia	Yes – 29 May 1992
Spain	Yes – 30 May 1960
Sweden	Yes – 25 November 1949
United Kingdom	Yes – 10 August 1949 – not in force

Question 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?**

Austria	No
Belgium	Yes – 4 July 1958. Belgium has accepted the provisions of Part II of the Convention, but it is not in force any more
Denmark	No
Finland	Yes – 22 December 1951, but the Convention was denounced in 1992
Germany	Yes – 8 September 1954 – not in force
Hungary	No
Ireland	Yes – 13 June 1972
Israel	Yes – 19 June 1961 – not in force
Netherlands	Yes – 13 February 1992 – not in force - See 4.1
Norway	Yes – 29 June 1950 – not in force – the Convention was terminated by Norway on 8 July 2002
Slovenia	No
Spain	Yes – 5 May 1971 – (Provisions of Part II) – not in force
Sweden	Yes – 18 July 1960 – not in force – It was denounced in 1993
United Kingdom	No

Question 4.4 **Has your country ratified ILO Convention No.181 (the Private Employment Agencies Convention) 1997, and, if so, when did this take place?**

Austria	No
Belgium	Yes – 28 September 2004
Denmark	No
Finland	Yes – 25 May 1999
Germany	No
Hungary	Yes – 19 September 2003
Ireland	No
Israel	Yes – 4 October 2012 – not in force
Netherlands	Yes – 15 September 1999
Norway	No
Slovenia	No
Spain	Yes – 15 June 1999
Sweden	No
United Kingdom	No

Question 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.**

Austria	(a) Yes. (b) Actually, Austria implemented the directive with a delay of over one year, which was largely due to a failure of the relevant stakeholders (political parties, social partners) to agree on several central chapters of the reform. The implementation essentially consisted in the adaptation of a range of provisions of the AÜG (see question 5.3 for contents). At present, extensive discussions are taking place about the interpretation of the directive and its consequences for the Austrian order. Particularly, the restriction of the directive's scope to employees who are temporarily assigned gives rise to the questions whether long-term assignments might constitute an abusive circumvention of employees' rights in the sense of art. 5 of the directive. This might make the Austrian system, which (according to the case law of the Supreme Court) allows for assignments lacking any temporary limitation without converting them into direct employment relationships with the user undertaking, contrary to EU law.
Belgium	(a) Yes (b) Except for some minor changes, Belgium didn't have to adapt its existing rules laid down in the 1987 Temporary Agency Work Act and the collective labour agreements concluded in execution of that act. However, as far as I know, Belgium didn't discharge of its duty, according to article 4, to review the restrictions or prohibitions on the use of temporary agency work.
Denmark	Yes See above (1.3 and 1.4.)
Finland	(a) Yes (b) Most requirements of the Directive were already fulfilled by pre-existing national legislation. However, a new provision, Sec. 9a (10/2012) was added to Chapter 2 of the Employment Contracts Act (55/2001). The provision

	deals with access to the amenities and collective facilities in the user undertaking, regulated in Art. 6(4) of the Directive.
Germany	(a) Yes (b) In particular the AÜG
Hungary	(a) Yes (b) A huge step was the 2009. Act LXXIV. Act comes into force, which is legally regulated by sectoral dialogues, creating the conditions and operations of the sector, sub-sector and the sectoral social dialogue committees.
Ireland	(a) Yes (b) This Directive was implemented by the Protection of Employees (Temporary Agency Work) Act 2012, referred to at 2.2(b) above.
Israel	(a) No (b) n/a
Netherlands	(a) Yes it is. The Directive is implemented only on 13 April 2012. (b) The law *Wet allocatie arbeidskrachten door ntermediairs* (WAADI), often translated as Temporary Agencies Act, (law proposal 32 895) has been adapted. For an English version of the changes, see Dutch Chamber of Commerce, KvK Hiring or provision of workers in the Netherlands. In short all restrictions on the use of registered TWA-employees are not allowed any more.
Norway	(a) Yes (b) The Directive was implemented with effect from 1 January 2013. Two new sections - 14-12a (equal treatment regarding pay and working conditions in connection with the hiring out of workers by temporary work agencies) and 14-12b (the obligation to provide information and right of access to information) - were included in the Working Environment Act and came into force 1 January 2013.

	Equal treatment: Pursuant to section 14-12a the temporary work agency shall ensure that the workers that it hires out are at least given the conditions that would have applied if the worker had been recruited directly by the user undertaking to perform the same work with regard to: (a) the length and placement of working hours, (b) overtime work (c) the length and placement of breaks and rest period, (d) nightwork, (e) holiday, holiday pay, days off and remuneration for such days, and (f) pay and coverage of expenses. According to subsection 2, the workers shall be given access to the user undertaking's collective amenities and facilities on equal terms with direct employees of the user undertaking, unless otherwise objectively justified. The equal treatment does not apply to the user undertaking's pension scheme. The principle of equal treatment also applies to workers posted to Norway from other countries. Further, the provisions concerning hiring of and equal treatment apply to the hiring by enterprises without employees (Section 1 of the Regulations concerning hiring from temporary work agencies; FOR-2013-01-11-33). There is not any general minimum wage in Norway. However, within certain areas, there are generally applicable collective agreements (Construction sites (for construction workers), the maritime construction industry, the agriculture and horticulture sectors and for cleaning workers). In connection with the hiring out of labour by temporary work agencies to undertakings subject to general application regulations, both the regulations and the equal treatment requirements apply.

	Information: Section 14-12b has rules on obligation to provide information and right of access to information when hiring workers from temporary work agencies. Section 14-12b and 14-12c (see below) are measures for ensuring that the new provisions are complied with. This is in line with Art 10 of the Directive. Firstly, the user undertaking must provide the temporary work agency with the information necessary for compliance with the equal treatment requirement. Secondly, when so requested by the temporary agency worker, the temporary work agency must provide the worker with the information necessary to assess whether his or her pay and working conditions comply with the equal treatment requirement. Thirdly, when requested by the user undertaking, the temporary work agency shall provide documentation of the pay and working conditions agreed with a worker hired out to the user undertaking. And finally, the user undertaking must provide documentation of the pay and working conditions agreed between a temporary agency worker and that person's employer when requested by the employees' representatives at the user undertaking. We may add that the major employers' organisations have objected to this provision and argued that it may be in breach of the negative right of organisation as enshrined in Art. 11 of the European Convention on Human Rights. The labour organisations supported the right of access to information, and the Ministry of Labour argued that this was a suitable measure to ensure compliance with the requirement of equal treatment. The Ministry further commented that such right was not a restriction on the freedom to provide services [Art. 36 of the EEA Agreement (Art. 56 of the TFEU)] or Art. 4 of the Directive. The obligation to provide information to the user undertaking and to the elected representatives of the user undertaking applies only to conditions that are covered by the equal treatment requirement (i.e. section 14-12, subsection 1), and there are rules on a duty of confidentiality regarding the information.20 The information may only be used for ensuring or investigating compliance with the equal treatment requirement in section 14-12a or for meeting obligations pursuant to this provision. Joint and several liability: A new provision on joint and several liability for user undertakings (section (14-12c) came into force 1 July 2013.

	Norway has chosen to include a provision on joint and several liability for user undertakings, even if this is not part of the Directive. Pursuant to section 14-12c, user undertakings shall be liable in the same way as an unconditional guarantor for payment of wages, holiday pay and any other remuneration pursuant to the principle of equal treatment laid down in section 14-12a. Rules on joint and several liability also apply in sectors where general applicable collective agreements apply (see 7.1 e). The Civil Service Act The Civil Service Act was amended as well by including a provision on equal treatment (section 3B) and an obligation to provide information and right of access to information (section 3C). In addition, a provision on joint and several liability (3D) came into force 1 July 2013.
Slovenia	(a) Yes (b) The Directive was transferred to Slovene legal order with ERA and LMRA
Spain	(a) Yes (b) "La Ley 14/1994, de Empresas de Trabajo Temporal" (Act 14/1994) complied with the provisions of the Directive 2008/104 except in the list of activities not permitted to the temporary work agencies. "La Ley 35/2010" (Act 35/2010) removed this disharmony.
Sweden	(a) Yes (b) Sweden is bound by Directive 2008/104/EC and has implemented it through a new act: the Agency Work Act (2012:854)
United Kingdom	(a) Yes (b) Implementation of the Directive's provisions into domestic United Kingdom law was undertaken through the enactment of the Agency Workers Regulations 2010, which came into force on 1 October 2011.

Question 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.**

Austria	(a) Yes, both of them. (b) See question 5.4.b for the importance of the free movement of services and the Posting of Workers Directive.
Belgium	(a) Yes, Belgium is bound by both aforementioned Directives (b) Belgium had to allow temporary work agencies established in other EU Member States to operate in Belgium under the license conditions of their home State. It also had to lift some prohibitions, such as not permitting "labour exchange activities" to be undertaken by private organisations. Usually the necessary amendments are made to late, or only after being condemned by the EU Court of Justice.
Denmark	Yes. Denmark is bound by the posting of workers directive and the services in the internal market directive. Denmark has made use of Article 3(9) in Directive 96/71. The Danish legislation on temporary agency work accordingly covers temporary agency workers posted in Denmark.
Finland	(a) Directive 96/71/EC was implemented by means of a new statute, the Act on Posted Workers (1146/1999). The implementing measure of Directive 2006/123/EC is the Act on Provision of Services (1166/2009). (b) The Directives in question have been carefully transposed into Finnish law through Parliamentary Acts, which reproduce the contents of the Directives almost in a blue-print manner.
Germany	(a) See answer 4.6 (b) (b) As EU Member State Germany is bound to all EU directives and has to implement them.

Hungary	(a) Hungary is bound by the provisions at a supra-national level relating to temporary work and temporary work agencies. (b) 96/71 EC Directive regulates what the procedure where an enterprise sign on abroad with its own workers, that the employee is actually working in the posting.
Ireland	(a) Yes The Posting Directive (97/71) was implemented by primary legislation in 2001. The Services Directive (2006/123) was transposed by statutory regulation in 2010. (b) Hitherto the Posting Directive was significant in applying the terms of legally binding collective agreement (Registered Employment Agreements) and Employment Regulation Orders (minimum rates established by Joint Labour Committees) to workers temporally posted in Ireland by employers or agencies located outside the jurisdiction. These regulatory measures operated in such sectors as construction, contract cleaning and security services They had the effect of avoiding a situation in which contractors or agencies from lower wage cost economies could obtain a competitive advantage in tendering for work in these sectors. In 2011, in the case of Employment Regulation Orders, and this year in the case of Registered Employment Agreements, the legislation under which these instruments were made was declared invalid having regard to the provisions of the Constitution of Ireland. The result of these judicial decisions is that Ireland no longer has a system of universally applicable collective agreements. Nor does it have sectorial minimum wage regulation. There remains a national minimum wage (currently €8.65 per hour). Consequently the protection that these instruments previously provided against the type of situation that arose in Case C-341/05, Laval un Partneri Ltd v Svenska Byggnadsarbetareforbundet [2008] IRLR 160 no longer applies. The national minimum wage in Ireland is higher than that applicable in other European countries and this will deter competition in contracting or agency supplies to a degree. The Government has committed to bring forward new legislation to address the situation that arose following the striking down of the legislation under which collective agreements and employment regulation orders were given universal effect. Nonetheless if the current situation persists it is likely that there will be some penetration of the labour market by employment agencies from outside the State. With regard to the Services Directive (2006/123), this has had no discernible impact on the number of agencies from outside the jurisdiction operating within the State. That may, in part, be attributable to the matters referred to above.

Israel	(a) No (b) n/a
Netherlands	(a) I think the Netherlands are and these provisions were implemented (see message on www.government.nl/.../q-q-posting-of-workers, 21 December 2011, par. 2.) (b) The implementation were relevant for the maximum work periods and minimum rest periods (Art. 3-1-a directive), adapted as per 1 April 2007, the minimum paid annual holidays (adapted because of Schultz-Hoff jurisprudence) and minimum rates of pay.
Norway	(a) Yes (b) Directive 96/71/EC was implemented by law on 7 January 2000. Directive 2006/123/EC was implemented into the EEA agreement on 23 April 2009 and entered into force in Norway on 28 December 2009.
Slovenia	(a) Yes (b) Directive 96/71/EC was transferred to Slovene legal order with ERA. Directive *2006/123/EC* was transferred to Slovene legal order with LMRA.
Spain	(a) No (b) n/a
Sweden	a) Yes (b) Sweden is, as a member of the EU, bound by the *acquis communautaire.* In 2012, the Swedish Posting of Workers Act was amended with a particular provision concerning agency workers posted to Sweden.
United Kingdom	(a) Yes

	(b) The United Kingdom did not enact specific domestic legislation for the purposes of implementing the provisions of Directive 96/71/EC (the posting of workers Directive). Instead, a number of previous territorial limitations to the enjoyment of particular employment protections were repealed. Although the European Commission expressed the view in 2003 that the United Kingdom had not adequately transposed the posting of workers Directive into national law, there has been no challenge before the CJEU or elsewhere to the government's position. It may be noted, however, that in the wake of Case C-341/05, Laval and related jurisprudence before the CJEU, there has been an academic debate about the adequacy of the United Kingdom's approach, but, once again, no full-frontal challenge. A similar state of uncertainty exists in relation to the impact of the United Kingdom and Polish "Protocol" to the Treaty of Lisbon in relation to the EU Charter of Fundamental Rights of Citizens. In relation to Directive 2006/123/EC (the services Directive), the 2012 staff working document of the European Commission (SWD (2012) 148 final) on implementation of the Directive reported that: "The horizontal [United Kingdom] law giving effect to the main provisions of the Services Directive also implements the freedom to provide services clause as foreseen in Article 16 of the Directive, which has been literally reproduced. The horizontal law being an omnibus law, it also amended certain sector specific legislation, e.g. concerning pedlars, employment agencies." That document also notes that the United Kingdom carried out an in-depth screening process and "identified around 280 pieces out of several thousands to be assessed for their compliance with the Directive. 24 of those legislative acts were finally amended to comply with the Services Directive. However, it seems that only one piece of legislation, namely the Companies Act was modified in order to ensure compliance with the freedom to provide services clause." The Directive was implemented in the United Kingdom by the Provision of Services Regulations 2009 (S.I. 2009/2999). Following concerns raised by the European Commission in relation to the national applicability of authorisations, or licences to provide services, the United Kingdom government undertook a public consultation on amendment of the implementing provisions, and concluded (August 2013) that it will be appropriate to address the concerns of the EU Commission by "implementing a form of mutual recognition, under which all licences issued by competent authorities whose functions relate either to the entire United Kingdom or to at least one of the four parts of it listed above, shall be valid throughout the United Kingdom" – subject to "important exceptions on the grounds of overriding public interest in appropriate cases".

Question 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)?**

Austria	Although Austria ratified the Employment Service Convention in the 1970s, I doubt that the Convention or the mentioned Recommendations on this subject had a major influence on the design of public employment services in Austria – considering these services were regulated and extended in the inter-war period and largely corresponded to the rather modest requirements put up in the ILO context already when the Recommendations were drafted. Similarly, Austrian law should have corresponded to the minimum requirements of the Private Employment Agencies Convention and the corresponding Recommendation already before 1997. Yet, the manifold subjects addressed in these ILO instruments may have played a significant role for their more detailed regulation in the EU Temporary Agency Work Directive and subsequently the Austrian reform implementing this directive (see question 10.1.b for the content of the reform).
Belgium	The recommendations have been mentioned in government policy statements to adopt new legislation or amend existing legislation on temporary employment agencies. However, they are rarely used for interpreting the internal legislation.
Denmark	No direct inspiration.
Finland	To a very little extent.
Germany	No direct information about this issue.
Hungary	Government Regulation No. 118/2001 on temporary working. This Regulation shall apply to labour hire, labour hire and private placement activities continue for public employment, to pursue this activity registration conditions.
Ireland	Many of the earlier Recommendations referred to were taken into account in the Employment Agencies Act 1971. The Act also addresses the principal provisions of the 1997 Recommendation
Israel	Employment Service Law inspired by the recommendations of the Employment Service listed in the question. These recommendations concern how will the public employment service work. Article 2 of the Employment Service, states that the Employment Service, will be established by this Law, will co-ordinate information about the labor market situation, will achieve work-seekers and referring workers claimants and will co-operate with other agencies in matters of vocational training and vocational guidance.

Netherlands	As far as I know, this is not the case
Norway	See above under 4.5.
Slovenia	Ratified ILO Convention No. 88 and Recommendation No. 83 were considered at arranging of public services in the field of employment and active employment policy measures, that are ensuring within the Employment Service of the Republic of Slovenia, as a public institute organised in a unified manner across the entire area of the Republic of Slovenia.
Spain	Not (a) and (b). Yes (maybe) (c).
Sweden	We are not able to answer those questions. But as a background we can give the following information. Temporary work agency was prohibited in Sweden during the years 1942 - 1991. It was also not allowed during this time to engage in private employment agencies. This was based on ILO Convention No. 34 concerning Fee-Charging employments Agencies, which held that the employment agencies operated for profit would be abolished. In 1935 employment agencies operated for profit was banned by law in Sweden. Through an extension of this law in 1942, agency work with employment services was also banned. After the Convention No. 34 had been changed, Sweden later on, in 1976, changed the law and allowed employment services for profit for musicians and artists. In 1991 temporary agency work was allowed but employment agencies for profit were still banned.
United Kingdom	No direct inspiration – although, as with many other ILO instruments, it is difficult in the United Kingdom to identify specific instances, as opposed to the establishment of “an approach” or some point of reference for national regulators in “international best practice” or the like.

Question 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)?**

Austria	See question 5.1.
Belgium	Preparatory documents of the national legislation on temporary employment agencies often indicate the aim to implement the ILO Conventions No. 88 and No. 181?
Denmark	No direct connection to the conventions.
Finland	The pre-existing national legislation has to a large extent been in line with the Conventions, so that only minor alterations have been necessary. For instance, Convention No. 181 gave rise only to supplements concerning equal treatment of job-seekers and the use of child labour by private employment agencies.
Germany	See answer 5.1.
Hungary	The ILO Convention No. 88 proclaimed the Act LIII. of 2000, the No. 181 was proclaimed by the Act CX of 2004.
Ireland	See above. Furthermore, the principles set out in this Recommendation are reflected in the Protection of Employees (Temporary Agency Work) Act 2012.
Israel	Art 88 and 181, ratified by Israel, are expressed in the legislation. 88 Convention requires each State to run a free employment service, accessible to employees and employers. The implementation of the Convention, is expressed in the Employment Service Law. Convention 181, regulates the activities of private employment agencies. The Convention seeks to ensure that private employment agencies will work while respecting the principles of non-discrimination, and maintaining cooperation between them and the public employment service,. Some provisions of the Convention are expressed in the Employment Service Law and the Law of manpower contractors.
Netherlands	As far as I know, this is not the case

Norway	See above under 4.5.
Slovenia	See above. Ratified ILO Convention No. 88 and Recommendation No. 83 were considered at arranging of public services in the field of employment and active employment policy measures, that are ensuring within the Employment Service of the Republic of Slovenia, as a public institute organised in a unified manner across the entire area of the Republic of Slovenia.
Spain	No especial influence, except (maybe) ILO Convention No. 181 (1997); thirteen years later Act 35/2010 suppressed the ban of the private employment agencies; and fifteen years later Act 3/2012 suppressed the ban of the private lucrative employment agencies.
Sweden	See above at 5.1
United Kingdom	See above at 5.1 However, it may be suggested that, notwithstanding the (broadly) *laissez-faire* attitude in the United Kingdom of seeking to leave 'business' unfettered by 'red tape', certain limitations upon the unbridled freedom of temporary work agencies to conduct business on 'Wild West lines' are to be found – and that these reflect, by and large, matters encompassed by the international standards applicable to temporary agency work – notably, the ILO Private Employment Agencies Convention, 1997 (No. 181) and the accompanying ILO Private Employment Agencies Recommendation, 1997 (No. 188).

Question 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?

Austria	Most notably, the directive made it necessary to amend national-law provisions on equal treatment in the user undertaking: until last year, provisions on remuneration in the user undertaking were extended to temporary agency workers only when contained in branch-level collective agreements or administrative provisions (but e.g. not those contained in a plant-level agreement with the works council). Although this system will effectively continue in practice, the legislator aimed at bringing it under the derogation possibility provided for in art. 5(3) of the directive. Similarly, no equal treatment was required under Austrian law regarding annual leave and access to collective facilities in the user undertaking. Also the obligation to inform temporary agency workers about opportunities of ordinary employment in the user undertaking did not exist before 2013.
Belgium	Since the national legislation to a large extent predates the Directive, few regulatory provisions owe their origin from it. Some minor modifications to the 1987 Act were made by Act of 9 July 2012 and other details of the Directive have been implemented through Royal Decrees (e.g. Royal Decree of 12 September 2011).
Denmark	The legislation on temporary agency work is modeled on Directive 2008/104/EC.
Finland	See reply 4.5(b) above.
Germany	See answers 1.4., 2.3.(b)
Hungary	It came into force 17 November 2008 in Hungary as well.
Ireland	The Protection of Employees (Temporary Agency Work) Act 2012 was enacted to give effect in domestic law to the provisions of Directive 2008/104/EC
Israel	Directive 2008/104/EC purpose is to provide protection for employees of agencies (including pregnant women, breastfeeding women and children) in the eradication of discrimination based on factors including gender, race, ethnicity, religion, disabilities and sexual identity. Israel's Equal Employment Opportunity Law and Women's Labor Law, for example, has expressed such provisions.
Netherlands	This Directive has been implemented as per 13 April 2012.

Norway	See above under 4.5.
Slovenia	Provisions of private agencies for employment and TWA is based only on provisions of the EU Directives.
Spain	No especial influence, except in the list of activities not permitted.
Sweden	The Swedish Code of Statutes (2012:854) implements the Directive 2008/104/EC on temporary agency work.
United Kingdom	The Agency Workers Regulations 2010, which came into force on 1 October 2011, are intended to implement the Directive. It has recently been announced that the TUC has lodged a formal complaint with the European Commission arguing that the Agency Workers Regulations 2010 fail to implement the Directive properly in the United Kingdom. The TUC's arguments reputedly focus on the use of the 'Swedish derogation', the definition of 'pay' and the use of comparators.

Question 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.**

Austria	(a) Yes (b) The most important one might be the EU's freedom to provide services cross-border and its interpretation by the European Court of Justice. Already in 2011, the Court (in C-397/10) overruled a Belgian regulation requiring agencies to exercise the assignment of employees as their sole activity and to be established in a specific legal form, because it considered it an unjustifiably strict obstacle for European temporary agencies wishing to advance into the Belgian market. As a result, all national provisions that are burdensome for temporary agencies (which are numerous also in Austrian law) must be reviewed with a view to their justification and proportionality. This was certainly a strong argument against the introduction of more restrictive measures by the last reform. The Posting of Workers Directive constitutes a key reference for the member states' regulation of the assignment of temporary agency workers to their territory from other member states – especially since the ECJ found in Laval that it sets not only a minimum but also a maximum threshold to the member states' possibilities in this respect. Austria made extensive use of the possibility contained in art. 3(10) of the directive to extend the provisions contained in collective agreements (in all sectors) concerning wage, working time and annual leave to posted employees (incl. temporary agency workers). This was possible due to the fact that virtually all collective agreements are generally applicable (see question 8.5.b). As for Austria's protective provisions specifically for temporary agency workers, art. 3(9) of the directive provides the basis for applying them also to posted employees (see the Supreme Court decision last mentioned under question 9.4).
Belgium	(a) No, except for what is said in answer to Q 4.6 (b) (b) n/a
Denmark	See above (5.3. and 4.6)
Finland	(a) No (b) n/a

Germany	(a) No, as far as I know (b) n/a
Hungary	(a) Yes (b) The EU law has priority to national law, and it has direct effects.
Ireland	(a) No, other than those already mentioned (b) See above
Israel	(a) No (b) n/a
Netherlands	(a) As far as I know, this is not the case (b) n/a
Norway	(a) No (b) n/a
Slovenia	(a) The proposer of ERA (Ministry of Labour) explicitly referred to Directive 2008/104/ES at designation provisions about: - rights of the posted worker to access towards training and education at the user under equal conditions, as workers that are employed at an user, - possibility of the lower payment of salary within time between two assignments, - ban of posting of a worker in especially certain cases from side of the employer is spreading also to ban for an user. Provision was changed as well about limitation to the duration of assignment. There is no limitation any more (previously 1 year).

	(b) Under LMRA in accordance with Directive 2008/104/EC: – employer shall without setting any limitations allow the worker to conclude employment contract with the user undertaking after the end of the term of posting, and – user undertaking shall allow the worker to be informed about job vacancies or types of work in the user undertaking and ensure him opportunities for conclusion of permanent employment contract at the user undertaking, equal to the opportunities, provided to workers employed in the user undertaking. At preparing legislations Slovenia considers also all other binding international documents, at arranging of rights of workers (including the agency workers) especially European social charter.
Spain	(a) No special influence (b) n/a
Sweden	(a) No (b) n/a
United Kingdom	(a) No. The modern position is made up of a combination of pre-existing regulatory arrangements (albeit that these are currently under consideration for updating and modernization) and the provisions introduced by the Agency Workers Regulations 2010. (b) n/a

Question 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?**

Austria	(a) Under the rules applicable to any commercial undertaking. (b) Yes. (c) See questions 6.2-6.4.
Belgium	(a) Under normal rules (b) Yes (c) No
Denmark	Temporary work agencies are set up and regulated under normal company law rules.
Finland	(a) There are no special rules on this point. (b) Yes. (c) No
Germany	(a) See answer 6.1. (b) (b) Yes. (c) n/a
Hungary	(a) The temporary work agencies can be established as a regular company, the scope of activities to be included. (b) Yes, they are. (c) Yes, the respect of supervising.

Ireland	(a) Any natural or legal person may establish an employment agency. However they cannot operate without a licence issued by the Minister for Jobs, Enterprise and Innovation. (b) If they are incorporated as a company they are subject to all of the provisions of company law (c) No, other than in respect of the requirement to hold a licence.
Israel	(a) Manpower Contractors Law and the regulations promulgated thereunder regulate the manner of establishment and activities of contractors manpower personnel in Israel. (b) If The manpower contractor wishes to work within a limited company, it is subject to a all the provisions of the Companies Act, 1999. However, he can also function not as a corporation. Thus, Regulation 2 to the Employment by Manpower Contractors (License Application) - 1996, states that the application for a license may submit a director of a corporation, and a business owner if the business is not a corporation. (c) Yes. See answer to question 6.1 (a) above and the answers to this chapter.
Netherlands	(a) Art. 7:690 and 691 DCC (see below) describe the position of the employee of a twa. It is possible to make other provisions by CLA, and this is what has happened since 1999: instead of a period of 26 weeks, during which the employees has less rights than orther employees have, this period is extended to 78 weeks. In compensation, the employees of twa's do build up some pension rights, and are allowed to get extra education paid by the employer. **Article 7:691 Ending of a secondment agreement** **- 1.** Article 7:668a shall apply only to a secondment agreement once the employee has performed work for a period of more than 26 weeks. **- 2.** In a secondment agreement may be stipulated in writing that such an agreement will end by operation of law when the third party referred to in Article 7:690 has requested the employer to end the situation in which this employee is placed at his disposal for the performance of work. If a contractual stipulation as meant in the preceding sentence is

	included in a secondment agreement, the employee may always terminate the secondment agreement with immediate effect. **- 3.** A contractual stipulation as meant in paragraph 2 shall no longer have any effect if the employee has performed work for the employer for more than 26 weeks. On expiry of this period the right of the employee to terminate the secondment agreement as referred to in paragraph 2 ceases to exist. **- 4.** For the calculation of the periods referred to in paragraphs 1 and 3, successive periods during which work is performed with intervals of less than one year shall be taken into account as well. **- 5.** For the calculation of the periods meant in paragraph 1 and 3, the periods during which work is performed for different employers who, in respect of the work performed, must reasonably be considered to be each other's successors, shall also be taken into account. **- 6.** The present Article does not apply to a secondment agreement whereby the employer and the third party both form a part of a group as referred to in Article 2:24b of the Civil Code or whereby one of them is a subsidiary of the other as referred to in Article 2:24a of the Civil Code. **- 7.** It is only possible to derogate to the disadvantage of the employee from the periods referred to in paragraph 1, 3 and 4 and from paragraph 5 by Collective Labour Agreement or by Regulation made by or on behalf of a public governing body competent to this end. (b) There is no formal obligation to register a twa in another way than other companies must be registered, but in practice the government stimulates to register a twa in a specific way. If a twa is not registered in such a way, the company who makes use of this twa bears the risk to have to pay the minimum wage to the employee (on top of tghe obligation of this company to pay the twa), see article 7:692 DCC which was recently introduced (text see below). **Article 7:692 Minimum wage and minimum holiday allowance for employees working in the Netherlands** **- 1.** If the work is performed under a secondment agreement in the Netherlands, then the employer and third party are joint and several liable for the payment of the applicable minimum wage and applicable minimum holiday allowance as referred to in Articles 7 and 15 of the Act on Minimum Wage and Minimum Holiday Allowance, regardless which law is governing the employment agreement and/or the agreement between the employer and the third party. **- 2.** Paragraph 1 does not apply to the third party if, at the time of the conclusion of the agreement between the employer

	and this third party, the employer is certified by an accredited certification body, acknowledged as such by the Accreditation Council, in accordance with the regulation of the Minister of Social Affairs and Employment for setting standards as far as these standards relate to the observance of Articles 7 and 15 of the Act on Minimum Wage and Minimum Holiday Allowance. This article is important in another way, because it emphasises the cooperation between the public and the private sector. If a twa is acknowledged by the Accreditation Council (a private body), this has a public consequence. (c) See above
Norway	(a) Pursuant to section 27 of the Labour Market Act and regulations according to the act, an enterprise "whose object is to hire out labour" must be registered as a private limited company or a public limited company or post a certified guarantee for an amount equal to the minimum amount for incorporation. (b) Enterprises registered as public or private limited companies or other, similar forms of enterprises in another EEA country meet the requirements for operating in Norway. (c) In addition to registration in the Register of Business Enterprises, the enterprise must also be registered as an employer with the tax collection authority. <u>Mandatory registration</u> With effect from 2009, all temporary work agencies (staffing enterprises) engaged in the hiring out of labour must report theses activities to the Labour Inspection Authority and be registered in a public register. As of 1 March 2009, companies are prohibited from using staffing enterprises that are not lawfully registered. The Labour Inspection has a register on staffing enterprises. All temporary work agencies, regardless of whether the enterprise is Norwegian or foreign-based, must have a permanent representative in Norway. The representative shall have the power to act on behalf of the company in legal matters. Thus, subject to the above rules, temporary work agencies are free to operate, however, as mentioned, there are strict restrictions in regard to the hiring of labour by the user undertaking.

Slovenia	Temporary work agencies are set up and regulated under normal company law rules and are not treated as special organisations, but they must meet additional conditions for performance of activity of ensuring of work of workers to other user: - that in last two years did not infringe labour legislation; - that in last two years settled all the obligations in the field of taxes and charges; - meets staff, spatial, organisational and other conditions, laid down in detail by the minister responsible for labour.
Spain	(a) By means of legislation (b) No (c) Yes (explained below)
Sweden	(a) In 2008, 1.3% of the working population was employed by a temporary work agency. Temporary work agency is today conducted by many companies, but the largest players in the Swedish staffing market are the privately owned companies Manpower, Proffice and Adecco. The state also conducts some form of staffing business in their companies Lernia and Samhall. (b) Yes, for example Manpower, Adecco and Proffice are run as private limited companies. (c) No
United Kingdom	(a) TWAs tend to be established in line with normal practice for corporate entities in the United Kingdom. Data compiled for 2009 by CIETT (the International Confederation of Private Employment Agencies) suggests that there were in that year some 1,068,197 agency workers, hired through the 17,000 branches of around 11,500 private employment agencies. All of the major players in the sector – including ADECCO, Manpower, Randstad and Reed – are well established in the United Kingdom market. (b) Once incorporated, the normal company law rules will be applicable. (c) In terms of their corporate regulation they are not treated as “special organizations”.

Question 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.**

Austria	(a) Yes – any undertaking which commercially assigns employees must obtain a trade licence for this activity. This duty is waived in the following instances: - assignment of employees between undertakings pursuing the same economic activity not exceeding six months in a calendar year; - assignments in the context of delivering technical equipment or machines, which are installed, maintained or explained to the customer's staff by employees of the supplier; - assignments to a joint venture of several undertaking by its members for economic or R&D purposes; - assignments within a group of undertakings; - assignments for the purpose of development aid. (b) As for any other regulated commercial activity covered by the Trade Regulation Act (GewO 1994), an application for a licence has to be made to the competent district authority, which assesses the applicant's legal status and qualification for the envisaged activity. In addition to these general requirements, a licence in the sector of temporary agency work requires the entrepreneur's nationality of an EEA member state (in case of a legal entity, its incorporation under the law of an EEA state). If the assignment of employees is to make up more than just a marginal part of the undertaking's activities, also its central organs and representatives must have EEA nationality. The same conditions apply for job placement activities. As concerns the requirement of the licence holders "reliability", the GewO explicitly refers to concerns about the violation of duties of employee protection. Notably, an applicant cannot be considered sufficiently reliable after having infringed provisions of the AÜG, of health and safety or social security regulations in the past. Already granted licences are to be withdrawn in case of any of the mentioned infringements.
Belgium	(a) They do require a license. (b) This is a regionalised matter. The Flanders, Walloon and Brussels region therefore have created a different (but comparable) set of rules.

	In Flanders, the would be temporary work agency has to apply with the Flemish employment administration. The license is given by the Flemish government after having received the advice of an advisory board created within the Flanders Socio-Economic Council, in principle for indefinite duration.
Denmark	License or other form of authorization is not required in Denmark (except in the transport sector where license is required for all).
Finland	(a) No licence is required. Only an advance notice to the labour inspection authority must be given prior to commencement of the activity of the agency. (b) n/a
Germany	(a) Yes, see answer 1.2 (b) (b) See answer 1.2 (b) - § 2 AÜG: - permit/authorisation issued in response to a written request to the Federal Employment Office - limited initially to a period of one year - unlimited duration possible after three successive years of activities authorised under the AÜG - § 3 AÜG: - permit/authorisation or renewal shall be refused if a set of criteria is not met, such as: - to fulfil the condition of reliability ("Zuverlässigkeit") - compliance with the standards of law concerning social security, tax on wages, legislation on placement services, recruitment of foreigners, health and safety acquis, responsibilities under employment law

	- to grant basic working and employment conditions for the duration of assignment that would apply if temporary agency worker had been recruited directly by the undertaking to occupy the same job (unless collective agreements allow deviating regulation, see answer 2.3 (b)) - temporary work agencies have to report data periodically to the Federal Employment Office and have to indicate changes in circumstances
Hungary	(a) It is needed to be registered by the State Employment Agency. (b) See above
Ireland	(a) Yes (b) An application for a licence is made to the Minister for Jobs, Enterprise and Innovation. A licence is renewable on a yearly basis. An applicant for a licence must, in the opinion of the Minister, be a person of good character and repute. The Department of Jobs, Enterprise and Innovation verifies this by means of two independent references vouching for the good character of the applicant and by means of a vetting report from the police that there is nothing in their records that would render the applicant unsuitable to hold an employment agency licence. The agency must conform to the regulations generally governing the activities of employment agencies, and must observe the laws and regulations relating to health and safety, observance of minimum wages and employment law generally. The Act of 1971 also places restrictions on the charging of fees by agencies and prohibits an agency for charging a job-seeker a fee for providing a service of seeking employment or from charging clients a fee for seeking persons to take employment. A similar prohibition is contained in the Act of 2012.
Israel	(a) Yes. Manpower Contractors Law imposes a licensing regime for the applicant to engage in the field. (b) Articles 2 to 10B to the Law deals with the regulation in order to get a license. Article 3 states that a manpower contractor should stand in these conditions:

	A. At least 3 years of experience. B. He gave a guarantee for fulfillment his obligations. C. Five years earlier to this date, he was not convicted in a Flagrant offense, which has disgrace. Article 6 provides that the Minister may restrict or terminate a license if The license is granted on the basis of false or incorrect information; the applicant has violated the terms of the license, he or a senior in his business have been convicted of an offense, is declared bankrupt or incompetent if he is given corporation liquidation order; He violated a substantive obligation imposed on him.
Netherlands	(a) Not any more (untill 1998 there was such an obligation). As per 1 July 2012 (implementation of Directive 2008/124) TWAs must be registered again, at the Chamber of Commerce. (b) See 6.2.a
Norway	(a) See above (b) See above
Slovenia	(a) By January 1, 2011 activity of TWA could be carried out based on concession contract concluded with Ministry of Labour. With enforcement of LMRA such provision is still in force for carried out activity of provisional and occasional occupations of students. TWA must be only enrolled to register at Ministry of Labour (foreign TWA to record). (b) Legal or a natural person, who wants to carry out activity of TWA, file an application for entry in register at Ministry of Labour with content and supplements, that is determining in special Regulations. Ministry checks fulfilment of determined conditions for performance of activity of TWA and decides on entry in register with administrative decision.
Spain	(a) Yes (b) Prior authorisation or licence depending on the fulfilment of the legal requirements established in Act 14/1994. Licence is for a year, becoming indefinite after three years of activity without infringements

Sweden	(a) No (b) n/a
United Kingdom	(a) Yes (b) Under the Employment Agencies Act 1973 a current license is required before any person undertakes activity as an employment agency or an employment business. The Gangmasters (Licensing) Act 2004 makes it a criminal offence to operate in designated sectors as, or to use, a gangmaster without a license.

Question 6.3 **(a) Are temporary work agencies subject to supervision/adminstration of any particular kind in your country?; (b) Who is responsible for the tasks of supervision/administration of temporary work agencies and their activities?**

Austria	(a) Yes (b) The AÜG provides that its implementation is to be supervised and controlled by the Ministry of Labour and Social Affairs, the Central Coordination Body for the Control of Illegal Employment, tax authorities, trade regulation authorities, labour inspectorates and social security institutions. Both temporary work agencies and user undertakings are obliged to enable controls, provide access to their premises and produce documents upon request of any of these bodies.
Belgium	(a) Yes, to supervision (b) Both the federal Labour Inspectorate and the regional Employment Administration can investigate the activities of temporary work agencies.
Denmark	No. No particular supervision/administration is taking place regarding temporary work agencies in Denmark.
Finland	(a) No (b) The labour inspection is in charge of supervising that the duty to give advance notice, explained above, is followed.
Germany	(a) Yes (b) In particular by - the Federal Employment Office - customs authorities (§ 17 and 17a AÜG) - in co-operation with different other administrations, relevant bodies and social agencies concerned with compliance of standards of social law, taxes ...
Hungary	(a) Yes. The State Employment Agency.

	(b) Minister for Employment Policy.
Ireland	(a) Agencies are subject to supervision by the National Employment Rights Authority, which is an agency of the Department of Jobs, Enterprise and Innovation. Authorised inspectors have extensive powers to enter the premises of an agency and to inspect records that the agency is required to maintain under the Act. (b) See above
Israel	(a) Yes (b) The director of regulation and enforcement to the Ministry of Industry Trade and Labor. The Minister delegates his powers, acting through supervising agents.
Netherlands	(a) See 6.2.a (b) Chamber of Commerce
Norway	(a) See above The Labour Inspection Authority is responsible for overseeing the register of staffing enterprises. (See also comments under no. 7.2 concerning new rules that apply from 1 January 2014 aiming to strengthen the powers of the Labour Inspection Authority.) (b) See above
Slovenia	(a) TWA must report at the request of Ministry of Labour about performance of work and activity and to report all changes about fulfilment of personnel, organizational, spatial and other conditions, that can influence execution of activity. Reporting is determined with special Regulations. (b) Control over execution of laws and other regulations from field of hiring and employment relationships is carrying out by Labour Inspectorate. In 2012 Inspector did tightened supervision (control) over fulfilment of personnel and of spatial conditions and

	above execution of ERA at TWA and user undertakings. He found out larger number of violations concerning performance of activity without preliminary entry of the employer in suitable register or records at Ministry for work, and violations of user undertakings that accepted workers of such agencies. There are also a number of cases of abuse of regulations when agency worker after two years of temporary work at user undertaking, sign employment contract with another TWA, and continue to work at same user.
Spain	(a) Yes (b) The Ministry of Employment and Social Security (or the equivalent body in regions) is charged with the task of authorisation and fulfilment of the legal requirements of temporary work agencies. The Inspection of Work is responsible for the supervision of the regular activity of these agencies
Sweden	(a) This branch is well regulated in the meaning that it is almost entirely covered by collective agreements. Some collective agreements provide for enhanced preference for redundant workers and strengthened right to negotiate for the unions. Due to the rules of the collective agreements the companies are "supervised" by the other parties in the agreements. (b) There is no other supervision than by a trade union which is a party, or try to become a party, in a collective agreement with the company.
United Kingdom	(a) Yes (b) Where the regulatory framework under the 1973 Act and the 2003 Regulations applies, the approach is essentially 'administrative'. Monitoring and enforcement is carried out through an Employment Agencies Standards Inspectorate (EAS), with additional sanctioning arrangements being made available under the criminal law. In relation to situations where protective arrangements relate to the health, safety and hygiene of the worker, the United Kingdom utilizes a framework of enforcement which relies predominantly upon criminal law sanctions (including fines, imprisonment, and – where appropriate – disqualification from the right to hold the position of a director of a company). The basis for these arrangements can be found in the Health and Safety at Work Act 1974, and is enforced through the Health & Safety Executive (HSE) in conjunction with local authority inspections.

Question 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?**

Austria	(a) All of the mentioned areas are relevant – the agency has to comply with general requirements under civil, company, labour and social security law just as any other company employing workers, and additionally with the provisions of the AÜG. All the mentioned sources provide for penal sanctions in case of certain infringements. (b) Matters of civil law are dealt with by the general courts in three instances (the third being the Supreme Court). If provisions of labour law are at issue, these courts operate in a special composition and according to the special procedural rules of the Labour and Social Court Act (ASGG). Matters of public law (such as the imposition of an administrative sanction or the prohibition of the agency's activities) start with a decision by an administrative authority, which as a rule can be appealed before a semi-judicial body referred to as Independent Administrative Senate (or, in tax matters, Independent Finance Senate. These bodies will be replaced by "real" courts as from 2014) and in third instance before the Administrative Court. Decisions by the social security authorities concerning contributions follow the administrative channel, with the Administrative Court deciding in last instance; decisions on benefit entitlements can be appealed before the general courts operating under the procedural framework of the mentioned ASGG.
Belgium	(a) Both under Penal Law and Labour Law. (b) Some issues can be dealt with by Labour Tribunals/ Courts and by Criminal Courts. The refusal or withdrawal of a license is subject to the competence of the Conseil d' État (the supreme administrative court).
Denmark	Temporary work agencies are treated like any other business regarding adjudication. Accordingly they can be dealt with by the normal civil courts or by the Labour Court.
Finland	(a) A TWA is, in its capacity as the empoyer of its emplyees, under the regular supervision of the labour inspection authorities. Also contractual disputes, arising from the employment relationship, are treated in a regular way, that is to say in regular courts as the main rule.

	(b) See above
Germany	(a) Yes, different options – the nature of adjudication depends on the individual case. (b) With regard to their respective responsibilities, e.g. the Federal Employment Office (legal dispute related to e.g. the permit/renewal: Social Courts), customs authorities, Labour Courts (legal disputes between temporary agency workers and [a] temporary work agencies as employers and also [b] with the "End-user"), Finance Courts (Finanzgerichte) ...
Hungary	(a) No (b) n/a
Ireland	(a) Non-adherence to the provisions of the Act of 1971, or regulations made thereunder, constitutes a criminal offence punishable by a fine of €2,000, and in the case of a continuing offence a fine of €1,000 for every day that the offence continues. Such offences are prosecuted summarily by the Minister in the District Court. Agencies that are incorporated under the Companies Acts are subject to the same legal regime as all other companies which can involve both civil and criminal law. Infringements of employment law by agencies are dealt with in civil law, under the same legal regime as applies to all other employers, through the employment tribunals and the Labour Courts. (b) See above
Israel	(a) Yes. Article 20 of the Law allows the Labour Court to impose criminal liability under the Penal Code, 1977 against those who violate the law. Administrative Offences Act, 1985 and the regulations promulgated there under (in our case the Administrative Offences Regulations (Administrative fine - foreign workers), - 1992 Recently (on 19/06/12) also the law of increase enforcement of labor law - 2011, which aims to increase and improve the enforcement of labor laws. (b) The labor Courts and the manager of regulation and enforcement in the ministry. See more extensive details on the

	subject in answers to questions 6.3, 6.6, 6.7, 9.1 and 9.2.
Netherlands	(a) If a TWA is not registered, or if a company uses twa-employees from a not-registered-TWA, thay can get a penalty of EUR 12.000 per employee (EUR 24.000 per employee if it is the second time and EUR 36.000 per employee if it is the third time) from the Labour Inspection. So these penalties are high. (b) If a company does not agree with the penalty, it can go to court.
Norway	(a) Matters relating to supervision / administration of temporary work agencies are subject to the ordinary rules of the Civil law etc. and the ordinary courts. (b) (See 7.3 concerning the powers of the Norwegian Labour Court)
Slovenia	(a) About entry and the erasure from register of TWA decides Ministry of Labour with administrative decision. Against final decision is possible administrative dispute at Administrative Court. (b) Fines for violations of LMRA and ERA impose Labour Inspector. Court protection is possible at court of general jurisdiction.
Spain	(a) Temporary work agencies are subject to special regulatory arrangements relating Labour Law: the Administration of Labour is competent to licensing, registering, supervising and receiving/obtaining information from them. (b) It is up to the Labour Judges and Courts the adjudication of cases and solving the issues concerning: (1) the decisions of the Ministry of Employment over the licence the temporary work agencies to act in the labour market, and (2) the decisions of the Inspection of Work relating the supervision of their activities
Sweden	(a) Cases between workers and temporary-work agencies or between workers and user undertakings concerning the application of the Agency Work Act shall – according to section 17 the Agency Work Act – be dealt with in accordance with the Labour Disputes (Judicial Procedure) Act. (b) The questions which can be brought to the Labour court are disputes about damages for temporary-work agencies or undertakings. A temporary-work agency shall, for the duration of the worker's assignment at a user undertaking, guarantee the worker at least the same basic working and employment conditions as would apply if the had been recruited directly

	by that undertaking to carry out the same job (section 6) A temporary-work agency shall not, through conditions in agreements or in any other manner, prevent a worker from accepting employment with a user undertaking for which he or she is working or has worked (section 9). A temporary-work agency shall not request, lay down in an agreement or receive from a worker any remuneration in exchange for arranging for them to be placed at a user undertaking, or because a worker concludes a contract of employment with a user undertaking for which he or she is working or has worked (section 10). A temporary-work agency that breaches those rules shall pay damages to the worker for the loss incurred and for the violation that has occurred (section 13). A user undertaking shall give a worker working at the user undertaking access to collective facilities and amenities under the same conditions as workers employed directly by the undertaking, unless there are special reasons to the contrary (section 11). A user undertaking shall inform workers at the undertaking of any vacant permanent positions and probationary employment at the undertaking. Such information may be provided by being made generally available in the workplace (section 12). If a user undertaking breaches those rules the undertaking shall pay damages to the worker for the loss incurred and for the violation that has occurred (section 14).
United Kingdom	(a) In principle, all of these modes of adjudication could come into play. (b) Where penal sanctions are involved, the prosecution process will generally be through the normal criminal courts (Magistrates Courts and the Crown Court). Certain matters can be brought before the Employment Tribunals (with appeals to the Employment Appeal Tribunal) where these concern employment rights within the context of temporary agency work arrangements – the designation of the Employment Tribunals as the appropriate jurisdictional forum will always be specified in the relevant legislation, as those bodies, being “creatures of statute”, do not possess “residual general jurisdiction” within the United Kingdom’s legal system. Residual matters relating to company law and related administrative issues lie within the jurisdiction of the normal civil courts.

Question 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.**

Austria	(a) As any other undertaking, the agency can employ persons without EEA nationality or falling under a transitional regime after EU accession only after some form of work permit has been obtained for the individual at issue under the Law on the Employment of Foreigners (AuslBG). The employer must be prepared to provide information and produce documents about the employment of such persons whenever requested by tax, social security or labour market authorities, who for control purposes can demand access to the undertaking's premises. (b) Again, temporary work agencies have the same duties as any other employer – notably to deduct the amount of income tax from the employee's wage and forward it to the competent tax authority. (c) Social security contributions are deducted and paid by employers in a similar manner as tax; there are no specific provisions for temporary work agencies. (d) Also here, the general provisions apply: the employer must protect every employee's life, health, integrity and dignity under the detailed provisions of several national laws. Since the most recent amendment of the AÜG, the agency is explicitly required to inform the user about all circumstances that may be relevant for the protection of its employees (e.g. a specific health condition, pregnancy etc.) and to terminate the assignment immediately when it appears that the user undertaking does not respect health and safety regulations or its duty of care. (e) The general system applies. Austrian law does not know a statutory minimum wage: wages are set in collective agreements on the branch level as described under question 8.5.b. In the outcome, all commercial temporary work agencies must remunerate their blue-collar employees according to the minimum provisions set out in the Collective Agreement on Agency Work, and white-collar employees according to specific temporary agency provisions in branch-specific collective agreements. The hourly minimum wages currently envisaged by the mentioned collective agreement for blue-collar employees range between EUR 8.53 for unqualified personnel and EUR 16.28 for a learned technician. For periods of the employee's assignment to a user undertaking, they may be entitled to a substantially higher payment based on the AÜG's equal treatment provisions, which were amended as from this year in order to

	implement the EU Directive on Temporary Agency Work. Under the new rule, the employee benefits from all binding provisions concerning the wage of comparable "direct" employees of the user. However, binding provisions on the plant level can be neglected if both the agency and the user are bound by branch-level collective agreements. Since this will virtually always be the case in Austria (see question 8.5.b), temporary agency workers will continue to earn less than their colleagues who are contractually hired by the user if the higher wage of the latter is based e.g. on a works council agreement on the plant level. (f) Austrian law prescribes the information and consultation of an undertaking's works council concerning all relevant social, economic and technical aspects of the undertaking's management, current events and the design of labour relation. It is in the nature of temporary work agencies that the minimum threshold of five employees for establishing such a works council will usually be met in these undertakings. For some actions of the employer, the Labour Constitutional Law (ArbVG) prescribes specific procedures. Regarding measures in respect of a concrete employee, the works council needs to be consulted if the employer plans to dismiss one of them or to move them to an inferior position. If the works council declares its objections to a particular dismissal, this has important consequences for the possibilities of challenging this dismissal in court (by the works council or the employee themselves) and the employer's possibilities of justifying this dismissal decision. If the works council puts a veto on the employer's intention of moving an employee to an inferior position for a period of at least 13 weeks, the employer can take this measure only upon authorisation by a court. As for works council agreements, which may determine the rights and duties of temporary agency workers vis-à-vis the agency to a substantial degree, see question 8.5.b.
Belgium	As follows from the answer to Q 8.6 (b) hereafter, the temporary work agency is considered to be the employer of temporary agency workers. As a result, the usual obligations of an employer must be fulfilled by the temporary work agency, except for the application of provisions of the regulations concerning working conditions that are valid for the place of work. This last obligation has to be fulfilled by the user undertaking (article 19, al. 1, of the 1987 Temporary Agency Work Act). For that purpose are considered to be a regulation of working conditions: the rules concerning health, safety and hygiene at work, duration of working time, night work, public holidays, Sunday rest, women's labour, youth labour (article 19, al. 2). It is also the duty of the user undertaking to inform or consult with "workers' representatives" in relation to the use of temporary agency work.

Denmark	Temporary work agencies have responsibilities like any other employer in general (checking permission to work, regarding tax, social payments, paying wages and so on). Health and safety is, however, in practice the responsibility of the user undertaking.
Finland	(a) Checking immigration status, residence permit validity, work permit validity, or similar - No special rules apply here. (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.); Issues (b) and (c) are regulated in a special statute, the Act on Contractor's Obligations and Liability when Work is Contracted Out (1233/2006). It obliges enterprises concluding contracts on temporary agency work or subcontracted labour with other companies, to ensure that said companies discharge their statutory obligations. Furthermore, the Act promotes equal competition between enterprises and observance of the terms of employment. It is also a means in the campaign against grey economy. According to the Act, before an orderer concludes a contract, it is obliged to check whether the counterparty is entered in the Prepayment Register and the Employer Register, and is registered as VAT-liable in the Value Added Tax Register. Similarly, the orderer must ascertain whether the counterparty has paid its taxes and taken out pension insurances, as well as the type of collective agreement or principal terms of employment it applies to the work. The same information must also be obtained on foreign companies. Respectively, a TWA is obliged to provide the orderer the information mentioned above. (d) Ensuring health, safety and hygiene at work; The point of departure is that a TWA is the employer of its personnel and therefore has the duty to ensure its workers' health and safety at work. It is another matter that since the work is done in the premises and under the supervision of the user enterprise, the TWA has little influence in respect of the working conditions in practice. Consequently, the main responsibility in these matters rest with the user enterprise, see 7.1(d) below. The duties of the TWA mainly consist of providing the user enterprise with certain information. (e) Payment of wages (including observance of minimum wage requirements) is the main duty of a TWA.

	(f) Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters. Here again, a TWA has the regular duties of information and consultation in relation to its employees and their representatives. There is also a limited duty of information towards the worker representative, normally the shop steward, employed in the contractor firm. Any information, which is necessary to clarify a dispute concerning the pay or other terms of employment of a temporary worker, must be given to the worker representative mentioned above. This requires, however, that the worker in question has given his or her consent to giving the information. The procedure, regulated in the Act on Contractor's Obligations and Liability when Work is Contracted Out (1233/2006), is meant to be used in those cases where the terms of employment of the temporary workers are the same as those applied in the user firm.
Germany	Normal employer obligations plus obligations under the AÜG.
Hungary	Unless otherwise agreed, the lender bears expenses as travel expenses and fees for the aptitude test. The responsibility of the temporary work agency is reporting to the National Tax Authority the data of the employer of the begining of the insurance. (a) Checking immigration status, residence permit validity, work permit validity, or similar – Unless otherwise agreed, yes. (b) Payment of (or accounting for) personal tax liability – Unless otherwise agreed, yes. (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, etc.) – Unless otherwise agreed, yes. (d) Ensuring health, safety and hygiene at work – For the duration of placement the user enterprise shall be deemed employer in terms of the regulations on (a) occupational safety, (b) the employment of women, young people and workers with any degree of incapacity, (c) non-discrimination, (d) working conditions, (e) working time and resting time, and for the records of these. (e) Payment of wages (including observance of minimum wage requirements) – Unless otherwise agreed, yes.

	(f) Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters – The user enterprise shall inform the workers representatives about the numbers and the terms of the temprorary employee and the vacant posts.
Ireland	These questions should be considered together. The responsibility for ensuring compliance with the legal requirements in relation to work permits, taxation and social security payments and minimum wages rests with 'an employer'. If the agency is the employer (that is to say the agency is responsible for paying wages) it is obligated to fulfil all of the normal obligations imposed on employers by law, including the matters referred to in these questions. The position relating to health and safety is different and will be referred to below. This therefore applies in relation to (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., and (e) payment of wages (including observance of minimum wage requirements). In relation to (d), the responsibility for matters relating to health and safety at work rests with the person under whose control the employee works. That, in most cases, is the end user. As regards (f), for this purpose agency workers are deemed to be employed by the end-user.
Israel	Article 12A of the Law determined that the "user" for a period not exceeding nine months, is the contractor workforce. Thus, during this period, as far as authentic employment through manpower contractor, the contractor employer is charged with performing the duties listed in question 6.5. However, as this is not an authentic employment through manpower contractor, the actual employer / "user" may be familiar as the Worker's employer and as such the responsibility to fulfill the obligations specified in question 6.5, apply to him.
Netherlands	(a) Checking immigration status, residence permit validity, work permit validity, or similar – The TWA has all obligations (and the end user has the same), as they are the official employer (b) Payment of (or accounting for) personal tax liability – The TWA has all obligations (and the end user has the same), as they are the official employer (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social

	security contributions, etc.) – The TWA has all obligations (and the end user has the same), as they are the official employer (d) Ensuring health, safety and hygiene at work – The TWA has all obligations (and the end user has the same), as they are the official employer (e) Payment of wages (including observance of minimum wage requirements) – The TWA has all obligations (and the end user has the same), as they are the official employer (f) Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters – This is a bit different. TWA-employees count for the end-user as employees who can participate in a Works Council, as soon as they have worked two years for this end-user. The same employee also counts for the Works Council of the TWA itself. So TWA-employees have a double-employee-ship in regard to the Works Council (law change in 1998).
Norway	(a) Checking immigration status, residence permit validity, work permit validity, or similar – The temporary work agency will be responsible as employer. <u>Registration scheme</u>: EEA nationals do not require a work permit. However, there is a registration scheme (if the person shall work for more than 3 months). (This is also necessary for tax purposes). <u>Identity cards on construction sites</u>: With effect from 1 January 200824, regulations concerning identity cards (ID cards) apply at construction sites. This also applies to foreign workers employed by foreign companies at assignments at building and construction sites and to "one-man enterprises". The employee is obliged to present his/her ID card upon request. (b) Payment of (or accounting for) personal tax liability – Yes, the employer is responsible for deducting tax (including social security contribution). The employer is responsible for all reporting obligations towards Norwegian Tax Authorities, i.e. reporting of personnel, payment of employer's social security premium, tax withholding etc. (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, etc.) – Yes, see above.

	(d) Ensuring health, safety and hygiene at work – Yes. However, due to the fact that the worker/employee (hired out worker) will be under the supervision of the hirer, the hirer has duties in this regard as well. See comments under 7.1.d below. (e) Payment of wages (including observance of minimum wage requirements) – Yes, as the employer, the temporary work agency is responsible for payment of salary etc. See comments under no. 4.5 b on joint and several liability for user undertakings. (f) Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters – General rules on information/consultation may apply. See also comments under 7.1.f below.
Slovenia	TWA is employing workers for indefinite duration or for fixed-term and it has all obligations as every other employer to their employees. This means that employer must check if employee meet conditions for conclusion of employment contract, also special conditions when are and as are determined, for instance immigration status, residence permit validity, work permit validity. TWA is responsible also for clearance and the payment of personal incomes and other allowances and payment of contributions for pension and invalidity and health insurance. When contractual employment relationship concluded for fixed-time (this means time, when a worker will be referred to an user), he is obligatory to check also if conditions for conclusion of such contractual employment relationship are fulfilled at an user. The worker and TWA shall agree in the employment contract that the worker will temporarily work with other user undertakings at the location and in the period defined with the worker's assignment to work with the user undertaking. TWA and the worker shall stipulate in the employment contract that the amount of remuneration for the work and the compensation will depend on the actually performed work with the user undertakings, taking into account the collective agreements and the general acts binding individual user undertakings. In the event of an indefinite duration employment contract, TWA and the worker shall also agree on the amount of wage compensation for the period following early termination of work with the user undertaking and/or for the period in which TWA fails to assure work with the user undertaking; the wage compensation may not be lower than 70% of the minimum wage. Early termination of the user undertaking's need for work performed by an assigned worker shall not represent a reason for terminating a fixed-term employment contract. TWA shall be obliged to pay the worker wage compensation until the

	expiry of the fixed-term employment contract in accordance with ERA: 80% of (arranged) salary. TWA and the user before the beginning of work of the worker at an user conclude the written agreement in which they more in detail determine mutual rights and obligations and rights and obligation of a worker and an user (look point 7).
Spain	(a) Checking immigration status, residence permit validity, work permit validity, or similar – The temporary work agency is the employer of the "worker in mission"; it is the responsible in all matters relating the employment of foreigner workers (b) Payment of (or accounting for) personal tax liability – Yes, as any employer (c) Payment (or accounting for) social payments (such as national health, unemployment, pensions or other social security contributions, etc – Yes, as any employer (d) Ensuring health, safety and hygiene at work – Yes, in collaboration with end-user undertaking (specially, "preventive education" and medical checkups) (e) Payment of wages (including observance of minimum wage requirements) – Yes, as any employer (f) Informing and/or consulting with "workers representatives" (whether trade unions or any other form of representative) in relation to any particular matters – Yes, as any employer. But the claims of the workers in mission concerning the conditions of performance of the work may be directed to the user undertaking
Sweden	A temporary-work agency shall, for the duration of the worker's assignment at a user undertaking, guarantee the worker at least the same basic working and employment conditions as would apply if the had been recruited directly by that undertaking to carry out the same job (section 6) Basic working and employment conditions are conditions laid down in collective agreements or other binding general provisions in force in the user undertaking relating to: (a) the duration of working time, overtime, breaks, rest periods, night work, holidays or public holidays; (b) pay; (c) protection for children and young people, pregnant women, new mothers and breastfeeding women; or

	(d) protection against discrimination on grounds of gender, transgender identity or expression, ethnic origin, religion or other belief, disability, sexual orientation or age (section 5).
United Kingdom	Questions 6.5 and 7.1 need to be taken together. This depends upon the answer to the question "who is the employer?" – which is the basis upon which most of these liabilities are founded. If the TWA has been designated "the employer" – and this is the key controversy – the "employer-like" duties are those normally assumed by an employer under United Kingdom labour law and in relation to the administration of temporary work undertakings. This will normally include (a) checking the right of the worker to take up work in the United Kingdom (residence and work permit status); (b) tax accountability to HM Revenue and Customs; (c) responsibility for National Insurance payments – although issues such as health insurance or pension scheme arrangements will normally be a matter of contractual agreement between the parties; (d) all of the (criminally-sanctioned) responsibilities in relation to health, safety and hygiene at work; and (e) payment of wages and observance of minimum wage provisions. In relation to information and consultation duties, the normal rules will apply – noting that trade union "recognition" in the United Kingdom is regulated by a statutory framework supervised by the Central Arbitration Committee (CAC), and bearing in mind that special arrangements have been introduced into the otherwise traditionally "laissez-faire" British industrial relations framework where such rights to information, consultation or participation derive from instruments developed at the level of the EU (e.g. collective dismissals; transfers of undertakings; health and safety; works councils; etc.).

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

Austria	Employers have various documentation duties to enable the supervision of their compliance with provisions of tax and social security law, health and safety, foreigners' employment etc., and they are obliged to cooperate in control measures of the respective competent authority. Additionally, employees or works councils may bring claims before a court if an infringement of these provisions affects their rights vis-à-vis the agency.
Belgium	In the same way as for every 'ordinary' employer, by the Labour Inspection. To my knowledge, temporary work agencies are not systematically monitored. They usually are only investigated after receiving a complaint from an individual temporary agency worker or from a trade union, or as a result of findings of an inspection of a user undertaking.
Denmark	The discharge of these responsibilities for temporary work agencies is monitored like employers in general are monitored.
Finland	Mainly by the Labour Inspection. See replies 6.3(b) and 6.4(a) above.
Germany	Depends on the individual case.
Hungary	According to the contract.
Ireland	The National Employment Rights Authority has this responsibility
Israel	Regulation and enforcement director in the Ministry is charged with the regulation and enforcement of labor laws in Israel. Director has three branches: the Regulation and enforcement arm, criminal enforcement and administrative enforcement arm. Regarding the treatment of the issue of foreign workers (employees who are not Israeli citizens or residents therein), there is the in charge of workers rights at work Scope and areas of activities and functions of the Commissioner are anchored in paragraphs 1.
Netherlands	In the same way as for all companies, through the Inspectorate of the Ministry of Social Affairs (social security premiums, working conditions and permission to work), Tax authorities (tax issues) etc.

Norway	The general rules on the supervision apply.
Slovenia	Discharge of TWA responsibilities is monitored by the Labour Inspectorate.
Spain	Not specially problematic from the point of view of case-law. Disputes concerning these agencies are not overwhelming in courts, probably because of the weak position of temporary workers in mission.
Sweden	By the trade unions.
United Kingdom	Where inspection falls to be dealt with by the EAS or the HSE, these bodies will take up any problem cases. The enforcement of individual employment rights is normally achieved by the individual bringing proceedings before the Employment Tribunals.

Question 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?**

Austria	Yes As far as issues of labour or social security law are concerned.
Belgium	Yes
Denmark	Yes
Finland	Only in those rare cases where there is a normally binding collective agreement regulating the employment relationships within a TWA.
Germany	Yes See answer 6.4 (b)
Hungary	Yes
Ireland	Yes
Israel	Yes These go to the Labor Courts
Netherlands	No
Norway	No The ordinary courts may hear cases concerning breach of the rules of the Working Environment Act.
Slovenia	Yes

	Labour Courts have power to deal with disputes or issues arising out of the discharge of responsibilities by the temporary work agency.
Spain	Yes
Sweden	Yes, if a temporary-work agency breaks the rule about equal treatment a dispute about damage can be put to the Labour Court. See 6.4 (b).
United Kingdom	Yes For employment rights issues, the Employment Tribunals will have jurisdiction granted by the relevant statute. This does not normally include social security issues – which are dealt with by a separate system of tribunals.

Question 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.**

Austria	(a) The user undertaking is viewed as an employer under the AuslBG, obliging it to ensure a work permit where necessary and keep available the required documentation for the case of control measures. (b) Generally none. However, if the employees are hired in for construction activities, the Law on Income Tax (EStG) makes the user undertaking liable for any outstanding payments that tax institutions cannot obtain from the agency – regardless of whether they are related to the assigned employees or the period of the assignment in any way. This liability is, however, limited to 5% of the sum the user pays to the agency, and it can be avoided by paying these 5% directly to the competent tax institution. Alternatively, the user can choose an agency from a list of specifically certified temporary work agencies, to which the described liability regulation of the EStG does not apply. (c) Under the AÜG, the user has to stand bail for the temporary work agency regarding all social security contributions due for the assigned workers over the period of assignment to their undertaking. Where the user can prove the fulfilment of their contractual obligations vis-à-vis the agency, their bail responsibility can be invoked only if the recovery of the contributions from the agency has become definitely impossible. The amount that can be claimed from the user is reduced to the degree that the Insolvency Remuneration Fund reimburses outstanding social security contributions of an insolvent employer under specific legal provisions. If the employees are hired in for construction work, the ASGG contains a similar rule as the one just described for personal tax liability – making the user undertaking liable for outstanding payments regardless of whether they relate to the employees assigned to it. The only difference to the regulation of the EStG is that the maximum limit is not 5% but 20% of the outstanding amount. Again, this liability can be avoided either by a direct payment of these 20% to social security institutions or the choice of a certified agency. (d) The AÜG provides that the user has to be regarded as an employer in respect of all provisions in the area of health and safety and the duty of care (as one of the basic principles of Austrian labour law). (e) In this regard, the AÜG burdens the user with the same responsibility to stand bail for the agency as with respect to

	social security contributions: all wages not paid to the assigned employees in respect of the period of work for the user undertaking may be claimed from that undertaking, unless they are reimbursed by the Insolvency Remuneration Fund. (f) An employer's decision to hire in temporary agency workers is an issue which the works council needs to be consulted about. The ArbVG envisages the possibility of a works council agreement (cf. question 8.5.b) about principles of the assignment of employees to the undertaking. According to jurisdiction, these principles may notably contain a maximum threshold of temporary agency workers in relation to the ordinary workforce, their restriction to certain areas inside the undertaking, guidelines about their remuneration and other working conditions in relation to the rights of other employees, the employer's commitment not to terminate ordinary employment contracts in connection with the assignment, and the obligation to offer temporary agency workers direct employment after a certain period of work for the undertaking. If no agreement is reached on such principles between the employer and the works council, the latter can demand the engagement of a mediation body (composed of a judge and representatives of the parties), which has the power to determine the principles for the undertaking by an authoritative decision. The Supreme Court has confirmed in 2011 that the agreement about principles is aimed at the protection of the regular workforce of the user (from the competition of "cheap" agency employees), so that a temporary agency worker cannot derive from them any individual rights (e.g. to an offer of an ordinary employment contract). Much rather, if the employer does not stick to the agreement, only the works council can claim damages or the payment of a contractual penalty (if the latter is provided for by the agreement). Apart from that, there is some dispute in literature whether there are any restrictions to the general representation of a temporary agency worker also by the works council of the user undertaking. It flows from the case law of the Supreme Court that, at any rate, they must be fully represented by that works council after working for the user over six months. Importantly, even if this may imply some restrictions for employees hired in more recently, the equal treatment provisions of the AÜG ensure that collective agreements with the works council in the user undertaking benefit also temporary agency workers if they concern issues of remuneration, working time, annual leave, amenities or collective facilities for the user's "ordinary" workforce. See, however, question 6.5.e on the restriction of equal treatment regarding remuneration.
Belgium	See the answer to Q 6.5
Denmark	The user-undertaking have the main responsibility with regard to health and safety and hygiene at work. The user undertaking must also inform and consult "workers representatives" in the user-undertaking (in accordance with Directive

	2002/14/EC) on the use of temporary agency workers. In special situations the user-undertaking can be held accountable for tax liability as well.
Finland	(a) Payment of (or accounting for) personal tax liability; (b) These issues are governed by the Act on Contractor's Obligations and Liability when Work is Contracted Out (1233/2006). According to the Act, before an orderer concludes a contract, it is obliged to check whether the counterparty is entered in the Prepayment Register and the Employer Register, and is registered as VAT-liable in the Value Added Tax Register. Similarly, the orderer must ascertain whether the counterparty has paid its taxes and taken out pension insurances, as well as the type of collective agreement or principal terms of employment it applies to the work. The same information must also be obtained on foreign companies. The Act is applied if the duration of the work by temporary agency workers exceeds a total of 10 days, or the value of the sub-contract agreement exceeds 7,500 euros, excluding value added tax. This refers to the total value of the agreement, without separating the share of work performed. The orderer need not request the above-mentioned information, if it has good reason to trust that the counterparty will discharge its statutory obligations. Such counterparties include states, municipalities, parishes, public limited companies, state enterprises, companies wholly owned by a municipality, or the equivalent foreign organisations or enterprises. A similar contractual relationship based on trust between the orderer and counter-party can also be regarded as having been established on the basis of earlier contractual relationships. (c) The relevant provisions are included in Sec. 3 of the Occupational Health and Safety Act and a Governmental Decree (782/1997) issued by virtue of the Act. According to the Act and the Decree, any employer who uses under his supervision workers employed by someone else, e.g. workers supplied by a temporary work agency, shall observe the provisions of the Act regarding employers' duties in the course of the work performed in the user undertaking. Furthermore, the user undertaking has specific duties of information vis-à-vis the workers concerned and the temporary work agency. These provisions more or less reproduce the rules of the Directive 91/383/EEC. (d) The end-user has no duties in this respect. (e) Under the Act on Contractor's Obligations and Liability when Work is Contracted Out, the contractor must inform the representative of its workers of the use of temporary manpower. This information must include for instance the number of the temporary workers, the principal tems of their employment or the collective agreement applicable to them, the work tasks to be performed, and the duration of the work.

	Several collective agreements lay down similar kind of duties of information.
Germany	• no contractual relationship (exception: see answer 7.3), employer obligations like pay etc. are with the agency • but some obligations, such as protective obligations (e.g. law on health and safety at work) and duties under Directive 2008/104/EC • entitled to “instruction right of the employer” (concerning performance of the work) • “subsidiary responsibility" for e.g. paying the associated wages, social security contributions and taxes
Hungary	For the duration of placement the user enterprise shall be deemed employer in terms of the regulations on a) occupational safety, b) the employment of women, young people and workers with any degree of incapacity, c) non-discrimination, d) working conditions, e) working time and resting time, and for the records of these. See above at 6.5.
Ireland	Checking immigration status, residence permit validity, work permit validity, or similar – As set out above, the employer is liable in this regard. If the Agency is the employer it is liable for any contravention. Payment of (or accounting for) personal tax liability – As above Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, etc.) – As above

	Ensuring health, safety and hygiene at work – The end-user is liable Payment of wages (including observance of minimum wage requirements) – The agency as employer is liable Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters – For the purpose of any statutory obligation to consult with workers, employees of agencies are included as if they were employees of the end-user.
Israel	See answer to question 6.5.
Netherlands	(a) Checking immigration status, residence permit validity, work permit validity, or similar – yes it has in the same way as the twa has (b) Payment of (or accounting for) personal tax liability – yes it has in the same way as the twa has (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, etc.) – yes it has in the same way as the twa has (d) Ensuring health, safety and hygiene at work – yes it has in the same way as the twa has (e) Payment of wages (including observance of minimum wage requirements) – It only has if the twa is **not** registered according to Article 7:691 DCC. (f) Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters. – The employees of the twa count as employees of the end-user in regard to the obligation to install a works council as soon as they have worked there for two years (which generally is not the case).
Norway	General comments in regard to the rules on hiring of employees: As mentioned, strict rules apply to hiring of labour from temporary work agencies. Hiring of labour from enterprises whose "object is to hire out labour" (temporary work agencies) is, as a general rule, permitted to the extent that an employee may be engaged on a temporary basis according to section 14-9 of the Working Environment Act, cf. section 14-12 subsection 1 of the Working Environment Act. Thus, an employer/user undertaking may not circumvent the strict rules on temporary employment by hiring labour from a temporary work agency.

	The Norwegian Working Environment Act has strict rules on temporary employment. The general rule is that an employee shall be appointed permanently, cf. section 14-9. Temporary employment may be permitted if warranted by the Act. This includes, inter alia, "(a) when warranted by the nature of the work and the work differs from that which is ordinarily performed in the undertaking, (b) for work as a temporary replacement for another person or persons, (c) for work as trainee, (d) for participation in labour market schemes under the auspices of or in co-operation with the Labour and Welfare Services." In addition, it may be agreed in certain special cases for instance in connection with sport. Hiring of labour may - regardless of the above restrictions - be agreed with the elected representatives: In undertakings bound by a collective agreement, the employer and the elected representatives who collectively represent a majority of the employees in the category of workers to be hired may enter into a written agreement concerning the hiring of workers for limited periods, cf. section 14-12 subsection 2. (a) Checking immigration status, residence permit validity, work permit validity, or similar – See comments above under 6.5.a. (b) Payment of (or accounting for) personal tax liability – The hirer is jointly responsible with the employer (the lessor) for any unpaid taxes and social security premium in relation to the personnel that are hired out (Section 4-1 of the Act of 17 June 2005 No. 67 relating to tax payment). (c) Payment of (or accounting for) social payments (such as national health, unemployment, pension, or other social security contributions, etc.) – See above under b. (d) Ensuring health, safety and hygiene at work – Since the worker will be subject to instructions etc by the user undertaking, this undertaking will have duties / responsibilities in relation to the temporary worker as well. Pursuant to section 2-2 of the Working Environment Act, the employer shall, inter alia, ensure that his own activities and those of his employees are arranged and performed in such a manner that persons other than its own employees are ensured a thoroughly sound working environment (subsection 1, (a).

	With effect from 1 January 2013, an "employer" who hires workers from temporary work agencies shall ensure that the working hours of these workers comply with the statutory rules. (e) Payment of wages (including observance of minimum wage requirements) – See comments above under no 4.5.b) concerning joint and several liability. There is no general minimum wage. However, within certain sectors, there are generally applicable collective agreements (Construction sites - for construction workers, the maritime construction industry, the agriculture and horticulture sectors and for cleaning workers.) <u>Joint and several liability</u>: If a collective agreement has been made generally applicable, the contractor at the top of the chain is liable for the obligation of contractors further down in the contractor chain to pay the minimum wage (joint and several liability) [Section 13 of the Act of 4 June 1993 No. 58 relating to general application of wage agreements (the General Application Act)]. (f) Informing and/or consulting with "workers' representatives" (whether trade unions or any other form of representative) in relation to any particular matters. Pursuant to section 14-12, the employer shall at least once a year discuss with the employees' elected representatives the use of temporary workers from temporary work agencies, including compliance with the equal treatment requirement. Collective agreements may also contain rules on information and/or consultation. See comments under no. 4.5.b above concerning the right to information about the hired worker's pay and working conditions. <u>The right to institute legal actions</u> With effect from 1 July 2013, a trade union with members in the user undertaking may institute legal proceedings in their own name against that undertaking for declaratory judgment on whether the hiring in is lawful or not. The individual worker is not a party to the law-suit - he may pursue his own claim. This provision has been disputed, and depending on the outcome of the election during the Autumn of 2013, the provision on the right for the union to institute legal actions may be revised.

	If the collective agreement has rules on hiring of labour - the union may of course - in line with the ordinary rules, institute legal actions before the Labour Court claiming that there is a breach of the collective agreement, see 7.3 below.
Slovenia	Before the worker starts working with the user undertaking, the employer providing work and the user undertaking shall conclude an agreement in writing in which they shall define in greater detail their mutual rights and obligations and the rights and obligations of the worker and of the user undertaking. They must consider some especially determined obligations of an user: (a) prior to entering into the agreement and during the implementation of this agreement, the user undertaking must inform TWA of the existence and/or occurrence of circumstances that are making use of an agency work impossible: replacing workers employed with the user undertaking who are on strike or that he has cancelled employment contracts with a large number of workers employed with him, (b) user undertaking must inform TWA about all the conditions to be fulfilled by the worker for the performance of the work and shall submit to the employer providing work an assessment of the risk of injuries and health impairment. (c) user undertaking must inform the trade union, the works council or the worker representative at least once a year on the reasons for the use of assigned workers and their number if so requested by the trade union, the works council or the worker representative. (d) irrespective of the provisions of the written agreement, the user undertaking is responsible for respecting the provisions of an Act, the collective agreements and the user undertaking's general acts on the protection of health at work and on working time, breaks and rest periods. (e) the user undertaking is responsible for the completeness and accuracy of data on the existence of conditions for conclusion of employment contract for fixed time and for the completeness and accuracy of data on the remuneration for work submitted to the TWA for the purposes of calculating salaries and other benefits from the employment relationship, (f) the user undertaking is subsidiarily liable to the worker for the payment of salaries and other benefits from the employment relationship during the period in which the worker worked with the user undertaking.

Spain	(a) Checking immigration status, residence permit validity, work permit validity, or similar – No responsibility (b) Payment of (or accounting for) personal tax liability – No responsibility (c) Payment (or accounting for) social payments (such as national health, unemployment, pensions or other social security contributions, etc – The end-user undertaking has in principle a secondary liability in all social security duties (health insurance, unemployment, pensions, etc) during the "mission" of the worker. Occasionally (contract of providing workers in mission not complying with "legal obligations") the liability may be joint and several (d) Ensuring health, safety and hygiene at work – The end-user undertaking is the main obligated to and responsible for the health and safety of the workers in mission, but the temporary work agency must collaborate in the fulfilment of these duties; see 6.5. d) (e) Payment of wages (including observance of minimum wage requirements) – The end-user undertaking has in principle a secondary liability in payment of wages during the "mission" of the worker. Occasionally (contract of providing workers in mission not complying with "legal obligations") the liability may be joint and several (f) Informing and/or consulting with "workers representatives" (whether trade unions or any other form of representative) in relation to any particular matters – The claims of the workers in mission concerning the conditions of performance of the work may be directed to the user undertaking. The user undertaking has the duty to inform to its workers representatives about all the contracts of providing workers subscribed with a temporary work agency
Sweden	A user undertaking shall give a worker working at the user undertaking access to collective facilities and amenities under the same conditions as workers employed directly by the undertaking, unless there are special reasons to the contrary (section 11). A user undertaking shall inform workers at the undertaking of any vacant permanent positions and probationary employment at the undertaking. Such information may be provided by being made generally available in the workplace (section 12).
United Kingdom	Questions 6.5 and 7.1 need to be taken together. If the end-user has been designated "the employer" – and this is the key controversy – the "employer-like" duties are those normally assumed by an employer under United Kingdom labour law and in relation to the administration of temporary work undertakings.

	This will normally include (a) checking the right of the worker to take up work in the United Kingdom (residence and work permit status); (b) tax accountability to HM Revenue and Customs; (c) responsibility for National Insurance payments – although issues such as health insurance or pension scheme arrangements will normally be a matter of contractual agreement between the parties; (d) all of the (criminally-sanctioned) responsibilities in relation to health, safety and hygiene at work; and (e) payment of wages and observance of minimum wage provisions. In relation to information and consultation duties, the normal rules will apply – noting that trade union "recognition" in the United Kingdom is regulated by a statutory framework supervised by the Central Arbitration Committee (CAC), and bearing in mind that special arrangements have been introduced into the otherwise traditionally "laissez-faire" British industrial relations framework where such rights to information, consultation or participation derive from instruments developed at the level of the EU (e.g. collective dismissals; transfers of undertakings; health and safety; works councils; etc.).

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

Austria	See question 6.2 for the general mechanisms.
Belgium	The answer to Q 6.6 is also valid for this question.
Denmark	The discharge of such responsibilities for user-undertakings is monitored like employers in general are monitored.
Finland	Should an orderer neglect the obligation to check, described above in reply 7.1(c), it shall be obliged to pay a fine for negligence. A similar fine shall also be levied should the orderer conclude a contract for work by a trader who has been barred from conducting business. Furthermore, the fine may be levied if, in spite of fulfilling the obligation to check, the orderer shows a clear disregard for the fact that the counterparty has no intention of discharging its statutory obligations as, for instance, an employer. Such a fine will comprise a minimum of 1,600 euros and a maximum of 16,000 euros. The Regional State Administrative Agency under whose jurisdiction the Labour Inspection Authority supervising the law falls, shall decide on the payment. The duty of information, described in reply 7.1(f), is supervised by the Labour Inspection.
Germany	See above
Hungary	According to the contract.
Ireland	A failure to consult is a civil wrong and a complaint can be pursued by an individual through a Rights Commissioner and, on appeal, the Labour Court.
Israel	See answer to question 6.6.
Netherlands	In the same way as for all companies, through the Inspectorate of the Ministry of Social Affairs (social security premiums, working conditions and permission to work), Tax authorities (tax issues) etc.
Norway	Rules on information etc: The rules on obligation to provide information and right of access to information are measures for ensuring that the provisions are complied with. See above under no. 4.5 b).

	The Labour inspection Authority: To follow-up and prevent social dumping, two measures have been adopted, including reinforcing the powers of the Labour Inspection Authority. The other, an extended right for the union to file law-suits, was commented above. Currently, the Labour Inspection Authority may issue orders and make individual decisions concerning the employer's duty to discuss the use of temporary workers from temporary work agencies, see above. With effect from 1 January 2014, the Labour Inspection Authority may require the undertaking to document that the undertaking has entered into an agreement concerning the hiring of labour according to section 14-12 subsection 2 (see our general comments under 7). Further, with effect from 1 January 2014, the Inspection may, inter alia, impose an administrative fine for non-compliance up to 15 times the Base Amount (per 1 May 2013 NOK 85,245 – approximately € 163,000)
Slovenia	Discharge of TWA responsibilities is monitoring by Labour Inspectorate
Spain	Not specially problematic. Disputes and case-law concerning end-user enterprises is not overwhelming. See 6.6
Sweden	By the trade unions
United Kingdom	Where the regulatory framework under the Employment Agencies Act 1973 and the 2003 Regulations applies, the approach is essentially 'administrative', insofar as monitoring and enforcement is carried out through the Employment Agencies Standards Inspectorate (EAS), with additional sanctioning arrangements being made available under the criminal law. Inspection and enforcement in relation to matters such as pay, health & safety, working time, and the like will be undertaken within the normal arrangements undertaken through the HSE or local authority inspection. Claims for infringement of rights contained in the Agency Workers Regulations 2010 can be brought by individual agency workers to the Employment Tribunals.

Question 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?**

Austria	Yes As far as issues of labour or social security law are concerned.
Belgium	Yes
Denmark	No The Danish Labour Court deals with matters in relation to collective agreements.
Finland	Breaches of information duties regulated in collective agreements are handled in the Labour Court.
Germany	Yes See answer 6.4 (b), in particular to assert the legal right according to § 10 paragraph 1 AÜG: • in case the contract of employment with a temporary agency is void according to § 9 No.1 AÜG (agency without valid permit), • the contract of employment -to put it in non-technical terms - "shifts" to the "end-user" (§ 10 paragraph 1 AÜG)
Hungary	Yes
Ireland	Yes
Israel	See answer to question 6.7.
Netherlands	No
Norway	The ordinary courts may, as mentioned above, consider cases concerning breach of the rules of the Working Environment Act

	The Norwegian Labour Court considers disputes about validity, interpretation and existence of collective agreements, questions regarding breach of collective agreements, questions regarding breach of the peace obligation, and claims for damages resulting from such breaches. Thus, the court has power to deal with the dispute if obligations - for instance to discuss and consult - are laid down in collective agreement. Some collective agreements also contain rules on equal treatment, and these disputes may thus be considered by the Labour Court.
Slovenia	Yes Labour Courts have power to deal with disputes or issues arising out of the discharge of responsibilities by the temporary work agency.
Spain	Yes
Sweden	Yes, if a user undertaking breaks the rules about access to collective facilities, same conditions and information as mentioned above a dispute about damage can be put to the Labour Court (section 17).
United Kingdom	Yes – subject to what is said above in relation to “employer” status

Question 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?

Austria	They are relatively free to agree on the terms of employee assignment. Notably, there are no limits to the temporary extent or the activities for which employees can be hired in. However, the AÜG does not only set out a compulsory minimum content of the agreement (including e.g. names and addresses of the parties and the employees, dates and period of the assignment, a notice period for termination and information on essential working conditions – remuneration, working time and location, annual leave and applicable collective agreements); it also contains a non-exhaustive catalogue of clauses that are prohibited: a restriction of the employee's wage entitlement to periods of actual work performance, the stipulation of artificially short normal working hours or the employer's authority to order regular overwork (which would circumvent the first prohibition), a temporal limitation of the assignment for which there is no objective justification, a prohibition of the employee's successive direct employment with the user or contractual penalties in this case.
Belgium	The contract has to be drawn in writing, within 7 working days from the start of the activity. It has to contain a whole list of data such as the license number and social security number of the temporary work agency, the name of the joint industrial committee competent for the user undertaking, the reason why the user undertaking is recalling to temporary work, the wage earned by the permanent staff of the user undertaking for the same job, etc. The temporary agency worker has to receive a copy of that list of data. Article 18 of the 1987 Temporary Agency Work Act prohibited a clause obliging the user undertaking to pay the temporary work agency an indemnity if the temporary agency worker is afterwards engaged directly by the user undertaking. This prohibition was abolished in 2001. However Article 16 still prohibits a clause in the labour contract of the temporary agency worker that forbids the worker to engage with the user undertaking. According to Article 24, al. 1, of that Act, the King (the federal government) can fix the maximum tariffs temporary work agencies can bill to the user undertakings for their services, but until now no such Royal Decree exists.
Denmark	Basically there is "freedom of contract". A clause that the user-undertaking has to pay excessive amounts of money to the temporary work agency to employ a former temporary agent is, however, null and void.
Finland	There are no statutory rules regulating this relationship. However, the national association representing temporary work agencies, the Private Employment Agencies Association, has drawn up the document "General Terms and Conditions for the Temporary Agency Work Industry (2006)". The document covers the following titles: - Obligations of the concluding parties

	- Occupational safety and health - Complaints and obstacles to the performance of work - Grounds for fees - Recruitment fee - Non-disclosure of confidential information and information security - Liability for damage - Force Majeure - Term, termination and transfer of contract - Place of jurisdiction - Notifications These terms are, as a general rule, included in contracts made between member agencies and their customer companies
Germany	§ 12 AÜG: • Contract must be made in writing, • the Temporary Work Agency has to confirm to have a permit in accordance wirh § 1 AG, • the “end-user” has to specify e.g. the nature of the task and professional qualifications necessary
Hungary	Agreement between the temporary work agency and the “end-user” containing the essential terms of the hiring-out of workers, the exercise of the employer's rights division. The right of terminations can be exercised by the temporary work agency. The agreement must be in writing.
Ireland	They are free to conclude contracts and agreements provided they do not contravene any statutory right or obligation. Any agreement or contract is void in so far as it purports to avoid or limit the application of the Act of 2012.
Israel	Manpower Contractors Law imposes a number of restrictions regarding the relationships between personnel agencies and "users" / actual employers. For example: A. Article 10B of the Law prohibits communication between the user and who is not duly licensed under the law. B. Article 12Ass of the Law provides that the employment of an employee is until nine months. C. Article 13 of the Law stipulates that working conditions and where there is a collective agreement will be applicable to the employees in the workplace as for employees of contractor personnel employed at the same workplace.

	D. Article 15 provides that a stipulation in the contract that prohibits actual employer in the workplace to get employ the employee has no validity. E. Article 17 of the Law provides that the provisions of the labor contractors add to the right of an employee under the law, collective agreement or contract of employment. F. Article 18 of the Law states that the right of an employee under this Act may not be conditional or waived.
Netherlands	Entirely (as long as it is not an abuse of law)
Norway	The general rule is that the parties are free to regulate their own commercial relationship. However, some restrictions apply. For instance, pursuant to section 27 of the Labour Market Act, an undertaking cannot lawfully limit the worker's possibility to take employment in the user undertaking after the employment with the employer (lessor/temporary work agency or other hiring out undertaking) is terminated. Further, a worker cannot be hired out to one of his or her previous employees for the first 6 months after his/her employment with the employer was terminated. The undertaking hiring out the worker is prohibited from charging any form of payment from employees for hiring-out services.
Slovenia	Free, with restraints listed in point 7
Spain	Law (Act 14/1994) establishes relevant restrictions of the freedom of contract in the relationship of providing work to a end-user enterprise in: (a) causes and duration of the contract; (b) form of the contract and information to the Labour Administration; (c) situations and tasks excluded
Sweden	The regulation concerning the relationship between the temporary work agency and the user undertaking is not a labour law matter, but of course there is a freedom of contract.
United Kingdom	There is a broad freedom to enter into contractual arrangements – in line with the “deregulation / light touch” approach of modern United Kingdom governments – subject only to the restrictions (including the fee-charging prohibitions) indicated above.

Question 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?**

Austria	(a) No. The temporary work agency cannot delegate its duties as the contractual employer, and the additional obligations envisaged for both parties in the AÜG are equally non-negotiable. As set out above, both of them are fully responsible for ensuring e.g. health and safety and equal treatment at work, and the user is liable for several payment obligations of the agency. (b) n/a
Belgium	(a) No (b) n/a
Denmark	Basically the duties can be divided up. The legal responsibility can, however, not be transferred between user-undertaking and temporary work agency.
Finland	(a) No. A basic statutory rule concerning the division of responsibilities in this respect is included in Sec. 7.3, Chapter 1 of the Employment Contracts Act. The provision is mandatory and reads as follows: If, with the employee's consent, the employer assigns an employee for use by another employer (user enterprise), the right to direct and supervise the work is transferred to the user enterprise together with the obligations, stipulated for the employer, which are directly related to the performance of the work and its arrangement. By way of example, the arrangement of working time is one of those issues which are directly related to the performance of the work. Consequently, the user enterprise bears the responsibilities related to normal working time, daily rest periods, overtime work etc. The provision of temporary child-care leave and the employee's right to absence for compelling family reasons can also be mentioned here. The duties concerning occupational health and safety at work have been discussed above in reply 7.1(d). On the other hand, the duties relating to e.g. pay, annual leave and job protection lay with the TWA.

	(b) See above. Only those employer duties, which are regulated by optional (non-mandatory) rules of law, can be divided up by a contract made between the TWA and the user enterprise.
Germany	(a) No (b) n/a
Hungary	(a) Yes (b) The restrictions is, that the right of terminations can be exercised by the temporary work agency.
Ireland	(a) Generally, No. In so far as the rights and duties of agencies and their employees are prescribed by law there is no provision for contracting out (b) Yes. They are circumscribed by the Act.
Israel	See answers to questions 6.5 and 7.1.
Netherlands	(a) Yes, in their relation they are free, but the employee can claim both from the TWA as from the end user. (b) n/a
Norway	(a) To a large extent the rules are mandatory, and the rules of the Working Environment Act may not be departed from to the detriment of the employee unless this is expressly provided. Thus, as an example, the parties cannot circumvent rules on joint and several responsibilities. (b) n/a
Slovenia	(a) n/a (b) n/a
Spain	(a) No

	(b) The duties/liabilities/responsibilities (specifically those indicated in 6.5 and 7.1) are fixed and regulated imperatively by statutory law (Act 14/1994)
Sweden	(a) See above at 8.1 (b) See above at 8.1
United Kingdom	(a) Generally, Yes. Indeed, this is the core of the problem as to "who is the employer?" for the purposes of liability in respect of statutory employment protections. (b) n/a

Question 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)?**

Austria	Not that I know of. That would hardly be possible regarding most of the responsibilities at issue.
Belgium	I have no information on this matter.
Denmark	No information available.
Finland	No. Liability for damage caused to persons assigned to the user enterprise is determined by labour legislation. The liability provisions of the "General Terms and Conditions" in the industry (see 8.1) only deal with damage caused by the worker to the customer company or to a third party.
Germany	Unfortunately I do not have any information about this issue.
Hungary	In the case of employee misconduct to the end-user to assert a claim for compensation to the employee under the general provisions of the Labour Code. The end-user and the temprory work angecy are liable jointly and severally for damage caused to the employee during the employment.
Ireland	Yes. This is a common practice
Israel	Yes. There are agreements between companies to users with indemnity clauses which states that the "User" is not the employer of the employees and that in any case in which he will be charged as an employer to its employees, shall manpower company take his obligations.
Netherlands	I think so. E.g. the end user wants a guarantee from the TWA that the employee has permission to stay and is allowed to work.
Norway	We are not aware of this, and cannot (easily) obtain further information. In any case, any such arrangements cannot be contrary to mandatory law.

Slovenia	Yes, for example with an agreement, that an employer will have responsibility of ensuring of safety at work. Supreme court decided, that liability for damages of the user for an injury of a posted worker isn't turned off in spite of this agreement.
Spain	Yes
Sweden	See above at 8.1
United Kingdom	Although it is difficult to find specific evidence and examples, practitioners suggest that this is a common feature – indeed, indemnity arrangements operate across a whole range of employment liability matters (including, in particular, liabilities in the event of a transfer of an undertaking) and effectively operate as contractually-pre-agreed distribution of liabilities as between fully legally competent parties.

Question 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?

Austria	As for labour relations in Austria in general, the role of the social partners is crucial. Even though temporary agency workers are not very likely to join a trade union, they are covered by the applicable collective agreements (see next question) and subject to compulsory membership in the Chamber of Labour, which provides legal advice free of charge and assistance for claiming their rights before a court. See also question 6.5.f and 7.1.f on their representation by the works council in the agency as well as the user undertaking. One major problem regarding employee representatives is that they will often view temporary agency workers as competitors for their "primary clients" (the regular workforce), whose employment and working conditions could be endangered when undertakings have the option of hiring in staff via an agency. It should also be mentioned that employees' and employers' organisations have always had a considerable influence on policy making in Austria, so that also the current statutory framework for temporary agency work is certainly shaped by their very active involvement in the legislative process.
Belgium	The 1987 Temporary Agency Work Act leaves it to the social partners to regulate some aspects of the use of temporary work by collective labour agreement, such as the procedure the user undertaking has to follow to recall to temporary agency work or the maximum duration for the use of temporary work. A joint industrial committee for the temporary work agencies was also created. This joint industrial committee was especially given the task to set up a Security Fund to pay certain benefits to the workers in stead of the employer (the agency) or to compensate the workers if a temporary work agency would fail to discharge of its financial duties.
Denmark	Basically the social partners play the same role in relation to temporary agency work as they do in relation to other forms of work. Their role very much depends on whether there is a collective agreement covering the work or not.
Finland	As an employer organization, the Private Employment Agencies Association has concluded two collective agreements applicable to the industry. The first one, the Collective Agreement for the Personnel Services Sector, is made with the Federation of Special Service and Clerical Employees (ERTO) and determines the terms of employment for agency employees who work in office, financial administration or ICT duties. Furthermore, this collective agreement determines the terms of employment of clerical employees working in a private employment agency's own office. Another collective agreement is made to apply to the work of restaurant musicians.

	Collectively agreed provisions with a much wider application regulate the use of outside manpower in enterprises. Such provisions are included in so called general agreements made between the central labour market organizations. It is common practice to make these provisions part of the collective agreements concluded by nationwide confederations for different branches, often with modifications designed for the branch in question. The provisions discussed here relate to two kinds utilization of outside manpower, subcontracting and the use of workers supplied by temporary work agencies. The use of temporary agency workers is permissible only under certain conditions, e.g. in work tasks which the own personnel cannot perform, or in sudden work peaks.
Germany	See answer 2.3 (b); increasing debate about “equal pay”
Hungary	“The social partners” play the same rule as other employment.
Ireland	They have no formal role
Israel	The role of "social partners" is essentially signing collective agreements. On 16.2.2004 the "social partners" (for labour - the Histadrut Labor Federation and National Labor Federation, and for the employers - a membership organization providing human resources services and the National Association of Companies Human Resources of the Association of Chambers of Commerce) a collective agreement regulating conditions in the manpower services industry. A. Regulate the working conditions of workers employed by a contractor. B. Increase efforts to integrate into the work force most of the workers who have not found their place of work and helping those workers finding jobs according to their skills and abilities. C. Investing resources in improving human resources and suitability for work.
Netherlands	They have concluded a CLA so they are strongly involved.
Norway	There have been extensive discussions concerning the use of temporary work agencies and social dumping. There were substantial objections to the implementation of the Directive 2008 on temporary working agencies - mainly in the trade unions.

	As described above, the Government has adopted several rules on, inter alia, joint and several responsibility and extended powers for the Labour Inspection.
Slovenia	Look point 7 about possibility of Trade union at an user. Association of employment agencies exists, to which is united only around 15 TWA. Workers, employed at TWA as a rule aren't members of Trade union. Trade unions try (for now still without special success), that in collective agreements, that are valid for users, will apply also to the agency workers for the time they work at an user. ERA is allowing otherwise such explanation: in the period during which the worker works with the user undertaking, the user undertaking and the worker must comply with the provisions of ERA, the collective agreements that are valid for the user undertaking and/or the user undertaking's general acts, including also the rights to use the benefits provided by the user undertaking to its workers in connection with employment. However there are problems in practice and aspirations are occurring in spite of this for restriction of rights of the agency workers. There is no special collective agreement for agency workers.
Spain	Regulating is mostly up to the State. Supervising is up to the Inspection of Work with the collaboration of the workers representatives
Sweden	According to section 2 in the Agency Work Act its is possible, through a collective agreement, to deviate from the rules of equal treatment on the condition that the agreement respects the overall protection of workers within the meaning of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.
United Kingdom	This has historically been a matter dependent upon the relative economic strength of the employer and trade union sides within the United Kingdom system of industrial relations. That relationship is generally categorized as "conflictual", rather than "co-operative" in terms sometimes found in other national systems of labour relations. In consequence, the expression "the social partners" is liable to raise a wry smile on the parts of British commentators – as does the notion of "social dialogue" in the United Kingdom context. It has also to be borne in mind that "collective agreements" in the United Kingdom do not, generally, carry binding legal (contractual or other) effect, being designated as "gentlemen's agreements" presumed not to have been intended by the parties to create legal relations.

	Unusually, however, in the lead-up to adoption of Directive 2008/104/EC, what pass in the United Kingdom as the 'social partners' – in the shape of the Confederation of British Industry (CBI) and the Trades Union Congress (TUC) – entered into discussions with the (then Labour) government over some of the basic issues arising in the context of future implementation. The outcome of that 'social dialogue' was a 'Joint Declaration', which was issued on 20 May 2008. That document purported to express "…agreement on how fairer treatment for agency workers in the United Kingdom should be promoted, while not removing the important flexibility that agency work can offer both employers and workers". More specifically, with an eye to the status of negotiations at the level of the EU Member States over the eventual final wording for the Directive, the parties agreed that, so far as the United Kingdom was concerned: "…(a) after twelve weeks in a given job there will be an entitlement to equal treatment; and that (b) equal treatment will be defined to mean at least the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by that undertaking to occupy the same job. It will not cover occupational social security schemes." For their part, it was agreed that the Government would consult the social partners regarding the implementation of the Directive more generally, and in particular: "…(i) mechanisms for resolving disputes regarding the definition of equal treatment and compliance with the new rules that avoid undue delays for workers and unnecessary administrative burdens for business; (ii) appropriate arrangements to enable the two sides of industry and also public services to reach appropriate agreements on the treatment of agency workers, while respecting the overall protection of agency workers; and (iii) appropriate anti-avoidance measures reflecting Article 9(2), in particular relating to the treatment of repeat contracts for the same worker and the position of workers with permanent contracts of employment with agencies who continue to be paid between assignments; it is not intended that Article 5(2) will be used to evade the aims of the Directive." Finally, it was agreed that the new arrangements were to be reviewed 'at an appropriate point in the light of experience'.

Question 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?**

Austria	(a) Yes (b) The particularity of the Austrian system is that membership in the organisation representing the employers' side in the vast majority of cases (the Economic Chamber) is compulsory for any undertaking operating on the basis of a trade licence. As a result, the obtainment of the licence necessary for activities of employee assignment automatically induces the agency's membership in the Chamber and obliges it to one of the two collective agreements currently regulating remuneration (and other working conditions) for temporary agency workers. These conditions are applicable to all employees of the represented agencies, regardless of their trade union membership. On the plant level, the agency – just as any enterprise – can conclude agreements with its works council. Austrian law is quite complex in this area: a works council agreement is a necessary precondition for certain measures by the employer (e.g. when they interfere with the employees' right to privacy), whereby somewhat less interfering measures can alternatively be authorised by a decision by a mediation body (see question 7.1.f). Among the numerous issues that can be dealt with in a voluntary works council agreement, there are a few crucial ones (such as working time schemes or measures in case of restructuring) which in case of disagreement can be referred to the mediation body, which can regulate the matter by a decision. All these agreements (or decisions) are legally binding on the employer, who may therefore be confronted with legal action in case of a violation.
Belgium	(a) Yes (b) At this moment there are 2 national CLAs in force: CLA nr. 36 of 27 November 1981 holding conservatory measures concerning temporary work, temporary agency work and the posting of workers at user undertakings, and CLA nr. 58 of 7 July 1994 replacing CLA nr. 47 of 18 December 1990 concerning the procedure to follow and the duration of temporary work. In the joint industrial committee for the building industry a CLA was concluded on 22 November 2001 that sets up particular rules for temporary agency work in the building industry.

	The ordinary rules to ensure compliance with the provisions of collective agreements are also applicable for such CLA's.
Denmark	There are collective agreements dealing specifically with the use of temporary agency work. How widespread they are is not known, it varies from sector to sector. Compliance with provisions is ensured in the same way as compliance is generally ensured.
Finland	See the account given above in 8.4. Compliance with the provisions is guaranteed by the regular means and sanctions, which are in use within the collective bargaining system. Compensatory fine is the sanction which can be ordered by the Labour Court in case of violation of the provisions.
Germany	(a) See answer 2.3 (b) (b) See answer 2.3 (b); extent of collective bargaining coverage is very high – only under collective bargaining contract exception from "equal pay" is possible/legal
Hungary	(a) The user enterprise shall inform the workers representatives about the numbers and the terms of the temporary employee and the vacant posts. (b) See above
Ireland	(a) In some cases yes. There are many examples of where employers and trade unions agree, on a voluntary basis, to regulate the circumstances in which agency or temporary workers may be employed. (b) In Ireland collective agreements are generally binding in honour only and are not enforceable in law. This is based on a legal presumption that the parties to a collective agreement do not intend to create legal relations.
Israel	(a) Yes. See answer to question 8.4 above. (b) See answers to questions 8.4 and 8.5 (a).
Netherlands	(a) Yes, see above (b) In fact there are two bigger CLA's in this field: one concluded with the organisation who represents the bigger TWAs (like Tempo Team, Randstad etc) and one with the organisation who represents the smaller ones. The

	government has during some periods (e.g. until 1 April 2012) declared the first one 'generally binding', that means that if a TWA is not a member of a organisation who represents the TWAs, this (generally binding declared) CLA is binding on them.
Norway	(a) Yes, the hiring of labour from temporary work agencies has been regulated in collective agreements, for instance rules on equal treatment etc. See below under b. As mentioned, the Working Environment Act has strict rules on fixed term employment. However, rules on consultation etc may be laid down in the collective agreements (this is now regulated in the Working Environment Act as well). (b) Several collective agreements have rules on the use of temporary work agencies. As mentioned above, disputes concerning collective agreements are heard by the Labour Court. Per 1 August 2013, the Labour Court has not yet received any such disputes.
Slovenia	(a) See above at 8.4 (b) See above at 8.4
Spain	(a) - The use of temporary work: yes for the specification of the statutory law - The activities of temporary work agencies: yes; mainly for limiting them in the scope of the collective agreement (b) - Often, but not generally - Means of enforcement of these provisions are the same as the means of enforcement of legal provisions
Sweden	(a) There are several collective agreements concerning employees in temporary-work agencies. The Swedish Staffing Agencies is an employer and trade federation for staffing, outplacement and recruitment companies of all sizes operating in Sweden. As a member of the Swedish Staffing Agencies, the company is covered by one or several collective agreements. The Swedish Staffing Agencies has signed collective agreements with different trade unions. (b) The collective agreements are supervised by the trade unions.

United Kingdom	(a) There is no evidence of this – see the most recent Workplace Employment Relations Survey (WERS) 2011 – although there are examples where undertakings have reached voluntary agreements with worker representatives / trade unions over the use and disposition of temporary agency workers. (b) It has always to be borne in mind that "collective agreements" of the kind envisaged here are not the normal method for regulating issues such as recruitment through temporary work agencies – for many of the reasons already referred to above. See, generally, above at 8.4

Question 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?**

Austria	(a) Yes (b) The agency is the employer. (c) n/a
Belgium	(a) Yes (b) Article 7, 2°, of the 1987 Temporary Agency Work Act defines the temporary agency work labour contract as the contract by which a temporary agency worker commits himself to a temporary work agency to provide temporary work that is permitted according to Chapter I, for a wage, at a user undertaking. According to Article 8, § 1, of the same Act, such a contract is irrefutably considered to be a labour contract. Thus, in the triangular relationship, the temporary work agency is always considered to be the employer of the person who provides services to an "end-user". However, if the person who provides services to an "end-user" is required to perform a job that doesn't qualify as temporary work that is permitted according to Chapter I of the 1987 Temporary Agency Work Act, it is automatically considered to be a forbidden form of posting of workers. In that case, the person who provides services and the user undertaking are from the start of the activity considered to be bound by a labour contract for indefinite duration (Article 31, § 3). Also, the temporary work agency and the user undertaking become jointly and severally liable for the payment of wages, social payments and personal tax due as result of this employment (Article 31, § 4).
Denmark	The employer is the temporary work agency. Some of the duties of an employer lies, however, by the user-undertaking (e.g. ensuring health and safety at work).
Finland	It is an undisputed fact that the agency is the employer of the persons in question.

Germany	(a) See answer 1.3 (b) (b) See answer 1.3 (b) (c) n/a
Hungary	(a) Agreement between the temporary work agency and the "end-user" containing the essential terms of the hiring-out of workers, the exercise of the employer's rights division. The right of terminations can be exercised by the temporary work agency. The agreement must be in writing. (b) See 8.6.a. (c) n/a
Ireland	(a) Yes (b) In all cases other that those relating to unfair dismissal the person who is responsible for paying wages is the employer. In cases under the Unfair Dismissals Acts the end-user is deemed to be the employer. (c) n/a
Israel	(a) Yes. In Case law. (b) Under the case law, labor relations in a triangular relationship , the judicial determination of the identity of the employer, shall be based on the real relationship between the parties, regardless of the formal conditions set by the parties. The many faceted test for examining the question of what the employer (contractor personnel or "User") are: A. How to see the arrangement the parties who received the employee to work, the power to fire anyone who sets the terms of remuneration, who oversees the work, to whom ownership of the means of production and more. B. Insofar as the transaction is not in accordance with the provisions of the labor contractors, the tendency will be to recognize employment by the user.

	C. Temporary (basic purpose is the provision of human resources temporarily available to the user), and stability against turnover (staffing company is the employer steady while the user is the shifting). D. Truth or illusion. Arrangement of works by employing a user through an employment agency must be true - namely, to achieve the real purpose for which intended employment. E. Fairness, good faith and public policy. Employee's employment by Company personnel will not be tainted by the exploitation of the worker. F. Maintaining a regime of collective agreements and the status of labor organizations. Employee's employment arrangement through an employment agency must maintain not only the remuneration and terms of employment of the employee but also the status of the relevant collective agreements and the status of trade unions. (c) n/a
Netherlands	(a) If you are within the criteria of Art. 7:690 DCC, the twa is the employer. There is however a big discussion whether the so called payroll companies are under this definition. The Dutch Supreme Court has not given a decision on this issue. (b) See 8.6.a (c) n/a
Norway	(a) This must be determined in the same way as any other situation where it may be questioned who is the "employer". There have so been a few cases where the courts have found that there is a dual / shared employer's responsibility. (b) If there is a breach of the conditions for hiring of employees, typically that the conditions for temporary employment is not satisfied, the court shall, as a general rule and if demanded by the hired employee, decide that the hired employee has a permanent employment relationship with the hirer, cf. section 14-14 of the Working Environment Act. If an employee has been hired from a temporary work agency for more than four years, he or she shall be deemed to be permanently employed by the user undertaking (hirer), cf. section 14-12 subsection 4.

	(c) n/a
Slovenia	(a) Yes, there are 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) According to LMRA employer who posts workers to user undertakings to work there is: – every legal entity or natural person, – who concludes employment contracts with workers with the purpose of posting them to user undertakings where they temporarily work under the supervision of and in accordance with the instructions by user undertaking, and – such employer is entered at the ministry responsible for labour in the register (of domestic TWA) of such persons or in the records (of foreign TWA). ERA refers to LMRA: an employer of a person who provides services to an "end-user" through the medium of a temporary work agency is person who in accordance with the labour market regulations, may carry out the activity of providing work of workers for another employer. (c) n/a
Spain	(a) Yes (b) - The employer is the temporary work agency - The operating of the power of ordering the services of the worker in mission is legally transferred to the end-user undertaking (c) n/a
Sweden	(a) There is no legal definition of the term "employer". Through case-law however criteria have been set up concerning who is to be defined as an employee and employer. This case-law does not specially concern the situation of temporary-work agencies. (b) A temporary-work agency employs temporary agency workers in order to assign them to user undertakings to work

	under their supervision and direction. A temporary-work agency shall, for the duration of the worker's assignment at a user undertaking, guarantee the worker at least the same basic working and employment conditions as would apply if they had been recruited directly by that undertaking to carry out the same job. (c) n/a
United Kingdom	(a) This turns on case-law (dealing with both the question of "who is the employee?" and "who is the employer?") – little of which can be claimed to be "clear". Much has been written and discussed about the so-called "triangular relationship" and its analysis under the rules of the Common Law. There is also substantial jurisprudence (although not, so far, at the level of the Supreme Court). (b) There is a significant practical problem where the search for a 'classical' bundle of 'employer obligations' is addressed in the context of 'the triangular relationship' under "classical" Common Law analysis. As has been described by various commentators, a relationship between the worker and a labour supplier (such as an employment business under the United Kingdom arrangements) may involve the labour supplier taking on responsibility for payment of 'wages' and the administration of deductions to provide for tax liabilities and social contributions, but will not involve the worker actually undertaking labour directly for the benefit of that labour supplier. At the same time, the worker may be sent to the end-user/client, where work will be undertaken under the supervision and 'control' of that end-user, and where obligations in respect of matters such as health, safety and hygiene at work can only effectively be discharged by that end-user. A number of instances may be offered in which the 'classical bundle of employer obligations' is allocated between the labour supplier and the end-user. If the judicial search for 'protected employee' status confines itself to the formalistic contractual analysis approach of applying the historical 'Common Law tests' against the background of a fundamental need to establish 'control' and some 'irreducible minimum of mutual obligation' between the parties, the danger swiftly becomes apparent that neither the worker's relationship with the labour supplier nor his relationship with the end-user has all of the requisite components to lead to a conclusion that there exists the requisite 'contract of employment' for enjoyment of related employment protections. (c) It should be noted that the provisions of the Agency Workers Regulations 2010 do nothing to address or to overcome the problems arising in this context.

Question 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?**

Austria	Yes. De iure, these employees are even given extra protection compared to "ordinary" employees: They are entitled to the minimum wages of the collective agreement binding the agency (see question 6.5.e), which is due also in periods between assignments (when they may be free from any working tasks), and to higher remuneration as set out in the collective agreement binding the user during the assignment. In case of an ordinary dismissal, the agency must observe a statutory period of notice of 14 days (whereas there is no compulsory statutory minimum for other groups of blue-collar workers). Finally, the AÜG's non-exhaustive catalogue of clauses that are prohibited includes a restriction of the employee's wage entitlement to periods of actual work performance, the stipulation of artificially short normal working hours or the employer's authority to order regular overwork (which would circumvent the first prohibition), a temporal limitation of the assignment for which there is no objective justification (whereby the end of an assignment does not constitute a justification), a prohibition of the employee's successive direct employment with the user or contractual penalties in this case. In practice, though, it appears that despite all these protective provisions temporary agency employees usually lose their job immediately if the agency has no use for them at the moment, whereby the period of notice is circumvented by termination on mutual agreement. (The employee will hardly reject such a termination if they hope to be re-employed by the agency in future). This results in repeated and often lengthy periods of unemployment for a major share of temporary agency workers. See also question 6.5.e on the limitations of equal pay provisions during the period of an assignment.
Belgium	Yes
Denmark	Before the introduction of the legislation mentioned above (1.3.) it is fair to say the temporary work agents did not in general enjoy the same protection as other workers but with the new legislation these two kinds of workers are more equal with regard to protection.
Finland	Yes
Germany	Yes, in accordance with the AÜG

Hungary	In Hungary the temporary work agency, the end-user, and the employer play role in the temporary employment.
Ireland	Yes
Israel	The law is intended to ensure the employee's rights and welfare, and is intended to prevent serious harm to his social security. These for example are the parts of the law deal with it: A. Article 11 of the Law provides that the employee's working conditions of manpower contractors shall be a written agreement between them unless you apply collective agreement. B. Article 12A of the Law provides that the Contractor will not accept and will not require personnel processed in any way that an employer or candidate to work with him, any compensation for services or reimbursement of expenses. In addition, apart from the Law, the legislature imposed the provisions of the additional responsibility for the "User" / actual employer to ensure the employee's social security. Here are some of those provisions: A. Article 6A of the Law stipulates that the minimum wage in certain circumstances the duty of the contractor workforce minimum wage will also apply to the actual employer. B. Article 1g to the Foreign Workers Law provides that in certain circumstances the obligation to a foreign worker to pay his salary, pay a deposit, to arrange his medical insurance and provided with accommodation, will also apply to the actual employer. C. According to Article 9 (b 1) of the Women's Work Law - 1954 an employer may not dismiss a pregnant worker and he can also not make a contractor dismiss a pregnant worker. If the employee was fired presumption that the employer caused it. D. Article 2 (1A) of the Equal Employment Opportunities Law, 1988 - states among other things that the actual employer shall not discriminate between employees of manpower employed by him, and shall not discriminate among job applicants referred to him in terms of admission to work, stop work and conditions in the workplace, for the reasons indicated in paragraph (a). The article also states that the actual employer will not discriminate contractor personnel.

	E. Article 9 of the Prevention of Sexual Harassment - 1998 states that the provisions of this Law shall also apply to a person who actually employs using manpower and a person employed as aforesaid.
Netherlands	See above (6.1.a.), this employees has less rights.
Norway	Yes, however, in practice there may be differences due to the nature of the employment. Based on statistics, 16 per cent are "permanently employed with guaranteed salary", approximately 20 per cent are permanently employed without guaranteed salary and 43 per cent was temporary employed while 21 per cent had stated that they were not employed. 23 per cent of the workers from EU-countries in Eastern Europe were entitled to a guaranteed salary. To further strengthen the rights of the workers and to prevent misuse, the provisions on equal treatment also applies to hiring by enterprises without employees. These are typically "one person" enterprises.
Slovenia	Yes, a person who provides services to an “end-user” through the medium of a temporary work agency is regarded as a worker who enjoys “the normal range” of employment protections and/or social security benefits available to employed persons.
Spain	Yes The employment conditions ought to be the same as the temporary workers. The work conditions ought to be the same as the work conditions in the end-user undertaking. The salary is the more favourable between the salary fixed in the temporary work agency and the salary fixed for a comparable worker in the end-user undertaking
Sweden	See above at 8.6
United Kingdom	Yes. The problem arises as to “who is the employer?” against whom any such rights and benefits can be enforced.

Question 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?**

Austria	(a) Yes (b) The general system applies for determining whether a person provides services in a position of personal dependency (= employee) or at least economic dependency (= employee-like person). Whoever does not fall into one of these categories cannot be assigned in the described sense by a temporary work agency. Constructions of sub-contracting with a genuinely independent entrepreneur do not fall under the AÜG. (c) n/a
Belgium	(a) Yes (b) This is the consequence of the rules explained in al. 1 of the answer to Q 8.6 (b).
Denmark	Such persons are employees and as such they are covered by the legislation generally applicable to all employees. In case law it is established, however that temporary agency workers are not covered by the specific Salaried Employees Act (Funktionærloven, you know). According to the new legislation on temporary agency work (mentioned in answer 1.3) the temporary worker who performs salaried employee work (arbejder som funktionær) and thus would be covered by the Salaried Employees Act if he or she were directly employed by the "end-user" will enjoy the same rights as a Salaried Employed to a certain degree (e.g., salary during illness) by virtue of the principle of equal treatment. It remains, however, to be seen exactly which impact the new legislation will have.
Finland	(a) No special criteria are needed here, because the status as an employee of these persons is well established. (b) n/a (c) n/a
Germany	(a) Yes, see answers to 6 and 7.1 (b) n/a

	(c) n/a
Hungary	(a) In general, yes, but if mass lay-offs they are the first to be redundant. (b) n/a (c) In case of mass lay-offs they are the first to be redundant.
Ireland	(a) See above (b) Generally the entitlement to such benefits is founded on the existence of a contract of employment (a contract of service). There are established criteria against which a contract can be judged to be one of service or one for services. These relate to control, etc. Absent statutory intervention, the relationship between an agency worker vis-à-vis the agency and the end-user can be problematic. In the case of an agency worker his or her contract is with the agency but day-to-day control over the work which he or she performs is exercised by the end-user. In the past this has given rise to difficulties referred to earlier. However, statute has intervened so as to provide that in the case of an agency worker the person liable to pay wages is the employer. (c) n/a
Israel	(a) See answer to question 8.7. (b) n/a (c) n/a
Netherlands	(a) This depends on the extent of Art. 7:690 DCC.The legal experts who defend that payroll companies are not within this definition, point on the fact that these payroll companies do not send the employees one time to one end user and one time to another, but instead the employees are meant to stay with one end-user. (b) n/a (c) n/a
Norway	(a) n/a

	(b) n/a (c) n/a
Slovenia	(a) Yes (b) A person who provides services to an "end-user" through the medium of a temporary work agency is a worker who: - has concluded an employment contract with TWA in accordance with the ERA, - TWA posts him to user undertaking, and - he temporarily works there under the supervision of and in accordance with instructions by the user undertaking (c) n/a
Spain	(a) Yes (b) The rights of the workers in mission and the duties of the agencies are expressly recognised in sections 10-12 of the Act 14/1994 (c) n/a
Sweden	(a) See above at 8.6 (b) See above at 8.6 (c) n/a
United Kingdom	(a) No – this is the same problem as found in the obverse situation described above at 8.6 (b) n/a (c) n/a

Question 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?

Austria	As mentioned, labour issues are dealt with by the general courts, which operate under the special regime of the ASGG. Notably, they are adjudicated by panels composed of professional and expert lay judges nominated by the social partners, the duty of engaging an attorney is largely waived in favour of representation by employees' and employers' representatives, first instance judgments are preliminarily enforceable etc. These labour courts are competent for disputes between the agency and its employees concerning their contractual relationship and all applicable provisions of labour law (incl. the AÜG); they are equally competent for appeals against a social security institution's decision concerning social benefit entitlements. By contrast, appeals against other decisions by an administrative authority (taxes, contributions, imposition of fines…) are outside their area of competence.
Belgium	Only individual disputes between a temporary work agency and a temporary agency worker fall within the jurisdiction of the Belgian labour tribunals/courts.
Denmark	To some extent (depending on if the work is covered by a collective agreement).
Finland	The competence of the Labour Court is confined to disputes arising from collective agreements. This applies to regulation for temporary work agencies respectively. See 8.4 above.
Germany	See answer 6.4 (b)
Hungary	The Labour Courts have full powers.
Ireland	They do not come within the jurisdiction of the Labour Court.
Israel	It is Labor Courts jurisdiction.
Netherlands	All problems between the employees and the TWAs fall within this jurisdiction.
Norway	As mentioned above, the Norwegian Labour Court only considers collective disputes (see 7.3). In general, and despite the fact that the rules and conditions for hiring of employees from temporary work agencies on

	the one hand and from other employers on the other are very different, our impression is that there has been very few cases where the hired worker has challenged either that the conditions for hiring from temporary work agency was not satisfied or that he or she was in fact hired out from a temporary work agency - not from "an undertaking other than those object is to hire out labour". The first case to be heard by the Supreme Court concerning whether the employee has been hired out by a temporary work agency (and thus entitled to permanent employment by the hirer based on the four-year rule – (see 8.6 above) or whether the object of his employer was not to hire out labour - will be heard during the fall 2013. The appeal court found that the employer who hired out the employee did not satisfy the criteria for being an undertaking whose object is not hot hire out labour and that the worker was a permanent employee of the hirer (LG-2012-25739). Disputes may also arise in connection with sub-contracting. The question may be whether there is a contract of hire of labour or a contract of independent sub-contracting. In a decision 26 June 2013 (HR-2013-01391-A), the Supreme Court found that post services in a company were performed based on a sub-contracting agreement - not hiring of labour. The court stated that the distinction between sub-contracting and hiring must be determined based on an overall assessment of the relevant factors. *[The decision is included in our response on the second subject - "Leading Cases".]*
Slovenia	Matters of regulation for temporary work agencies fall within the jurisdiction of the Administrative Court. Disputes between TWA and their employee fall within the jurisdiction of the Labour Courts.
Spain	Labour courts are competent in claims against a temporary work agency about (1) relationship of employment; (2) social security benefits of the workers; (3) licences (or not licences), supervision and sanctions imposed by the labour administration
Sweden	Cases between workers and temporary-work agencies and between workers and user undertakings concerning the application of the Agency Work Act are dealt with in accordance with the Labour Disputes (Judicial Procedure) Act (1974:371). These cases fall within the jurisdiction of the Labour Court.
United Kingdom	See above at 6.4, 6.6, 6.7, 7.2 and 7.3

Question 9.2 To what extent do disputes or other matters touching the "end-user" of services provided through the medium of temporary work agencies fall within the jurisdiction of the labour courts in your country?

Austria	The user is considered an "employer" for the purposes of the ASGG, giving rise to the labour courts' competence for disputes between them and the employees assigned to them.
Belgium	Only individual disputes between a temporary agency worker and a user undertaking (e.g. if the worker claims that the rule explained in al. 2 of the answer to Q 8.6. (b) applies) fall within the jurisdiction of the Belgian labour tribunals/courts.
Denmark	See above.
Finland	See the previous reply.
Germany	See answer 6.4 (b)
Hungary	Disputes extent to the end-user within labour context.
Ireland	The only disputes that come within the jurisdiction of the Labour Court are those concerning matters related to or touching upon the terms and conditions of employment of workers. Disputes concerning the terms and conditions of agency workers, including dismissal, are within the jurisdiction of the Court.
Israel	See answer to questions 6.7 and 9.1.
Netherlands	Only some questions fall within this jurisdiction, e.g. work accidents. This is stipulated in Art. 7:658 – 4 DCC. But apart from this, there is no legal tie between the employee and the end user, so if the claim exceeds € 25.000, the employee must start a procedure at the 'normal' court. **Article 7:658 Care duty of the employer** **- 1.** The employer must arrange and maintain the spaces, rooms, machines and tools in which or with which work is performed under his responsibility and give instructions and take safety measures as is reasonably necessary to prevent that the employee suffers damage during the performance of his work. **- 2.** The employer is towards the employee liable for damage which the employee has suffered from activities performed

	in the course of his work, unless he shows that he has complied with the obligations mentioned in paragraph 1 or that the damage to a substantial degree results from an intentional act or omission or from wilful recklessness on the part of the employee. **- 3.** It is not possible to derogate to the disadvantage of the employee from paragraph 1 and 2 and from the statutory provisions of Title 6.3 of the Civil Code with regard to the liability of an employer. **- 4.** A person who in the course of his professional practice or business enables other persons, with whom he has not concluded an employment agreement, to perform work, is liable towards these other persons in accordance with the previous paragraphs of the present Article for damage which these other persons have suffered from activities performed in the course of that work. The Sub-district Court has jurisdiction to give a judgment on legal claims as referred to in the first sentence of this paragraph.
Norway	See above at 9.1
Slovenia	Disputes and other matters touching the “end-user” of services provided through the medium of temporary work agencies fall within the jurisdiction of the Labour Courts, when it is dispute about rights and obligations of a posted worker.
Spain	Labour courts are competent in claims against an end-user enterprise about (1) performance of the work; and (2) social benefits relating to end-user premises (transport, catering, nursery, etc)
Sweden	See above at 9.1
United Kingdom	See above at 6.4, 6.6, 6.7, 7.2 and 7.3

Question 9.3 How common are such cases (having regard to the overall work-load/case-load) in your country's labour courts?

Austria	They are relevant, but not extraordinarily frequent. To illustrate this, over the last year the Supreme Court delivered five judgments which at least partly deal with provisions of the AÜG, while there are nearly twice as many decisions touching e.g. provisions on annual leave or transfer of undertakings, and nearly thrice as many about general dismissal protection.
Belgium	Not very common. In the 10 years that I was a judge at the Ghent Labour Court, I only had to judge 3 or 4 cases related to temporary agency work.
Denmark	Not uncommon.
Finland	Not too common, maybe 2 or 3 per cent of all cases.
Germany	More and more common, currently e.g. about "equal pay" after CGZP "collective agreements" for temporary work have been found to have been null and void from the beginning, see answer 2.3.(b)
Hungary	8 - 10 per cent.
Ireland	The legislation transposing Directive 2008/104/EC was only enacted in 2012. Consequently few cases have come before the Court under that legislation. The Labour Court only has appellate jurisdiction and few appeals have yet come on for hearing although it is understood that a number of cases under that Act have been referred at first instance, principally concerning the terms and conditions of agency workers vis-à-vis comparable directly employed workers.
Israel	Cases that deal with the issue of employment through manpower is very common in labour Courts. Rainbow types of files is very broad field, including claims that the question of identity arises; appeals against decisions concerning ministry permits, fines, and other sanctions.
Netherlands	Uncommon.
Norway	See above at 9.1
Slovenia	Not very common.
Spain	Not especially litigious. My personal calculation: less than 10 % of the work-load

Sweden	There have so far been no such cases at the Labour Court. The Act entered into force on 1 January 2013.
United Kingdom	A couple of early cases under the Agency Workers Regulations 2010 came before the Employment Tribunals at the end of 2012. There is, however, no sign of large-scale litigation in this area. To date, there has been nothing considered on appeal in relation to those Regulations. However, it should be noted that where a "triangular relationship" features in proceedings for the enforcement of statutory employment protections, the jurisprudence on the questions of "who is the employer/employee?" will come into play. There is very little case-load in relation to the administration of temporary work agencies (2 reported decisions on the Employment Appeal Tribunal web-site – and neither of them solely focused upon the agency activity).

Question 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?

Austria	Over the last two years, the following issues were decided by the Supreme Court: - The assignment of an employee requires their explicit consent as a constitutive element. A private person, who does not fall under the special regulations for football clubs, cannot therefore "purchase" a player from one club and assign him to another for a fee only based on agreements with the two clubs. - The prohibition of contractual penalties for the temporary agency worker in case of a successive direct employment relationship with the user may not be circumvented by imposing a fee on the user undertaking in case it subsequently hires the assigned employee directly. - Temporary agencies are obliged by provisions on parental leave just as any other employer. If the agency fails to explore all reasonable possibilities of enabling parental part-time in negotiations with the employee, it cannot dismiss her relying on the incompatibility of that part-time with the specific features of temporary agency work. - If a civil servant is assigned to a private enterprise by law, the state is responsible for all actions of the user undertaking as if it was still directly putting the servant to work (see question 2.4.b). - A works council agreement in the user undertaking obliging the employer to offer temporary agency workers a direct employment contract after a certain period does not give a right to such an offer to the employees that have been hired in (see question 7.1.f). - The AÜG's catalogue of prohibited clauses is applicable to employees posted to Austrian even if their contract provides for the application of another law (in casu that of Liechtenstein). The application of these provisions (here: the prohibition to shorten the usual periods of prescription for bringing claims concerning a former employment relationship to the detriment of temporary agency workers) is authorised by art. 3(1)d and art. 3(9) of the EU Posting of Workers Directive.
Belgium	As far as I know of, none in particular.
Denmark	One important issue is if a collective agreement in force in the user-undertaking covers temporary agency work carried

	out in the user-undertaking.
Finland	Most cases relate to "forbidden" use of outside manpower in a user enterprise. A recent case, judgement 2012:9 of the Labour Court, concerned the question whether the collective agreement, applicable to the empoyees of the user enterprise, was to be applied also to a temporary agency worker assigned to that enterprise. The answer was yes. In a pending case the question has been rised whether the collectively agreed restrictions on the use of temporary agency workers are compatible with Directive 2008/104/EC.
Germany	See answer 9.3; also disputes in connection with specific fields of German labour law, e.g.: o in case of dismissals in the “end-users” establishment - do temporary agency workers “count” (to be included) in the “social selection procedure”? The BAG recently (June 2013): yes, when substitutability is possible o BAG (March 2013): temporary agency workers “count” in principle for the formation of workers' councils (the size of the works council increases with the number of employees) o BAG (July 2013): works council of the “end-user’s establishment is entitled to refuse consent (according to § 99 German Works Constitution Act [Betriebsverfassungsgesetz – BetrVG] the use of temporary agency workers requires the consent of the works council) to the use of temporary agency workers in case of not only “temporary” use (see answer 1.3. [b] – legal only “temporary”)
Hungary	If the subject of the law-suit is illicit dismissal, and the plaintiff wants to get back in his original job.
Ireland	See above.
Israel	As mentioned, there are plenty of ruling. Here are recent examples: In 203/10 Israel Antiquities Authority - Abdul Hijazi, dated 03/17/2013: Respondents were employed by the company personnel, in IAA excavations worked in two days. Regional Court and National received the respondents' claim that the manpower company has no authority to dismiss them as employees of the Israel Antiquities Authority made under Article 12 A of the Law.

	National Court rejected the argument of the IAA that Article 12 of the Law does not apply to the transaction forms are temporary in nature and depend on external factors. Determined that Article 12 of the Law applies to all forms of employment through manpower companies as employer had fixed task has a variable volume it may take the form of corresponding legitimate employment, but not by way of employment through labor contractors for a period not shorter. The argument of the manpower company that she was not manpower, but a service provider, was rejected. By the contents of the agreement signed between the company Antiquities Authority personnel undertaking was to provide temporary staffing services. In addition, IAA treated and reported the second respondent Minister, a personnel company, providing a workforce. 6818-10-10 NII - Eliyahu Moshe Dayan, dated 24.04.2012: Respondents who were employed in professions computing through agencies, claimed to have seen them as employees of the National Insurance Institute (the "Institute") in which do the work. After the National Court analyzed the characteristics of the contract and applied the many faceted test, it is concluded that the employer's authentic employer is the institution. The National Insurance Institute auditions applicants for work; decided on the placement position and mobilization; permanent pay and accessories; directed the workers on a daily basis and so forth. 472/09 Zohar Golan – O.R.S Human Resources Ltd. and others, dated 12.09.2010: The appeal centered on Article 12A of the Law. The question at debate is whether the "User" / actual employer of contract workers, in this case the Broadcasting Authority may terminate the contract with them near to the end of nine months of work in the service, in order to avoid being forced to accept them as its' workers. The National Court ruled that Article 12A of the Law is unconstitutional. 131/07 Gilad Goldberg - Ortal Manpower Services Inc dated 13.5.09: Appellants were security guards employed by a security company providing security services to an Aerospace Company. The appeal focused on their demand to compare their working conditions to those of the Aerospace Company employees under Article 13 (a) of the Law. The National Labor Court accepted the appeal and ruled to compare the working conditions

Netherlands	Whether a payroll company falls under the definition of Art. 7:690 DCC.
Norway	See above at 9.1
Slovenia	In practice mainly matters of liability for damages for industrial accidents. It is question of joint liability of TWA for industrial accidents, that a worker suffers on work at an end-user. The employment relationship exists between the worker and TWA, whereby the worker performs work with an end-user undertaking to whom he was posted and who is obliged to provide for adequate safety and health security measures at the workplace. User as "actual employer" is responsible for any damages a posted worker may suffer at work. According to case law of the Supreme Court there is no liability for damages of the TWA (as formal employer) merely on the grounds of the existing employment relationship or employment contract. There are also disputes when employer dismissed his employee's and "replace" them with agency workers (see answer 9.6.).
Spain	Temporary work: (a) fixed-term contract connected to the end of a subcontracting (very frequent); (b) specifications of the document of the fixed-term contract of employment (TS 26-3-2013); (c) notice of the end of the fixed-term contract of employment (TS 24-9-2012); (d) successive fixed-term contracts of employment (TS 19-4-2011 y TS 20-10-2010) Temporary work agencies: (a) joint and several liability of the end-user in case of not compliance with the legal obligations in the provision of services (TS 3-11-2008); (b) remuneration of the worker in mission (social benefit granted by the end-user to their employees consisting of economic aid for the cost of food at work)(TS 7-2-2007)
Sweden	n/a See above at 9.1
United Kingdom	The first examples of issues arising in the context of the 2010 Regulations started to come before Employment Tribunals at the end of 2012. One early clarification was forthcoming in a judgment delivered in December 2012 by an Employment Tribunal sitting in Watford (Case Number 3302128/2012, Unison v. (1) London Borough of Barnet and (2) NSL Ltd*)*, dealing with the obligation to furnish information (including information concerning agency workers) in a public sector 'transfer of undertaking' situation involving the outsourcing of services originally provided by a local authority in the London area.

	Meanwhile, the judgment of an Employment Tribunal sitting in Hull to hear a group of cases challenging the operation of the 'Swedish derogation' provided for in Regulation 10 of the 2010 Regulations contains a detailed discussion of arrangements purporting to take advantage of Article 5(2) of the Directive (Case Numbers: 1801581/2012, 1801582/2012, 1801584/2012, 1801586/2012, 1801587/2012 and 1801588/2012, Bray, Gardner, Hanley, Smith, Tunley and Woolnough v. Monarch Personnel Refuelling (UK) Limited). The focus of the United Kingdom trade union movement has been upon (a) the "Swedish derogation"; (b) the problem of "equal treatment"; and (c) the use of comparators.

Question 9.5 To what extent do those issues reflect current policy-making concerns at the "political" level in your country?

Austria	The judgment last mentioned might be of particular relevance, considering the general uncertainty about the rules applicable to posted employees in the EU context: the Supreme Court's decision implies that the AÜG is relevant for these employees in its entirety, since basically all its provisions regulate the "terms and conditions which apply to temporary workers in the Member state where the work is carried out" in the sense of Art. 3(9) of the Posting Directive.
Belgium	n/a
Denmark	The above-mentioned issue is an element in the "social dumping agenda".
Finland	These are issues which involve interpretation of collective agreements in individual cases and do not reflect major concerns of policy-making.
Germany	n/a
Hungary	No
Ireland	There are no issues concerning agency workers that could be described as a matter of political concern, other than those potential problems that may arise from the striking down by the Supreme Court of the sectoral regulatory system previously provided by Registered Employment Agreements and Employment Regulation Orders
Israel	The issue of employment of triangular relationships are often in the focus of public debate, including political.
Netherlands	TWAs are not considered to be a big problem. Payroll companies are, but the growth of the use of normal temporary contracts and the use of so called self employed is a much bigger issue.
Norway	See above at 9.1
Slovenia	Concession fee paid from student work was raised (from 14% to 25%), which limits scope of this work and reduced incomes of agencies for ensuring of student work. Change of LMRA is in preparing too for lowering height of contributions for temporary work of pensioners (that are now too high).

	Otherwise it is expected that new ERA, enter into force in April this year (except about the quota of posted workers), will abolished barriers for work of the agency workers and made impossible most obvious abuses of this work.
Spain	See 9.6
Sweden	See above at 9.1
United Kingdom	Hardly at all – although that might change if a recent TUC complaint to the EU Commission alleging failure properly to implement the 2008 Directive in relation to these issues gains any momentum.

Question 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.**

Austria	(a) See questions 9.4 and 9.5. (b) See questions 9.4 and 9.5. Unfortunately, no translations are available for the described judgments.
Belgium	(a) Yes (b) A couple of years ago the press related that a particular temporary work agency was discriminating against persons from immigrant origin. Allegedly, if a user undertaking didn't want such workers to be posted, that temporary work agency gave in to this demand, marking the file with "BBB", short for "bleu blanc belge" which is a Belgian breed of cows. It was investigated by the Labour Inspection. The criminal case didn't lead to a conviction due to a mistake in the procedure. But in a civil case brought before the Brussels Civil Tribunal by the NGO 'SOS Racism' and the trade union 'ABVV-FGTB', the temporary work agency was condemned to pay material and moral damages (25.000 euro to 'SOS Racisme' and 1 + 1 symbolic euro to 'ABVV-FGTB'). I have no information if the judgment (31 May 2011) was appealed.
Denmark	n/a
Finland	(a) No (b) n/a
Germany	(a) See answer 9.4 (b) See answer 9.4
Hungary	(a) No (b) n/a
Ireland	(a) No

	(b) n/a
Israel	(a) See answer to question 9.4. (b) n/a
Netherlands	(a) See 9.4 (b) Until last year payroll companies where a few times considered as normal TWAs, which means that the employee is an employee of the payroll company and not of the end user. In 2013 two labour courts (Rotterdam and Almelo) have decided differently, and declared that the end user is the employer. No court of appeal or the supreme court has given an opinion on this.
Norway	(a) See above at 9.1 (b) n/a
Slovenia	(a) Yes (b) In dispute about termination of employment contracts for business reason, court give grounds for its decision about illegality of dismissal in such way: Employer didn't succeed to prove, how much and which workers, employed for indefinite time, became unnecessary. Only approximate assessment about this isn't enough for judgement about legality of notice. This is especially unacceptable in case, when an employer in same time is hiring workers from TWA for fixed time. Also if needs are changing considering number of workers needed for regular production (their scope), fact is, that employer obviously had certain number of employees for indefinite time for work that is needed incessantly. If thus scope of orders was changing (reduced) this means first, that posted workers for definite time won't be needed any more. Dismissal of employees employed for indefinite time next to simultaneous hiring of workers from TWA for definite time for equal or analogous works, mean undoubtedly abuse. Increased scope of work (for example because of exceptional larger orders) can means need for additional hiring of workers, but not "of replacing" regularly employees for indefinite time with workers through employment agencies.
Spain	(a) Temporary work is one of biggest concerns in labour relations in Spain: the rate of temporary work is higher than in the other comparable countries of the UE. Cases of temporary work reflect some of the main topics in the

	matter (b) The leading cases in temporary work agencies, concerning the application of an important reform in Act 14/1994, carried out in 1999 are not recent; they went back to the former years of the XXIst century
Sweden	(a) No (b) n/a
United Kingdom	(a) The first examples of issues arising in the context of the 2010 Regulations started to come before Employment Tribunals at the end of 2012. One early clarification was forthcoming in a judgment delivered in December 2012 by an Employment Tribunal sitting in Watford (Case Number 3302128/2012, Unison v. (1) London Borough of Barnet and (2) NSL Ltd*)*, dealing with the obligation to furnish information (including information concerning agency workers) in a public sector 'transfer of undertaking' situation involving the outsourcing of services originally provided by a local authority in the London area. Meanwhile, the judgment of an Employment Tribunal sitting in Hull to hear a group of cases challenging the operation of the 'Swedish derogation' provided for in Regulation 10 of the 2010 Regulations contains a detailed discussion of arrangements purporting to take advantage of Article 5(2) of the Directive (Case Numbers: 1801581/2012, 1801582/2012, 1801584/2012, 1801586/2012, 1801587/2012 and 1801588/2012, Bray, Gardner, Hanley, Smith, Tunley and Woolnough v. Monarch Personnel Refuelling (UK) Limited). (b) n/a

Question 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.**

Austria	(a) Yes – as mentioned, the AÜG was amended last year. (b) The amendments, which generally entered into force in January 2013, concerned temporary agency workers' right to - more detailed advance information concerning individual assignments – e.g. about the relevant provisions of the collective agreement applicable to the user; - information about the end of an assignment 14 days in advance; - information about vacancies in the user undertaking; - equal treatment with the staff of the user undertaking concerning all binding provisions on remuneration, working time, annual leave, amenities or collective facilities, with the restrictions discussed under question 6.5.e; - support from a "social and training fund". The new fund's means, largely financed via contributions by all temporary agencies active on the Austrian market, will be used as from 2014 for direct transfers to unemployed temporary agency workers and to agencies that maintain their employees over longer periods between assignments, and into training for these employees. What's more, agencies and users will have to report more statistical data annually as from 2014 (see question 3.1.a), and the administrative fines for infringing the AÜG have been increased.
Belgium	(a) Yes (b) The Act of 26 June 2013 changes some provisions of the 1987 Temporary Agency Work Act. These changes come into force on 1 September 2013. First of all, a new type of temporary work is recognised: the posting of a temporary agency worker at a user undertaking to fill in a vacancy, with the purpose of engaging that worker in the same job for indefinite duration after the agreed period of posting. This legalises an existing practice.

	Secondly, a provision is added allowing consecutive day contracts for temporary agency work at the same user undertaking, on the condition that the user undertaking can prove that such a flexibility is needed. The rules concerning how and what exactly the user undertaking has to prove need to be determined by a national CLA concluded in the National Labour Council. On 16 July 2013 the National Labour Council has concluded a new collective labour agreement (CLA n° 108), regrouping the provisions of the aforementioned CLA's n° 36 en n° 58. CLA n° 108 also determines the specific rules concerning the use of consecutive day contracts, thus executing the new provision added by the 26 June 2013 Act. At the time of writing CLA n° 108 isn't yet declared generally binding by Royal Decree.
Denmark	Now the new legislation has just been adopted. It is to considered if this new legislation should be followed up with amendments regarding access to the Labour Court.
Finland	(a) There is no such single issue in the pipeline right now. However, there is a continuing discussion about the acceptability of temporary agency work in the labour market. The Private Employment Agencies Association is doing its best to promote positive attitudes towards the industry. (b) See above.
Germany	Recently - 2011 - important amendments to the AÜG
Hungary	(a) Yes (b) The future points to a specific service, the real added value is not going to work well in recruiting, but the reliability of temporary workers, how well they work, how committed. This is a key question is how to treat them with the temporary work agencies, what tools are used to make them motivated and to what they have achieved customer satisfaction.
Ireland	(a) No (b) n/a
Israel	(a) No

	(b) n/a
Netherlands	(a) Yes, in April 2013 a new 'Social Agreement' has been concluded between trade unions and employer organisations. If this comes to law, only two temporary contracts instead of three will be allowed. It is announced that the employees of payroll companies will get the same rights as the employees of the end user. How this will take place is unclear. (b) See above
Norway	(a) Yes, there is a current focus on this and, as mentioned above. (b) The new rules on extended power of the Labour Inspection Authority will enter into force 1 January 2014.
Slovenia	Initiatives (above all from Trade Unions) go to direction of clearer definition of agency work: temporary agency work must be clearly distinguished from sub-contracting. Initiatives of larger TWAs are for the reduction of number of agencies.
Spain	See 9.6
Sweden	(a) Not so far as we are aware (b) n/a
United Kingdom	(a) Recent public consultation on proposals to reform and update the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 has now closed and specific final proposals are awaited from the legislator. (b) The government was seeking views inter alia on the current enforcement regime and 'whether individuals should be able to enforce their own rights at Employment Tribunals, bringing the recruitment sector in line with other areas of employment law'. The government's proposals had a distinct 'light touch' ethos to them. Thus, having made clear that 'complete deregulation of the recruitment sector is not considered to be viable or desirable', the government declared that:

	"We believe that legislation should be minimised and, for the most part, focussed where work-seekers are most at risk of exploitation. Our vision for the recruitment sector is that it will be regulated by the simplest regulatory framework possible, reducing the regulatory burden and allowing businesses to play an active role in developing their own methods of maintaining standards so they can compete for work-seekers and hiring companies." In order to deliver that vision, the proposed reform set out 'four outcomes', which were said to be 'important to ensure that the recruitment sector operates fairly and flexibly'. Those outcomes were described in terms that: (1) employment businesses and employment agencies are restricted from charging fees to work-seekers; (2) there is clarity on who is responsible for paying temporary workers for the work they have done; (3) the contracts people have with recruitment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable; and (4) work-seekers have the confidence to use the recruitment sector and are able to assert their rights. The method suggested for achieving those outcomes is to replace the existing Employment Agencies Act 1973 and the 2003 Regulations with new legislation, in order 'to free employment agencies and businesses from unnecessary regulation and allow them more scope to operate in the way that is best for them'.

Question 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.

Austria	(a) Yes (b) It seems that at least in Europe, there are two central questions, which have also constituted the main obstacle to agreeing on the contents of the Temporary Agency Work Directive: one is temporary agency workers' entitlement to real equal treatment in the user undertaking, the other is their protection against an immediate loss of employment or entitlement to income once an assignment is terminated. In contrast to many European jurisdictions, Austrian law has traditionally given relatively weak protection in the first area (allowing for substantial wage differences between the user's ordinary workforce and those hired in via an agency), but relatively strong protection in the second (prohibiting a suspension of the wage entitlement as well as fixed-term contracts only for the duration of the assignment). The practical circumvention of this system (widespread termination by mutual agreement) gives rise to the question whether it is realistically able to protect temporary agency workers from exploitation or whether the more reasonable strategy would be to strengthen their rights during the periods of assignment. Finally, a crucial question relates to the economical consequences of all possible means of protection: after all, any of them is necessarily connected to increased costs incurred by the agencies, which will be reflected in the fees they demand from users. Especially in the discussion surrounding the EU directive, it has repeatedly been claimed that this effectively hinders the job creating potential of temporary agencies, which was stressed so insistently by the European Commission.
Belgium	(a) No (b) n/a
Denmark	(a) No (b) n/a
Finland	1. There has been an ongoing debate concerning the duration - permanent or definite - of the employment contract of a temporary agency worker. Thus far it has been common practice to conclude fixed-term contracts for each

	assignment. This practice has been strongly opposed by the trade unions, which argue, that the legally regulated conditions for making a fixed-term contrac ("justified reason") are not fulfilled, if the agency can in fact offer work on a permanent basis. This view received support from judgement 2012:10 of the Supreme Court. The reasoning of the judgement remained, however, to some extent ambigious, and the issue is not fully resolved yet; 2. By which collective agreement are the terms and conditions (especially pay) of temporary agency work determined? The Finnish Employment Contracts Act lays down a certain hierarchy in this respect (Sec. 9, Chapter 2): (1) The normally binding or generally applicable collective agreement binding upon the TWA (see 8.4. above) (2) In the absence of such an agreement, the collective agreement binding upon the user enterprise. (3) If there is no collective agreement, referred to above, the terms of pay, working hours and annual leave of temporary agency workers must at a minimum correspond to the terms, which are applied in the user enterprise according to contracts or practices followed in that enterprise. These rules relate to the principle of equal treatment, stipulated in Art. 5 of Directive 2008/104/EC. 3. In which cases can the use of temporary agency manpower be restricted through collective agreements, esp. in the light of Art. 4 of the Directive? 4. Partly different national and EU rules apply to temporary agency work and subcontracting. The dividing line between these two phenomena is not, however, always clear.
Germany	(a) No (b) n/a
Hungary	(a) No (b) n/a

Ireland	(a) No (b) n/a
Israel	(a) No (b) n/a
Netherlands	(a) No (b) n/a
Norway	(a) No (b) n/a
Slovenia	See above at 10.1
Spain	(a) No (b) n/a
Sweden	(a) No (b) n/a
United Kingdom	(a) No (b) n/a