

**Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors**

**Issues paper for discussion at the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors**  
(18–19 October 2011)

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*Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors: Issues paper for discussion at the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors, Geneva, 18–19 October 2011/International Labour Office, Sectoral Activities Programme. Geneva, ILO, 2011.*

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## Preface

This paper can serve as a basis for discussions at the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors, to be held in Geneva on 18 and 19 October 2011. The Governing Body of the International Labour Office decided at its 304th Session (March 2009) that the Forum would be held in the second half of 2011; be composed of ten Worker and ten Employer participants, selected after consultations with the respective groups of the Governing Body; and be open to representatives of all interested governments. Additional Worker and Employer participants may also attend. Its purpose is to exchange views on private employment agencies and temporary agency work, further promote the Private Employment Agencies Convention, 1997 (No. 181), present good practice and encourage ratifications, and focus more specifically on private services sectors (especially hotels, catering and tourism; commerce; financial and professional services; media, culture and graphical; and postal and telecommunications services) as regards private employment agencies' role in promoting decent work through the expansion of protection for temporary workers, while improving the functioning of labour markets in private services.<sup>1</sup> The Forum may adopt consensus-based recommendations that would be the basis for subsequent action by the ILO and its constituents. It follows up the 2009 Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181),<sup>2</sup> which focused on the Convention, trends in agency work and the impact of the economic crisis on agency work.

The Forum and Workshop are part of the ILO's Sectoral Activities Programme, aimed at assisting governments and employers' and workers' organizations to develop their capacities to deal equitably and effectively with social and labour issues in specific economic sectors. Sectoral action programmes, technical cooperation, advisory and research activities, and tripartite meetings contribute to ILO strategic objectives. Such meetings bring together a cross-section of Government, Employer and Worker representatives from various countries, and aim to strengthen tripartism and promote social dialogue at the international level.

The Governing Body decided at its 310th Session (March 2011) that research on the impact of implementing Convention No. 181 in countries having ratified it be carried out in 2012–13, and that the findings be compared with conditions in countries not having ratified it (prioritizing countries where private employment agencies are rapidly developing, and countries such as Egypt, France and the Philippines), taking into account the framework for operation of agencies; employment conditions (contracts, use of agencies, replacement of direct, permanent positions by agency workers); and benefits such as pay, sickness benefits and pensions.<sup>3</sup> This research could serve as a basis for a possible Global Dialogue Forum on this topic.

<sup>1</sup> GB.304/STM/1, para. 25, and dec-GB.304/12.

<sup>2</sup> ILO: *Private employment agencies, temporary agency workers and their contribution to the labour market*, Issues paper (Geneva, 2009).

<sup>3</sup> GB.310/STM/1, para. 44, and dec-GB.310/14.



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## 1. Introduction

This issues paper aims – on the basis of the 2009 Workshop’s points of consensus and the Governing Body’s decision in March 2010<sup>1</sup> – to highlight trends in temporary agency employment in private services sectors, and among private employment agencies’ own staff; collect data on best practices (and practices to be discouraged); review the employment agency industry, on issues such as job creation, precarious work, occupational safety and health, and agency workers’ profiles; examine the positions of workers’ and employers’ organizations on such issues; and raise awareness about the Private Employment Agencies Convention, 1997 (No. 181), among governments, workers and employers, and encourage its ratification and implementation. However, it generally excludes agency workers in primary industries, manufacturing and public services (including education and health). It also excludes outsourcing and subcontracting. A survey among national federations of employment agencies and trade unions representing agency workers was carried out to obtain more information on their roles in the following sectors: commerce; financial and other professional services; hotels, catering and tourism; postal and telecommunications services; media, culture and graphical; information technology (IT) and business services; property services (cleaning and security); and private employment agencies.

### 1.1. Defining agencies and agency work

For the purposes of this paper, the following definitions are used:

*Private employment agency:*<sup>2</sup> Article 1 of Convention No. 181 defines this as any enterprise or person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment;<sup>3</sup> (b) services for employing workers with a view to making them available to a third party (“user enterprise”);<sup>4</sup> or (c) other services relating to jobseeking, such as the provision of information, that do not aim to match specific employment offers and applications. Agencies are generally prohibited from charging workers for finding

<sup>1</sup> Dec-GB.307/13, para. 2.1(b).

<sup>2</sup> See also ILO: *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III Part 1(B), International Labour Conference, 99th Session, Geneva, 2010 (the General Survey), paras 296–299 and 300–307.

<sup>3</sup> An employment placement agency interviews jobseekers and tries to match their qualifications and skills to those required by employers for specific job openings. See *ibid.*, para. 302, for other examples.

<sup>4</sup> A temporary work agency or temporary help agency provides temporary employees to user enterprises to cover employee absences, skill shortages and varying seasonal workloads. Workers are employed and paid by the agency, but are contracted out to clients for pre-arranged fees or agreed hourly wages. Some user enterprises choose to use temporary workers on a long-term basis rather than employ permanent staff. See *ibid.*, para. 306, for other examples of agencies acting as skills providers.

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work; however, Article 7(2) of the Convention envisages some exceptions for certain categories of workers (for example in the entertainment industries).<sup>5</sup>

*Temporary agency workers:* Workers with a contract either for service or of employment with the agency, which finds them work in user enterprises on a temporary basis. Such workers may be able to use such arrangements to try out different kinds of work, as a stepping stone to jobs they want, as a way of entering or re-entering the job market or working more flexibly to suit their circumstances, or to move jobs easily and at short notice. However, they may have less control over their work, more pressure and shift work, and fewer rights than regular staff colleagues.

*Temporary agency employment:* Employment by a private employment agency under a labour contract of limited or unspecified duration with no guarantee of continuation, whereby the worker is hired out to perform his or her work at (and under the supervision of) the user enterprise. There is no employment relationship between the agency worker and the user enterprise, although user enterprises may have legal obligations towards such agency workers, especially on health and safety. These arrangements are often called “temporary work”, “temping” or “agency work”. User enterprises pay fees to the agency, and the agency pays the wages.

The above terminology covers wide variations in pay, conditions and decent work profiles of each category of employment. However, the focus here is on private employment agencies in private services sectors, not on wider issues – such as precarious, atypical, non-standard forms of employment, or specific forms of operations such as franchising, private equity, subcontracting and outsourcing – that are not on the agenda for this Global Dialogue Forum.

## 1.2. Related terms

*Temporary employment:* Labour contracts of limited or unspecified duration with no guarantee of continuation, with or without involvement of private employment agencies.

*Temporary workers:* Workers with temporary contracts of employment or service, with or without private employment agency involvement.

*Outsourcing:* The practice of buying goods and services from outside suppliers, rather than producing or providing them within an enterprise.

*Employment with an in-house service provider:* Work whereby workers are contracted by their employer to provide services (for example cleaning, security) to workplaces run by another enterprise.

*Freelance work:* Working on a contract basis for several clients, rather than as an employee for a single enterprise.

Temporary employment, according to the Organisation for Economic Co-operation and Development (OECD), typically includes the following: fixed-term contracts; temporary workers placed by private employment agencies to perform work at third-party user enterprises; contracts for specific tasks, lasting only until completion of the specified task; replacement contracts, for example replacing workers on family-related leave; seasonal work, for example harvesting, tourism, retail; on-call work, performed only on an

<sup>5</sup> More details are given in the General Survey, op. cit., paras 332–349, and in the section of this paper on private services sectors.

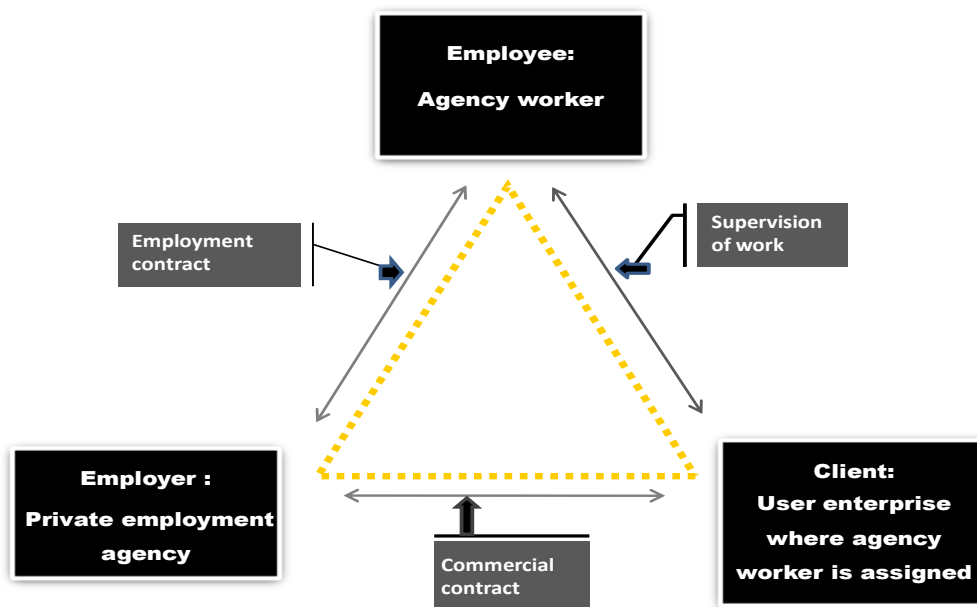
as-needed basis; daily workers, hired day by day; trainees, including apprentices and other workers with paid training contracts but without guaranteed permanent jobs at the end of training; and persons in job-creation schemes, hired for a limited duration under public programmes to stimulate employment.

These subcategories for any particular country depend on the contracting forms in use there, and judgements about which job types are temporary. Accordingly, there is no uniform application of common definitions to diverse national institutional contexts.<sup>6</sup> The OECD further notes that: “In some countries, temporary agency workers can have permanent contracts with the agency (e.g. Austria, Finland, Germany, Netherlands and Sweden) and arguably should not be included among temporary workers”. Similarly, there may be expectations that employers will provide permanent positions to trainees and probationary workers who perform well. However, workers’ organizations also contend that temporary work is becoming an increasingly permanent status for many (agency and non-agency) workers.

### 1.3. The triangular relationship

Agencies meet the needs of user enterprises for workforce flexibility on the one hand, and of workers for temporary employment on the other. Supplying workers to most sectors of the economy, the agency industry’s fortunes are bound up with those of many other industries and occupations. Over the past 30 years, employment agencies have become large-scale labour market intermediaries, acquiring the status of brokers of flexibility at both the micro level (meeting the preferred needs of individuals and enterprises) and the macro level (managing economic uncertainty and risk across labour markets).<sup>7</sup>

Figure 1. The triangular relationship between agencies, workers and user enterprises



Source: Adapted from a CIETT illustration.

<sup>6</sup> “Defining and measuring temporary employment”, Annex 3.A of “Taking the measure of temporary employment”, in OECD: *OECD Employment Outlook* (2002), Chapter 3, p. 171.

<sup>7</sup> J. Peck and N. Theodore: “Flexible recession: The temporary staffing industry and mediated work in the United States”, in *Cambridge Journal of Economics* (2007, Vol. 31, No. 2), pp. 171–192.

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Figure 1 portrays triangular relationships intermediated through private employment agencies, which are governed by the national regulatory context in which they occur. The fortunes of the three actors involved in this relationship are intertwined: changes in the circumstances of one can have knock-on effects on the other two. This can constitute a virtuous circle during economic booms and a vicious circle for all during recessions. During economic downturns, the importance of these relationships shrinks, as was the case from mid-2008. There is a close correlation in many industrialized countries between growth of gross domestic product and the use of temporary agency workers,<sup>8</sup> so the recent financial and economic crisis – and the subsequent fall in global economic output – led to a contraction of the industry worldwide. Agency workers were often the first obliged to leave user enterprises in bad times, but were also often the first to be rehired when recovery began. While such workers sometimes remained employed by agencies in the short term, contractual obligations and rights often end rapidly when economic prospects are poor.

#### 1.4. Background to Convention No. 181

From the 1970s, funding for public employment services diminished in many developed countries, creating new opportunities for private employment agencies. Meanwhile, liberalization and competition led to agencies increasingly being seen by user enterprises and by many governments as smoothening the functioning of labour markets. The growth of agencies thereafter has been linked to providing services to facilitate labour market flexibility. Following these developments and debate on this among governments, employers and trade unions in the 1990s, the ILO's tripartite constituents in the International Labour Conference voted for Convention No. 181, which aims "to allow the operation of private employment agencies as well as the protection of the workers using their services" (Article 2). Employers acknowledged that it represented major progress over the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and that recognition of private employment agencies' role could not be obtained without regulation, such as licensing, certification, prohibition of charging fees to workers (apart from certain exceptions), and establishing respective responsibilities of employment agencies and user enterprises regarding agency work. Worker delegates at the 85th Session (1997) of the International Labour Conference overcame their initial opposition to private employment agencies and supported the proposed Convention because it offered protection to temporary and migrant workers and an opportunity to reduce unfair competition from unregulated recruitment agents frequently associated with malpractice and abuse. However, the Global Unions' position on temporary agency work in general is much less favourable than their stance as regards the Convention (see *Global Union Principles on Temporary Work Agencies*, June 2010).<sup>9</sup> They believe that in practice, agency work is harmful to the effective exercise of workers' rights because it reduces their bargaining power in user enterprises, even where the right to organize and bargain collectively exists (in both agencies and user enterprises). Convention No. 181 is designed to balance enterprises' need for flexibility to expand or reduce their workforce with workers' need for employment stability, a safe work environment, decent working conditions and a safety net when they are unable to work. Good practice in regulation and effective national legislation includes clearly defining the term "private employment agency", determining basic requirements for the legitimate operation of agencies, and ensuring governments' capacity to enforce such provisions. It sets general parameters for the regulation,

<sup>8</sup> International Confederation of Private Employment Agencies (CIETT): *The agency industry around the world* (Brussels, 2009), p. 28.

<sup>9</sup> Summarized in this chapter, and reproduced in Appendix III. Global Unions: *Global Union Principles on Temporary Work Agencies*, CGU General Secretaries Meeting, Geneva, 11 June 2010.

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placement and employment of workers by these agencies, and assists member States to establish clear policies, legislation and mechanisms for effective registration and licensing of agencies, thereby helping them play a constructive role in contributing to labour markets free from exploitative conditions. The Convention came into force in May 2000; by May 2011, 23 countries had ratified it,<sup>10</sup> 12 of which were European Union Member States. While Chile remains bound by the Fee-Charging Employment Agencies Convention, 1933 (No. 34), and 25 countries by Convention No. 96, most of these countries (plus five having denounced the latter) have expressed their intention to ratify Convention No. 181.

The ILO Constitution requires member States to submit regular reports on their legislation and national practice for each Convention they have ratified. The ILO's Committee of Experts on the Application of Conventions and Recommendations has examined reports of States ratifying Convention No. 181 since 2002 and made comments on its application. In its comments, the Committee has recalled that incorporating a prohibition on child labour in the conditions for awarding licences to agencies should be envisaged; governments should also indicate measures adopted to prevent fraudulent practices or abuses by agencies in relation to migrant workers,<sup>11</sup> and provide detailed information on bilateral agreements concluded to prevent such practices in recruitment, placement and employment covered by the Convention.<sup>12</sup> In its comments on the application of Convention No. 96, the Committee has reminded governments about the Governing Body's invitation to its States parties to contemplate ratifying Convention No. 181,<sup>13</sup> thereby ipso jure denouncing Convention No. 96.

As fee-charging recruitment agencies are increasingly involved in international migration, and as some recruiters have engaged in unfair and abusive practices, efforts should be increased at the national and international levels to further regulate this market and ensure proper application of existing rules. The licensing and supervision of recruitment and contracting agencies for migrant workers, with the requirement that those agencies provide clear and enforceable contracts, should be a key element in this, in accordance with Convention No. 181. These efforts should also include promoting wider ratification of the Convention and implementation by member States, in order to prevent abusive practices by certain recruiters, and ensure greater respect of workers' rights.

Countries mentioning private employment agencies in Decent Work Country Programmes or national action plans include Armenia, Azerbaijan, Bahamas, Belize, Burkina Faso, Ethiopia, Oman, Philippines and South Africa.

The conclusions concerning the recurrent discussion on employment adopted at the 99th Session of the International Labour Conference in June 2010 are relevant to the October 2011 Forum, referring to appropriate action to enhance labour markets:

- *Governments* are encouraged to take the following steps: (i) respond positively and as a matter of priority to the Office campaign for the ratification of fundamental labour

<sup>10</sup> Albania, Algeria, Belgium, **Bosnia and Herzegovina (2010)**, Bulgaria, Czech Republic, Ethiopia, Finland, Georgia, Hungary, Italy, Japan, Lithuania, Republic of Moldova, Morocco, Netherlands, Panama, Poland, Portugal, **Slovakia (2010)**, Spain, Suriname, Uruguay.

<sup>11</sup> Referring to the conclusions on a fair deal for migrant workers in a global economy, in ILO: *Provisional Record* No. 22, International Labour Conference, 92nd Session, Geneva, 2004.

<sup>12</sup> See 2010 direct requests of the Committee of Experts under Convention No. 181 for Algeria.

<sup>13</sup> For example, see 2010 comments of the Committee of Experts under Convention No. 96 for Djibouti, Egypt and others.

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standards and the “governance” Conventions, taking steps for their effective implementation; (ii) ratify and implement effectively the up-to-date Conventions covered in the General Survey concerning employment instruments of 2010 [Conventions Nos 122, 142, and 181].

- *Employers’ and workers’ organizations* are encouraged to work with governments and the Office to promote ratification and implementation of the above instruments.
- *Priorities for the Office* include: (i) promote the ratification and effective implementation of the [abovementioned] instruments; (ii) promote coherence and implementation in practice of international labour standards through advice in reference to national employment policies and Global Jobs Pact country implementation, as well as use of their principles where relevant in regional and international forums; (iii) promote the Employment Relationship Recommendation, 2006 (No. 198), as an instrument to combat disguised employment relationships with particular attention to women and young people; (iv) draw guidance from ILO Conventions on public and private employment agencies [Nos 88 and 181] in order to assist in modernizing and strengthening employment services as well as from best practices at the national level.<sup>14</sup>

The 2010 General Survey concerning employment instruments<sup>15</sup> – for which reports were submitted for 2009 concerning six employment instruments,<sup>16</sup> including Convention No. 181 – provides rich information on the Convention. Of the 108 countries from which replies were received to the questionnaire for the General Survey, 16 had ratified Convention No. 181, one had initiated ratification, 38 had prospects of ratification, 16 noted divergences with national legislation and practice, 23 did not consider or rejected ratification, and 14 gave no reply as to ratification. Some salient points having a bearing on this paper from the discussion on the Survey can be found in the report of the Conference Committee on the Application of Standards.<sup>17</sup>

## 1.5. Perspectives on agencies and agency work

Opinions on the nature of private employment agencies vary. Some consider the glass half full. Others see it as half empty. If it is half full, private employment agencies are a useful springboard towards a regular job; they allow companies to cope in a flexible manner with fluctuations in demand. If it is half empty, it is a sector in which temporary agency workers do not have full rights and are seen as second-rate workers.<sup>18</sup>

<sup>14</sup> ILO: *Provisional Record* No. 18, International Labour Conference, 99th Session, Geneva, 2010, paras 38–41.

<sup>15</sup> Chapter III.

<sup>16</sup> Employment Service Convention, 1948 (No. 88), Employment Policy Convention, 1964 (No. 122), Human Resources Development Convention, 1975 (No. 142), Convention No. 181, Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), Promotion of Cooperatives Recommendation, 2002 (No. 193).

<sup>17</sup> ILO: Report of the Committee on the Application of Standards, *Provisional Record* No. 16, Part One, International Labour Conference, 99th Session, Geneva, 2010, paras 107–178 *passim*.

<sup>18</sup> ECORYS: *Uitzendkrachten in beweging: de samenstelling van de uitzendpopulatie in goede en slechte tijden* [Agency workers on the move: The composition of the agency worker population in good times and bad] (Rotterdam, 2009), pp. 11–12.

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There are many different views among various employers' and workers' organizations on the issue of private employment agencies. For example, some workers' organizations are hostile to all forms of "labour broking"; but others support specific types of temporary agency work when agencies respect their workers' right to exercise freedom of association, uphold collective bargaining and effectively apply decent work principles in their human resource practices. The International Trade Union Confederation has expressed the view<sup>19</sup> that agency work is part of a clear strategy by employers to promote triangular rather than direct employment relationships in order to fragment and weaken union membership, collective bargaining, labour regulation and therefore terms and conditions of employment. Among employers' organizations, there can be divergences reflecting the different interests of user enterprises, of private employment agencies that are members of the International Confederation of Private Employment Agencies (CIETT), and of other agency employers that oppose regulation of their industry.

Some of these differing perspectives were seen in recent discussions in the Russian Federation, South Africa and elsewhere over possible changes to labour legislation, with some groups favouring a ban on labour broking,<sup>20</sup> while others preferred reforms to enhance the functioning and regulation of private employment agencies. A bill to restrict the use of agency and other forms of temporary labour was submitted to the Russian State Duma in mid-2011. In South Africa, labour broking has been the subject of great controversy in recent years (see Chapter 5.3).

Agencies are a growing force in many sectors in an increasing number of countries. In recent years, the largest agencies have pursued strategies of internationalization and diversification, entering new geographical markets, transforming labour markets and making temporary work more acceptable to jobseekers in an increasing number of countries. Diversification has meant that "traditional" employment relationships have evolved in many sectors. Agencies and their federations have become political actors, involved in developing the rules for their industry's regulation and, in their view, facilitating adaptation to global changes shaping labour markets. Recruitment industry associations have increased their role as political lobbyists and labour market commentators. CIETT has mainstreamed the role of agencies in reformulating labour market policy worldwide. Yet agencies continue to be the subject of controversy. This explains why deregulation is happening slowly and why many countries still restrict their activities.

The preamble of a European Union (EU) Directive on temporary agency work asserts that "Temporary agency work meets not only undertakings' needs for flexibility but also the need of employees to reconcile their working and private lives. It thus contributes to job creation and to participation and integration in the labour market".<sup>21</sup> Similarly, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) observes that: "[t]he growth of temporary agency work (TAW) is driven by a combination of demand-side and supply-side factors. In addition to its traditional use of covering for employees who are sick or otherwise absent from the workforce, increased competition and market uncertainty encourages user companies to make recourse to TAW for reasons of cost and flexibility. At the same time, it offers groups such as students, migrant workers,

<sup>19</sup> Communication to the ILO, May 2011.

<sup>20</sup> A total ban on agencies runs counter to the principles of Convention No. 181.

<sup>21</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, preamble point 11, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:01:EN:HTML> [accessed 9 July 2011].

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women returning from childcare breaks, disabled and unemployed people access to the labour market. In principle, TAW can help workers develop their work skills and experience, thereby offering pathways into more secure employment”.<sup>22</sup> The points of consensus at the 2009 ILO Workshop state that: “As a specific service provided by private employment agencies, if regulated appropriately, temporary agency work contributes to improved functioning of labour markets, fulfils specific needs for both enterprises and workers, and aims at complementing other forms of employment”.<sup>23</sup>

Two types of critique are regularly mentioned. First, agencies’ growth has coincided with the deregulation of the labour market and those who are critical of this frequently blame agencies for being a driving force behind that deregulation, and not just the beneficiary. Second, there are still many unscrupulous agencies<sup>24</sup> in operation, which exploit the naivety and desperation of workers and others in vulnerable situations – often foreigners, many of them irregular migrants<sup>25</sup> – and give the whole agency industry a bad name.

Deregulation and flexibilization – under which agencies have thrived – have come to many labour markets largely as a government response to persistent high levels of unemployment. Deregulation is not uncontroversial, however, and many who oppose it blame agencies for the precarious situation in which a growing number of workers and jobseekers find themselves. Other observers question, however, whether this is not a case of blaming the messenger for bringing bad news. Bergström argues, for instance, that: “Agencies may offer worse labour conditions when the labour market is in disequilibrium. They may also offer better labour conditions when the labour market is in disequilibrium. [If there is high demand for agency workers, or insufficient supply of them, their labour conditions should be better than they were in equilibrium; but they should be worse if there are too many workers or insufficient demand for them.] Instead of seeing this as a character trait of the agency branch, one should see labour conditions as an expression of the labour market where agencies offer their services.”<sup>26</sup> Gonos suggests: “The rise of temporary staffing needs to be seen in the context of a widespread expansion of flexible labour markets and growth in ‘non-standard’ forms of work. The job characteristics associated with standard employment contracts – permanent, full-time, with employee

<sup>22</sup> Eurofound: *Temporary agency work and collective bargaining in the EU* (Dublin, 2008), p. 43.

<sup>23</sup> ILO: *Report of the discussion*, Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181), Geneva, 20–21 October 2009, Points of consensus, para. 3.

<sup>24</sup> Some such agencies were run by foreigners, employing people from their own country or region, as noted regarding London hotels in L. McDowell et al.: “Internationalization and the spaces of temporary labour: The global assembly of a local workforce”, in *British Journal of Industrial Relations* (2008, Vol. 46, No. 4, Dec.), pp. 759–761.

<sup>25</sup> See for example G. van Liemt: *Human trafficking in Europe: An economic perspective* (unpublished document, Geneva, ILO, 2004), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1008&context=forcedlabor> [accessed 9 July 2011].

<sup>26</sup> O. Bergström et al.: *Den Nya Arbetsmarknaden: Bemanningsbranchens etablering i Sverige* [The new labour market: Establishing temporary work agencies in Sweden] (Lund, Academia Adacta, 2007), pp. 214–215, translated from Swedish.



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benefits – have, for many workers, given way to individualized, often insecure, non-standard forms of paid employment”.<sup>27</sup>

Several of today’s agencies are large, internationally active enterprises quoted on the stock exchange and taking great care to be seen as responsible and ethical. However, many smaller agencies operate in grey zones of what is acceptable or even legal behaviour. Others simply cheat their employees and break the law.

Abuse can take many forms: from violations in health and safety procedures, falsifying wage slips, confiscating passports, deducting excessive amounts for payment of housing and transport to work, to debt bondage, bullying, harassment or even physical violence. It took the death of 21 Chinese cockle pickers in Morecambe Bay in 2004 for the British Government to enact the Gangmasters (Licensing) Act 2004. Since October 2006, “gangmasters” supplying labour to agriculture, horticulture, shellfish gathering and related packaging and processing industries have been required to have a licence, thus making it an offence for labour users to employ workers supplied by unlicensed gangmasters.

Walz et al. estimated that of the 10,000–12,000 agencies registered in the Netherlands in 2008, between 5,000 and 6,000 (employing some 100,000 people) could be qualified as mala fide.<sup>28</sup> The biggest sectors in which these mala fide agencies were active were agriculture and horticulture, construction and, to a lesser extent, property services (cleaning) and meat processing.

In many countries, well-regulated and organized private employment agencies play a large role in the functioning of labour markets, creating jobs that might otherwise not exist, increasing labour market participation and diversity, providing stepping stones to the labour market and reducing illegal work.

## ***Global Union Principles on Temporary Work Agencies***

In June 2010, the Council of Global Unions reached agreement on key principles to protect agency workers’ rights,<sup>29</sup> while recognizing that trade unions use varying approaches in different countries and sectors to deal with temporary employment agencies. These principles included the following: the primary form of employment should be permanent, open ended and direct; agency workers should be covered under the same collective bargaining agreement as other workers in the user enterprise; agency workers should receive equal treatment in all respects; the use of temporary agencies should not increase the gender gap in wages, conditions and social protection; temporary agencies must not be used to eliminate permanent, direct employment relationships; and agency workers should never be used to weaken trade unions or undermine workers’ rights. They indicate that: “Not only do temporary agency workers typically receive lower pay and fewer benefits, when the financial crisis rapidly became an employment crisis, temporary agency workers were among its first victims. Many companies simply terminated their

<sup>27</sup> Quoted in N. Coe et al.: “The business of temporary staffing: A developing research agenda”, in *Geography Compass* (2010, Vol. 4, No. 8), p. 1056.

<sup>28</sup> G.P. Walz et al.: *Grenzen stellen: Omvang van en maatregelen tegen malafide praktijken in de uitzendbranche* [Setting boundaries: Scope of measures against mala fide practices in the agency sector], Stichting Naleving CAO voor uitzendkrachten [Foundation for Compliance with the Collective Labour Agreement for Agency Workers] (Zoetermeer, Research voor Beleid, 2010).

<sup>29</sup> Global Unions: *Global Union Principles on Temporary Work Agencies*, CGU General Secretaries Meeting, Geneva, 11 June 2010 (see Appendix III).

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contracts with temp agencies so that the workers did not receive the minimum compensation or social benefits that they would have received as direct employees”.

CIETT commented as follows: “CIETT and its members already share many of the principles outlined by the Global Unions, however there are a number of points made in the document that need to be clarified and/or corrected. Temporary agency work is the most secure form of external flexible employment available and both the ILO and EU institutions have recognized the role that temporary agencies can play in improving the functioning of the labour market”.<sup>30</sup>

<sup>30</sup> CIETT: Ciett reacts to Global Unions’ principles on TAW, press release, 16 June 2010, [http://www.ciett.org/index.php?id=110&tx\\_ttnews%5Btt\\_news%5D=118&tx\\_ttnews%5BbackPid%5D=1&cHash=0e274d2c9c](http://www.ciett.org/index.php?id=110&tx_ttnews%5Btt_news%5D=118&tx_ttnews%5BbackPid%5D=1&cHash=0e274d2c9c).

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## 2. Trends in temporary agency employment

Despite ongoing efforts – notably by CIETT – to collect reliable information, attempts to profile the industry remain beset by difficulties concerning the availability, consistency, accuracy and comparability of data, including on the sectoral distribution and occupational classification of agency workers.<sup>1</sup> In most cases, the latest available data are for 2009, and exclude China and India, two major and fast-growing markets for the industry.

Global growth in the private employment agency industry has been facilitated by labour market deregulation, mergers and acquisitions, business process outsourcing, offshoring activity, demand for talent and information technology, and increased use of flexible labour by user enterprises. It is also partly driven by people’s changing attitudes to work, and a wish to find a more flexible work–life balance. Large agencies benefit from significant scale economies in marketing, purchasing, recruitment and back-office operations. Many smaller agencies specialize in recruitment for specific industries, while others offer such services as staff training for clients. Growth of the private employment agency industry in different countries is also affected by the strength of national labour market regulation (from “strict” to “liberal”), by the wider labour market regimes in which they operate, and by the way in which employment relationships are coordinated and regulated. These relationships can be shaped by government, industry self-regulation and joint labour–management monitoring, or are governed by market forces.

### 2.1. The private employment agency industry

According to CIETT, the global agency industry grew rapidly from the mid-1990s – doubling over the period 1994–99 and again during 1999–2007 (figure 2) – but declined in 2008–09 (and 2001–03). In 2009, the global temporary staffing industry generated €203 billion in revenues, with over 72,000 agencies worldwide, 169,000 branches and 741,000 agency internal staff.<sup>2</sup> Revenues from human resources services are generated from temporary staffing (the largest segment, accounting for about 72 per cent of the market’s total value);<sup>3</sup> search and placement (permanent staffing); and corporate training services. In 2009, eight national markets dominated the global industry, accounting for 85 per cent of total revenues: Japan (24 per cent), the United States (22 per cent), the United Kingdom (12 per cent), France (8 per cent), Germany (6 per cent), the Netherlands (5 per cent), Australia (4 per cent) and Brazil (4 per cent). The remaining markets represented 15 per cent of global revenues. There has been real growth and improved data availability on temporary employment levels in emerging markets (for example Brazil).<sup>4</sup>

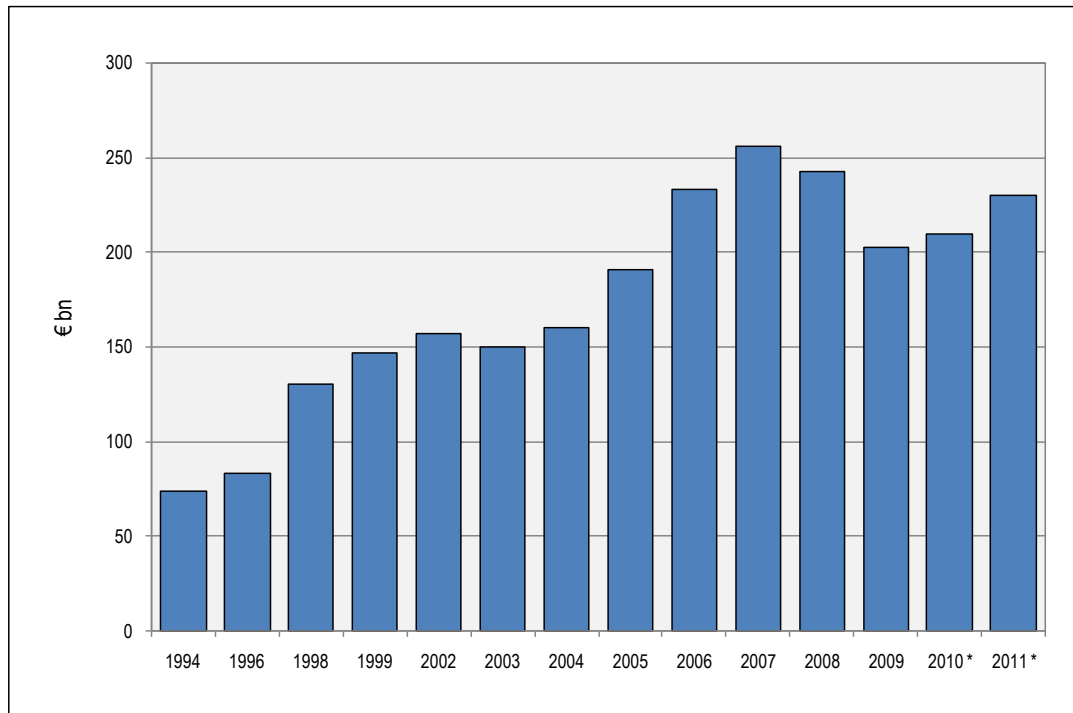
<sup>1</sup> Data on temporary agency workers for major countries such as China and India are lacking or difficult to compare, but probably far exceed CIETT’s global total employment figure, although such workers have relatively modest revenue earnings. There can be double counting of workers registered with several employers; people who temp may also have a permanent job; and seasonality of work poses problems. Data for specific sectors (including private services sectors) are scarce – available statistics are often for “services sectors” in general, and data are sometimes by occupation rather than sector.

<sup>2</sup> CIETT: *The agency industry around the world*, 2011, p. 11.

<sup>3</sup> Datamonitor: *Global human resources and employment services* (New York, 2010), p. 8.

<sup>4</sup> However, data for China and India were lacking.

Figure 2. Private employment agency global annual sales revenues, 1994–2011



\* = estimate.

Source: Adapted from CIETT: *The agency industry around the world*, 2009 and 2011.

The industry is also very concentrated in corporate terms. Table 1 ranks the top 12 agencies in terms of their 2009 revenues – at US\$86 billion, these US, European and Japanese firms account for 35 per cent of the industry’s global revenues, reflecting their origin in, and proximity to, the largest national markets for temporary staffing. They represent about 150,000 internal staff and over 2.5 million workers placed. Their clients, too, tend to be large firms: according to Eurofound, in Europe, “temporary agency work is mostly practised by larger companies. On average, slightly more than every second establishment of larger size with 250 or more employees uses temporary agency work, compared with only 15 per cent of the smallest establishments with 10 to 19 employees.”<sup>5</sup>

<sup>5</sup> Eurofound: *European company survey 2009: Overview* (Luxembourg, 2010), p. 27.

**Table 1. Top 12 private employment agencies, global and sectoral spread, by revenue, 2009**

	<b>Firm</b>	<b>Origin</b>	<b>Revenue \$m 2009</b>	<b>No. of territories</b>	<b>Business mix</b>	<b>Internal staff</b>	<b>Workers placed</b>
1	Adecco <sup>1</sup>	Switzerland	21 300	50	Generalist 83% (office 22%; industrial 55%; emerging markets 6%); Specialist 17% (IT 6%; engineering and technology 4%; finance and legal 2%; medical science 2%; sales, marketing and events 2%; human capital solutions 1%)	28 000	500 000
2	Randstad	Netherlands	17 300	50	Generalist 80% (70% industrial staffing; 10% in-house staffing, on client premises); Specialist 20% (20% professional)	27 600	465 000
3	Manpower	United States	16 700	82	Generalist 96%; Specialist 4%	30 000	400 000
4	Allegis	United States	4 900	6	Majority of placements are in specialist sectors	8 500	90 000
5	Kelly Services	United States	4 315	34	Generalist 79%; Specialist 21%	6 800	480 000
6	Recruit Staffing and Staff Service	Japan	4 200	4	n.a.	6 850	n.a.
7	USG People	Netherlands	4 190	13	Generalist 63%; Specialist 37%	7 250	140 000
8	Hays	United Kingdom	3 830	29	Generalist 0%; Specialist 100% (accountancy and finance 36%; construction and property 24%; IT 14%; other 26%)	6 800	270 000
9	Advantage Resourcing <sup>2</sup>	Japan, United States	3 200	9	Majority of placements are in specialist sectors	4 500	n.a.
10	Robert Half International	United States	2 650	21	Majority of placements are in specialist sectors	9 900	n.a.
11	Temp Holdings (Tempstaff)	Japan	2 275	8	Generalist 46%; Specialist 54% (specialist office 18%; IT/engineering 8%; other 28%)	5 050	n.a.
12	Pasona	Japan	1 796	8	Generalist 63%; Specialist 37% (technical 16%; IT/engineering 11%; other 10%)	4 550	45 500
	<b>Total</b>		<b>86 656</b>			<b>145 800</b>	<b>2 390 500</b>

<sup>1</sup> Adecco bought MPS Group (No. 13 in 2008) in 2009. <sup>2</sup> Formerly Goodwill Group and Radia Holdings.

n.a. = not available.

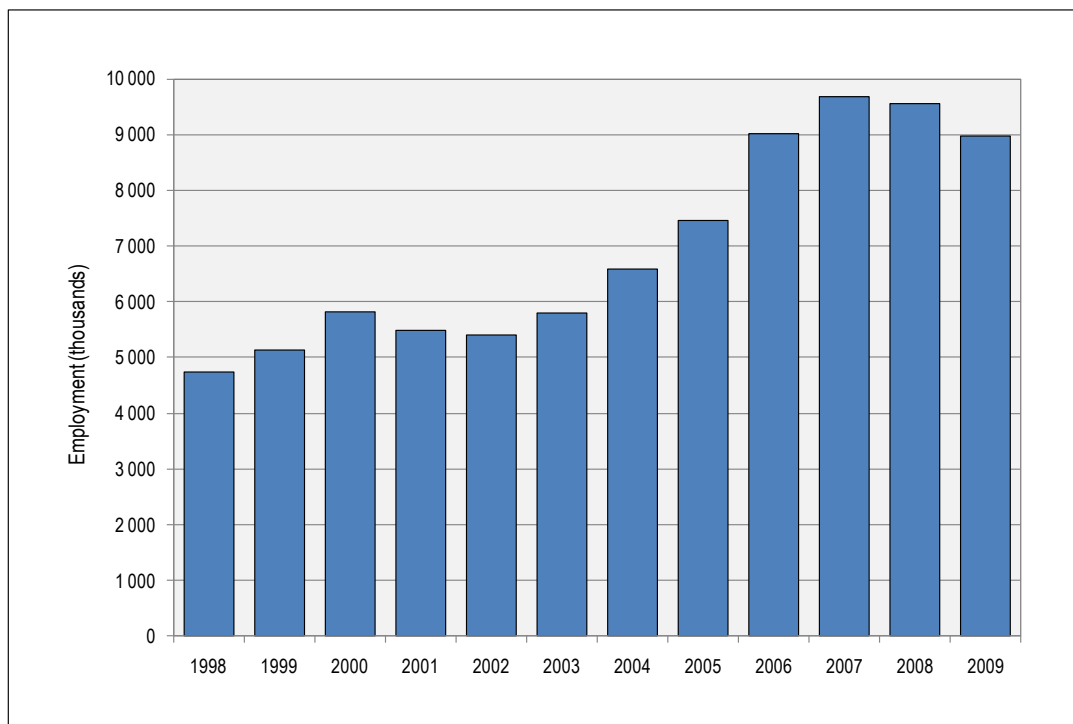
Note: All figures are for the financial year corresponding closest to calendar year 2009.

Sources: Company annual reports and websites, including Staffing Industry Analysts website at <http://www.staffingindustry.com>.

## 2.2. Temporary agency employment

Table 2 and figure 3 track trends in agency workers across countries that together account for almost all of the global total of temporary agency work recorded by CIETT, which roughly doubled from around 4.8 million in 1998 to 9 million in 2009. However, it should be noted that the data exclude China (which is reported to have millions of agency workers, especially since new regulations governing their use through the Employment Contract Law, 2008) and India (where their numbers may also be very significant). Detailed research is required on this, and on whether the global agency employment total is accurate – 9 million agency workers (in full-time equivalents) is a small figure in comparison with 3 billion employed worldwide.<sup>6</sup>

**Figure 3. Number of agency workers, 1998–2009 (daily full-time equivalents)**



Source: Adapted from CIETT: *The agency work industry around the world*, 2011, p. 21.

Temporary agency employment levels grew in absolute terms in all the listed countries (except the United States) over the period, despite declines experienced in many countries during 2008–09. By far the biggest growth was in Japan (+750,000 temporary workers), but also in Germany (+440,000) and the United Kingdom (+300,000). In South Africa, temporary staffing has developed rapidly in recent years, notably in 2007–09 and especially in finance, call centres, IT and professional services. Data are now available from important new markets in Central Europe, Latin America, South Africa and East Asia. In percentage terms, temporary staffing levels trebled in Austria, Germany and Japan, and grew strongly in Italy, Sweden and Switzerland, while, unsurprisingly, increasing more slowly in the mature United States, British, Dutch and French markets. Growth was strongest in the period 2002–07 (76 per cent), compared to 20 per cent from 1997 to 2002, but fell 6 per cent during 2007–09. In part, this reflected some countries' deregulation efforts – legislative changes in Germany (2002), Italy (2003) and Japan (1999) relaxed restrictions on agencies' operations. These were among the most profitable markets for staffing agencies from 1997 to 2009.

<sup>6</sup> ILO: *Global employment trends 2011* (Geneva, 2011), fig. 4, p. 10.

**Table 2. Number of agency workers, selected countries, 1997–2009 (thousands)**

	1997	Growth 1997–2002	2002	Growth 2002–07	2007	Growth 2007–09	2009
<b>Europe</b>							
Austria	18	72%	31	90%	59	–3%	57
Belgium	51	29%	66	44%	95	–24%	72
France	359	59%	570	12%	638	–30%	447
Germany	180	48%	267	130%	614	2%	625
Hungary	n.s.	–	30	83%	55	–60%	22
Italy	n.l.r.	–	82	168%	220	–26%	162
Netherlands	163	4%	169	38%	233	–9%	213
Poland	n.s.	–	n.s.	–	60	20%	72
Spain	90	37%	123	30%	160	–12%	141
Sweden	14	164%	37	59%	59	–22%	46
Switzerland	24	54%	37	89%	70	–19%	57
United Kingdom	775	34%	1 036	33%	1 378	–22%	1 068
<b>Rest of world</b>							
Argentina	46	–26%	34	182%	96	–21%	76
Australia	n.a.	–	n.a.	–	n.a.	–	100
Brazil	n.a.	–	n.a.	–	859	5%	902
Japan	340	104%	693	91%	1 330	–17%	1 098
Republic of Korea	n.s.	–	n.s.	–	75	12%	84
Mexico	n.a.	–	n.a.	–	25	–4%	24
South Africa	n.s.	–	n.s.	–	300	208%	924
United States	2 440	–11%	2 160	37%	2 960	–32%	2 010
<b>World total</b>	<b>4 513</b>	<b>20%</b>	<b>5 916</b>	<b>76%</b>	<b>9 595</b>	<b>–6%</b>	<b>8 989</b>

n.s. = not significant. n.l.r. = not legally recognized. n.a. = not available.

Note: Data expressed in full-time equivalents (FTEs).

Source: Adapted from CIETT: *The agency work industry around the world*, 2009 and 2011, p. 21.

Table 3 shows changes in the proportion of temporary agency employment to total employment across leading markets, 1997–2009. The agency rate increased in all markets except the United States, but fell in most countries during 2007–09. The United Kingdom had the highest rate in most years, and other relatively strong markets (Belgium, France, Luxembourg, Japan, the Netherlands and South Africa) had rates of 1.5 per cent or more. Penetration rates were still low in newly emerging markets in Central Europe, Latin America and East Asia. The United Kingdom and Japan saw the most significant rises during the period 1997–2007, with 1.9 per cent and 2.3 per cent of the working population respectively moving into temporary staffing. Most other countries saw increases in penetration rates of between 0.4 per cent and 1.2 per cent over the whole period, representing significant growth in temporary work.

**Table 3. Agency work penetration rates, 1997–2009** (FTE per cent of total active working population)

	1997	2002	2007	2009	Change in % points, 1997–2009
<b>Europe</b>					
Austria	0.5	0.8	1.5	1.4	0.9
Belgium	1.3	1.6	2.2	1.7	0.4
Denmark	0.2	0.4	0.8	0.6	0.4
Finland	0.4	0.5	1.1	0.8	0.4
France	1.6	2.4	2.5	1.7	0.1
Germany	0.5	0.7	1.6	1.6	1.1
Hungary	n.s.	0.8	1.4	0.6	–
Ireland	0.3	1.4	1.7	1.5***	1.2
Italy	n.l.r.	0.4	1.0	0.7	–
Luxembourg	1.2	2.2	2.4	2.0***	0.8
Netherlands	2.3	2.1	2.8	2.5	0.2
Norway	0.4	0.5	1.0	0.8	0.4
Poland	n.s.	n.s.	0.4	0.3	–
Spain	0.7	0.7	0.8	0.7***	0.0
Sweden	0.4	0.9	1.3	1.0	0.6
Switzerland	0.6	0.9	1.7	1.4	0.8
United Kingdom	2.9	3.8	4.8	3.6	0.7
<b>Rest of world</b>					
Argentina	n.d.	n.d.	0.9	0.4	–
Brazil	n.d.	n.d.	0.9	1.0	–
Japan	0.5	1.3	2.8	1.7	1.2
Republic of Korea	n.d.	n.d.	0.3	0.4	–
Mexico	n.d.	n.d.	0.2	n.d.	–
South Africa	n.d.	n.d.	2.3	6.5	–
United States	1.5*	1.6**	2.0	1.3	–0.2

n.s. = not significant. n.l.r. = not legally recognized. n.d. = no data. FTE = full-time equivalent.

\* 1999; \*\* 2001; \*\*\* 2008.

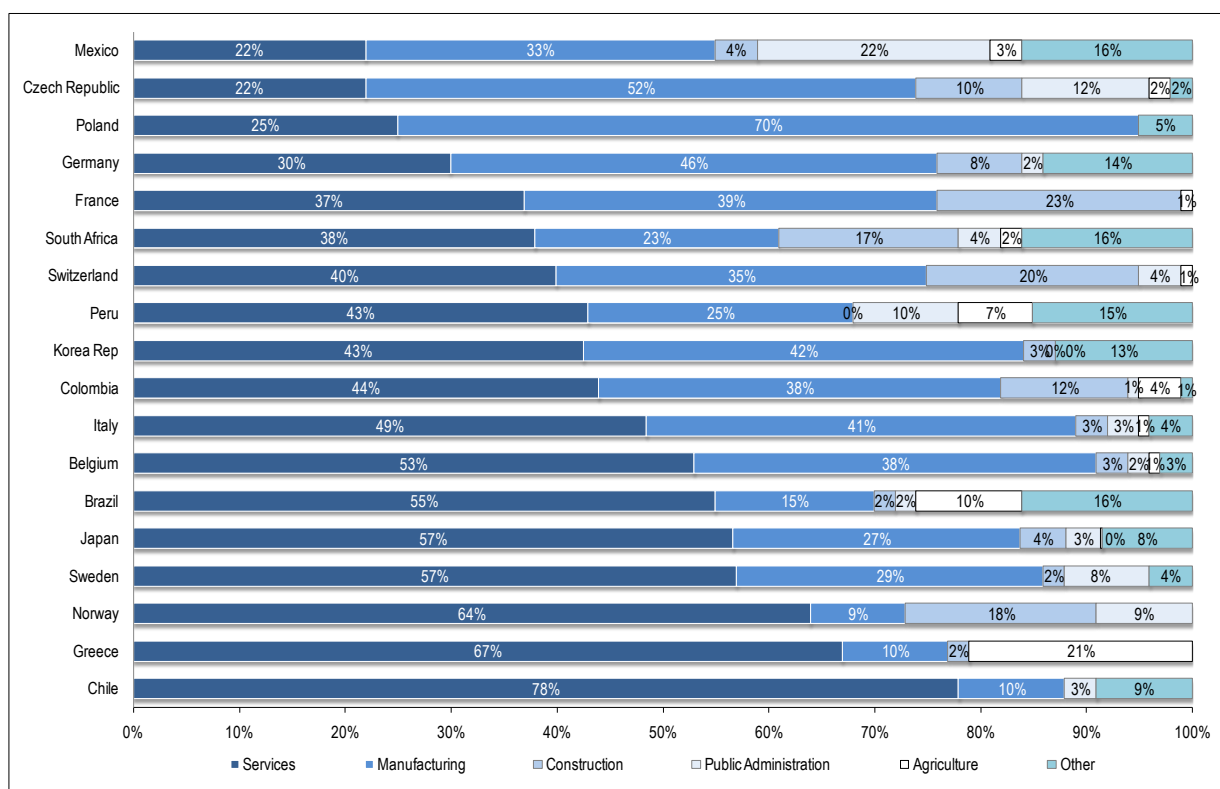
Source: Adapted, with augmentations, from CIETT: *The agency work industry around the world*, 2009 and 2011, pp. 22 and 23.



### 2.3. Sectoral dimensions of temporary work

Sectoral and occupational trends are two distinct aspects, but some data sources appear to conflate them: sectoral data classify the *industry* in which workers are placed; occupational data concern the *type of job*. Although there is a relationship between the two, it is not always clear-cut; for example, information and communication technology (ICT) and clerical workers are present in all sectors of the economy. Table 4 and figure 4 show the *sectoral* distribution of agency work for leading markets, ranked alphabetically and by the percentage share of services sectors respectively.<sup>7</sup> Manufacturing and services together account for most agency workers in all markets (70–90 per cent of the total), but in Chile, Greece, Norway, Spain, Sweden and the United Kingdom services sectors predominate (over 50 per cent); while in Belgium, Germany, Hungary and Poland, manufacturing accounts for over half. Agency work is generally low in agriculture, perhaps reflecting informal temporary employment in many countries. Levels of agency employment in the public sector are very variable between countries.

Figure 4. Sectoral distribution of agency work, selected countries, 2009, ranked by per cent services



Source: Adapted from CIETT: *The agency work industry around the world*, 2009, pp. 35–36; and 2011, pp. 33–34.

<sup>7</sup> In several countries – notably Argentina, Greece, the Republic of Korea and Mexico – the category “other” accounts for over 20 per cent of the total, hampering attempts at analysis.

**Table 4. Sectoral distribution of agency work, selected countries, in 2007–09 (percentages)**

	Services	Manufacturing	Construction	Public administration	Agriculture	Other
Argentina	33	45	0	0	0	22
Belgium	53	38	3	2	1	3
Brazil	55	15	2	2	10	16
Bulgaria	90	10	0	0	0	0
Chile	78	10	0	3	0	9
Colombia	44	38	12	1	4	1
Czech Republic	22	52	10	12	2	2
Denmark	25	12	7	48	2	9
France	37	39	23	0	1	0
Germany	30	46	8	2	0	14
Greece	67	10	2	0	21	0
Hungary	35	51	11	0	1	2
Italy	49	41	3	3	1	4
Japan	57	27	4	3	0	8
Republic of Korea	43	42	3	0	0	13
Luxembourg	39	11	27	0	0	23
Mexico	22	33	4	22	3	16
Netherlands	54	19	3	21	1	3
Norway	64	9	18	9	0	0
Peru	43	25	0	10	7	15
Poland	25	70	0	0	0	5
Portugal	40	15	15	20	1	9
South Africa	38	23	17	4	2	16
Spain	62	33	2	0	1	2
Sweden	57	29	2	8	0	4
Switzerland	40	35	20	4	1	0
United Kingdom	54	22	7	10	0	7
Uruguay	35	45	0	20	0	0

Source: Adapted from CIETT: *The agency work industry around the world*, 2009, pp. 35–36 (Argentina and United Kingdom); 2010, pp. 33–34 (Netherlands and Uruguay); and 2011, pp. 33–34 (other countries listed).

## A. Sectoral distribution in Europe

Reflecting ongoing changes in European economies, agency work has shifted away from manufacturing (30 per cent) towards services sectors (45 per cent). Manufacturing remains an important user of agency work in Poland (70 per cent), the Czech Republic (52 per cent), Hungary (51 per cent), Germany, Italy, France and Belgium. Denmark (48 per cent), the Netherlands (21 per cent), Portugal (20 per cent) and the Czech Republic (12 per cent) use agency work in public administration; Luxembourg (27 per cent) and France (23 per cent) in construction.<sup>8</sup> In Scandinavia, the United Kingdom and the Netherlands, agency work is common in the public and health sectors, while other countries have restricted its use in the public sector (Belgium, Spain). France lifted a public sector ban in 2009 and Spain a construction sector ban in 2011.

Table 5 shows the sectoral distribution of temporary (and temporary agency) workers in Europe as a whole, but sectoral distribution per country varies widely. Most temporary workers are in the manufacturing, wholesale and retail trade, health and social work, education, accommodation and food service, construction, public administration and defence categories. According to the statistical classification of economic activities in the European Community (NACE), hotels and catering was the top sector for temporary workers in Austria, Ireland and the Netherlands; manufacturing was the top in the Czech Republic, Germany, Hungary and Italy; construction in Portugal, Spain and Sweden; and health care was the top in Denmark, France, Poland and the United Kingdom. Figure 5 illustrates that temporary employees fared better in services than in other sectors in 2008–10; however, there was little change in the gender composition (figure 6).

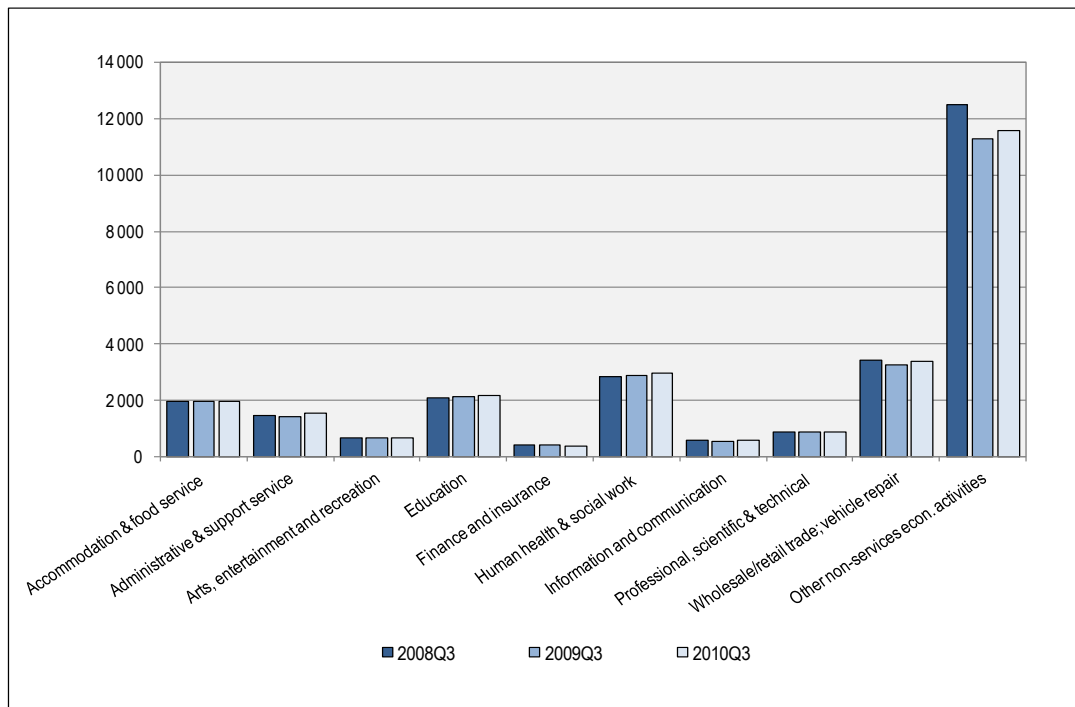
**Table 5. Distribution of temporary employees in the 27 Member States of the European Union (EU-27), by economic activity (NACE rev. 2), third quarters 2008–10 (thousands)**

Sector	2008Q3	2009Q3	2010Q3
Accommodation and food service	1 976.7	1 964.6	1 945.0
Administrative and support service	1 463.3	1 420.8	1 540.5
Arts, entertainment and recreation	662.2	649.6	654.0
Education	2 075.3	2 120.5	2 177.3
Finance and insurance	427.4	399.5	376.2
Human health and social work	2 856.6	2 899.2	2 958.7
Information and communication	574.1	526.0	576.7
Professional, scientific and technical	874.0	870.4	857.5
Wholesale/retail trade; vehicle repair	3 434.8	3 246.3	3 399.4
<b>Other non-services economic activities</b>	<b>12 503.8</b>	<b>11 266.5</b>	<b>11 573.3</b>
<b>Total</b>	<b>26 848.2</b>	<b>25 363.4</b>	<b>26 058.6</b>
Females	13 232.3	12 715.2	12 847.1
Males	13 615.9	12 648.2	13 211.5

Source: Eurostat: EU Labour Force Survey.

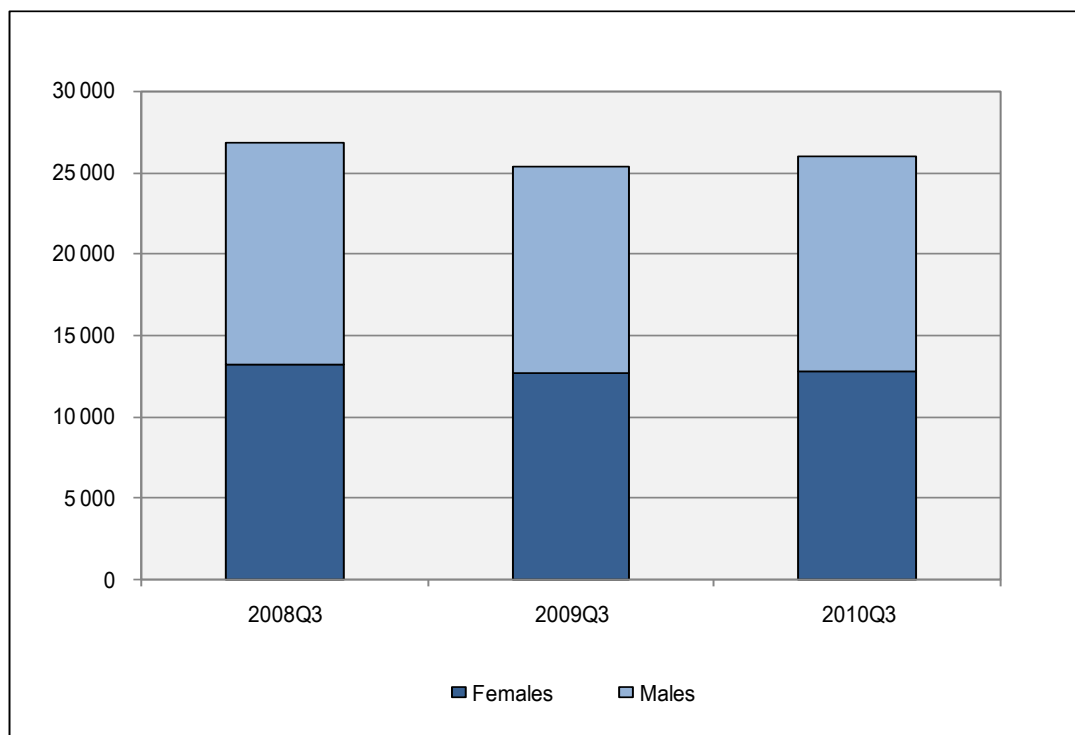
<sup>8</sup> CIETT: *The agency industry around the world*, 2011, p. 33.

**Figure 5. Temporary employees in the EU-27, by economic activity (NACE rev.2), third quarters 2008–10 (thousands)**



Source: Eurostat: EU Labour Force Survey.

**Figure 6. Temporary employees by sex, EU-27, third quarters 2008–10 (thousands)**



Source: Eurostat: EU Labour Force Survey.

## B. Sectoral distribution outside Europe

More than three-quarters of Chilean agency workers are in services sectors. Agency work is common in the public sector in Mexico (22 per cent), Uruguay (20 per cent) and Peru (10 per cent), and in construction in South Africa (17 per cent). Over 40 per cent of agency workers in Argentina, the Republic of Korea and Uruguay are in manufacturing.<sup>9</sup>

In the United States, sectors typically employing temporary agency workers include manufacturing; wholesale and retail trade, transportation and utilities; and financial, professional and business services. The use of temporary workers has intensified in wholesale and retail trade, transportation and utilities since 1990; in professional and business services, it increased during 1990–2001 but then decreased significantly; and in financial services, it remained stable during 1990–2001, but significantly increased thereafter.<sup>10</sup>

Table 6 offers relatively recent data for US employment services (including their direct employees), illustrating the importance of office and administrative work, and manufacturing and transport jobs, which together account for almost two-thirds of the total. In terms of growth, however, professional and related occupations, and services (for example nursing, fast food, waiters, cleaners) are projected to expand most in future, reflecting gradual trends away from manufacturing and clerical work.

**Table 6. Employment of wage and salary workers in employment services by occupation, United States, 2008 (thousands)**

Occupation	Employment, 2008	
	Number	Percentage
All occupations	3 144.4	100
Management, business and financial occupations	197.8	6.3
Professional and related occupations	355.8	11.3
<i>Registered nurses</i>	84.9	2.7
<i>Health technologists and technicians</i>	54.1	1.7
Service occupations	275.1	8.8
<i>Nursing aides, orderlies and attendants</i>	41.4	1.3
<i>Food preparation and serving-related occupations</i>	68.7	2.2
<i>Office and administrative support occupations</i>	778.3	24.8
<i>Bookkeeping, accounting and auditing clerks</i>	36.4	1.2
<i>Customer service representatives</i>	95.1	3.0
<i>Receptionists and information clerks</i>	48.6	1.5
<i>Secretaries and administrative assistants</i>	121.8	3.9
<i>Data entry keyers</i>	45.9	1.5
Construction and extraction occupations	172.1	5.5
Production occupations	603.4	19.2
Transportation and material-moving occupations	609.4	19.4

Source: Bureau of Labor Statistics: National Employment Matrix, 2008–18, as presented at <http://www.bls.gov/oco/cg/cgs039.htm>.

<sup>9</sup> CIETT: *The agency industry around the world*, 2011, p. 34.

<sup>10</sup> T. Luo et al.: “The expanding role of temporary help services from 1990 to 2008”, in *Monthly Labor Review* (2010, Vol. 133, No. 8, Aug.), pp. 3–16.

Table 7 indicates the very wide range of hourly wages across the leading occupations in US employment services.

**Table 7. Median hourly wages of the largest occupations in employment services, United States, 2008 (US dollars)**

Occupation	Employment services	All industries
Registered nurses	32.77	30.03
Employment, recruitment and placement specialists	20.52	21.86
Executive secretaries and administrative assistants	16.26	19.24
Customer service representatives	12.73	14.36
Office clerks, general	11.46	12.17
Construction labourers	10.80	13.71
Team assemblers	9.61	12.32
Helpers – production workers	9.30	10.48
Labourers and freight, stock and material movers, hand	9.18	10.89
Packers and packagers, hand	8.62	9.16

Source: Bureau of Labor Statistics: Occupational Employment Statistics, May 2008, as presented at <http://www.bls.gov/oco/cg/cgs039.htm>.

## 2.4. Selected private services sectors

This section examines private employment agencies' role across hotels, catering, tourism; commerce; financial and professional services; media, culture, graphical; and postal and telecommunications services; as well as property services (cleaning and security); call centres and IT services; and private employment agencies themselves (see figures 7 and 8, and table 8). Where possible, however, the classification excludes agency workers in primary industries, manufacturing, public services, education and health. It similarly excludes outsourcing and subcontracting, unless these form part of agencies' operations.

These private services sectors have a wide variety of employment relationships, from regular permanent employment with a specific employer to a variety of non-standard, temporary and informal arrangements, as well as freelance, self-employed and other categories. Agency work in these sectors may differ in nature from that in manufacturing and other primary and secondary industries; it is believed to be more oriented towards covering for temporary vacancies or alternative approaches to human resources management, rather than as a pre-recruitment probationary period or "safety valve", as in manufacturing.<sup>11</sup> Agency work in services has grown substantially as a proportion of total employment, but more research is needed on the significance of these differences in contractual status, human resources solutions and so on. In some cases, the sectoral boundaries can become blurred, for example as regards agency cleaning staff working in hotels and restaurants – are they in property services or in hotels, catering and tourism? Mega events in media, entertainment and sports, such as major music, theatre and film festivals, the FIFA Football World Cup, the Olympic Games, and basketball, tennis, golf and motor racing championships generate massive temporary expansion of agency work in the media, entertainment and sports sector itself for the duration of the event, and for other services such as catering, security and hotels. The same applies to international expos, meetings and tourism events.

<sup>11</sup> CIETT: *The agency industry around the world*, 2010, p. 63.

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## A. *Hotels, catering and tourism*

There is significant use of agency work to cover staff shortages of temporary or seasonal nature in hotels, restaurants and other catering or tourism enterprises in some countries, combined with some outsourcing and subcontracting of specific services (for example housekeeping in hotels) to outside service providers who may use agency workers. In the United Kingdom, this sector has much higher levels of occasional use of temporary agencies than other sectors, reflecting fluctuating demand linked to event-driven or seasonal patterns of work.<sup>12</sup> In some locations, there is substantial use of temporary agency workers for specific functions (for example cleaners, catering staff, waiters), whereby a user enterprise may sign a contract with an agency for provision of staff, but can switch to another agency if dissatisfied with the services provided.<sup>13</sup> However, the majority of temporary workers in the sector are directly employed on a fixed-term or casual basis rather than through an employment agency. According to Eurofound, in Europe, “establishments in the hotels and restaurants sector, as well as those in public administration and education, employ temporary agency work less frequently than establishments in other sectors. Less than 20 per cent of enterprises in these three sectors hire temporary agency workers.”<sup>14</sup> A specific exception on fee charging in this sector is Japan, where collecting fees from jobseeking agency housekeepers, cooks and waiters has been maintained.<sup>15</sup>

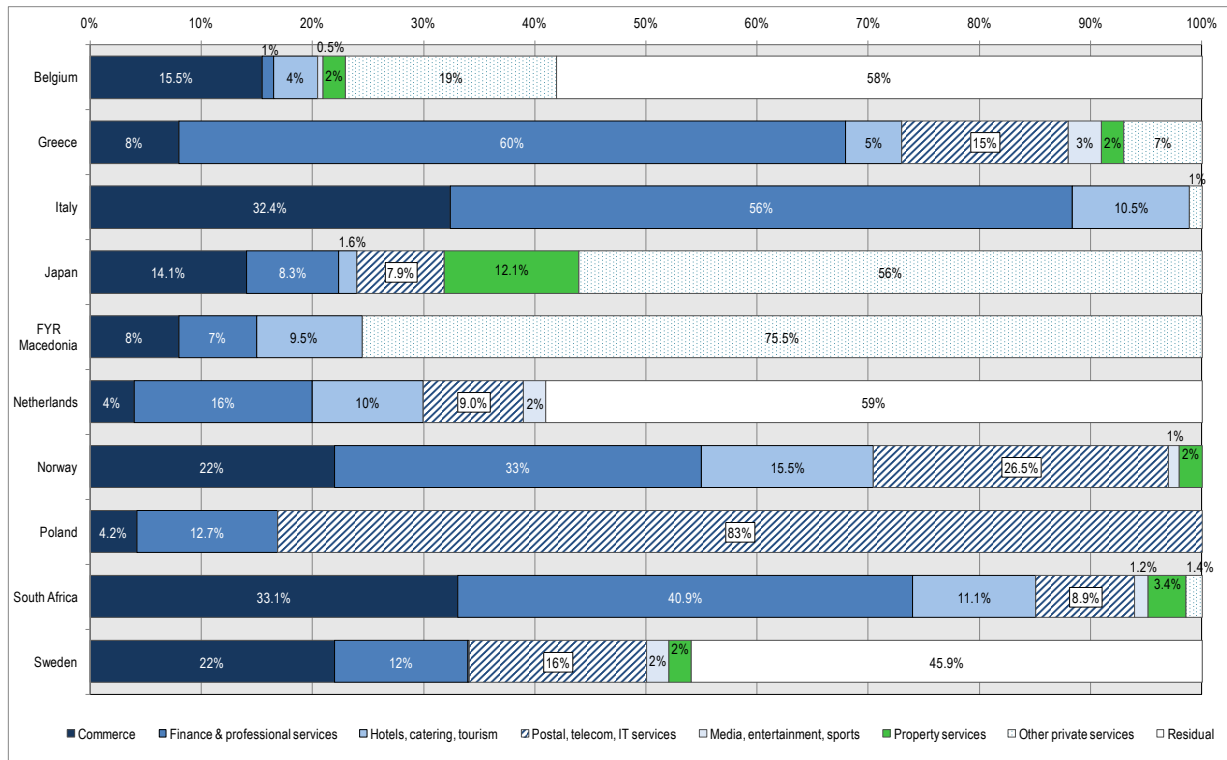
<sup>12</sup> Recruitment and Employment Confederation: *Hospitality: REC sector profile* (London, 2010), p. 13.

<sup>13</sup> See L. McDowell et al.: “Internationalization and the spaces of temporary labour: The global assembly of a local workforce”, in *British Journal of Industrial Relations* (2008, Vol. 46, No. 4, Dec.), pp. 759–761.

<sup>14</sup> Eurofound: *European company survey 2009: Overview* (Luxembourg, 2009), p. 27. The survey also notes (p. 30) that “In sectoral terms, up to 15% of establishments in the hotels and restaurants sector, public administration, and wholesale and retail trade and repair of goods employ freelance workers, compared with almost 30 per cent of establishments in real estate and business activities, and other community, social and personal services”.

<sup>15</sup> ILO: *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III Part 1(B), Geneva, 2010, para. 340.

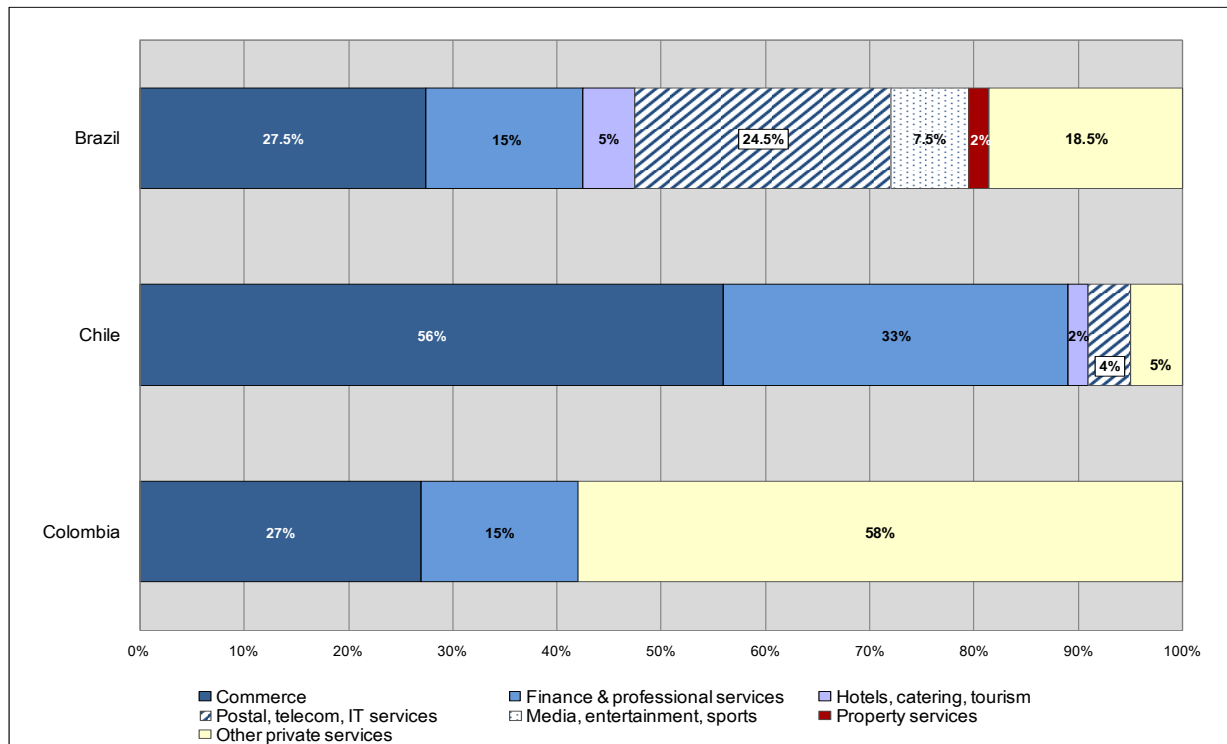
**Figure 7. Sectoral distribution of agency work in private services sectors, selected countries, 2010**



Source: Questionnaire responses from national employer or worker federations.

Note: Series entitled "Residual" was used where respondent indicated that the percentages were of total agency workforce, not of agency workforce in private services sectors.

**Figure 8. Sectoral distribution of agency work in private services sectors, Latin America, 2010**



Source: Questionnaire responses from national employer federations.



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## **B. Commerce**

Employment and working conditions in retail commerce can sometimes be highly precarious, due mainly to the predominance of small enterprises, and cost-cutting and flexibility-maximizing strategies by companies. While a core of regular, full-time employees is maintained, many retailers use contingent labour to fill temporary or intermittent needs caused by spikes in shopping traffic or to provide one-time-only services. Growing price and other competition factors in many countries are increasingly pressuring profit margins, encouraging human resources management practices that favour part-time work, uncertain working time schedules, low remuneration, recourse to temporary agency staff, high staff attrition and low training and retraining. Women are often concentrated in retailing with many of them holding lower status, lower paid, casual or temporary agency jobs.

## **C. Financial and professional services**

The structural changes occurring in financial services enterprises have directly affected the roles, responsibilities and career paths of staff. The search for flexibility may involve redefinition of corporate objectives, often hiving off non-core functions, reducing staff, using contingent (sometimes agency) workers and outsourcing some professional and technical services and tasks, especially those related to back-office processing work, to independent contractors. For example, a South African agency provided such services to a major bank – primarily for upscaling or downscaling of teller support (front-line customer service) in their retail banking outlets – including shift scheduling, rostering, skills development and performance management of workers.

## **D. Media, culture, graphical and sports**

There have been major shifts in the composition of employment across the sector because of technological change – including growth in some areas and occupations, some relocation of certain tasks to other countries or sectors, and cutbacks in employment in specific segments and occupations. Some workers may accept contracts with lower pay and poorer conditions than in the past, rather than have no work at all.<sup>16</sup> Employment in the performing arts is characterized by work for multiple employers, temporary work, seasonal jobs, freelance employment, self-employment, relatively few possibilities of finding stable employment, and periods during which there is no work. It is noteworthy that Hungary has excluded art and theatre recruitment agencies from the scope of Convention No. 181,<sup>17</sup> while in parts of Belgium, remunerated sportspeople or artists can be subject to agency fees in some circumstances.<sup>18</sup>

<sup>16</sup> ILO: *The future of work and quality in the information society: The media, culture, graphical sector*, report for discussion at the Tripartite Meeting on the Future of Work and Quality in the Information Society: The media, culture, graphical sector, ILO Sectoral Activities Programme (Geneva, 2004), p. 14.

<sup>17</sup> ILO: *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III Part 1(B), Geneva, 2010, para. 328.

<sup>18</sup> *ibid.*, para. 338.

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## **E. Postal and telecommunications services**

The telecommunications services industry has seen substantial growth of informal work arrangements over the past ten years in several countries, which has undermined the rights and opportunities of the sector's regular staff. Such informal work arrangements mean that workers who were previously considered direct employees – with rights associated with that relationship – have lost that status through the process of working through temporary agencies or as freelancers. This informalization trend may increase as part of corporate strategy.

The postal and logistics industry has also made substantial use of temporary agency workers in some developed countries in the past decade. Sometimes, collective bargaining within postal enterprises has helped to regularize existing agency workers, and discourage further recourse to such agencies. Among global courier companies, use of agency workers is often linked to pre-recruitment probationary periods of several months' duration; agency workers then become regular employees of the multinational if they give satisfaction, but otherwise their agency contracts are terminated or renewed temporarily.

## **F. Property services (cleaning and security) and domestic work**

There has been tremendous expansion of private security services and consolidation of these services on a global level, which is likely to continue, particularly with global fiscal tightening and reductions in public services, including security personnel. Cleaning services are also subcontracted extensively in most sectors and this is projected to continue. In both areas of property services – security and cleaning – workers are typically low skilled and low paid. In cleaning, the workforce has a large percentage of immigrant, female and part-time workers, and many temporary agency staff.

In some cases, domestic workers may be recruited from one country through private employment agencies to work in another country, and there can be problems with excessive fees being charged and few rights being accorded to such workers. International efforts are under way to enhance the regulation and monitoring of such agencies in source and destination countries to prevent or redress unfair treatment. Discussions at the 2011 session of the International Labour Conference led to the adoption of the Domestic Workers Convention, 2011 (No. 189), which includes provisions on this issue in its Article 15.

Large numbers of agency workers are in domestic work in China, where non-governmental domestic service agencies usually follow the labour dispatch system or the intermediary service system. Labour dispatch agencies recruit domestic workers as their staff and train them before dispatching them to serve in households. Payments from the household go to the agency, which pays the workers' wages and social security insurance, even when they are between assignments. Intermediary agencies collect placement fees when householders and domestic workers sign a contract, but take no other responsibilities. Labour dispatch domestic service agencies are relatively rare in China due to high operating risks (for example for injury or accident compensation), but the numbers of people employed are substantial.<sup>19</sup>

<sup>19</sup> ILO Regional Office for Asia and the Pacific: *Situational analysis of domestic work in China* (Bangkok, 2009), p. 3.

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## G. Call centres and IT services

In the context of widespread outsourcing and offshoring in this sector, workers have experienced downward pressure on pay, conditions and employment in recent years in many countries,<sup>20</sup> and there has been increasing use of temporary agencies for staff at all levels, other forms of flexible labour and subcontracting.

## H. Staff of private employment agencies

There has been significant growth in internal staff numbers in the past decade, but only in four countries do they exceed 0.25 per cent of the national workforce (table 8). In general, they are regular employees on permanent or fixed-term contracts. Numbers are very large in Brazil, Japan, the United Kingdom and the United States.

**Table 8. Internal agency staff and total employment, selected countries, 2008–09**

	Internal staff	Internal staff/total employment (%)
<b>Europe</b>		
Belgium	6 482	0.15
Bulgaria	470	0.01
Czech Republic	1 440	0.03
Finland	3 000	0.12
France	23 000	0.09
Germany	44 700	0.12
Greece	183	0.00
Hungary	2 885	0.07
Ireland	12 950	0.61
Italy	10 800	0.05
Luxembourg	307	0.15
Netherlands	34 000	0.40
Norway	2 340	0.09
Poland	4 100	0.03
Portugal	750	0.01
Romania	1 472	0.02
Slovakia	1 254	0.05
Sweden	11 000	0.23
United Kingdom	108 833	0.36

<sup>20</sup> P. Taylor: “Remote work from the perspective of developed economies”, in J. Messenger and N. Ghosheh (eds): *Offshoring and working conditions in remote work* (Basingstoke, Palgrave Macmillan, 2010), pp. 29–30.

	Internal staff	Internal staff/total employment (%)
<b>Rest of the world</b>		
Argentina	3 550	0.02
Brazil	169 635	0.18
Chile	1 348	0.02
Japan	240 000	0.38
Republic of Korea	2 032	0.01
Mexico	6 100	0.01
South Africa	5 500	0.04
United States	120 000	0.08
Uruguay	600	0.04
<b>Total</b>	<b>818 731</b>	

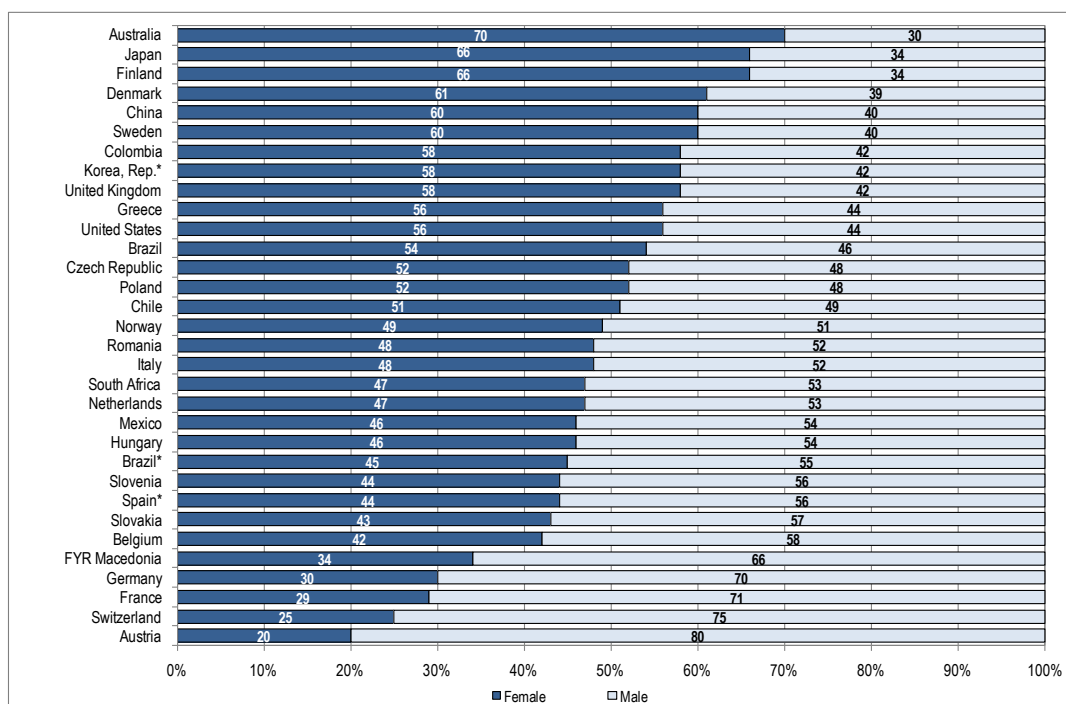
Source: CIETT: *The agency industry around the world*, 2010, p. 14.

## 2.5. Agency workers' profile

### A. Gender dimension

Research is required on the gender dimensions of agency work in private services sectors, but indications are that the female share is as high as in the services workforce in general. This could be a reason why the female proportion of the agency workforce as a whole is increasing. Figure 9 demonstrates that for many countries the gender composition of agency work is reasonably balanced (in other words, in the 40–60 per cent range). Australia, Denmark, Finland and Japan have above 60 per cent of women, while for Austria, France, Germany and Switzerland the statistic is below 40 per cent. This partly reflects the social and economic history of each country (for example the sectoral bases of the economy, and social attitudes to family and gender divisions of labour), but may also be connected to the sectoral and occupational distribution of agency work, with men being concentrated in the manufacturing and construction sectors, while women form the majority in service sectors and occupations (hence correlating somewhat with figure 4). UK and German data, for example, reflect the significance of temporary agency employment in services and manufacturing, respectively. Comparison with previous surveys shows that the gender distribution remains generally static, with slight increases in the female share in many countries in the 2000s, but significant growth in the Czech Republic, Italy and South Africa from 2007 to 2009. In Japan, the changes have been bigger, with manufacturing placements expanding rapidly for several years. While for much of Japan's temporary staffing history, women workers (80 per cent of the total in 1997) dominated its workforce, the female proportion fell to 62 per cent by 2007, but then rose to 66 per cent by 2009.

**Figure 9. Agency workers by gender, various countries, in 2009**



\* = data for 2007.

Source: CIETT: *The agency industry around the world*, 2009, p. 33; and 2011, p. 30.

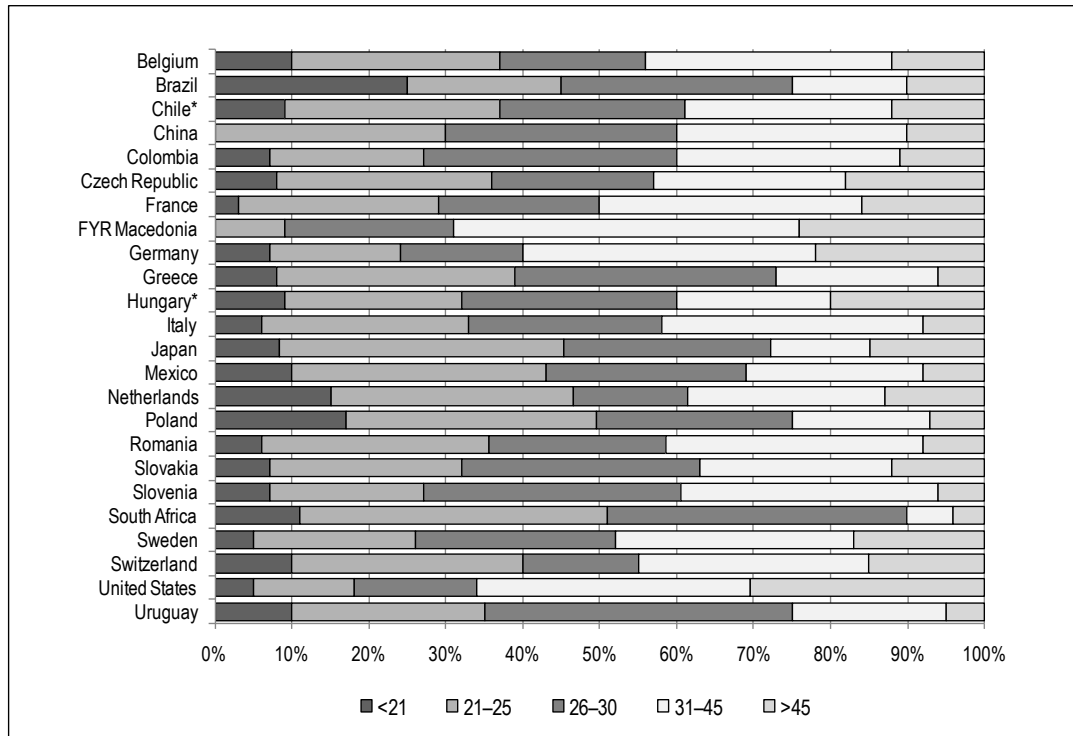
## B. Age profile

Figure 10 illustrates that the majority of agency workers are below the age of 30, with that age group accounting for over 50 per cent of the total in all countries except Germany, The former Yugoslav Republic of Macedonia and the United States. This reflects the long-standing role of the industry in placing student workers and providing an entry point into the labour market for younger workers. The proportion of under-21s increased significantly in both Brazil (from 11 to 25 per cent) and South Africa (from 6 to 11 per cent) during 2007–09. The proportion of workers aged over 45 years varies more widely, ranging from below 7 per cent in Greece, Slovenia, South Africa and Uruguay to 32 per cent in the United States. Older staff are increasingly represented among agency workers, reflecting demographic and regulatory change in many leading markets. In France, the proportion of agency workers aged 50 and over increased from 4.1 per cent to 7.5 per cent during 1997–2007, while in Italy, representation expanded in all age groups over 34 in 2003–07.<sup>21</sup> In Austria, where the rate of temporary workers was 2.9 per cent among employees aged 15–24 as against 1.8 per cent among all employees in 2009, a special youth foundation was implemented for young unemployed former agency workers who had lost their jobs during the economic crisis.<sup>22</sup>

<sup>21</sup> CIETT: *The agency industry around the world*, 2009 and 2010, p. 31.

<sup>22</sup> *European Employment Observatory Review: Youth employment measures 2010* (Brussels, European Commission, 2011), p. 27.

**Figure 10. Agency workers by age, various countries, 2009**



\* = data for 2007.

Source: CIETT: *The agency industry around the world*, 2009, p. 30; and 2011, p. 31.

### C. Educational and skill profile

Employment agencies employ many medium-to-high-skilled professional and technical staff with expertise in human resources management in their own offices. In most countries, the majority of agency workers placed in user workplaces have low-to-medium initial education levels; many work in entry-level functions with low skill requirements, but also in skilled occupations with high levels of training and skills.

Roughly half of agency workers worldwide had finished secondary school, a quarter had not, and a quarter had completed higher education. Early school leavers cannot get permanent jobs because they lack qualifications, so temporary jobs are often their only option. Agency work can play an important role in helping low-skilled workers enter the labour market and gain experience.<sup>23</sup> In some countries, many agency workers are students, and thus are recorded as having completed secondary education, but are close to reaching higher educational status. In Australia, Bulgaria, Japan, the Republic of Korea, Norway and the United Kingdom, agencies employ many highly educated people.

### D. Migration profile

Migrants are often a significant element in flexible labour markets. They are over-represented in temporary jobs, whether they are in the host country for short or extended periods. Agencies often facilitate migrant workers finding jobs and accommodation in a new country in North America, the Gulf States or elsewhere. The role of agencies once the worker has arrived differs from that of agencies facilitating the movement of workers across national borders, which involves documentation, travel, immigration, work and residence permits, accommodation and employment in the receiving country. Some

<sup>23</sup> CIETT: *The agency industry around the world*, 2011, p. 32.

agencies facilitate the migration of workers from one country to another and help to ensure decent work; but some provide poor services to their clients for exorbitant fees and give the industry a bad name.

In Europe, after substantial migration from other continents on a more permanent basis, migration patterns have changed in recent years, with the accession of new EU Member States in 2004 and 2007, free movement of people within the EU, and rapid growth in agency work among intra-European migrants. Migration patterns are often more fluid, temporary and driven by specific work opportunities, because return migration is easier and cheaper. If job opportunities shrink, migrants (whether agency workers or not) can return home or move to another EU country. As migrants can travel freely in the EU, and do not require work permits, tracking temporary labour migration is problematic.

### **E. Length of assignment**

In most countries, agency workers' assignments are generally for over one month. The longest durations are in Germany, Japan, the Republic of Korea and Sweden, but in Italy (and, to a lesser extent, France) assignments are brief, rarely more than three months,<sup>24</sup> although some workers may have several assignments in succession (table 9 and figure 11). Certain countries stipulate a maximum duration, beyond which the worker has to be recruited by the user enterprise or their contract cannot be renewed.

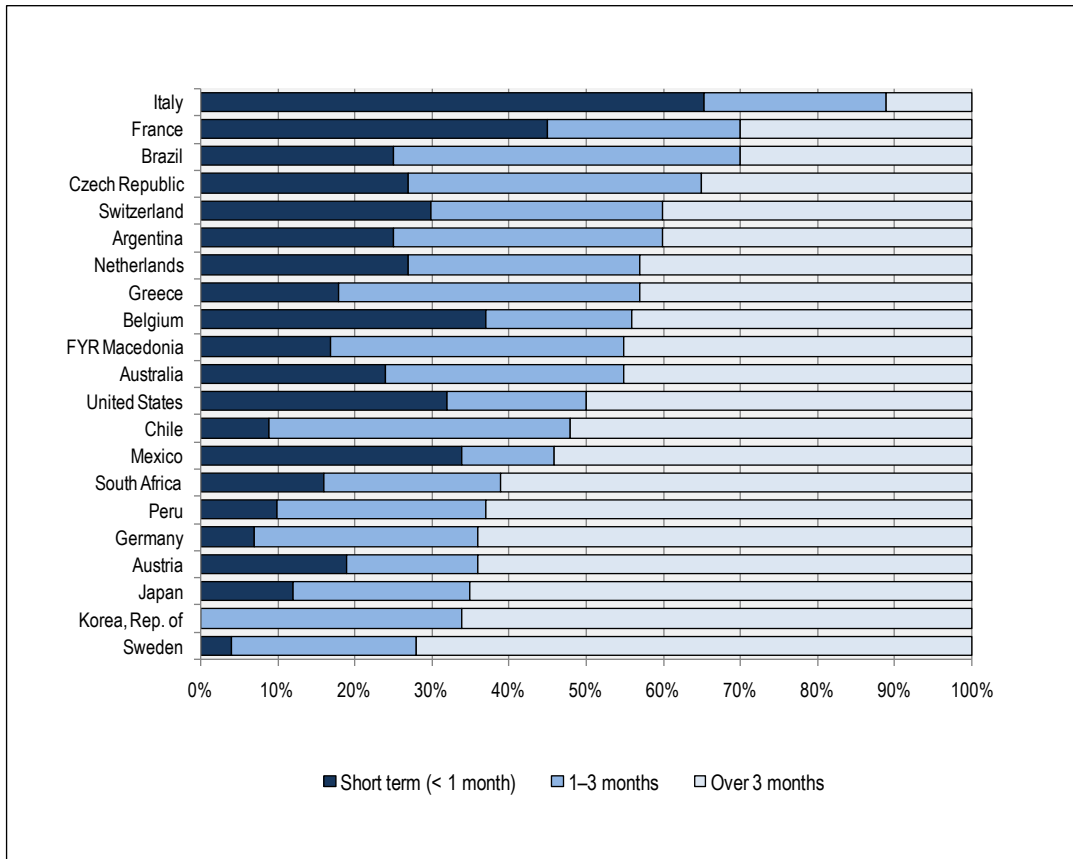
**Table 9. Agency workers: Average length of assignment, selected countries, 2009 (percentages)**

	Short term (< 1 month)	1–3 months	Over 3 months
Argentina	25	35	40
Australia	24	31	45
Austria	19	17	64
Belgium	37	19	44
Brazil	25	45	30
Chile	9	39	52
Czech Republic	27	38	35
France	45	25	30
Germany	7	29	64
Greece	18	39	43
Italy	66	23	12
Japan	12	23	65
Republic of Korea	0	34	66
Mexico	34	12	54
Netherlands	27	30	43
Peru	10	27	63
South Africa	16	23	61
Sweden	4	24	72
Switzerland	30	30	40
The former Yugoslav Republic of Macedonia	17	38	45
United States	32	18	50

Source: CIETT: *The agency industry around the world*, 2011, p. 27.

<sup>24</sup> Poland and Spain have assignments of similarly short duration, according to previous data.

Figure 11. Temporary agency workers: Average length of assignment, selected countries, 2009



Source: CIETT: *The agency industry around the world*, 2011, p. 27.



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### 3. Private employment agencies' role in promoting decent work

The ILO's Decent Work Agenda recognizes that work is central to people's well-being, paving the way for broader social and economic advancement, and strengthening individuals, their families and communities. As outlined in the ILO Declaration on Social Justice for a Fair Globalization,<sup>1</sup> it can be summarized as follows:

- (i) **promoting employment** by creating a sustainable institutional and economic environment in which: individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being; all enterprises, public or private, are sustainable to enable growth and the generation of greater employment and income opportunities and prospects for all; and societies can achieve their goals of economic development, good living standards and social progress;
- (ii) **developing and enhancing measures of social protection** – social security and labour protection – which are sustainable and adapted to national circumstances, including: the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes; healthy and safe working conditions; and policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection;
- (iii) **promoting social dialogue and tripartism** as the most appropriate methods for: adapting the implementation of the strategic objectives to the needs and circumstances of each country; translating economic development into social progress, and social progress into economic development; facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems; and
- (iv) **respecting, promoting and realizing the fundamental principles and rights at work**, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives, noting: that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

As indicated in the Declaration, these four strategic objectives are inseparable, interrelated and mutually supportive. The failure to promote any one of them would harm progress towards the others. Optimizing their impact requires an ILO global and integrated Decent Work Agenda, in which gender equality and non-discrimination must be considered to be cross-cutting issues.

The Decent Work Agenda can be applied to the specific concerns and circumstances of temporary agency workers in private services sectors in different countries by implementing policies to promote employment, defend and extend rights at work for such workers, strengthen the social partners, reinforce social dialogue, extend social protection systems among them and promote gender equality. In the context of private employment

<sup>1</sup> ILO: *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008, pp. 5–11.

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agencies, key international labour Conventions include the Private Employment Agencies Convention, 1997 (No. 181); the Employment Service Convention, 1948 (No. 88); the Employment Policy Convention, 1964 (No. 122); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949 (No. 97); and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and others covering freedom of association, collective bargaining, minimum wages, working time and other working conditions, statutory social security benefits, access to training, occupational safety and health, compensation in case of occupational accidents or diseases or of insolvency and protection of workers' claims, and maternity and parental protection and benefits.<sup>2</sup>

Private employment agencies that adhere to the principles of Convention No. 181 should contribute to decent work. However, if some of the applicable rights at work are flouted, sidestepped or disregarded, decent work deficits will arise. Temporary agency work can also be accompanied by or reinforce other changes in the world of work, such as downward pressure on wages, erosion of workers' rights, weakening of social dialogue and social protection, and increasing insecurity and instability of employment in general. There is need for vigilance, to ensure that there is effective regulation of temporary work and monitoring of agencies, to prevent abuse and exploitation of workers and to ensure that growth in temporary work is not at the expense of regular employment relations. Private employment agencies and temporary work should not be deliberately used to weaken regular employment. In this context, there has been debate in several countries about the merits of banning the operations of private employment agencies altogether,<sup>3</sup> based on previous experience. The challenge remains how to protect the millions of workers employed by agencies while also ensuring that the industry's growth does not erode employment relationships. It should be stressed that the Convention provides a framework that should be implemented as a whole, and should not be treated as an à la carte menu from which to choose a few items. A key issue is ensuring that private employment agencies involved in migration contribute positively to the economic development of countries of origin and of destination by promoting decent work. A balance should be struck reconciling the needs of labour markets and the rights of migrant workers, including equal treatment and respect for labour legislation in destination countries.

For agency workers, the situation can be improved when private employment agencies ensure that their workers enjoy comparable rights to other workers in user enterprises. While there may be a minimum qualifying period for entitlement to such rights, this offers many temporary agency workers an advantage over workers employed on contracts that are more precarious. However, there are great variations in agency workers' rights from one country to another, from one agency to another and even among workers working for the same agency.

Thus, while agencies and agency workers may be covered by specific laws, regulations and directives that uphold decent work principles in many countries, in other countries no such standards exist. Some countries have systems for certification and monitoring of agencies and for sanctions against those not in compliance, but their coverage may be patchy (and there may be jurisdiction problems as regards migrant agency workers).

<sup>2</sup> As listed in the table after paragraph 313 of the 2010 General Survey, *op. cit.* See also paras 308–318 on protection of workers, and on personal data.

<sup>3</sup> Notably in Namibia, the Russian Federation and South Africa in the past two years.

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### 3.1. Agency workers' rights and working conditions

Articles 4, 5, 9 and 11 of Convention No. 181 deal with the protection of agency-recruited workers. These guarantees cover fundamental rights at work such as freedom of association, collective bargaining, equal opportunity and treatment, and eliminating child labour. Recalling the fundamental rights to freedom of association and to bargain collectively, Article 4 is the main provision in Convention No. 181, which protects workers against violations of fundamental principles and rights at work, enshrining the rights encompassed in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).<sup>4</sup> Article 8 provides that countries should adopt all necessary and appropriate measures to provide adequate protection for, and prevent abuse of, migrant workers recruited or placed in its territory by agencies. Those measures should include laws or regulations that provide for penalties, including prohibition of agencies that engage in fraudulent practices and abuses. The Philippines and Sri Lanka provide examples of protection provisions for migrant workers recruited via overseas agencies. Articles 4 and 11 address freedom of association and collective bargaining, stipulating that legislation should specify that agency-recruited workers be afforded these rights. Assuming that governments develop appropriate mechanisms aimed at strengthening the protection of agency workers, in consultation with the social partners concerned, it is important to ensure that workers' rights to freedom of association and collective bargaining can be exercised in practice, so that they do not remain merely theoretical rights. Agency workers should also have adequate protection in relation to minimum wages; working time; working conditions; statutory social security benefits; access to training; occupational safety and health; compensation for occupational accidents and diseases and insolvency; protection of workers' claims; and maternity protection and benefits. The Government of Norway has expressed concern that foreign employees may be denied the rights set out in health, environmental and safety regulations, including regulations governing working hours; such violations may not only affect foreign workers, but may also be indirectly detrimental in overall terms to the workforce and businesses in Norway.<sup>5</sup> Similarly, the Canadian Confederation of National Trade Unions (CSN) expressed concern that the spread of temporary work agencies in Canada would lead to shortage of skilled labour, because young temporary agency workers did not receive professional education, which could limit them to low-skilled work and lead to precarious employment relationships; due to widespread use of temporary agencies, that problem was likely to affect the whole population.<sup>6</sup>

Article 8 of Convention No. 181 requires member States to establish a legal framework, including adequate penalties, such as fines or the closure of private agencies, to protect migrant workers against abuses committed by private agencies; the CIETT Code of Conduct stipulates that any regulation on private employment agencies should enhance the fight against illegal practices and human trafficking.<sup>7</sup> Article 12 indicates the responsibilities of agencies employing workers and making their services available to user enterprises. The Private Employment Agencies Recommendation, 1997 (No. 188), addresses the issue of involvement in industrial relations disputes, stating: "Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike." Several countries have adopted legislation that prohibits the replacement of regular workers who are on strike by agency staff.

<sup>4</sup> ILO: 2010 General Survey, op. cit., para. 350.

<sup>5</sup> *ibid.*, para. 368.

<sup>6</sup> *ibid.*, para. 287.

<sup>7</sup> *ibid.*, para. 369.

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### 3.2. Undeclared work

According to CIETT, there “appears to be an inverse correlation between penetration rate of agency work and level of undeclared work. By serving as a legal alternative in sectors often plagued by illegal labour, agency work can bring to the labour market thousands previously illegally employed, and hence serve as a means of fighting undeclared work. Working via an agency allows workers to take full advantage of all the legal protection and enforcement mechanisms available, unlike the often insecure and potentially risky work available through illegal channels.”<sup>8</sup> However, much work is required by governments, employers’ and workers’ organizations and the ILO to counter these problems, and more effective regulation and monitoring should be implemented.

### 3.3. Role of the social partners and social dialogue regarding temporary agency work

Most industrialized countries’ legislation includes profit-oriented agencies, treating them as any other business, and their employers and workers are thus covered under general labour legislation. This simplifies regulation of agencies, especially where strong trade unions exist, having secured the working conditions of employees through collective agreements. For example, Dutch<sup>9</sup> and German<sup>10</sup> collective agreements specify the employment relationship of temporary workers, reflecting the positive role of social dialogue in regulating and monitoring agencies.

The European Commission established the European Sectoral Social Dialogue Committee on Temporary Agency Work in 2000, with UNI-Europa and Eurociett<sup>11</sup> as its social partners. This committee contributed to the European Council Directive on temporary agency work<sup>12</sup> (which contains specific provisions on temporary workers’ representation and provides greater opportunities for social dialogue). Its work programme for 2011–12<sup>13</sup> includes:

- debating the contribution of the social partners of the temporary agency work sector to implementing the Europe 2020 Strategy, especially the flagship initiatives “Youth on the Move” and “New Skills and Jobs” and the EU Employment Guidelines;
- holding round tables in 2011–12 in EU candidate countries to establish or improve sectoral social dialogue;

<sup>8</sup> CIETT: *The agency industry around the world*, 2011, p. 57.

<sup>9</sup> Federation of Private Employment Agencies (ABU), FNV Bondgenoten (FNV), CNV Dienstbond, De Unie and LBV: *Collective Labour Agreement for Temporary Agency Workers 2009–14* (Amsterdam, July 2010).

<sup>10</sup> BZA–DGB-Tarifgemeinschaft: *Tarifverträge Zeitarbeit* [Collective Framework Agreement on Temporary Work], 2010.

<sup>11</sup> UNI-Europa is a European trade union federation for services and communication workers; Eurociett is the European Confederation of Private Employment Agencies.

<sup>12</sup> European Union: “Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work”, in *Official Journal of the European Union*, L 327/9, 5 Dec. 2008.

<sup>13</sup> UNI-Europa and Eurociett: *European Sectoral Social Dialogue Committee on “Temporary Agency Work” work program 2011–2012*.

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- supporting the sectoral social partners during the implementation phase of the Directive at national level and identifying joint action, reviewing the Directive's implementation and alerting the European Commission on outstanding issues;
  - promoting ratification of Convention No. 181 as a relevant framework for regulation on agency work and a way to promote decent work;
  - submitting a proposal on a joint project on "Temporary agency work and transitions in the labour market";
  - investigating future cooperation and exchange of information with labour inspectorates and other bodies relevant to the agency work sector.

The 2008 Memorandum of Understanding between CIETT corporate members and the UNI Global Union on Temporary Agency Work is aimed at promoting fair conditions for the industry and its workers through social dialogue (see Appendix II). It was developed through social dialogue following the earlier voluntary commitment by CIETT member companies to a global code of conduct on private employment agency practices (2006), complemented by the CIETT Charter of Private Employment Agencies outlining its members' obligations regarding corporate social responsibility (see Appendix I).

### **A. National dialogue in the industry**

In the EU, there are collective bargaining arrangements for temporary agency workers at the sectoral level in Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Spain and Sweden.<sup>14</sup> The United Kingdom has company-level agreements rather than sector-level bargaining.<sup>15</sup> In 2010, the Japanese employer association JASSA, and the trade union confederation RENGO, signed a joint declaration on temporary agency work, aiming to promote fair practices of temporary work agencies and listing efforts to be taken by employers and unions to promote such practices (including discussing options for revising the legal framework for temporary agency work so as to enhance worker protection and career development, and action to improve the work environment, welfare benefits and career development of agency workers).<sup>16</sup>

### **B. Agency-level dialogue**

At the agency level, Randstad established the European Platform for Social Dialogue (EPSD) in 1996, to promote dialogue between management and workers' representatives and facilitate exchange of information and consultation. It meets twice per year; most EPSD members are not unionized. In 1999, Adecco established the Platform for Adecco Communication in Europe (PACE), meeting once a year, mainly for exchange of views between management and workers' representatives. Most workers' representatives are union members affiliated to UNI-Europa. In the EPSD and PACE, most workers' representatives are from the company's internal staff rather than temporary agency workers. The instability of the temporary workforce undermines its capacity to organize collectively or defend workers' rights. Trade union membership is very low, except in Scandinavian countries. Efforts were under way in 2011 to promote social dialogue in leading agencies, in line with the revised European Works Council Directive.<sup>17</sup>

<sup>14</sup> Eurofound: *Temporary agency work and collective bargaining in the EU* (Dublin, 2008), p. 17.

<sup>15</sup> *ibid.*, p. 23.

<sup>16</sup> Eurociett: *Dispatch* (Brussels, Autumn 2010), p. 2.

<sup>17</sup> European Union: "Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council", in *Official Journal of the European Union*, L 122/28, 16 May 2009.

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## 4. Private employment agencies' role in improving the functioning of labour markets

The ILO's October 2009 Workshop identified the following consensus:

Private employment agencies that respect the principles of the Convention can contribute, through the services they provide, to:

- Matching supply and demand in the labour market.
- Implementing active labour market policies and creating pathways from unemployment to employment by:
  - Helping jobseekers enter or re-enter the labour market, including catering for the need for flexibility of enterprises.
  - Helping vulnerable people to enter the labour market.
  - Providing greater work opportunities for more people.
- Facilitating the transition from education and work, by providing students and young workers with their first opportunity to gain work experience.
- Easing the transition between assignments and jobs by providing agency workers with vocational training.
- Promoting conversion between different types of work contracts, for example by assisting a shift from temporary agency contracts to fixed-term or open-ended contracts.
- Improving life–work balance, for example by providing flexible working-time arrangements such as part-time work and flexible working hours.
- Helping fight undeclared work.
- Contributing to decent conditions for cross-border labour migration.<sup>1</sup>

The Workshop also noted that implementation of a national government policy on organizing the labour market – through cooperation and complementarity between the public employment service and private employment agencies – should be encouraged.

### 4.1. Introduction

Labour market intermediaries can play a key role in an efficiently functioning labour market. Labour markets are imperfect and, as anyone who has looked for a job can testify, it is rare to find all relevant information freely available, the Internet notwithstanding. Looking for a job or a future employee takes time and effort and there is no guarantee that

<sup>1</sup> ILO Sectoral Activities Programme: *Report of the discussion*, Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181), Geneva, 20–21 October 2009, Points of consensus, point 1.

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the ideal match will be found. Autor suggests that: “In the benchmark neoclassical model of the labour market, it is costless for workers and firms to search for each other. In reality, search is costly. Workers pay directly for search, through the monetary and psychic costs of applying and interviewing for jobs, and indirectly, through forgone work or leisure. Employers likewise incur search costs directly – through help-wanted advertising, job fairs, and applicant screening and interviewing – and indirectly through forgone output while vacancies await workers.”<sup>2</sup> In the United States, the staffing industry is reported to have created 304,100 new jobs out of 1,457,000 overall.

For many years, public employment services were the main, if not the only, labour intermediary available. In some countries, private employment agencies had a bad reputation after a history of abuse. However, in recent decades the tide has turned in favour of agencies. Stubbornly high unemployment and the perception that public employment services could not cope with the volume and the diversity of tasks raised the profile of agencies among policy-makers. Agencies became increasingly seen as a cost-effective and complementary means to get the unemployed back into work.<sup>3</sup> Governments relaxed the restrictions under which agencies could operate and so contributed to their rapid growth.

## 4.2. The user enterprise perspective

Originally, agencies’ main function was to provide temporary staff as short-term cover for someone who was ill, on holiday, on maternity leave or temporarily absent for another reason; to accommodate seasonal or short-term business fluctuations; to fulfil an intermittent need for people with specialized skills; or to fill gaps during periods of recruitment.

More recently, agency workers, together with fixed- and short-term employees and subcontractors, have become a component of the flexible layer of workers that companies have created around themselves. This has a quantitative dimension. When business is bad, this buffer zone or flexible layer allows these enterprises to avoid making “core” workers redundant (see case study on Japan in Chapter 5.2). It also has a qualitative dimension. The availability of a flexible layer allows core workers to do work with which they feel comfortable, leaving those in the flexible layer with less popular or more peripheral assignments.

The volume of demand for agency workers fluctuates with the business cycle. Employment growth does not move in parallel with economic growth along the business cycle, but with a lag. When demand accelerates after the business cycle has reached its lowest point – but employers still feel uncertain about the robustness of the recovery – they hire people on flexible contracts, including through agencies. The upswing in agency work thus occurs in parallel with the upswing in economic growth, but before employers feel ready to hire regular employees. When economic growth is seen as robust, employers hire

<sup>2</sup> D.H. Autor (ed.): *Studies of labor market intermediation* (Chicago, University of Chicago Press, 2009), p. 5.

<sup>3</sup> M. Kvasnicka: *Does temporary agency work provide a stepping-stone to regular employment?* SFB 649 Discussion Paper 2005-031 (Berlin, Humboldt University, 2005).

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permanent staff and demand for agency workers slows down. The “thickness” of the flexible layer thus fluctuates with the stage in the business cycle.<sup>4</sup>

However, there are indications that the flexible layer is becoming thicker and more constant across business cycles (see Chapter 5.2). The Dutch Public Employment Service, UWV, which, among other things, closely follows Dutch labour market indicators, speaks of “a possible new trend in the flexibilization of the labour market”.<sup>5</sup> It has noted that the number of people in the flexible layer (defined as workers on fixed-term contracts, agency workers and the self-employed) is showing a long-term increase: its share of the Dutch labour force increased from 23 per cent in 1996 to 34 per cent in 2009. Case evidence from elsewhere appears to support this, and many trade unions assert that this trend is undermining organizing, collective bargaining and employment relationships in user enterprises and across wider labour markets. Evans et al.<sup>6</sup> and McDowell et al.,<sup>7</sup> writing on the situation in London hotels, noted a trend whereby hoteliers indirectly hired agency or contract workers on a longer term basis to fill regular vacancies or to remove such jobs from their payrolls entirely.

Screening potential new employees has become another function of agencies, particularly in the United States. By using temporary agencies, companies can reduce their costs of hiring and recruitment, such as advertising and interviewing. This is particularly relevant for employers looking for workers to fill “undesirable, repetitive, or physically demanding jobs where high turnover is endemic”. Using agency workers creates a “pre-probationary period of employment to select the most productive individuals who best ‘fit’ the firm’s culture”.<sup>8</sup> This reduces the risk of litigation should the match between the worker and the requirements of the user enterprise end badly.<sup>9</sup> Outside the United States, the screening function has also gained in importance. In Denmark, it is relatively easy to hire and fire workers and that is one reason why little use is made of agencies. Nonetheless, the agency sector grew strongly during 2000–09 because Danish companies increasingly used agencies for selection purposes.<sup>10</sup>

In short, the advantages of agencies to user enterprises are many. Often these firms find it easier to use agency workers rather than hire people directly, especially when

<sup>4</sup> Ecorys: *Uitzendkrachten in beweging: de samenstelling van de uitzendpopulatie in goede en slechte tijden* [Temporary workers on the move: Composition of temporary workers in good and bad times] (Rotterdam, 2009).

<sup>5</sup> UWV (Dutch Public Employment Service): *UWV Kwartaal Verkenning 2010-II* (Amsterdam, Kenniscentrum UWV, Directie SBK, 20 April 2010), p. 31.

<sup>6</sup> Y. Evans et al.: *The living wage in London’s hotels: Challenging “subcontracting by stealth”*, Working Paper (Department of Geography, Queen Mary, University of London, 2007).

<sup>7</sup> L. McDowell et al.: “Internationalization and the spaces of temporary labour: The global assembly of a local workforce”, in *British Journal of Industrial Relations* (2008, Vol. 46, No. 4, Dec.).

<sup>8</sup> H. Freeman and G. Gonos: “The commercial temp agency, the union hiring hall, and the contingent workforce”, in *Employee Rights and Employment Policy Journal* (2009, Vol. 13, 285–360), p. 293.

<sup>9</sup> D.H. Autor (ed.): *Studies of labor market intermediation* (Chicago, University of Chicago Press, 2009).

<sup>10</sup> Ecorys: *Uitzendkrachten in beweging: de samenstelling van de uitzendpopulatie in goede en slechte tijden* [Temporary workers on the move: Composition of temporary workers in good and bad times] (Rotterdam, 2009).



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internal hiring procedures are seen as slow and cumbersome. It has even been argued that it may be hard for enterprises *not* to use agencies. The problem is that, in doing so, some of the fundamental causes of staff shortages (for example lack of qualified staff, unattractive working conditions) risk being ignored, thus long-term solutions receive inadequate attention.<sup>11</sup>

### **Reasons for using agency workers**

Three in five user enterprises surveyed by CIETT used agency workers to fill temporary positions “always” or “most of the time”; other frequent methods to cover temporary vacancies are using casual staff, fixed-term workers and increased overtime. It has been argued that the overall flexibility provided by agency workers is a key reason for services sectors enterprises to use them, whereas manufacturing sectors tend to use agency work to evaluate staff for permanent recruitment, or to keep running costs down.<sup>12</sup>

Some countries specify reasons for using temporary agency work. For example, in Belgium, it is authorized as temporary replacements for permanent workers; to cover temporary and exceptional peaks in work; for work of an unusual nature; and for artistic performances.<sup>13</sup> Others also specify reasons for prohibiting its use. For example, in Slovenia, it is prohibited in workplaces where there have been significant recent redundancies or where workers may be exposed to dangers and risks, or in other cases stipulated in collective agreements.<sup>14</sup>

Four types of reasons are given for why, and for what purpose, user enterprises use private employment agencies:<sup>15</sup>

**Providing numerical flexibility.** User enterprises can divide their workforces into a core and a periphery, deciding which jobs to externalize or retain based on complexity, skills and knowledge required for tasks. Thus, enterprises aim to reduce the turnover of skilled and trained core staff, while the use of agency workers allows rapid adjustments to staffing levels in periods of rapid growth or contraction – enterprises have a buffer zone of temporary workers, to avoid redundancy costs of permanent core workers.

**Cutting labour costs.** Agency workers may be paid less than permanent staff, although agency fees (usually a percentage of the worker’s pay) entail similar overall costs to user enterprises, but without responsibility for redundancy, holiday, sickness, pension or maternity entitlements. However, agencies in EU countries report applying the principle of equal treatment, whereby additional payments are made to agency workers to compensate for their limited entitlements (compared to user enterprise workers) resulting from short assignments. In any case, agencies in the EU and other countries have such responsibilities

<sup>11</sup> O. Bergström et al.: *Den nya arbetsmarknaden: Bemanningsbranchens etablering i Sverige* [The new labour market: Establishing temporary work agencies in Sweden] (Lund, Academia Adacta, 2007), p. 215.

<sup>12</sup> CIETT: *The agency industry around the world*, 2010, p. 63.

<sup>13</sup> Eurofound: *Temporary agency work and collective bargaining in the EU* (Dublin, 2008).

<sup>14</sup> *ibid.*

<sup>15</sup> N. Coe et al.: “The business of temporary staffing: A developing research agenda”, *Geography Compass* (2010, Vol. 4, No. 8), p. 1056.

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for their workers under the directive on temporary agency work, and this may discourage some types of agency employment in future.

**Reducing recruitment costs.** By outsourcing functions such as job advertising and interviewing to private employment agencies, user enterprises can test agency workers' potential employability and monitor their on-the-job performance over short or extended periods, with minimal commitment.

**Externalizing risks associated with directly employing workers.** Use of temporary agency work can avoid the responsibilities of standard employment relationships, recruitment, selection, payroll administration, management of employee benefits and performance management. In some countries, enterprises can thereby avoid compliance with labour law, occupational health and safety regulations and so on. It may also be seen as a way to undermine trade unions and weaken workers' bargaining power.

### 4.3. The workers' perspective

A broad workers' perspective on private employment agencies' role in labour markets would consider non-agency workers whose interests are affected by businesses deciding to become user enterprises, as such workers may find their bargaining power is reduced, or their own jobs are put at risk, by the arrival of agency workers. This aspect clearly requires further research, but was not part of the topic selected for discussion by the ILO Governing Body when it approved the Forum.

Workers who seek employment with agencies do so for various reasons. Agency work is relatively easy to get – there is no need to invest in a cumbersome, lengthy search for a permanent job with an uncertain outcome. Agencies can be vital for less skilled workers who lack the informal networks and contacts that are often necessary to gain permanent employment. The unemployed may acquire skills and gain work experience in agency jobs that increase their productivity and thus improve their future labour market prospects.<sup>16</sup> To many, agencies offer a “foot in the door” in a particular industry or at a particular employer, possibly opening a way to permanent employment (temp-to-perm transition). Others simply prefer temporary work to other forms of employment. Most temporary workers would probably prefer full-time, permanent employment, and many trade unions would argue that agency employment was not a result of a positive choice by the workers concerned. Figures 12 and 13 provide data from union federations on this. Being able to move around contributes to one's personal and professional development, work experience, and ability to learn new systems and ways of working.<sup>17</sup> Some permanent staff choose agency work to avoid the pressure of permanent jobs (for example nurses and social workers).<sup>18</sup> For some workers, mostly women, temporary agency work offers opportunities to combine work and family responsibilities, potentially giving them more flexibility in designing their own working hours and more control over their working conditions than those working in regular jobs. However, job instability can negatively

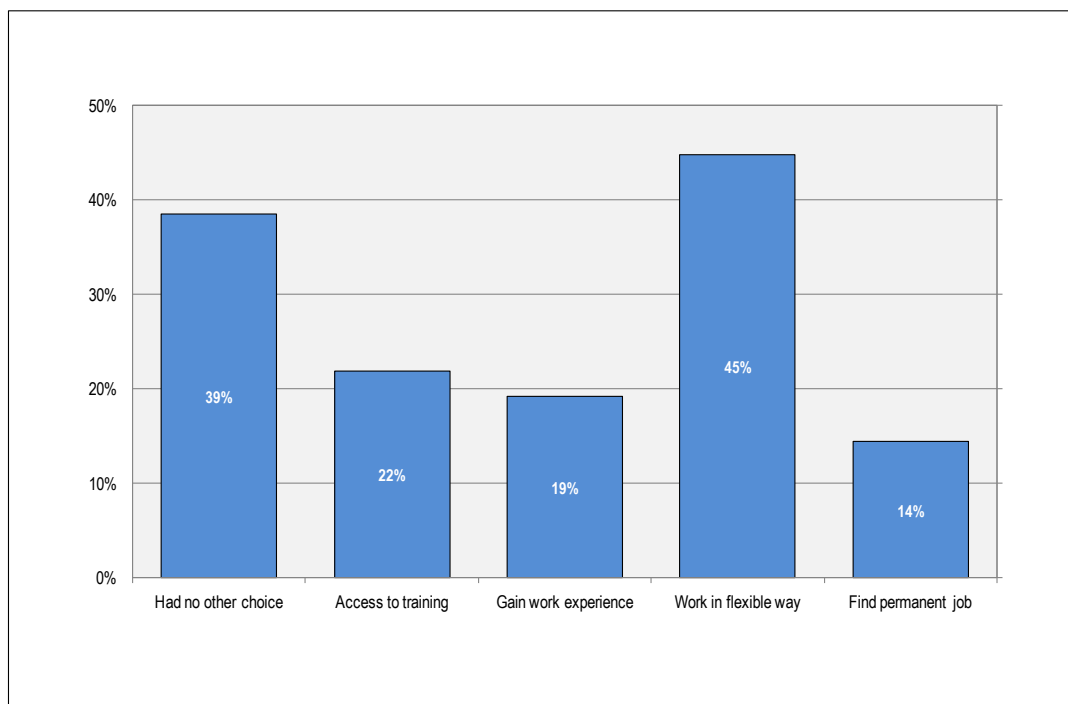
<sup>16</sup> M. Kvasnicka: *Does temporary agency work provide a stepping-stone to regular employment?* SFB 649 Discussion Paper 2005-031 (Berlin, Humboldt University, 2005).

<sup>17</sup> P. Alach and K. Inkson: *Temping: A study of temporary office workers in Auckland*, Research Report Series 2003/2, Labour Market Dynamics Research Programme (Auckland, Massey University, 2003).

<sup>18</sup> De Ruyter et al.: “Agency working and the degradation of public service employment: The case of nurses and social workers”, *International Journal of Human Resource Management* (2008, Vol. 19, No. 3), pp. 432–445.

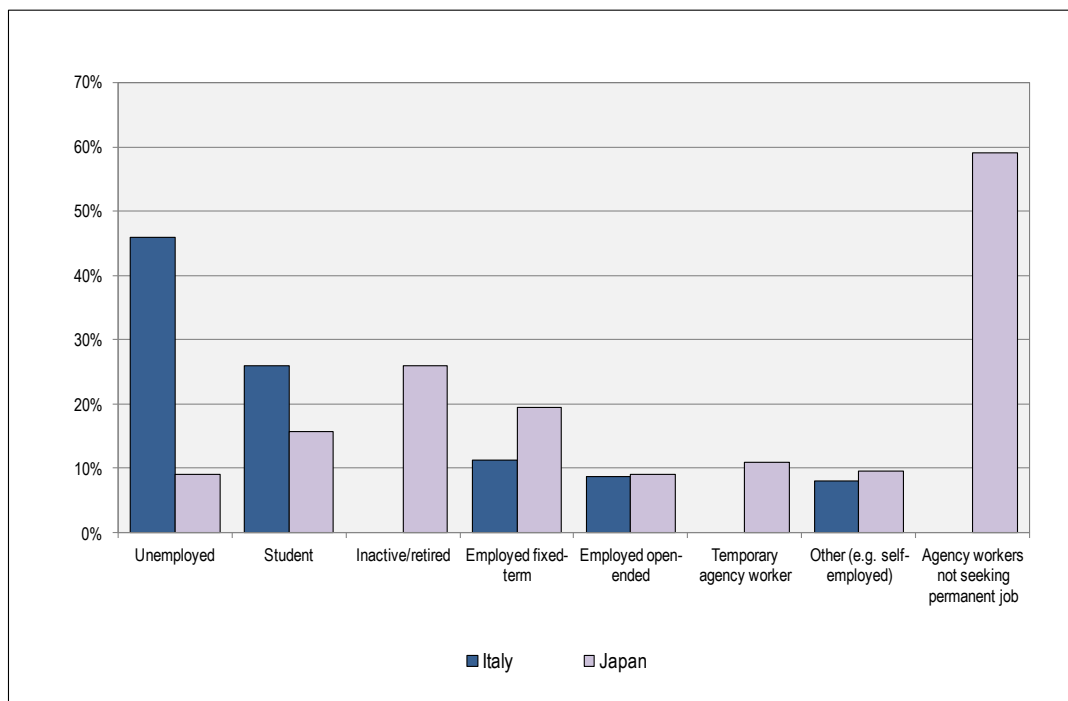
influence family formation. Having a temporary contract can delay motherhood, particularly for young women.<sup>19</sup>

**Figure 12. Reasons for working in a temporary job, Japan, 2009**



Source: ILO: Japanese trade union response to questionnaire.

**Figure 13. Usual situation prior to or after current assignment as an agency worker**



Source: ILO: Italian and Japanese trade unions' responses to questionnaire.

<sup>19</sup> SEO Economic Research: *Bridging the gap: International database on employment and adaptable labour* (Amsterdam, 2010), p. 73.

Despite differences in age, gender, skill level and experience, workers have generally either selected temporary agency work from among job options, or their skills profile matches agency work. Social and geographical divisions and inequalities within labour markets are the main reasons why some groups – particularly women – are drawn into (low-end) temporary agency labour markets. Workers lacking qualifications often find that most pathways into jobs are through private employment agencies. Thus young people, lone parents, minorities and women may have little choice but to take up low-paid, entry-level agency jobs, particularly in services sectors.<sup>20</sup> In many cases, these jobs will not lead to either permanent employment or upward mobility, even in the longer term.

Jobseekers' approaches and the importance of private employment agencies' role differ strongly between countries. The EU Labour Force Survey identifies methods jobseekers use to find work. The proportion of jobseekers in Europe using private employment agencies recently in their job search grew steadily in all countries from 13 per cent in 1998 to 22 per cent in 2009, with a higher percentage of men than women using agencies (table 10). The survey found significant national variations related to regulatory reforms and removal of sectoral restrictions, notably in Italy, Spain and Eastern Europe. Agencies played an important role in linking jobseekers and employers in Belgium, France, Ireland, the Netherlands, Spain, Switzerland and the United Kingdom, but were less significant in Scandinavian and Eastern European countries (figure 14).

**Table 10. Methods used for seeking work, EU-27, 1998–2009 (per cent)**

	1998	2000	2003	2006	2009
Contact public employment office	73.9	72.5	61.0	64.5	58.8
Contact private employment agency	13.2	15.2	19.3	19.3	22.0
Apply to employers directly	29.9	32.9	37.9	48.6	57.2
Ask friends, relatives, trade unions	42.6	43.9	45.3	58.2	65.8
Publish or answer advertisements	32.2	28.9	35.7	40.7	41.3
Other method	12.4	9.9	18.7	21.1	16.5

Source: Eurostat: *Methods used for seeking work: Percentage of unemployed who declared having used a given method* (2011).

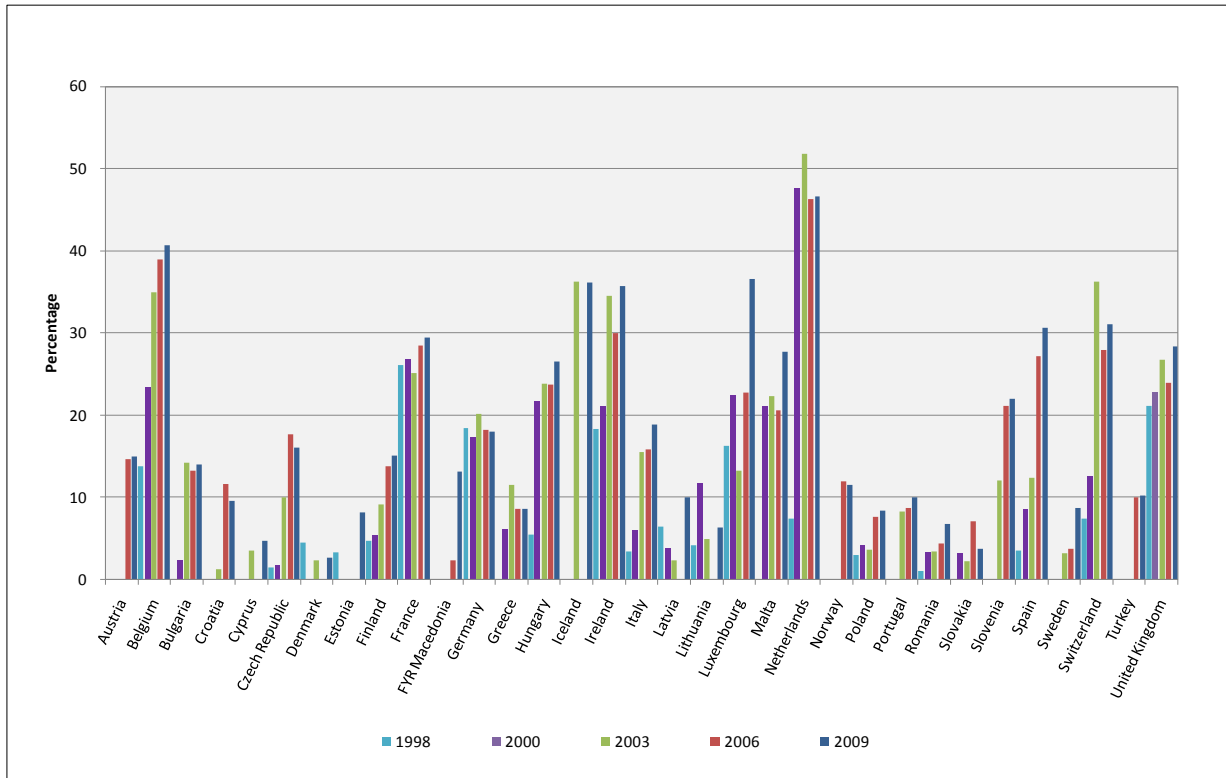
Agency workers considered the disadvantages of agency work to be job and employment instability, and sometimes receiving lower pay. However, agency nurses often earn higher pay than regular staff. Agencies in some countries (for example France and Portugal) are reported to pay higher “reference wages” to compensate for regular workers’ allowances, premiums and fringe benefits, and pay “end-of-assignment” bonuses. Another frequently mentioned disadvantage is that agency workers are not eligible for benefits such as health insurance and pension, sick pay, holiday or vacation entitlements. How significant this disadvantage is depends on the legal and collectively negotiated frameworks in which agencies operate. In Germany, agency workers are covered by the public pension and unemployment insurance system and must have health insurance.<sup>21</sup> In Portugal, agency workers are entitled to the wage set by collective bargaining for agency work or the wage paid by the user enterprise to similar workers, whichever is higher.

<sup>20</sup> For example, see C. Forde and G. Slater: “Agency working in Britain: Character, consequences and regulation”, *British Journal of Industrial Relations* (2005, Vol. 43, No. 2), pp. 249–271.

<sup>21</sup> M. Kvasnicka: *Does temporary agency work provide a stepping-stone to regular employment?* SFB 649 Discussion Paper 2005-031 (Berlin, Humboldt University, 2005).

In sum, for workers, choosing agency work can be the result of a positive selection, in other words, they choose to work for an agency because, at that moment, this responds better to their preferences than the other options available. Alternatively, it can be the result of a negative selection, in other words they work for an agency because, given their qualifications and work history, it is the only option realistically available at that specific time.

**Figure 14. Percentage of unemployed who declared having used private employment agencies for seeking work, Europe plus Turkey, 1998–2009**



Source: Eurostat: *Methods used for seeking work: Percentage of unemployed who declared having used a given method* (2009).

#### 4.4. The agencies' perspective

There have been significant changes in agencies' orientation towards additional or higher value services in recent years, reflecting user enterprises' reasons for using agency workers and evolution in work organization and business organization within enterprises in general. There are general trends towards using agency workers in the processes of restructuring public and private services, with some shift towards vendor-administered human resources solutions for staffing in hospitals and other service institutions; towards fewer permanent core staff and more temporary, seasonal and other shorter contracts; and towards more outsourcing, subcontracting and functional specialization. Agencies have emphasized services that go beyond temporary employment services, such as recruitment process outsourcing, permanent placement services (direct hire, temp-to-hire) and vendor management in human resources. Agencies have encouraged employers to change their strategies in organizing employment in recent years.<sup>22</sup> More employers have become user enterprises, and some user enterprises have significantly expanded their use of temporary staff.

<sup>22</sup> C. Forde et al.: "Help wanted?", in *Employee Relations* (2008, Vol. 20, No. 6), pp. 694–695.

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## 4.5. Agencies and disadvantaged groups

Agencies can play a positive role in getting the long-term unemployed, the disabled, older workers, ethnic minorities and people from other disadvantaged groups (back) into work. More research is needed on agencies' contribution to their employability. The possibilities for these groups to obtain regular jobs using ordinary channels are often poor, if at all available. Employers have prejudices regarding the employability of these people. Hiring them as agency workers opens the possibility to take away or modify that prejudice.<sup>23</sup> Or, as Erickcek et al. observed on the American context:

By lowering the compensation and firing costs, temporary help agencies made it more attractive for companies to try out workers with poor work histories, or otherwise "risky" characteristics ... although agency temporaries earned lower wages than those hired directly, many of these workers potentially benefited from the exposure to jobs that temporary help agencies offered. ... Another advantage to these workers was that if they did not succeed in the position or did not like the job, the assignment simply ended; it was not recorded as a dismissal or a quit, which would have tarnished their employment records.<sup>24</sup>

## 4.6. Agencies as stepping stones

Beyond this function of getting workers from disadvantaged groups into work, research has addressed the question whether agency employment helps or hinders future chances in the job market (the "stepping-stone" function). However, it appears hard to draw any generally valid conclusions from this research because studies are hard to compare with one another. Important differences exist in the sampling design, evaluation method employed, time periods considered and regulatory frameworks encountered in the different countries,<sup>25</sup> as well as the fact that many agency workers are not seeking permanent jobs.

For instance, Ecorys examined the temp-to-perm chances for agency workers in the Netherlands and found this to be on average 14 per cent over a longer period of time, in other words, one out of every seven temporary agency workers finds a permanent job at the company where they work.<sup>26</sup> CIETT indicated the median temp-to-hire conversion rate in the United States at 20 per cent (ranging from 40 per cent in the office/clerical segment to 10 per cent in the health sector).<sup>27</sup> Other studies found this percentage to be lower.

<sup>23</sup> Ecorys: *Uitzendkrachten in beweging: de samenstelling van de uitzendpopulatie in goede en slechte tijden* [Temporary workers on the move: Composition of temporary workers in good and bad times] (Rotterdam, 2009).

<sup>24</sup> G.A. Erickcek et al.: "The effects of temporary services and contracting out on low-skilled workers: Evidence from auto suppliers, hospitals and public schools"; in E. Appelbaum et al. (eds): *How employers are reshaping opportunity in the workplace* (New York, Russell Sage Foundation, 2003), pp. 383–384.

<sup>25</sup> M. Kvasnicka: *Does temporary agency work provide a stepping-stone to regular employment?* SFB 649 Discussion Paper 2005-031 (Berlin, Humboldt University, 2005).

<sup>26</sup> Ecorys: *Uitzendkrachten in beweging: de samenstelling van de uitzendpopulatie in goede en slechte tijden* [Temporary workers on the move: Composition of temporary workers in good and bad times] (Rotterdam, 2009).

<sup>27</sup> CIETT: *The agency industry around the world*, 2010, p. 50.

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The differences in research methods referred to above may explain these different outcomes but they may also be due to differences in the characteristics of the sample studied: their age, skill and education level, gender, profession or occupation, how long they had been unemployed, their motivation, and the state of the economy,<sup>28</sup> among others. In addition to these observable attributes there may be unobservable attributes explaining differences in outcomes.

Kvasnicka investigated for Germany the average effects of entering agency work on future labour market outcomes of jobseekers relative to the counterfactual in which they continue their job search in registered unemployment. His conclusion indicates a neutral effect:

Unemployed workers who entered agency employment within twelve months of unemployment registration turned out to benefit from both higher monthly employment and agency employment probabilities throughout the four-year period these workers were followed. ... They did not, however, enjoy greater chances of future regular employment, or greater risks of unemployment. While our results, therefore, do not lend empirical support to the stepping stone hypothesis of agency work for unemployed job seekers in Germany, neither do they confirm the existence of adverse effects on the future regular employment and unemployment of workers.<sup>29</sup>

Summerfield introduces age and gender into the equation. It is reasonable to assume that women who have left the labour force to have or raise children will deliberately choose agency jobs when re-entering to gain work experience in a sector where they would like to find permanent employment. These women lack recent labour market experience and are out of practice with job-hunting techniques and strategies, but do not necessarily lack skills.

For this reason, it is not surprising to find that women are benefitting from agency employment. ... However, holding a temporary agency job appears to present men with a wage penalty as they age ... this penalty extends into employment probability, suggesting that men experience harmful signalling effects from a résumé listing agency employment. Employers may be more sympathetic to younger employees who have recent agency experience because they have comparatively limited labour market experience.<sup>30</sup>

The stepping-stone question appears relevant only for workers aiming to obtain permanent jobs, not for students, workers in seasonal jobs (in sectors where permanent jobs are comparatively scarce, for example tourism), those who “temp” in addition to their regular job, or those using temping so as to devote more time to family or leisure activities, or having had bad experiences with permanent jobs and looking for “time out” or less stressful work alternatives.

Tempstaff, a leading Japanese temporary staffing agency, summarized the motives, behaviours and characteristics of its employees and found that age differences were an important variable:

<sup>28</sup> Ecorys (op. cit.) points out that the chance of transiting into permanent employment via a temporary job increases when the economy is growing at a good pace.

<sup>29</sup> M. Kvasnicka: *Does temporary agency work provide a stepping-stone to regular employment?* SFB 649 Discussion Paper 2005-031 (Berlin, Humboldt University, 2005), p. 28.

<sup>30</sup> F. Summerfield: *Help or hindrance: Temporary help agencies and the United States transitory workforce*, paper to the Canadian Economics Association Annual Conference (Quebec, Canada, 2010), pp. 14–16.

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- 20–25 years old: Reluctant to sign permanent contract, wish to get some real-world experience before committing to career, wish to test job market.
  - 25–40 years old: Wish to change career track after a term of regular employment, unwilling to work as a permanent staff member, looking for opportunities to use newly acquired skills.
  - 40+ years old: Work as temporary staff because of restructured workplace, wish to use previously acquired skills in new environment, wish for mid-career change or (for women) return to job market after having children.<sup>31</sup>

Ecorys also studied the retention rate of agency workers (in other words, the likelihood that an agency worker remained an active agency worker at the beginning of the year following his or her start in such work) in the Netherlands.<sup>32</sup> Unsurprisingly, motivation was found to be a key variable: people not looking for continued employment (for example students) had a below-average chance of being employed in the next period. The long-term unemployed, people with a disability or from ethnic minorities, and those aged over 45 also had below average chances. The retention rate of people aged between 25 and 45 was higher than average. The economic sector was also found to be a relevant variable. The retention rate was slightly higher than average in telecommunications, the finance sector and the public sector (except education), and below average for those active in agriculture, construction and care work.

Autor summarized the findings of four studies from three industrialized economies as follows: “None suggests that temporary help jobs have any lasting negative effect on the workers who obtain them. Whether holding these jobs has positive effects on workers outcomes relative to what they would have obtained in the absence of temporary help employment is less certain.”<sup>33</sup>

#### 4.7. Agencies are a heterogeneous group

Agencies are a heterogeneous group. There are a few global enterprises and tens of thousands of small and medium-sized agencies providing temporary employment services. Many have the stated intention to pursue a “high-end” strategy of becoming a relationship-driven, quality provider of highly skilled and sought-after temporary workers. Other “bulk supplier” agencies are more concerned with “filling the order” for “warm bodies” than taking the time to truly understand client and candidate needs and seeking to provide the “perfect match”.<sup>34</sup> Agencies cater to unskilled workers performing simple menial tasks, but also to executive secretaries, highly qualified software specialists and experienced petroleum engineers. As we saw earlier, workers’ choice for an agency can be the result of a positive or negative selection.

<sup>31</sup> Quoted in H. Meyer-Ohle: *Japanese workplaces in transition: Employee perceptions* (Basingstoke, Palgrave Macmillan, 2009), p. 129.

<sup>32</sup> Ecorys: *Uitzendkrachten in beweging: de samenstelling van de uitzendpopulatie in goede en slechte tijden* [Temporary workers on the move: Composition of temporary workers in good and bad times] (Rotterdam, 2009).

<sup>33</sup> D.H. Autor (ed.): *Studies of labor market intermediation* (Chicago, University of Chicago Press, 2009).

<sup>34</sup> Ecorys, op. cit., p. 18.



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Perhaps the only commonality agencies have is their central role in the triangular relationship.<sup>35</sup> While they operate mainly in OECD countries, box 1 shows that even that is changing.

**Box 1**  
**Private employment agencies in China**

Labour dispatch companies in China exist under different types of ownership: state run, privately run, or joint ventures with major global temporary staffing firms. These different types of ownership reflect the purposes for which they were established. Global firms came in the late 1970s and early 1980s to big cities to serve the outsourcing needs of their transnational clients. State-owned enterprises set up labour dispatch companies to dispatch workers laid off from their own operations following large-scale privatizations, usually for work in low-skilled service sectors such as cleaning, domestic service and security guard services. Labour exchange centres were set up by both migrant-sending provincial governments (for example Henan and Sichuan) and migrant-receiving ones (for example Beijing, Shanghai and Shenzhen) to coordinate supply and demand for migrant labour in labour-intensive manufacturers. The goal was to achieve “orderly” migration, in other words migration only for those who had jobs in hand. Privately owned labour brokers cater to the needs of migrants looking for work in the cities. These labour brokers have been the target of periodic government crackdowns. In the most recent period, the main clients of labour dispatch companies have been foreign-invested enterprises and government agencies – albeit for different reasons. Employers in China are reluctant to sign contracts with their workers and prefer to employ them informally. Foreign-invested enterprises use labour dispatch companies to recruit workers so as to meet Chinese legal requirements and have legal security when hiring temporary workers. Government agencies use labour dispatch companies because they face severe official staff quota constraints. Labour dispatch is a way for government agencies to reduce their official size and maintain a good level of activity.

Source: F. Xu: “The emergence of temporary staffing agencies in China”, *Comparative Labor Law and Policy Journal* (2009, Vol. 30), pp. 431–461.

China now has millions of agency workers. The Employment Contract Law 2008 revised the rules governing agencies’ operations, and the country has a well-developed ratings system for assessing agencies’ performance and compliance with the law.

#### **4.8. Agencies and the crisis**

Legislation and codes of conduct notwithstanding, agencies continue to be followed critically by many who are concerned about the deregulation of the labour market and its consequences for vulnerable groups. Fierce competition among agencies in labour-intensive, low-skilled activities such as cleaning or security services, where labour costs make up some 80 per cent of total costs, almost by definition leads to pressure on compensation and the pace of work. As Almega, the Swedish employers’ organization for cleaning and services companies, stated: “... competition appears to be increasing amongst member companies, and general price dumping can be observed. This hardly benefits companies that prioritize quality, the environment, education and a long-term perspective”.<sup>36</sup> The threat of price dumping in such labour-intensive industries illustrates the need for a clear legal framework (including a minimum wage), a proper enforcement of the law and where feasible a strong trade union (although for practical reasons agency workers are notoriously hard to organize, except through their agency).

<sup>35</sup> G. Gonos, quoted in N. Coe et al.: “The business of temporary staffing: A developing research agenda”, *Geography Compass* (2010, Vol. 4, No. 8), p. 1056.

<sup>36</sup> Almega: *Industry report 2009: Facts and developments of the industry* (Stockholm, 2009), p. 5.

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Elsewhere, there are reports of older core workers in Japan being forced to change their status to that of dispatch workers,<sup>37</sup> of permanent hotel housekeeping staff or jobs in London being transferred to an agency or a contract cleaning company,<sup>38</sup> and of German drugstore, graphical and automobile industry workers being forced to resign and then offered significantly worse contracts through agencies.<sup>39</sup>

As before, governments will have to carefully steer a middle course between, on one side, the objective of lowering unemployment and enlisting the help of agencies in making the labour market function more efficiently, and on the other side, their duty to protect workers against exploitation by private labour market intermediaries.

The impact of the global financial and economic crisis can be viewed from three perspectives:

First, user enterprises used the “pressure-valve” function to lay off workers recruited through agencies from mid-2008 to 2010. In several sectors, across much of the developed world and most noticeably in vehicle manufacturing, temporary workers bore the initial brunt of the lay-offs related to the crisis and user enterprises reduced their workforces through ending their agreements with agencies for the supply of workers.<sup>40</sup> In Germany, between 100,000 and 150,000 temporary agency workers lost their placements in the four to six months after October 2008. In the United States, the agency industry lost 52,000 jobs per month from December 2007 to April 2009 before recovering from October 2009 through to early 2011.<sup>41</sup> In Spain, placements through agencies fell 8 per cent in the last quarter of 2008, and dropped by 10 per cent in France over the same period.<sup>42</sup> In many countries, the number of temporary agency workers who had their placements ended is unknown, but it is clear that in many countries and sectors, temporary agency work became less prevalent. Overall, the biggest job losses were in countries where agency workers were concentrated in manufacturing.

Second, agencies with wider geographical reach and sectoral coverage experienced the geographically uneven consequences of the economic crisis. Although Adecco, Manpower and Randstad had competitive advantages over the others, even they were affected. Figure 15 (and table 1) indicate that geographical and sectoral differences among top agencies had limited influence on their fortunes during the crisis, with all declining in 2009 and most recovering slowly in 2010. Table 11 focuses on Adecco, showing substantial growth from mid-2009 everywhere (except Ireland, Japan, and the United Kingdom), following dramatic falls in revenue in early 2009.

<sup>37</sup> H. Meyer-Ohle: *Japanese workplaces in transition: Employee perceptions* (Basingstoke, Palgrave Macmillan, 2009).

<sup>38</sup> Y. Evans et al.: *The living wage in London's hotels: Challenging “subcontracting by stealth”*, Working Paper (Department of Geography, Queen Mary, University of London, 2007).

<sup>39</sup> Deutsche Welle: “Schlecker case casts temporary employment agencies in poor light”, 12 Jan. 2010 at <http://www.dw-world.de/dw/article/0,,5118711,00.html>; and “Industry and unions face off over temp workers”, 28 Feb. 2011 at <http://www.dw-world.de/dw/article/0,,14879060,00.html>.

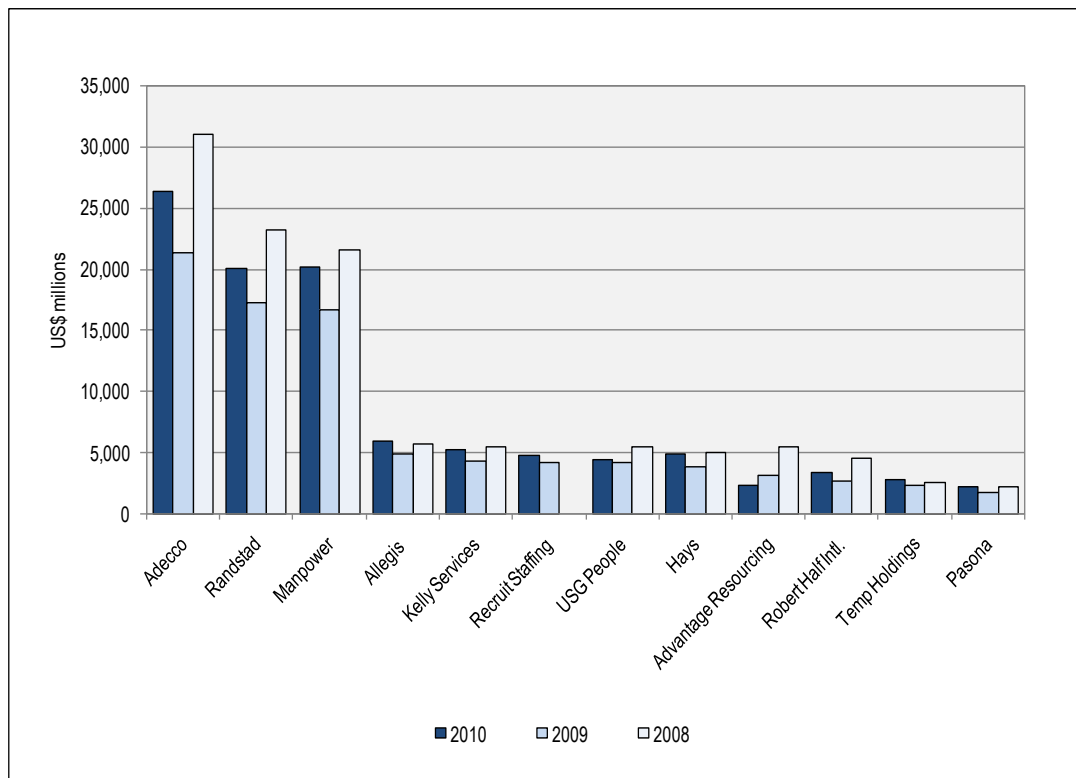
<sup>40</sup> ILO: *Private employment agencies, temporary agency workers and their contribution to the labour market*, Issues Paper (Geneva, 2009), Chapter 4.

<sup>41</sup> Bureau of Labor Statistics: *Current employment statistics highlights February 2011*.

<sup>42</sup> OECD: *Impact of the economic crisis on employment and unemployment in the OECD countries* (OECD, Directorate for Employment, Labour and Social Affairs, 2009).

Third, agency workers who lost their placements in the recent economic crisis faced a very difficult 2009; and 2010 was not much better. Many found new work, but employers and user enterprises were “rethinking their jobs strategy before they start hiring workers”.<sup>43</sup> In general, the balance of power moved further away from agency workers towards user enterprises. When the number of laid-off temporary agency workers increases, the competition for new placements intensifies. With a rise in the number of workers on their books, agencies intensified their selection and sorting of workers during the crisis, with some improvement when the recession abated.

**Figure 15. Leading 12 agencies’ revenues, 2008–10 (US\$ million)**

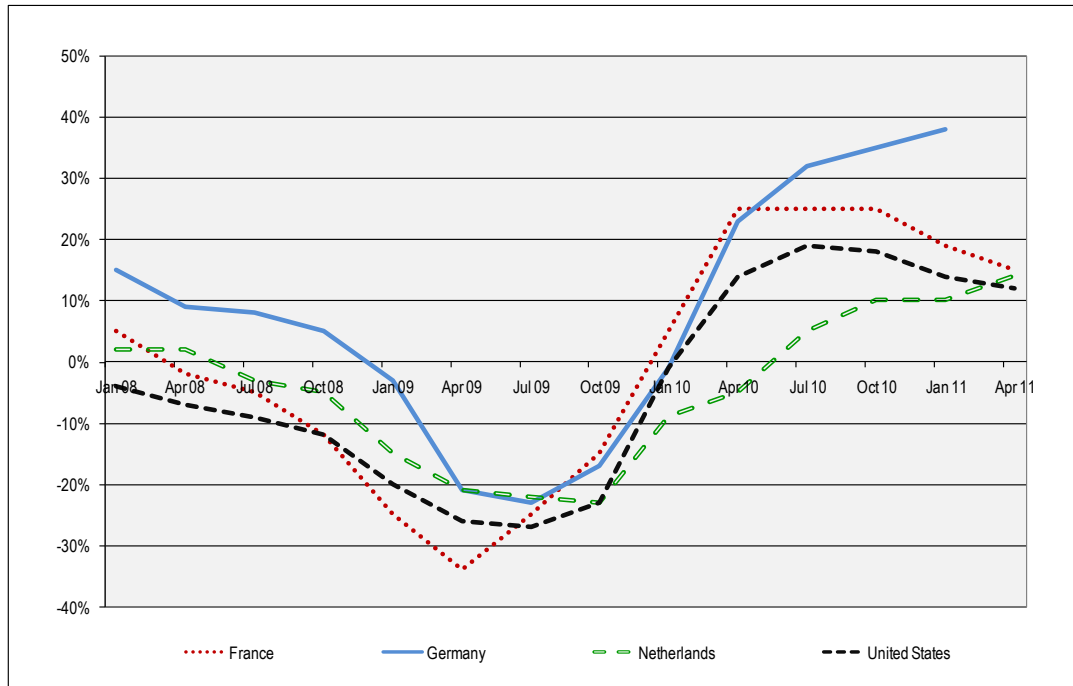


Source: Staffing Industry Analysts, 2010.

Figure 16 illustrates that the level of temporary agency work closely mirrors the downturn and slightly anticipates recovery in four selected countries.

<sup>43</sup> N. Ziemiński: “V, U, W-shaped rebound? Temp firms don’t see eye to eye”, 8 May 2009, at <http://www.reuters.com/article/companyNews/idUKTRE5474QC20090508?symbol=SFN.N>.

**Figure 16. Year-on-year change in temporary agency work, 2008–11**



Source: Staffing Industry Analysts, 2011.

**Table 11. Changing revenues, first quarters (Q1) 2008–09 and third quarters (Q3) 2009–10: The case of Adecco**

Territory	Percentage of total Adecco revenues Q3 2010 (%)	Revenues (€ million) Q3 2010	Percentage revenue growth Q3:2009 to Q3 2010 (%)	Percentage revenue growth Q1:2009 (%)
Australia, New Zealand	2	117	15	-24
Belgium, Luxembourg, Netherlands	5	24	13	-14
Denmark, Finland, Norway, Sweden	4	19	22	-32
Emerging markets	6	330	26	3
France	30	1 522	19	-32
Germany, Austria	7	338	29	-32
Italy	4	219	34	-45
Japan	7	340	-7	-1
Spain, Portugal	4	197	7	-42
Switzerland	2	119	17	-27
United Kingdom, Ireland	9	447	-1	-31
United States, Canada	20	994	20	-26

Source: Adecco press releases 6 May 2009 and 9 Nov 2010:

[http://www.adecco.com/MediaRelations/MediaReleases/Pages/News.aspx?newsURL=http://xml.newsbox.ch/corporate\\_web/che/adecco/press\\_release/239\\_112\\_65352.xml](http://www.adecco.com/MediaRelations/MediaReleases/Pages/News.aspx?newsURL=http://xml.newsbox.ch/corporate_web/che/adecco/press_release/239_112_65352.xml);

[http://www.adecco.com/MediaRelations/MediaReleases/Pages/News.aspx?newsURL=http://xml.newsbox.ch/corporate\\_web/che/adecco/press\\_release/239\\_112\\_65352.xml](http://www.adecco.com/MediaRelations/MediaReleases/Pages/News.aspx?newsURL=http://xml.newsbox.ch/corporate_web/che/adecco/press_release/239_112_65352.xml).

In recent times, several international-level policy statements have highlighted issues surrounding agencies and temporary work. For example, the June 2009 Global Jobs Pact refers to “establishing or strengthening effective public employment services and other labour market institutions”; “helping jobseekers by ... implementing effective, properly

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targeted active labour market policies; and enhancing the competence and increasing resources available to public employment services so that jobseekers receive adequate support and, where they are working with private employment agencies, ensuring that quality services are provided and rights respected”; and “providing adequate [social protection] coverage for temporary and non-regular workers”.<sup>44</sup> The G20 Labour and Employment Ministers’ Recommendations to G20 Leaders, 21 April 2010, urged that:

... where needed, social protection systems and active labour market policies be strengthened because significant numbers of people, including the most disadvantaged, will remain unemployed even after recovery takes hold and others will need help to adjust to structural changes in our economies. The historical experience of economic contractions triggered by financial crises suggests that unemployment rates may remain elevated for an extended period. ... In some countries, the rise of irregular and temporary employment relationships has left substantial portions of the workforce ineligible for existing unemployment insurance schemes. Where these circumstances exist it will be important to maintain and in some cases to expand income support schemes in a financially sustainable manner. Spending on social protection systems can also provide significant levels of job creation in the provision of services and multiplier effects, helping to sustain nascent recoveries. ... Active labour market policies that help the unemployed and working poor find suitable positions or assist them with training to upgrade skills are particularly important as we emerge from the crisis and adjust to structural changes in our economies, and should be integrated with social protection systems. Employment services can prevent workers from being left behind, detached from the labour market.<sup>45</sup>

<sup>44</sup> ILO: *Recovering from the crisis: A Global Jobs Pact*, adopted by the International Labour Conference at its 98th Session, Geneva, 19 June 2009, paras 9(4), 11(2) and 12(1)(vi).

<sup>45</sup> *G20 Labour and Employment Ministers’ Recommendations to G20 Leaders*, G20 Labour and Employment Ministers’ Meeting, Washington, DC, 21 April 2010.

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## 5. Case examples

### 5.1. Cooperation between public and private employment services

Governments that recognized the benefits of labour intermediaries for a smooth functioning labour market – but may have been concerned about possible abuse by private employment agencies – established free public employment services from the early twentieth century onwards. In some cases (for example Japan), the public employment service was given exclusive rights in labour intermediation, and private agencies were not allowed to operate. In others, the scope of private employment agencies' operations was limited (for example, they were banned from operating in certain sectors; or contracts could not exceed a certain duration) or they needed a licence to operate (Greece, Portugal).<sup>1</sup> US state legislatures followed a different approach. Rather than attempting to curtail the behaviour of abusers, states chose to “compete them out of business” by offering high-quality employment assistance services at public employment offices at no cost to jobseekers.<sup>2</sup>

Currently, however, many public employment services around the world (often with reduced resources) feel overwhelmed by the magnitude of their task, given the high numbers of unemployed, the rapid changes taking place in the labour market, and the growing diversity of jobs and jobseekers. This has raised doubts about the effectiveness and efficiency of these services and has led a growing number of governments to conclude that they need all the help that is available, including from agencies, to combat persistent high unemployment. That is argued to be the main reason underlying the deregulation drive that has been sweeping through OECD countries in the past decades.

The relationship between private agencies and public employment services differs by country. To an extent, they compete and that can be positive. To some extent, public and private employment agencies are complementary: public placement agencies provide free intermediation services, but increasingly they also deal with unemployment benefits. In France, Pôle emploi comprises both the public employment service and the unemployment insurance system. There is also scope for cooperation between public employment services and private employment agencies. Recommendation No. 188 suggests several areas for such cooperation, including the pooling of information; the use of common terminology so as to improve labour market transparency; exchanging vacancy notices; launching joint projects, for example in training; collaboration in the integration of the long-term unemployed; and staff training. In the Netherlands, most regional offices of the public centres for work and income also include a representative from one or more private agencies. In the Italian Province of Genoa, a specific form of collaboration between public employment centres and private employment agencies, the Provini Project, aims at the placement of workers registered with the public employment services.<sup>3</sup>

In France, a new cooperation agreement signed in December 2010 between the agency work federation, PRISME, and Pôle emploi aims to build on 15 years of

<sup>1</sup> ILO: 2010 General Survey, para. 244.

<sup>2</sup> D.H. Autor (ed.): *Studies of labor market intermediation* (Chicago, University of Chicago Press, 2009), p. 8.

<sup>3</sup> ILO: 2010 General Survey, para. 230.

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cooperation. The agreement focuses on enhancing exchange of information, facilitating recruitment processes (from unemployment to agency work, and temporary contracts to permanent ones) and labour market integration (particularly of young people and target groups, with skills enhancement for jobseekers in close cooperation with the sectoral training fund).<sup>4</sup>

In the Netherlands, an agreement with the public employment service means that the newly unemployed go directly to private employment agencies to find work; they only use the public employment service if still jobless after six months.<sup>5</sup>

In the United Kingdom, through a new Memorandum of Understanding launched in January 2011, the Recruitment and Employment Confederation and Jobcentre Plus have pledged to work together to help people into work by giving them the right support and best opportunities for training and jobs; to raise awareness of the benefits of a diverse workforce by giving employers clear guidance and access to the widest range of people seeking work; to give employers support in helping people with different circumstances get back into work; to act as champions against discrimination and challenge unfair employment policies; and to share knowledge and expertise on the best ways of helping people back into work.<sup>6</sup>

In China, the governorate of Xiangcheng (Suzhou, Jiangsu Province) undertook a public-private partnership in 2008-11 between the Bureau of Labour and Social Security and a private employment agency aimed at providing vocational skills training for 60,000 people and creating jobs for them, and offering training and additional assistance for 200-300 candidates to become self-employed. Operating in several industries with around 800 enterprises, it developed successful hotlines for job-matching, business incubators and an employment agency association to develop service standards and promote fair competition.<sup>7</sup>

In Poland, Romania and Sweden, cooperation with private employment agencies may include outsourcing of mediation services by the local authority responsible for public employment services. In Sweden, agreements can be signed between a local authority and an agency, aimed at finding full-time employment for at least one year for an unemployed person with special needs, with the local authority covering the costs incurred. Cooperation in Thailand includes arranging annual meetings of representatives of recruitment agencies to keep them updated on laws and regulations, regular inspections of agencies and establishing counter-fraud employment centres in every province. The Czech Ministry of Labour and Social Affairs collects information on agencies for publication on the Internet, updating the information monthly.

<sup>4</sup> Eurociett: *Dispatch*, Eurociett external newsletter (Brussels), Spring 2011, p. 4.

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> Unpublished paper for the Skills and Employability Department, ILO.

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## 5.2. Japan

A combination of slow economic and employment growth, legal changes and corporate human resources practices that favour protecting “core” workers have drastically changed the Japanese labour market. Private employment agencies, called labour dispatch firms in Japan, have been among the prime beneficiaries of these trends. Japan is currently among the largest employment agency markets in the world.

### A. Introduction

Few labour markets have undergone such transformation as the Japanese labour market in the past two decades. Up to 1991, Japan’s high economic growth and low unemployment had been the source of envy around the world. After 1991, everything changed; despite several costly stimulus packages, the economy and its employment creation have been deeply disappointing since the bubble burst.<sup>8</sup> The economy has been growing at historically low rates, thus creating only a low number of jobs each year. The unemployment rate has risen (from a low of 2.1 per cent in 1992) and so has the number of people with precarious jobs. These are key, but by no means the only, developments that have transformed the Japanese labour market in the past two decades. The steep rise in the number of private employment agencies and of people employed by them is another. The job prospects of young Japanese have changed dramatically in the past two decades. Unemployment is high among 15–19 year-olds (8 per cent in 2008) and 20–24 year-olds (7.1 per cent compared to the overall 2008 rate of 4 per cent).<sup>9</sup> This is the result of enterprises’ reluctance to hire new staff due to slow economic growth. But that is only one factor. Two other factors play a role. First, Japan’s population is ageing at a fast rate – in fact, at the fastest rate in the world. As in other countries, the Japanese Government has been raising the official retirement age and encouraging workers to retire later. Second, in Japan it is unusual for core workers to be made redundant.<sup>10</sup> As a result, the burden of adjustment has fallen disproportionately on non-core workers, especially women, young people and the elderly.

The core, overwhelmingly male, workers<sup>11</sup> enjoy an implicit lifetime employment commitment, seniority wages (in other words, wages and promotions are dependent on seniority) and good social benefits, including generous pensions, in exchange for a high degree of loyalty to their employer, as exemplified by high functional, geographical, pay and working-time flexibility.

Companies value the loyalty and flexibility of their core workforce, believing that core worker redundancies might cause loss of morale, lead to productivity declines among

<sup>8</sup> Japanese Government economic stimulus measures since 1991 have not lifted economic and employment growth to anything approaching pre-1991 growth rates. Low growth bordering on stagnation appears the maximum these costly packages managed to achieve (a *bad dream* scenario for other OECD countries taking similar measures).

<sup>9</sup> Japan Institute for Labour Policy and Training: *Labor Situation in Japan and Analysis: General overview 2009/2010* (Tokyo, JILPT, 2009).

<sup>10</sup> *ibid.*

<sup>11</sup> The vast majority of core workers are male. Heavy workloads, long hours of overtime and possible transfers to distant sites that are typically expected of the core workforce mean that female employees with domestic responsibilities have little choice but to opt for the supportive track or part-time work. See A.B. Keizer: *Changes in Japanese employment practices: Beyond the Japanese model* (Routledge, London, 2010).



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the workers who stay behind, and reduce the firm's ability to recruit new workers in the future.<sup>12</sup> Instead, enterprises have been cutting labour costs by trimming bonuses, cutting overtime, restraining basic wages, dispatching workers to subsidiaries, making wages more responsive to performance, and forcing older workers into retirement. They restrict the hiring of new recruits and expand the size of their non-standard workforce.<sup>13</sup>

However, this strategy of preserving jobs for incumbent workers at the expense of new recruits has created a demographic imbalance. The number of new recruits has dropped dramatically since the early 1990s. According to official statistics, in March 1992, enterprises wanted to hire 1,670,000 new [high school] graduates; by March 2003, this number had tumbled to 220,000, but recovered slightly to 290,000 by 2006.<sup>14</sup> No comparable official figures exist for college and university graduates but available statistics point to a similar, if less dramatic, development. "Regardless of the data used, it is clear that from the mid-1990s firms had become much less likely than before to hire graduates straight out of secondary school and tertiary institutions."<sup>15</sup> The younger cohort is now clearly under-represented among permanent employees. Japanese companies are experiencing a rapid ageing of their workforce.<sup>16</sup> Osawa cannot help noting the irony of it all: "Firms currently have workforces that are top-heavy with older, highly paid, but less productive workers at a time when cutting costs and raising productivity are necessary in the face of heightened global competition."<sup>17</sup>

Japan has a relatively poorly developed secondary labour market. The opportunity for choosing employment is concentrated on new graduates, and those opportunities diminish with age. As a result, the period immediately following graduation is the biggest opportunity a young person has to find a suitable job for the rest of his or her life.<sup>18</sup> "There are still many members of the second baby-boom generation, particularly college graduates, who passed through the deep freeze on hiring known as the 'ultra ice age' right after the collapse of the bubble economy and have yet to find suitable jobs."<sup>19</sup> This is an unfortunate development in a country where much on-the-job training is provided.

This development is also remarkable given that the number of graduates seeking work has been dropping since the early 1990s. Under normal circumstances this should have led to a labour shortage, but the fact is that demand for new graduates decreased faster than

<sup>12</sup> See S.K. Vogel: *Japan remodeled: How government and industry are reforming Japanese capitalism* (Cornell University Press, Ithaca, 2010); and M. Osawa: "Japan's changing economy and women workers", in *The Japanese Economy* (Winter 2004–05, Vol. 32, No. 4), pp. 96–108.

<sup>13</sup> *idem.*

<sup>14</sup> R. Kosugi: *Escape from work: Freelancing youth and the challenge to corporate Japan* (Melbourne, Trans Pacific Press, 2008), p. 16.

<sup>15</sup> *ibid.*, p. 17.

<sup>16</sup> At large companies with more than 1,000 employees the ratio of those aged 45 and over to the total number of full-time male employees increased from 22 per cent in 1979 to 37 per cent in 2000 – see Y. Genda: *A nagging sense of job insecurity: New realities facing Japanese youth* (Tokyo, International House of Japan, 2005).

<sup>17</sup> M. Osawa, *op. cit.*, pp. 96–108.

<sup>18</sup> Genda, *op. cit.*

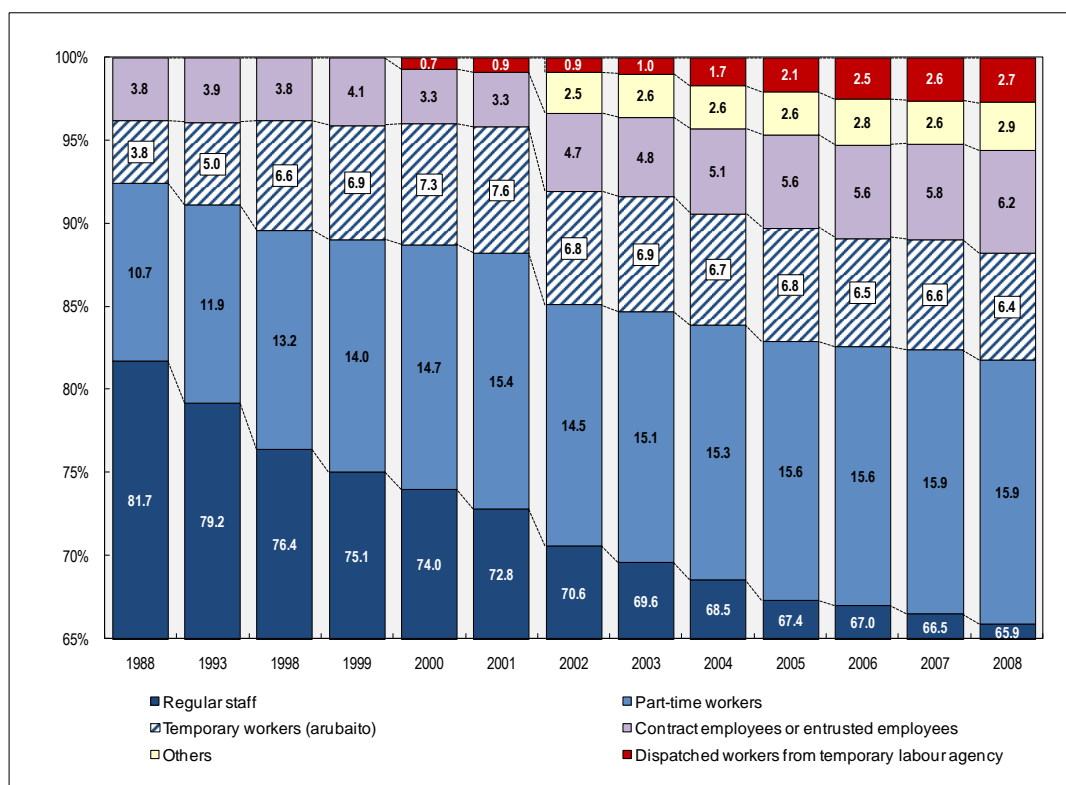
<sup>19</sup> *ibid.*, p. 61.

their supply. As a result, the proportion of young people seeking employment outside the normal channels, including through agencies, has grown over time.<sup>20</sup>

## B. The rise in non-regular jobs

Slow economic growth and the extension of the retirement age – in combination with the erosion in protection traditionally offered to core workers – have thus led to fundamental transformation in the Japanese labour market (figure 17).

Figure 17. Japan: Proportion of employees by type of employment, 1988–2008



Source: Japan Institute for Labour Policy and Training: *Special survey of the labour force survey 1988–2001*; and *Labour force survey (detailed tabulation) since 2002*.

The share of non-regular employees nearly doubled from 18.3 per cent of the employed workforce in 1988 to 34.1 per cent in 2008. Most of these are part-time workers (15.9 per cent in 2008), temporary workers (6.4 per cent in 2008) and contract workers (6.2 per cent in 2008). The fastest-growing group, however, is dispatched workers from temporary labour agencies, whose share increased from 0.7 per cent to 2.7 per cent (and from 330,000 to 1.4 million) between 2000 and 2008.<sup>21</sup> As is the case elsewhere, the rise in non-regular workers partly reflects changes in workers' preferences. However, the increase is often based on companies' strategies to adjust to the more uncertain economic environment, and to reduce labour costs.

<sup>20</sup> R. Kosugi, op. cit., p. 236.

<sup>21</sup> Japan Institute for Labour Policy and Training: *Labor Situation in Japan and Analysis: General overview 2009/2010* (Tokyo, JILPT, 2009).

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Two caveats are in order, though. Figure 17 illustrates changes in different types of non-regular employees, but the data on regular employees should be considered with caution. The distinction between regular and non-regular employees does not match exactly the one between core and peripheral employees. “Regular employees” comprise a much broader group than “core workers”. The core workforce has never been much above a third of the total (in big companies). Also, while it is true that many non-regular employees are in precarious positions, the regular versus non-regular distinction is not the same as the distinction between good and bad jobs. For instance, a large proportion of part-time employees hold relatively stable jobs,<sup>22</sup> and non-regular jobs need not be inferior. There are people in non-regular jobs who have developed a specific skill on their own, and who seek to utilize it in the labour force on a long-term basis. Kosugi notes that “In the IT industry, for example, many persons in their thirties and forties are working full time as dispatchers or contracted employees” and argues that a distinction between *typical* and *atypical* better reflects the fact that working conditions among non-regular employees vary considerably, and need not be inferior or unstable.<sup>23</sup>

As the graph indicates, non-regular workers fall into roughly four main categories: “part-time” workers (*paato*), many of whom actually work full time, are overwhelmingly women in their thirties to fifties who have re-entered the workforce.<sup>24</sup> These part-timers can be separated into two groups. The first consists of women mostly in their forties and fifties. Their children have already gained independence and this allows their mothers to work long hours, which are often close to, or even equal to, the hours of the regular employees; thus the somewhat paradoxical term of “full-time part-timers”. The second group consists of younger women in their thirties who still have to dedicate much time to their households and therefore work less than 30 hours.<sup>25</sup> Temporary, short-term workers (*arubaito*) are often high-school and university students working in addition to their studies; men have a slight majority among so-called contract or entrusted employees, many of whom are male retirees who continue working, either due to a low mandatory retirement age in their companies or because their company asked them to switch to a different employment arrangement.<sup>26</sup>

### C. *Dispatch workers*

The increase in the number of dispatch workers should be seen in the light of the broader growth in non-regular employment. However, the rise in the number of dispatch workers has been particularly fast. In 2009, Japan<sup>27</sup> represented 24 per cent of global revenues (United States 22 per cent; United Kingdom 12 per cent; France 8 per cent) and had 20,000 private employment agencies (United Kingdom 11,500; Germany 9,078; United States 3,640) with 83,808 branches (United States 20,000; United Kingdom 17,000). These agencies employed 185,000 internal staff (Brazil 169,635; United States

<sup>22</sup> A.B. Keizer: *Changes in Japanese employment practices: Beyond the Japanese model* (Routledge, London, 2010).

<sup>23</sup> R. Kosugi, op. cit., p. 224.

<sup>24</sup> This paragraph is based on H. Meyer-Ohle: *Japanese workplaces in transition: Employee perceptions* (Basingstoke, Palgrave Macmillan, 2009).

<sup>25</sup> *ibid.*, p. 115.

<sup>26</sup> *ibid.*, p. 118.

<sup>27</sup> Data in this paragraph are from CIETT: *The agency industry around the world*, 2011.

120,000; United Kingdom 108,833). Only in the daily average number of agency workers was Japan (1,098,191 full-time equivalents) outnumbered by the United States (2,010,000). The rapid growth of the Japanese agency sector has been impressive. Whereas agency worker numbers stagnated in the United States during 1998–2008 and rose by 50 per cent in the United Kingdom, in Japan their number quadrupled. The agency penetration rate rose from 0.5 per cent in 1998 to 2.2 per cent in 2008, surpassing the US and European averages. The growth in agency work is part of broader labour market changes resulting from slow economic growth, companies' coping strategies, the rising retirement age, older workers remaining in the labour force and gradual elimination of rules restricting the scope for agencies' activities (box 2).

<b>Box 2</b>	
<b>Timeline of deregulation of labour dispatch firms (agencies) in Japan</b>	
1947	Employment Security Law establishes public employment agencies and prohibits private job placement services.
1986	Worker Dispatching Law allows temporary staffing firms to intermediate in 13 (later extended to 16) occupations (the "positive list"), ranging from clerical and secretarial work to translators, software specialists and broadcast producers. The maximum period of dispatch is set at 9 months (later extended to 12 months).
1996	Worker Dispatching Law revised to extend the positive list from 16 to 26 occupations.
1997–99	Worker Dispatching Law further amended to switch from a "positive" to a "negative" list, a list with categories in which dispatch firms cannot intermediate. The most important of these excluded categories is manufacturing. Private employment agencies can now place all white-collar workers, except new graduates with less than one year of employment (this restriction was subsequently abolished). Establishment requirements and licence renewal are simplified. Depending on the occupation, the maximum period of dispatch is extended to three years.
2004–07	Temporary staffing in manufacturing is permitted and – under certain circumstances – also in medical services. Terms of dispatch are lifted to three years for all occupations.
<p>Source: N.M. Coe et al.: <i>Transforming the Japanese labour market: Deregulation and the rise of temporary staffing</i>, GOTSU Working Paper 11, 2009; A.B. Keizer: <i>Changes in Japanese employment practices: Beyond the Japanese model</i> (Routledge, London, 2010).</p>	

Legal changes are thus an important factor for explaining the strong growth in numbers of workers placed by private temporary staffing agencies in the past two decades. Previously, private job placement agencies had been outlawed by the 1947 Employment Security Law. Until 1986, when the Worker Dispatching Law made their operations legal, the few agencies that existed supplied mainly clerical and secretarial workers to foreign companies.<sup>28</sup> As was the case elsewhere, deregulation took place in stages, as box 2 demonstrates. At first, intermediation was allowed in a few occupations for placements of limited duration, but these restrictions were progressively eliminated. The shift to a negative list in 1999 and the possibility to intermediate in manufacturing in 2004 were particularly significant milestones.

In 2007, clerical (37 per cent) and manufacturing and construction<sup>29</sup> (40 per cent) were the main occupations for dispatch workers. However, legal changes go a long way in explaining the widely divergent trajectories of these two groups of occupations. In 1997, before intermediation in manufacturing was legalized, clerical work made up 70 per cent

<sup>28</sup> N.M. Coe et al.: *Transforming the Japanese labour market: Deregulation and the rise of temporary staffing*, GOTSU Working Paper 11, 2009; compare with box 4.1 on China.

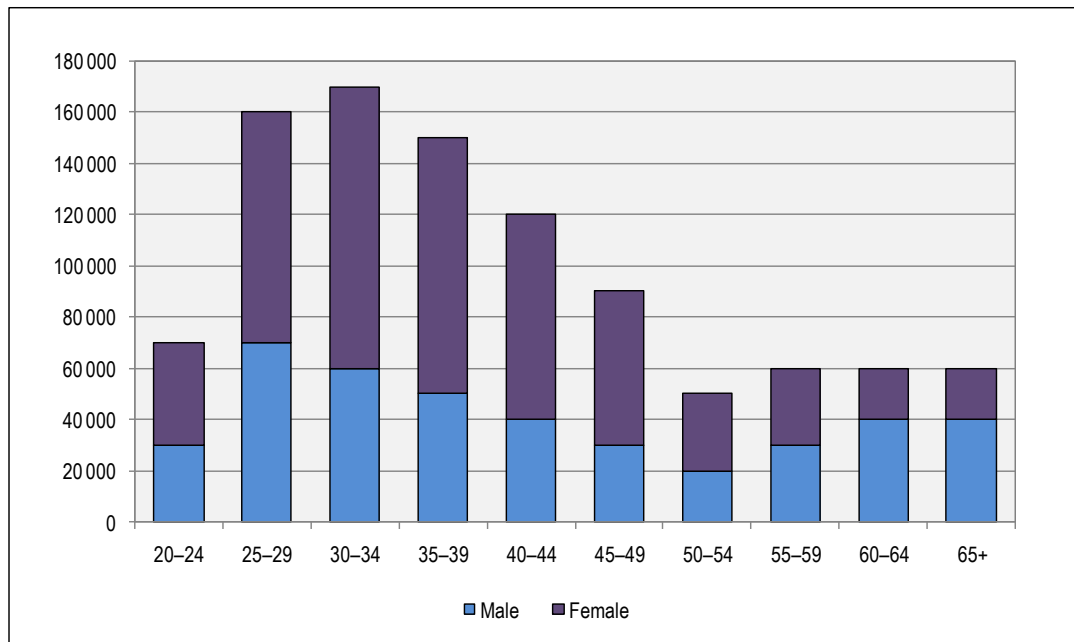
<sup>29</sup> These two are grouped into one category in the Employment Status Survey results quoted by the source.

of the total. Ten years later, and despite the number of clerical dispatch workers more than tripling, manufacturing (and construction) had become the largest category.<sup>30</sup> The steep rise in the overall number of dispatch workers is thus mostly due to the rising number of manufacturing (and construction) agency workers.

Temporary agencies employ people under two kinds of arrangements. Most are merely registered with staffing agencies and only receive employment contracts when dispatched to a client; they are usually relatively unqualified women, often used for administrative and sales tasks. However, some employees are permanently employed by the staffing agency – usually male professionals, often in software development or information technology.<sup>31</sup>

As figure 18 indicates, among the 980,000 employees in employment and worker dispatching services recorded in Japanese data for 2010, women constituted 60 per cent, and were in the majority in all age groups under 55. Most staff were concentrated in the 25–49 age range. The same was true in 2009, although figure 19 indicates that the number of men rose while that of women fell.

**Figure 18. Age and gender distribution of employees in employment and worker dispatching services, Japan, 2010 (thousands)**

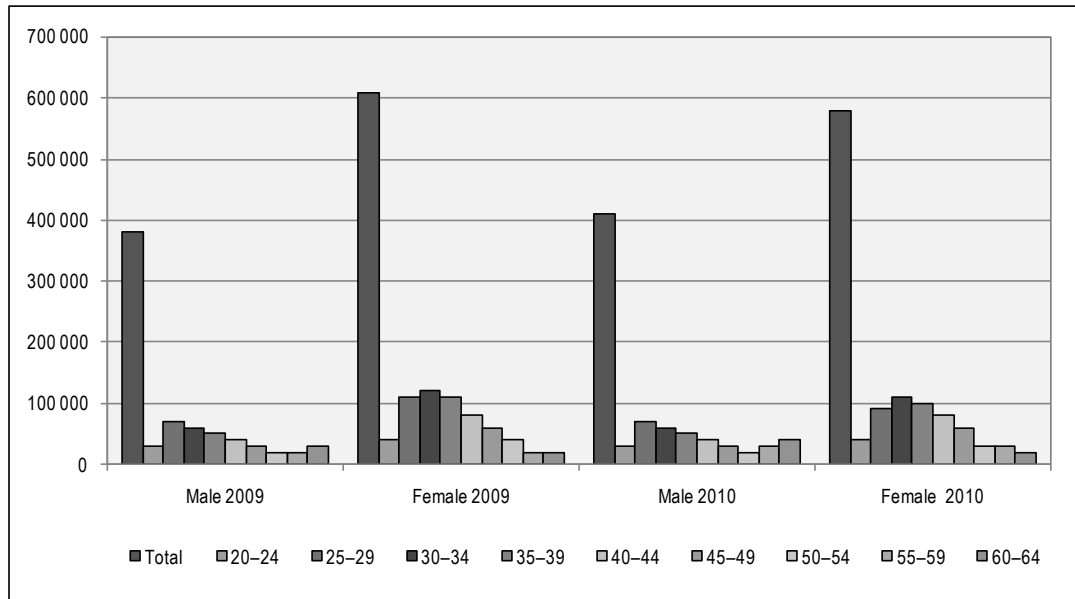


Source: Ministry of Health, Labour and Welfare: *General survey on dispatched workers* (Tokyo, Japan, 2008), table 11, Employed persons by age, industry.

<sup>30</sup> N.M. Coe et al., 2009, op. cit.

<sup>31</sup> H. Meyer-Ohle, op. cit., p. 130.

**Figure 19. Employment and worker dispatching services, Japan, 2009–10 (thousands)**

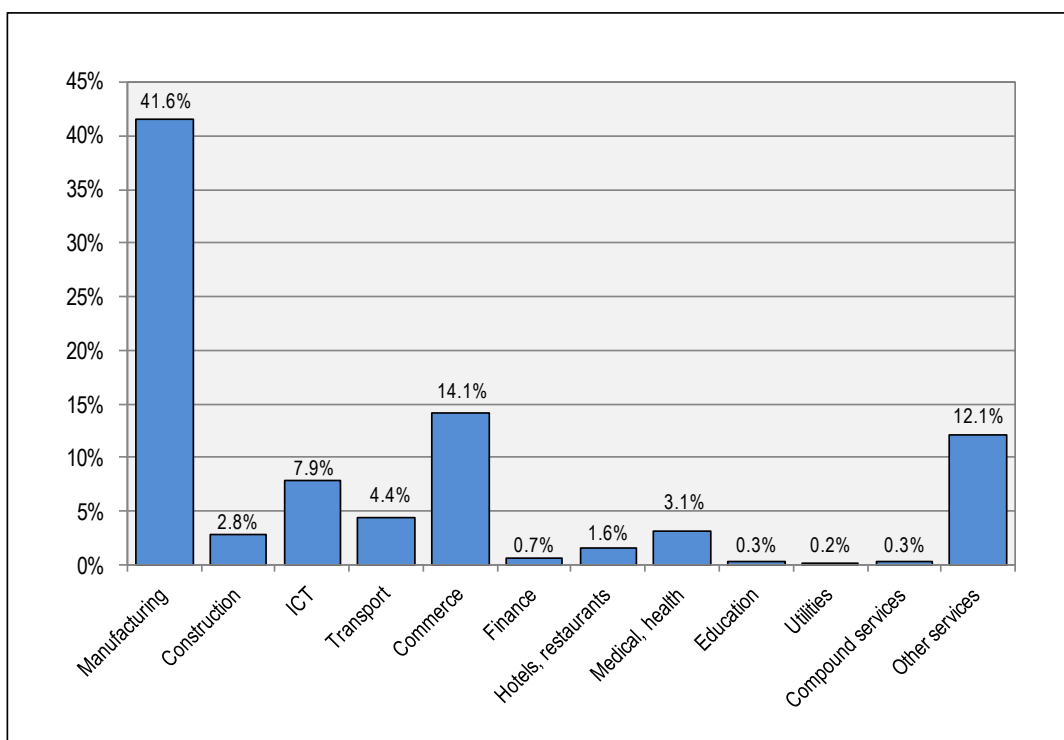


Source: Ministry of Health, Labour and Welfare: *General survey on dispatched workers* (Tokyo, Japan, 2008), table 11, Employed persons by age, industry.

#### **D. Sectoral distribution of dispatch workers in Japan**

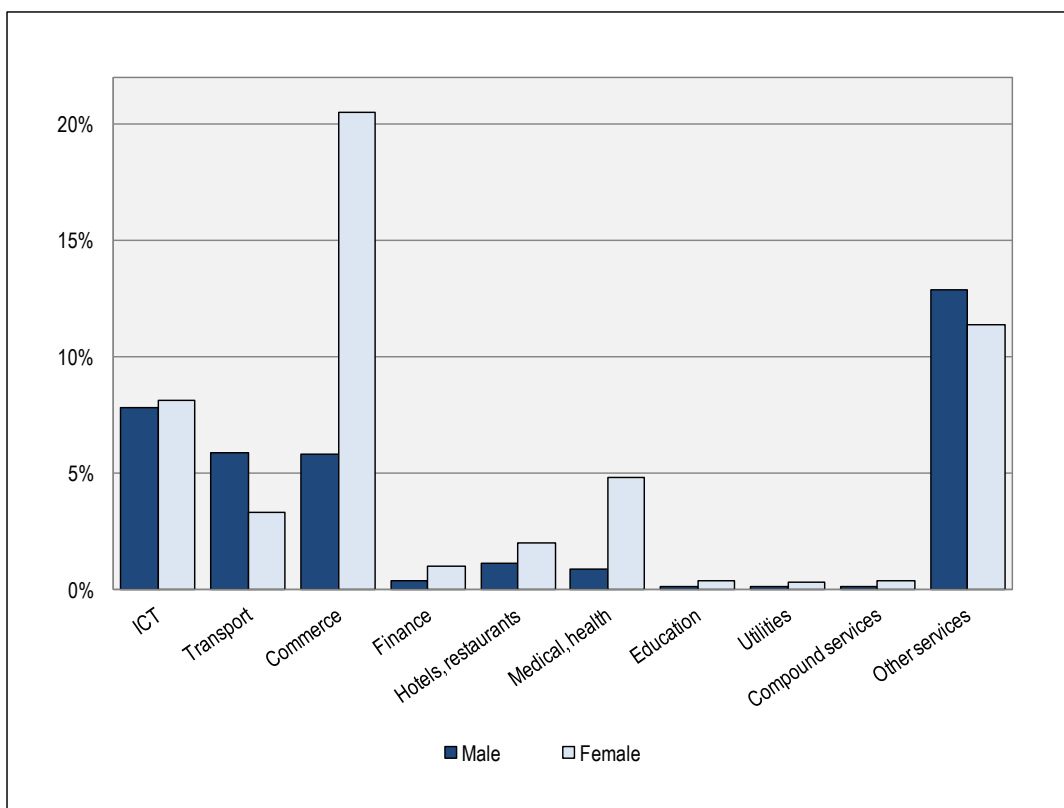
Figures 20 and 21, from Japanese Ministry of Health, Labour and Welfare data, provide snapshots of the sectoral patterns of employment in 2008–09. These indicate the importance of manufacturing and of services sectors in general in temporary agency employment, and of retail and wholesale commerce within services sectors. Women dispatch workers are in the majority in all services except transport.

**Figure 20. Sectoral distribution of agency work within manufacturing, services and other sectors, Japan, 2008**



Source: Ministry of Health, Labour and Welfare: *General survey on dispatched workers* (Tokyo, Japan, 2008), table 16, Sectoral distribution of dispatched workers.

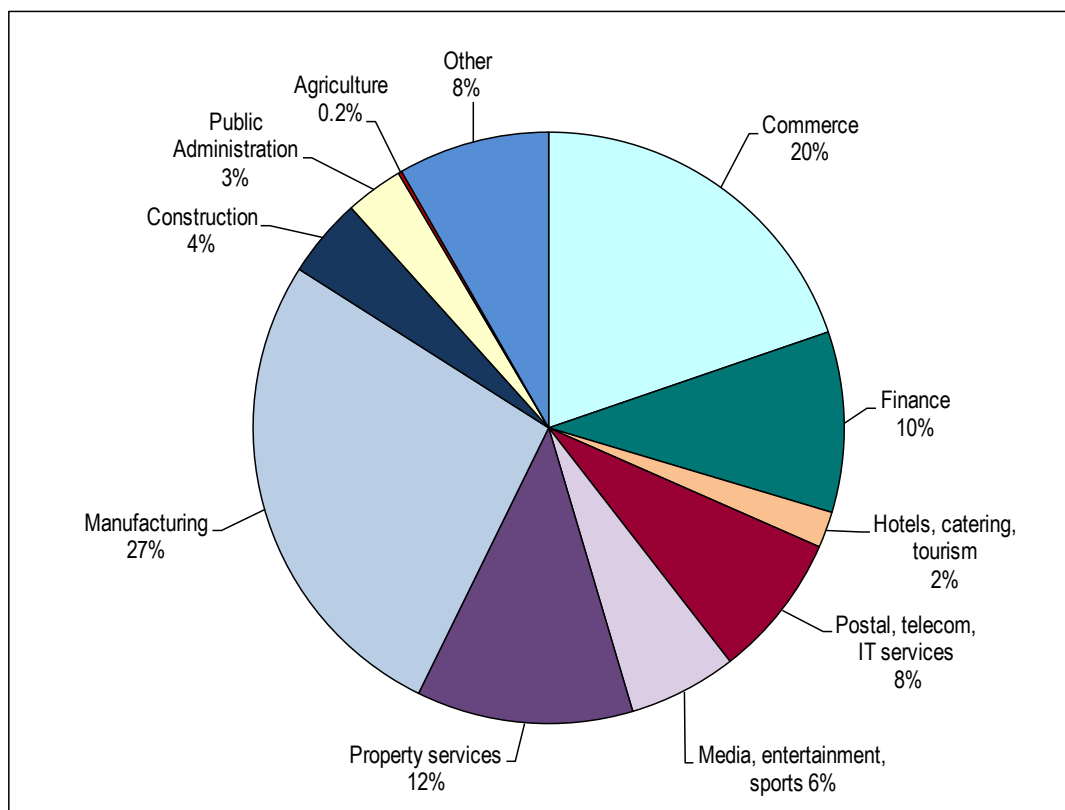
**Figure 21. Distribution of agency work within services sectors, Japan, 2008**



Source: Ministry of Health, Labour and Welfare: *General survey on dispatched workers* (Tokyo, Japan, 2008), table 16, Sectoral distribution of dispatched workers.

The Japan Staffing Services Association (JASSA) estimates the respective sectoral shares of employment agency revenues in 2009 as shown in figure 22.

**Figure 22. Sectoral distribution of agency sales revenue, Japan, 2009**



Source: JASSA, questionnaire response.

Agency workers are spread across a range of services sectors, including ICT, transport, banking and insurance, health care and general services industries. In addition to manufacturing, ICT and finance are the two industries where the proportion of temporary staff is highest, reflecting the placement of both professional and clerical personnel.<sup>32</sup>

Japan's distribution of temporary staffing in all occupational categories increased in absolute numbers over the 1997–2007 period, but there have been declines in several categories since then. In relative terms, manufacturing and construction expanded more than threefold from 2002 to 2007 after restrictions on placement in manufacturing were lifted in 2004, becoming the largest combined category by 2007 (40 per cent of the total), while clerical work fell from 50 per cent to 37 per cent of dispatch worker employment, but the trend reversed during the economic crisis.

<sup>32</sup> See: ILO: *Private employment agencies, temporary agency workers and their contribution to the labour market*, Issues Paper for discussion at the Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No. 181), ILO Sectoral Activities Programme (Geneva, 2009), table 3.5, and Employment Status Survey.



### 5.3. South Africa

#### **Supply of temporary workers for major sporting and entertainment events**

At the FIFA World Cup 2010, temporary workers were engaged in multiple categories – from building stadiums and completing the Gautrain to hospitality services and event management during the tournament. Around 80,000 temporary positions were created, and several leading agencies managed projects of varying sizes during the tournament. Large music concerts and regular conferences or *indabas* involved the supply of local temporary workers in fields such as security, cleaning, ushering and catering, and it is reasonable to assume that agencies were used.

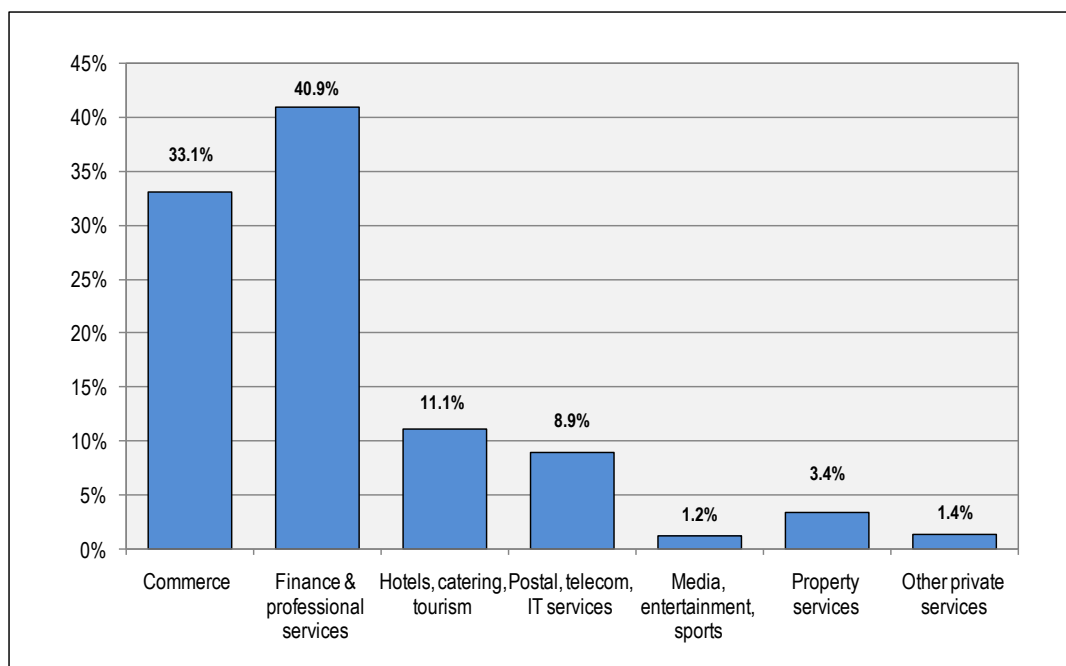
#### **Training schemes for agency workers in private services sectors**

South Africa’s dedicated skills development programmes (under the sector education and training authorities) is based on a 1 per cent payroll levy for all employers. Most skills development work is done by agencies (on behalf of their clients), and includes skills programmes (short courses for specific skill sets), learnerships and apprenticeships (year-long experiential technical training). Over the first decade of the National Skills Development Strategy, agencies concluded over 20,000 learnerships, 95 per cent of which were with unemployed learners.

#### **Cooperation with public employment services to help jobseekers**

The Association of Personnel Service Organizations regularly collaborates with government and non-governmental organizations, for example training over 120 public employment services officials, based in Gauteng, in August 2010 on new recruitment and selection skills.

**Figure 23. Sectoral distribution of agency work in private services sectors in South Africa**



Source: Employer questionnaire response.

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## ***Developments on labour broking in South Africa***

Temporary employment services, which have grown considerably in recent years, especially in the finance and commerce sectors among private services (figure 23), are currently regulated by Section 198 of the Labour Relations Act 1995. This provides that the user enterprise and labour broker are jointly and severally liable for any breach of a collective agreement or binding arbitration award that regulates terms and conditions of employment; or of the Basic Conditions of Employment Act; or of a determination made in terms of the Wage Act. However, workers may have difficulty in contesting dismissal or imposing liability to agencies or user enterprises due to the unique relationship of the three parties, while agencies and user enterprises may accept little or no responsibility towards the labour rights of employees. The protection of vulnerable workers has become a priority for many actors involved in the revision of the Labour Relations Act, with the Congress of South African Trade Unions calling for the outright banning of labour brokers, while the Federation of Unions of South Africa has called for their better regulation. Proposed legislative amendments were under review in late 2010 and early 2011, through a tripartite consultation process on four draft labour bills and on ways to address various issues regarding labour broking and worker vulnerability.

In its contribution to the 2010 *General Survey concerning employment instruments*, the Government indicated that the existing regulations on private employment agencies under the Skills Development Act 1998 allowed for their registration. The ILO Committee of Experts on the Application of Conventions and Recommendations invited the Government to supply information on the revision of the Regulations with regard to Private Employment Agencies (Employment Services for Gain), and encouraged tripartite consultations that would envisage the ratification of Conventions Nos 88 and 181.<sup>33</sup>

### **5.4. Morocco**

Leading private employment agencies entered the Middle East and North Africa (MENA) markets relatively recently, and remain concentrated in Arabian Gulf countries, Morocco and Tunisia. They started to develop the MENA market by promoting industry regulation and collaborating with organizations on youth employment.<sup>34</sup> Manpower, Adecco and others have also been working with governments in the MENA region in recent years to promote ratification of Convention No. 181. They played a role in Morocco's ratifying the Convention, although agencies consider the Moroccan labour code remains somewhat restrictive and limits labour market flexibility. There are limitations to the operations of private agencies, such as the six-month maximum length of temporary work assignment and restrictive agency registration requirements.

Morocco's labour market faces many challenges and opportunities. Approximately 50 per cent of the population is under 25 years of age, and unemployment is particularly high in urban areas and among educated young people. Many educated Moroccans neither have sufficient transition-to-work mechanisms nor possess the right skills to meet the job market needs in industries such as ICT and manufacturing.

<sup>33</sup> See: ILO: *Individual direct request of the Committee of Experts on the Application of Conventions and Recommendations* concerning the Unemployment Convention, 1919 (No. 2), South Africa.

<sup>34</sup> This section is based on a forthcoming SECTOR Working Paper – G. Ahmed: *Private employment agencies in the Middle East and North Africa: The case of Morocco*, 2011.

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In 2011, Morocco was the largest market in North Africa for employment agencies, with an estimated 1,200 agencies. Leading enterprises have upgraded, comply with the labour code, are usually ISO 9001 certified, and are engaged in training of young people and transition to work programmes. Leading agencies have expressed concern about youth employment, and their commitment to actively work on the issue. For example, Manpower Maroc, Adecco Maroc, RMO Maroc and others report formally collaborating with institutions to improve skills, raising awareness about the job market and facilitating migrant professional labour.

Agencies are pushing for better regulation and setting industry standards, aiming to raise the industry's profile, establish its legitimacy and protect their brands in countries where the industry is either underdeveloped or plagued with bad practices. Manpower, Adecco and Crit have stated their wish to play a major role, along with some local firms, in establishing a better platform for the industry, to weed out poor practices and to upgrade the industry. Global agencies in Morocco work with trade unions. Manpower began working with Moroccan trade unions since opening its country office in 1997, gaining trade union support for promoting changes to the labour code.

The agencies provide good labour market intelligence and are well connected to employers, and therefore can supply the Moroccan Government with information on market demand for skills. They also work with Moroccan training and education institutions to prepare young workers for the job market. They operate in the formal economy, with qualified professionals, generally servicing large multinational clients. Agency jobs are mostly in the administrative and technical fields and require qualifications or college degrees.

Leading agencies are trying to coordinate sectoral activities and have organized themselves through industry associations. However, membership levels are low and communication between firms, their associations and government is suboptimal.

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## 6. Regulation and sectoral restrictions relating to private employment agencies

According to Article 2(4)(a) of Convention No. 181, governments may exclude private employment agencies from operating in respect of certain categories of workers or branches of economic activity, after having consulted the most representative organizations of workers and employers. Such exclusion may be appropriate in cases where malpractice by private agencies has occurred, and governments consider that workers are better protected by public employment services. However, exclusion of private agencies from recruitment activities requires that public employment services are actually capable of providing them. This relates not only to governments' financial capacities, but also to jobseekers' views about using public employment services. If some jobseekers prefer private recruitment agencies to public services, it is better to authorize such agencies and regulate their participation in the labour market.

Leading agencies have developed mechanisms of self-regulation that promote good business practice and reinforce their status as key players in the labour market alongside public employment services. Self-regulation, however, must not replace the role of national legislators and law enforcement agencies. Legislation is a means of reconciling protection of workers' rights with the interests of agencies, as set out in Convention No. 181 and Recommendation No. 188. It shapes the agencies' role within the context of national employment and migration policies, local labour market specificities and socio-economic development levels. Regulation should therefore aim at ensuring that agencies offer their services in the interests of their clients (user enterprises and workers) while supporting overall national development goals and improving the functioning of labour markets.

Several countries in the EU have recently reformed temporary agency work legislation substantially, and lifted most sectoral and occupation restrictions, in line with the 2008 Directive. Other examples of regulation or licensing follow:

- China has developed a rating system for agencies to ensure quality of service operations and protection of workers.
- Uruguay's National Employment Directorate controls and regulates registration and licensing of agencies.
- Estonia, Georgia, Peru, Qatar and the United Arab Emirates require agencies to register prior to commencing operations.
- Greece, Kenya, Mauritius, Portugal and Ukraine have licensing systems.
- The Dutch Government set all temporary agencies an end-of-2011 deadline to enrol with the trade registry. Non-compliant agencies and user enterprises face fines of €12,000 per worker posted by an unregistered office, and higher fines for repeat offenders. By April 2011, only 35 per cent had complied. The Netherlands opted for self-regulation of agencies through a private certification system, in accordance with the national code of conduct partly based on collective bargaining agreements. The Dutch Labour Inspectorate concentrates on inspecting uncertified temporary agencies,

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particularly in sectors with high risk of non-compliance; it observed many abuses (for example, underpaying posted workers in construction and shipbuilding).<sup>154</sup>

Many countries elaborating such legal frameworks have sought guidance from the ILO. The 2007 ILO *Guide to private employment agencies*<sup>155</sup> provides information to national legislators for drafting laws in accordance with international standards; a comprehensive overview of regulatory frameworks, based on Convention No. 181 and Recommendation No. 188, and other international labour standards; and country examples to illustrate possible approaches to drafting legislation on agencies.

<sup>154</sup> “Netherlands: Mandatory registration for all temporary agencies”, in *Planet Labor* (2011, No. 110270, 18 April).

<sup>155</sup> ILO: *Guide to private employment agencies: Regulation, monitoring and enforcement* (Geneva, 2007).

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## Suggested points for discussion

With special reference to temporary agency work in private services sectors:

1. To what extent do private employment agencies contribute to job creation and decent work?
2. What forms of regulation of private employment agencies are appropriate and how can agencies' activities be monitored to make sure that the system of regulation that is in use is properly enforced?
3. How can the development of the private employment agency industry be effectively linked to protecting and improving agency workers' working conditions?
4. What can be done to promote social dialogue at enterprise, sectoral and national levels regarding agency work?

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## Appendix I

### **CIETT members' commitment: Towards well-functioning international labour markets**

#### ***Introduction***

Services provided by private employment agencies represent a modern answer to reconcile the requirement of labour flexibility for user companies and the need of work security for employees.

Being aware of such a social responsibility, the private employment agency industry has adopted, for many years, national codes of conduct at country level.

Because of the growing importance of private employment agencies at the international level and the need for strengthening self-regulation principles to enhance the quality standards of the industry, CIETT has established a global Code of Conduct, which provides general agreed principles on private employment agency practices, shared by all its members.

These common agreed principles are complemented by the CIETT Charter of Private Employment Agencies, which describe the obligations of CIETT members regarding their corporate social responsibility.

#### ***I. CIETT Code of Conduct***

##### **Principle 1 – Respect for ethical and professional conduct**

Members shall observe the highest principles of ethics, integrity, professional conduct and fair practice in dealing with temporary agency workers as well as other relevant stakeholders and shall conduct their business in a manner designed to enhance the operation, image and reputation of the industry.

##### **Principle 2 – Respect for laws**

Members and their staff shall comply with all relevant legislation, statutory and non-statutory requirements and official guidance covering private employment agencies.

##### **Principle 3 – Respect for transparency of terms of engagement**

Members shall ensure that workers are given details of their working conditions, the nature of the work to be undertaken, rates of pay and pay arrangements and working hours.

##### **Principle 4 – Respect for free-of-charge provision of services to jobseekers**

Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement.

##### **Principle 5 – Respect for safety at work**

1. Members shall act diligently in assessing risks in order to promote the safety of agency workers in their workplace.

2. Members shall inform agency workers whenever they have reason to believe that any particular assignment causes an occupational health or safety risk.

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## Principle 6 – Respect for diversity

Members shall establish working practices that safeguard against any unlawful or unethical discrimination.

## Principle 7 – Respect for the workers' rights

1. Equitable, objective and transparent principles for the calculation of agency workers' wages shall be promoted, considering national legislation and practices.
2. Members shall not in any way deny the right of freedom of association of their employees.
3. In accordance with national law and practices, private employment agencies shall not make workers available to a user company to replace workers of that company who are legally on strike.

## Principle 8 – Respect of confidentiality

1. Members shall ensure confidentiality in all of their dealings.
2. Members and their staff shall ensure that permission has been given and documented before disclosing, displaying, submitting or seeking confidential or personal information.

## Principle 9 – Respect for professional knowledge and quality of service

1. Members shall work diligently to develop and maintain a satisfactory and up-to-date level of relevant professional knowledge.
2. Members shall ensure that their staff are adequately trained and skilled to undertake their responsibilities and assure a high-quality service.

## Principle 10 – Respect for fair competition

Members shall assure mutual relations based on fair competition.

## ***II. The CIETT Charter of Private Employment Agencies***

Services provided by private employment agencies represent a statutory labour flexibility arrangement which provides workers an opportunity for employment security, enhanced occupational status and a stepping-stone function while, at the same time, reconciling employees' aspirations and employers' needs for flexible workforce.

As socially responsible employers, the CIETT members fully agree to recognize through this Charter of Private Employment Agencies that:

1. Employment through private agencies should respect the international and national principles of non-discrimination on all issues linked to working conditions.
2. Private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services.
3. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.
4. Private employment agencies should facilitate access to training for the agency workers.
5. Social dialogue and collective labour bargaining should be seen as an appropriate means to organize the private employment agency industry, when relevant and fitting.

At the same time, the positive contribution that private employment agencies make to the worldwide employment and economic objectives should be fully recognized by national governments, international institutions and relevant stakeholders. Indeed, services provided by



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private employment agencies can be part of the solution to improve the efficiency of the labour markets by:

- providing work to job-seekers;
- acting as a stepping-stone to permanent employment;
- enhancing job opportunities and integration in the labour market, in particular for the most disadvantaged group of workers;
- improving labour market's fluidity;
- helping the creation of jobs that would not exist otherwise and therefore contributing to reduce unemployment;
- cooperating with the public employment services;
- facilitating access to vocational training.

Additionally, any regulation on private employment agencies should enhance the fight against illegal practices and human trafficking.

Finally, as the International Confederation of Private Employment Agencies, CIETT fully endorses ILO Convention No. 181 on private employment agencies. CIETT supports its members in encouraging their respective countries to ratify this ILO instrument, in case they have not done so.

27 November 2006

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## Appendix II

### Memorandum of Understanding between CIETT corporate members and UNI Global Union on Temporary Agency Work

#### *Goals and purpose*

This Memorandum of Understanding (MoU) aims at creating a partnership between UNI Global Union <sup>1</sup> and CIETT corporate members <sup>2</sup> in order to achieve fair conditions for the temporary agency work industry and temporary agency workers through global social dialogue.

The signatories to this MoU recognize:

- that the ILO Convention No. 181 on private employment agencies and its accompanying Recommendation No. 188 provide a framework that allows for the improved functioning of private employment agencies;
- the ILO Declaration on Fundamental Principles and Rights at Work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation as a means to ensure decent working conditions for temporary agency workers;
- that temporary agency work contributes to improve the functioning of labour markets and fulfils specific needs for both companies and workers and aims at complementing other forms of employment;
- the need for further discussion and elaboration on a large number of issues. They shall seek to develop joint actions falling within the framework of their respective areas of responsibility.

1. UNI and CIETT corporate members recognize that temporary agency work can, to different degrees, contribute to:

- Facilitating fluctuations in the labour market, e.g. the matching of supply and demand.
- Implementing active labour market policies and creating pathways between unemployment and employment by:
  - Helping jobseekers entering or re-entering the labour market.
  - Helping disadvantaged people entering into the labour market.
  - Providing more work opportunities for more people.
- Facilitating the transition between education and work, e.g. by providing students and young workers with their first access to professional life and an opportunity to gain work experience.
- Facilitating the transition between assignments and jobs by providing agency workers with vocational training.
- Promoting conversion between different types of work contracts, e.g. by assisting in a transition from a temporary agency contract to fixed-term or open-ended contracts.
- Improving life–work balance, e.g. by providing flexible working-time arrangements such as part-time work and flexible working hours.
- Helping fight undeclared work.

<sup>1</sup> Industries covered by the agreement: Agency Staff, Commerce, Electricity, Finance, Gaming, Hair & Beauty, Graphical, IT & Business Services, Media & Entertainment, Postal, Property Services, Social Insurance, Telecom.

<sup>2</sup> Including Adecco, Kelly Services, Manpower, Randstad, USG People.

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2. UNI and CIETT corporate members agree that an appropriate regulatory framework for the operation of temporary work agencies needs to:

- Guarantee that temporary work agencies do not compete to the detriment of workers' rights and working conditions.
- Clarify the role, obligations and rights of the temporary work agency as the employer of the temporary agency workers.
- Combine adequate protection, decent working and employment conditions for temporary agency workers and proper conditions for the operation of temporary work agencies in a well-functioning labour market.
- Ensure that legislation regulating the use of temporary agency work is proportionate, non-discriminatory and objective; promotes decent forms of temporary agency work and effectively prevents potential abuses, such as undermining of employment conditions of workers.
- Promote quality standards within the industry and prevent unfair competition by fraudulent agencies and/or user companies, counter abuses and illegal practices and fight human trafficking.

3. UNI and CIETT corporate members agree that a regulatory framework on temporary agency work must include and promote:

- Principles as guaranteed by ILO Convention No. 181 and Recommendation No. 188 on private employment agencies, with a particular focus on the implementation of the no-fee-charging rule for jobseekers for temporary assignments and permanent placement services provided by the temporary work agency.
- Fair treatment for temporary agency workers with regard to their basic working and employment conditions based on the principle of non-discrimination (for instance equitable, objective and transparent principles for the calculation of agency workers' wages and benefits, considering national legislation and practices).
- Respect for freedom of association and the right to collective bargaining as guaranteed by ILO Conventions Nos 87 and 98.
- Sectoral social dialogue at national and company level for which collective labour bargaining is one appropriate means.
- Prohibition of the replacement of striking workers by temporary agency workers without prejudice to national legislation or practices.
- Attention to, and clarity of, benefits (i.e. salary, social insurance, pension, vocational training).

4. Actions to be taken jointly by the signatories

On national level:

- Identify and review obstacles of a legal or administrative nature that may limit the opportunities for temporary agency work to operate, and, where appropriate, work with the national governments to eliminate them.
- Review the need for systems of licensing and inspection and when relevant, work with the national governments for the introduction of such systems (which can include financial guarantees), which will contribute to the development of good industry standards, provided that such systems are proportional, non-discriminatory and objective and do not aim at hampering the development of temporary agency work.
- Work with the national governments to provide adequate and continuous social protection for temporary agency workers as well as subsistence payments provided for by safety nets after assignments.
- Promote sectoral social dialogue as the appropriate platform to negotiate working conditions of temporary agency workers as well as the conditions of use of temporary agency work.

On global level:

- Work with the ILO to promote ratification of ILO Convention No. 181 and the application of Recommendation No. 188.

- 
- Cooperate with the ILO, IOM and other organizations to promote international instruments and actions to eliminate human trafficking (e.g. promotion of ratification and effective implementation of relevant ILO Conventions on forced labour and migration, Athens Ethical Principles, UN.GIFT).
  - Continue to research the industry and further elaborate on perceptions and conditions for both workers and employers (e.g. on job creation, precarious work, etc.)
  - Promote the establishment of a global sectoral dialogue forum on temporary agency work.

5. Implementation of this Memorandum of Understanding

- UNI and CIETT corporate members commit to publicize this MoU throughout their membership and corporate structures respectively.
- In order to assess implementation and address any disputes that may arise concerning the application of this MoU, UNI and CIETT corporate members will meet twice yearly. This meeting will amongst other things review mutual respect for and implementation of this MoU.
- The secretariats of both organizations will maintain ongoing communications between those meetings.

*San Diego, 24 October 2008*

Philip J. Jennings  
General Secretary  
UNI Global Union

Leo Houwen  
Chair  
CIETT Corporate Members Committee

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## Appendix III

### Global Union Principles on Temporary Work Agencies

Policy positions differ in the trade union movement, both at national and international levels concerning the use of temporary work agencies. Views vary from total bans on such agencies, to partial bans, to strict regulation. There are also differences as to the basis on which workers should be covered by collective bargaining agreements. However, there are certain views shared by all Global Unions.

The first principle is that the primary form of employment shall be permanent, open-ended and direct employment.

#### **Concerns and challenges**

The use of workers provided by temporary work agencies raises concerns and challenges for trade unions. This includes the effect that the use of temporary work agencies has on workers with regular and permanent employment as well as on the conditions under which work is performed by workers engaged through such agencies. The triangular relationship between the worker, the user enterprise and the temporary work agency that supplies the worker can undermine labour and social protection, as well as the effective realization of the right of all workers to form or join trade unions and to bargain collectively.

Agency workers must be specifically guaranteed the right to join a union with a collective bargaining relationship with the user enterprise and be part of a bargaining unit comprising direct employees of the user enterprise and be covered by all collective bargaining agreements applying to the user enterprise.

#### Using temporary work agencies as a way of replacing direct and permanent employment

There may be legitimate demand-driven or business reasons for using temporary agency workers, including surges of work and seasonal employment, although such work can also be performed through direct employment. However, not all reasons for using temporary agency work are related to staff shortages or the “fluctuation of business” and it has become common to use temporary agency workers to fill previously permanent and direct positions and to reduce costs. Increasingly, workers provided by agencies are used to fill “core” jobs but are not given any opportunity to transition to direct permanent employment. In a growing number of instances, entire workforces are provided by temporary work agencies.

#### Using temporary work agencies to adversely change employment conditions, avoid social responsibilities and evade laws

Employers often use temporary agencies in order to avoid their legal obligations. This can, and does, lead to abuses such as social dumping and all kinds of discrimination. Work then becomes precarious and workers are denied the employment rights and working conditions to which they would otherwise be entitled. Sometimes these agencies are creations by the company or employer concerned, with the user enterprise becoming the sole client.

Workers provided by agencies frequently receive significantly lower compensation than regular employees performing the same work. Such workers are also often not entitled to the same levels of social protection, such as retirement provision, the right to unemployment compensation, sickness benefits or maternity leave. Employers commonly do not invest sufficiently in the education or training of agency-supplied workers. Inadequate education and training may undermine the quality of service provided by the agency workers, while lack of training on health and safety increases the risk of occupational accidents and diseases.

The cost of downsizing is lower if temporary agency workers are engaged because ending a commercial contract is often less costly than terminating an employment relationship. In various countries and sectors, the financial crisis resulted therefore in massive job losses for temporary

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agency workers, who are not generally entitled to any of the compensations that are required to be paid in the case of forced redundancies. This experience heightens the danger that as economies recover, employers will increasingly favour temporary agency work as a means to avoid the costs of terminating regular employees. This would add additional instability and volatility to the economy.

Where more and more workers are made “disposable”, many business risks are shifted from employers to workers.

### Using temporary work agencies to weaken trade unions, to avoid collective bargaining or to prevent union organizing

Employers are, at times, deliberately using temporary work agencies to reduce the number of workers covered by collective bargaining at their enterprises or to prevent unorganized sections of the workforce from seeking union representation and exercise their right to bargain with the user enterprise, which effectively controls terms and conditions of employment.

One of the principal reasons why workers do not form or join trade unions is fear of discrimination or dismissal. Temporary agency employment increases this fear because it is a way to avoid dismissal legislation, which has the effect of, indirectly, protecting the right to organize. Too often, contracts are simply ended. In addition, temporary agency employment reduces the workers’ stake in an enterprise, as well as the opportunity to participate in trade unions.

The use of workers supplied by temporary work agencies to replace striking workers or to undermine industrial action at a user enterprise is a serious violation of trade union rights.

### Using temporary work agencies as a means of exploitation

Where temporary work agencies are permitted to operate, they must be properly regulated and monitored in order to prevent abuses of workers, such as human trafficking or fee charging in cross border placements. When agencies involved in recruiting workers in one country for work in another country charge fees to the workers concerned instead of to the user enterprise, those abuses lead to extreme exploitation, including bonded or slave labour. All recruitment fees, including visa, transportation and hiring fees, must therefore always be borne by the user enterprise.

## ***Fundamental principles on temporary work agencies***

- The primary form of employment shall be permanent, open-ended and direct employment.
- Workers provided by temporary work agencies must be accorded equal treatment and opportunities, including equal pay for equal work, with regular and permanent employees with respect to terms and conditions of employment.
- Workers employed through temporary work agencies must have a recognized and enforceable written contract of employment, specifying their terms and conditions of employment.
- Where agencies are permitted to operate, they must be strictly regulated, including through licensing.
- Temporary work agencies must not be used to eliminate permanent and direct employment relationships, diminish the conditions under which work is performed, avoid collective bargaining relationships with trade unions or effectively make it impossible for an agency worker to join a trade union.
- Employers should consult trade unions before agency workers are used and negotiate over any effects that the use of these agency workers might have on regular employees, on working conditions or on the collective agreement.
- The use of temporary agencies should be restricted to cases of legitimate need. As a minimum, there should be defined limits on the use of agency workers, as well as restrictions on the duration of such employment.
- Workers provided by temporary work agencies must be guaranteed access to information on health and safety regulations in the workplace and be given the same equipment, induction and training as permanent workers.

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- Adequate and continuous social protection for agency workers, including social security coverage, must be ensured by employers and government alike.
  - Temporary work agencies must treat workers without discrimination on the basis of race, ethnic origin, colour, sex, sexual orientation, religion, political opinion, nationality, social origin, age, disability or any other form of discrimination. Appropriate regulatory frameworks (governmental, co-regulation or self-regulation) on private employment agencies should include and promote these principles, rights and obligations. These include the minimum standards outlined in ILO Convention No. 111.
  - Given the general over-representation of women in agency employment and the disparity in wages between permanent and agency workers, particular attention must be given to ensure that the equal pay provisions of Convention No. 100 are applied, including equal pay for work of equal value.
  - The ILO should play a much more active role in ensuring that temporary employment agencies respect basic labour standards, as well as in collecting data on abuses and best practices, while at the same time monitoring and analysing trends in employment in both the private and public employment agency sector. This research should focus on issues relating to the economic crisis and the Global Jobs Pact. The Global Unions should participate in this work.
  - Workers supplied by temporary work agencies must never be used to replace striking workers or undermine industrial action.
  - Temporary work agencies must not charge any fees to workers for dispatching them.
  - The user enterprise must be held liable for all financial and other obligations with respect to temporary agency workers should the agency fail to honour its responsibilities.

### ***Principles of public policy with respect to temporary agency work***

- Governments have the responsibility to protect the interests of society in stable employment relationships and to ensure the applicability of labour law, the branch of law developed to protect workers in both public and private sectors, in their unequal relationship with employers.
- Governments can limit or ban the use of temporary work agencies in order to protect these broader societal interests.
- Government must set strict regulations and licensing conditions if agencies are permitted to operate.
- Governments should consult trade unions on issues related to working and employment conditions of the agency workers, as well as on conditions of use of temporary agency work prior to making changes in the regulatory framework.
- The respective roles, obligations and rights of the workers, the temporary work agency and the enterprise using the worker must be clarified when there is an employment relationship between a temporary work agency and a worker.
- Governments must take genuine and concrete measures such as changes in legislation to ensure that workers dispatched by temporary work agencies are able to effectively exercise their right to join or form trade unions. This includes the right to join a union with a collective bargaining relationship with the user enterprise and be part of a bargaining unit comprising direct employees of the user enterprise and be covered by all collective bargaining agreements applying to the user enterprise.
- Governments should strengthen labour inspection, including through providing adequate resources, in order to effectively apply labour law and regulations to employment via temporary work agencies.
- Governments should provide effective mechanisms to protect all workers from health and safety hazards and ensure health and safety conditions of temporary agency workers are the same as of permanent ones. Governments should introduce sanctions for user enterprises, public and private, not complying with health and safety requirements.

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## ***Migrant workers dispatched through temporary agencies face specific problems***

- Migrant workers should receive details of their living and working conditions in a language they understand before leaving their country of origin.
- Governments must take active measures to prevent human trafficking and the exploitation of migrant workers by labour intermediaries, both public and private, including temporary work agencies.
- Governments should ensure that immigration legislation governing migrant workers recruited through agencies does not conflict with labour laws by imposing restrictions on migrant workers' rights to join trade unions or bargain collectively.
- Workers should not be required to pay deposits, visa, transportation and hiring fees. In the case of agencies dispatching workers to other countries, the agencies should be required to repatriate workers in the event that their employment ends or the user company disappears.
- Workers must not be required to surrender their passports or other travel or identity documents.
- Temporary migrant workers should have full rights to legal redress in the country where they work.

June 2010