

An assessment on temporary agency work regulation in Belgium, The Netherlands, France, and Germany

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About the author

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Introduction

Temporary agency work refers to the situation whereby a temporary worker is employed by an employment services firm, in order to be sent out to perform work for a temporary period.

In most countries, this employment services firm or temporary work agency is considered as the employer of temporary workers, meaning they are liable to comply with employment regulation, social security and tax obligations.²

These kinds of arrangements are typically subject to rules governing:

- the relationship between the temporary worker and the employment services firm
- registration, licensing, record keeping and reporting requirements
- limits to the use of temporary employees, detailing the type of work permitted, the maximum length of the assignment, salary levels and the reasons to employ temporary workers

Sometimes, special taxes, fees or costs are imposed in connection with the use of temporary workers.

Hereunder, an overview is compiled, detailing the different regulatory regimes in Belgium, the Netherlands, France and Germany, as well as possible regulatory changes.

¹ His detailed biography and CV can be found here:

<https://www.linkedin.com/in/pietercleppe/?originalSubdomain=be>

² https://www.researchgate.net/publication/241751995_Temporary_agency_work_in_the_Netherlands

Chapter 1. Belgium

1.1 Current regulations:

1.1.1 Licensing requirements

In Belgium, temporary work agencies are subject to prior authorisation without which a temporary agency cannot lawfully engage in temporary agency work activities. Authorisation is granted by the Regions and Communities.³

The specific conditions to be certified as a temporary employment agency are relatively onerous. In the Flemish Region, these agencies must pay a deposit of €75.000 to the Social Fund for Temporary Employees. One third of this total (€25.000) must be deposited when the application for recognition is submitted.⁴ In the Brussels Region, the recognition is only valid for two years. The employment agency must apply for renewal of the approval at the earliest six months and at the latest three months before the expiry of the approval. After that, it can however obtain recognition for an indefinite period.⁵ A similar procedure, with a provisional permit for two years, is in place in the Walloon Region as well.⁶

1.1.2 Salary requirements

During the period of temporary agency work, the temporary agency worker is entitled to the same wage or salary as that which he would have had if he had been taken on by the user as a permanent employee.⁷ When it comes to other conditions, temporary workers enjoy⁸ the same rights as regular workers, even if for certain things, like seniority rules, which determine salaries, special rules have been worked out.

1.1.3 Duration requirements

The maximum duration during which temporary work is permitted, as well as the procedure to be followed in this regard, differ depending on the motive for which temporary work is used.⁹

³ This according to the federal law of 24 July 1987

<https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1987072431&table_name=wet

An important legislative change happened with the federal law of 26 June 2013

https://www.law.kuleuven.be/arbeidsrecht/nieuwsbrieven/nieuwsbrief2013/nieuwsbrief2013_7.html

⁴ <https://www.vlaanderen.be/erkenning-van-uitzendbureaus>

⁵ <https://economie-werk.brussels/tewerstellingsagentschap-erkenning>

⁶ <https://www.wallonie.be/fr/demarches/obtenir-un-acordement-en-tant-quagence-dinterim-et-completer-son-rapport->

[dactivites#:~:text=Toute%20agence%20de%20travail%20int%C3%A9gritaire,le%20nouveau%20guichet%20mon%20Espace.](https://www.wallonie.be/fr/demarches/obtenir-un-acordement-en-tant-quagence-dinterim-et-completer-son-rapport-dactivites#:~:text=Toute%20agence%20de%20travail%20int%C3%A9gritaire,le%20nouveau%20guichet%20mon%20Espace.)

⁷ <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

⁸ https://werk.belgie.be/nl/themas/arbeidsovereenkomsten/uitzendarbeid#toc_heading_5

⁹

<https://werk.belgie.be/nl/themas/arbeidsovereenkomsten/uitzendarbeid#:~:text=Er%20zijn%20zes%20motieven%20waarvoor,Vervanging%20van%20een%20vaste%20werknemer>

As a principle, however, temporary workers may¹⁰ be employed for 6 months.¹¹ In the case of “inflow” into the labour market as a motive¹², this can be extended once with another 6 months, meaning there is a maximum of 12 months for each case where there can be justification to use temporary workers. Temporary workers may also be employed for 1 day, with a day contract. Successive day contracts are however not allowed¹³.

1.1.4 Restrictions for certain sectors

A whole range of different rules apply for different sectors. The construction industry, for example, faces special conditions and modalities for temporary work in the event of a temporary increase in work¹⁴ and also for temporary work in the food sector, specific regulations were adopted¹⁵ in 2020.

As is being explained in the appendix hereunder, some policies are being decided per sector, through “collective bargaining agreements” between employer federations and trade unions. Still, certain limits apply. Belgian legislation now bans sectoral collective bargaining agreements from containing a general prohibition on the employment of temporary workers.¹⁶ As a result, a general ban on the use of temporary workers in the moving and shipping industries was lifted in 2018.¹⁷

1.1.5 Other

Only certain types of temporary work can be arranged by temporary work agencies, classified according to the so-called “motive” to engage temporary agency workers.¹⁸ Mainly, these are the replacement of a permanent employee, meeting the demands of a temporary increase in work and ensuring the execution of exceptional work.¹⁹

In certain cases, there is a ban on making use of temporary agency work services, for example, when there is a strike or a lock-out.²⁰

¹⁰ In certain cases, when there is no trade union representation in a company, the maximum limit is 6 months in any case. <https://overheid.vlaanderen.be/personeel/rekrutering-en-selectie/uitzendarbeid>
<https://www.securex.eu/lex-go.nsf/PrintReferences?OpenAgent&Cat2=70~~22&Lang=NL>

¹¹ Except for artistic work, where no maximum limit is set
<https://werk.belgie.be/nl/themas/arbeidsovereenkomsten/uitzendarbeid/artistieke-prestaties-artistieke-werken-voor-eeen>

¹² https://www.law.kuleuven.be/arbeidsrecht/nieuwsbrieven/nieuwsbrief2013/nieuwsbrief2013_7.html

¹³ At least, this is the case in principle. Certain exceptions apply
https://www.law.kuleuven.be/arbeidsrecht/nieuwsbrieven/nieuwsbrief2013/nieuwsbrief2013_7.html

¹⁴ <https://www.securex.eu/lex-go.nsf/PrintReferences?OpenAgent&Cat2=70~~22&Lang=NL>

¹⁵ https://etaamb.openjustice.be/nl/koninklijk-besluit-van-19-november-2020_n2020204601.html

¹⁶ <https://werk.belgie.be/nl/themas/paritaire-comites-en-collectieve-arbeidsovereenkomsten-caos/paritaire-comites/bepaling-van>

¹⁷ <https://www.p-i.be/nl/nieuws/uitzendarbeid-verhuissector>

¹⁸

<https://werk.belgie.be/nl/themas/arbeidsovereenkomsten/uitzendarbeid#:~:text=Er%20zijn%20zes%20motieven%20waarvoor,Vervanging%20van%20een%20vaste%20werknemer>

¹⁹ <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

²⁰ <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

Temporary employment is also possible within the public sector, at least in Flanders and at the federal level, under certain conditions and in specified cases. It is not yet permitted in the Regions of Brussels and Wallonia.²¹

Before 2013, temporary agency work was mainly possible for the motives of accommodating a temporary increase in work or the temporary replacement of staff members. In 2013, a collective bargaining agreement²² – declared generally binding – also made it legal as a means to provide for the “inflow” of a worker into the labour market, but required that the temporary employment agency guarantees at least one month of employment for the worker concerned.²³

1.2 Possible regulatory changes:

1.2.1. Planned regulatory changes and likelihood of implementation

The current Belgian federal government, a coalition composed of not less than seven political parties, took office in October 2020, under the leadership of Prime Minister Alexander De Croo, a Flemish liberal. It is a coalition of centre-right and centre-left parties, combined with the greens, making it very hard to agree anything really. When it comes to temporary employment regulation, no major changes could be agreed. The only change, set out by PM De Croo in 2020 is that “the improper and excessive use of daily contracts in temporary employment will be combated, in consultation with the interprofessional and sectoral social partners.”²⁴

An application of this was how in November 2020, the federal government declared²⁵ a collective bargaining agreement for the food sector to be generally binding, which described a number of situations that should not be deemed “consistent with the normal use of temporary work”, including “improper use of successive daily contracts.”

1.2.2. Risk assessment

Temporary agency work has always been relatively strictly regulated in Belgium. Due to the big political differences between the Dutch-speaking and Francophone political parties, which contributed to almost two years of caretaker government from the end of 2018 until October 2020, no major reforms can be agreed at the federal level, which holds most of the competences on labour market policy.

As a result, no immediate big reforms of temporary agency work regulation can be expected in the near future, a view also held by temporary agency work industry federation Federgon²⁶. The 2024 elections may see a strengthening of the populist right in the Dutch speaking part of

²¹ This is the case at the federal policy level as well as the Flemish Region <https://www.prato.be/uitzendarbeid-in-de-publieke-sector-vlaamse-en-federale-overheid/> It is not yet permitted in the Regions of Brussels and Wallonia <https://www.p-i.be/nl/themas/overheidsdiensten#uitzendkracht-in-de-publieke-sector>

²² <http://www.cnt-nar.be/CAO-COORD/cao-108.pdf>

²³ <http://www.cnt-nar.be/CAO-COORD/cao-108.pdf>

https://www.law.kuleuven.be/arbeidsrecht/nieuwsbrieven/nieuwsbrief2013/nieuwsbrief2013_7.html

²⁴ <https://www.agoria.be/nl/human-capital-education/aanwerving-tewerkstelling-ontslag/de-formatienota-van-de-vivaldi-regering-wat-zijn-de-voorzien-maatregelen-in-zake-werk>

²⁵ https://etaamb.openjustice.be/nl/koninklijk-besluit-van-19-november-2020_n2020204601.html

²⁶ In discussion with me

the country and of the populist left in the Francophone part, further raising the chances of gridlock.

1.2.3. Appendix - Decision-making process and key actors

Belgium is a federal state. While most labour policies are still enacted at the federal level, the so-called Regions and Communities (this includes the Flemish Region, the Walloon Region, the Brussels Capital Region and German-speaking Community)²⁷ are able to decide certain aspects, for example the conditions and procedures to authorize temporary work agencies.

On top of that, also the so-called “social partners”, which are representatives of employer federations and trade unions, play a big role. Over time, they have agreed so-called “collective bargaining agreements”²⁸ which set out various details of labour regulation.

Collective bargaining in Belgium is structured²⁹ in the following manner:

- It happens at the central level, for whole of the private sector;
- There is also industrial industry-level bargaining, covering specific industrial sectors
- Also, there is bargaining at the company-level

For the first two cases, sometimes, but not always, Belgium’s federal government declares³⁰ collective bargaining agreements generally binding, meaning also companies not directly involved in it need to respect these agreements, sometimes at risk of criminal liability.

²⁷ <https://employment.belgium.be/en/themes/international/posting/working-conditions-be-respected-case-posting-belgium/temporary-agency>

²⁸ One such agreement in 2018, for example, tightened the possibility to extend duration with Successive day contracts <https://fondsinterim.be/nl/voor-de-werkgever/cao-nr-108>

²⁹ [https://www.worker-participation.eu/National-Industrial-Relations/Countries/Belgium/Collective-Bargaining#:~:text=Collective%20bargaining%20in%20Belgium%20is,some%20companies\)%20at%20the%20bottom.](https://www.worker-participation.eu/National-Industrial-Relations/Countries/Belgium/Collective-Bargaining#:~:text=Collective%20bargaining%20in%20Belgium%20is,some%20companies)%20at%20the%20bottom.)

³⁰ <https://www.aclvb.be/nl/vormvereisten-cao#wat-is-een-algemeen-verbindend-verklaring-van-een->

Chapter 2. The Netherlands

2.1 Current regulations:

2.1.1 Licensing requirements

The Netherlands was truly a pioneer when it comes to temporary staffing, together with the United States. Dutch entrepreneur Frits Goldschmeding founded³¹ Randstad in the 1960s, which is now among the largest global players. The Netherlands has been regulating temporary agency work since 1971, with a Collective Labour Agreement (CLA)³², covering the allocation, remuneration and protection of temporary agency workers. There are also specific Dutch laws covering temporary agency work, including the Allocation of Workers by Intermediates Act of 1998 (WAADI) and the Flexibility and Security Act of 1999.³³

At the moment, the procedure to start a temporary work agency is not too burdensome, as merely registration is required, not – yet – certification. This obligation was re-introduced in 2012³⁴, after it had been abolished in 1998.³⁵ Agencies that are not registered with the trade register held by the Chamber of Commerce will be fined, just like companies that hire staff from such agencies.³⁶

Between 1998 and 2012, there was a reliance on self-regulation by the sector. After 1998, when the requirement to hold an operating permit was abolished, the number of temporary employment agencies have multiplied, according to some estimates especially those involved with illegal workers.³⁷

2.1.2 Salary requirements

³¹ <https://fd.nl/ opinie/1388297/uitzendsector-is-toe-aan-hervorming>

³² <https://www.eurofound.europa.eu/publications/report/2009/the-netherlands-temporary-agency-work-and-collective-bargaining> Just like in Belgium, such a Collective Labour Agreement (CLA) is a deal between employers (or employers' organisations) and trade unions about wages and other conditions of employment, which can be declared generally binding by the government, and has been, in case of the sectoral CLA for temporary work agencies [https://www.rijksoverheid.nl/onderwerpen/arbeidsovereenkomst-en-cao/vraag-en-antwoord/wat-is-een-cao#:~:text=Algemeen%20verbindend%20verklaring%20\(AVV\),wordt%20dan%20algemeen%20verbindend%20verklaard.](https://www.rijksoverheid.nl/onderwerpen/arbeidsovereenkomst-en-cao/vraag-en-antwoord/wat-is-een-cao#:~:text=Algemeen%20verbindend%20verklaring%20(AVV),wordt%20dan%20algemeen%20verbindend%20verklaard.) <https://www.abu.nl/app/uploads/2019/11/CAO-voor-Uitzendkrachten-2019-2021-december-2019-EN.pdf>

³³ <https://www.eurofound.europa.eu/publications/report/2009/the-netherlands-temporary-agency-work-and-collective-bargaining>

³⁴ <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/registration-requirement-for-temporary-agencies-the-netherlands> Every company or legal entity that provides workers in the Netherlands must register this activity in the KVK Commercial Register. The legislation also applies to foreign organisations. Among those affected are temping agencies, employment agencies, payroll companies and jobs pools based outside the Netherlands but active in the Netherlands. All of these companies must register in the Commercial Register: <https://www.kvk.nl/english/registration/hiring-out-or-provision-of-workers-in-the-netherlands/> <https://www.flexhub.nl/blogs/eisen-uitzendbureau-starten-2022/#:~:text=Uitzendbureau%20beginnen%20eisen%202022,-Hoewel%20de%20uitzendbranche&text=De%20verwachting%20is%20niet%20dat,in%20de%20uitzendbranch e%20niets%20verandert.>

³⁵ https://www.researchgate.net/publication/241751995_Temporary_agency_work_in_the_Netherlands

³⁶ <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/registration-requirement-for-temporary-agencies-the-netherlands>

³⁷ <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/registration-requirement-for-temporary-agencies-the-netherlands>

Temporary workers must be paid the statutory minimum wage, but certain Collective Labour Agreements foresee higher pay. Sometimes, these stipulate that temporary workers must receive the same salary as employees that are employed by the hiring company and that perform similar jobs.³⁸

When it comes to other working conditions, there is a so-called “phase system” in place, enshrined by Collective Labour Agreements, which set out that the longer a temporary worker is employed by the temporary work agency, the more rights he or she will build up.³⁹ This will be discussed in 2.1.3.

Last but not least, there are also specific rules protecting foreign temporary labourers, which for example include a ban on deducting more than 25% of the statutory minimum wage in order to finance accommodation costs.⁴⁰

2.1.3 Duration requirements

There is no direct legal maximum duration, but there is a “phase system”, enshrined by Collective Labour Agreements, which set out that the longer a temporary worker is employed by the temporary work agency, the more rights he or she will build up.⁴¹

Each phase has specific characteristics. There are phase A, phase B and phase C, also called phase 1-2, phase 3 and phase 4 respectively, depending on whether a worker is covered by Collective Labour Agreement ABU or NBBU, which guarantee more or less the same salary levels⁴².

- Phase A or phase 1-2 is limited to 52 weeks. During this phase, an unlimited number of agency work employment contracts may be entered into. During this phase, there will be no notice period, neither for the temporary worker or the agency.⁴³ This has just been reduced from 78 weeks, as a result of a new collective bargaining agreement, reached in November 2021.⁴⁴

- Phase B or phase 3 can last for three years at most, which was four years before the new collective bargaining agreement entered into force⁴⁵ and the new Dutch government has pledged to reduce this to two years⁴⁶. During this period, no more than six agency work employment contracts for a definite period of time may be entered into. This is the phase

³⁸ <https://www.werk.nl/werkzoekenden/eu/working-netherlands/temporary-worker/index.aspx>

³⁹ <https://www.werk.nl/werkzoekenden/eu/working-netherlands/temporary-worker/index.aspx>
<https://www.sncu.nl/en/faqs/what-is-the-phase-system/>

⁴⁰ <https://www.werk.nl/werkzoekenden/eu/working-netherlands/temporary-worker/index.aspx> This flyer on “Working in the Netherlands as a temporary agency worker” is specifically aimed to inform foreign workers about their legal rights: <https://www.sncu.nl/uploads/sites/3/2019/10/SNCU-VOORLICHTINGSBROCH-UITZENDKRACHTEN-UK-WT-LR1510-ENGELS.pdf>

⁴¹ <https://www.werk.nl/werkzoekenden/eu/working-netherlands/temporary-worker/index.aspx>
<https://www.sncu.nl/en/faqs/what-is-the-phase-system/>

⁴² <https://www.fnv.nl/cao-sector/flex/uitzendkrachten/blijf-op-de-hoogte/cao-abu-of-nbbu> ABU CLA: <https://www.abu.nl/app/uploads/2021/06/CAO-voor-Uitzendkrachten-2021-juni-2021-web-EN.pdf> NBBU CLA: https://www.nbbu.nl/sites/default/files/2021-05/NBBU_CAO_Uitzendkrachten-EN_juni%202021.pdf

⁴³ [https://www.ontslaghulp.com/documenten/opzegtermijn-uitzendkracht/#:~:text=Voor%20fase%20A%20\(eerste%2078,afhankelijk%20van%20het%20type%20uitzendo%20vereenkomst.](https://www.ontslaghulp.com/documenten/opzegtermijn-uitzendkracht/#:~:text=Voor%20fase%20A%20(eerste%2078,afhankelijk%20van%20het%20type%20uitzendo%20vereenkomst.)

⁴⁴ <https://www.randstad.nl/werkgevers/werkpocket/personeel-aannemen/uitzendkrachten/fasensysteem#fasea>

⁴⁵ <https://www.randstad.nl/werkgevers/werkpocket/personeel-aannemen/uitzendkrachten/fasensysteem#fasea>

⁴⁶ Page 19 <https://www.ser.nl/-/media/ser/downloads/adviezen/2021/sociaal-economisch-beleid-2021-2025.pdf>

during which the temporary worker is on a time-limited contract with the temporary employment agency, meaning the temporary worker is assured of income. During this time, if a temporary worker loses his job, the staffing agency is required to find other placements or compensate him.⁴⁷

- During phase C or 4, the temporary worker is on a time-unlimited contract with the temporary employment agency. During this time, the contract can be terminated by the temporary worker or the staffing agency with a 1 month notice period.⁴⁸

2.1.4 Restrictions for certain sectors

Employer and employee representatives are able⁴⁹ to conclude sectoral Collective Labour Agreement (CLA) to tighten up regulations, and have done so, for example for substitute teachers in primary and special education that are replacing a teacher because of an illness.

2.1.5 Other

There used to be a legal distinction between temporary employment and secondment in the Netherlands, but currently, there is one legal regime for temporary employment agencies, which includes the entire range of staffing companies, thus also secondment companies and labour pools.⁵⁰

2.2 Possible regulatory changes:

2.2.1. Planned regulatory changes and likelihood of implementation

The new Dutch government, which entered power at the end of 2021, is planning to introduce considerable reforms when it comes to temporary work. In its coalition agreement, it pledged⁵¹ to make sure that “on-call, agency and temporary work contracts are better regulated”, this “in line with the advice⁵² of the Social and Economic Council”, an official advisory body.

⁴⁷ [https://www.ontslaghulp.com/documenten/opzegtermijn-uitzendkracht/#:~:text=Voor%20fase%20A%20\(eerste%2078,afhankelijk%20van%20het%20type%20uitzendo%20vereenkomst.](https://www.ontslaghulp.com/documenten/opzegtermijn-uitzendkracht/#:~:text=Voor%20fase%20A%20(eerste%2078,afhankelijk%20van%20het%20type%20uitzendo%20vereenkomst.)

⁴⁸ <https://www.sncu.nl/en/faqs/what-is-the-phase-system/>
[https://www.ontslaghulp.com/documenten/opzegtermijn-uitzendkracht/#:~:text=Voor%20fase%20A%20\(eerste%2078,afhankelijk%20van%20het%20type%20uitzendo%20vereenkomst.](https://www.ontslaghulp.com/documenten/opzegtermijn-uitzendkracht/#:~:text=Voor%20fase%20A%20(eerste%2078,afhankelijk%20van%20het%20type%20uitzendo%20vereenkomst.) <https://www.randstad.nl/werkgevers/werkpocket/personeel-aannemen/uitzendkrachten/fasensysteem#fasea>

⁴⁹ <https://knowledge.leglobal.org/the-netherlands-temporary-employment-contracts-the-chain-rule-after-1-january-2020/>

⁵⁰ <https://www.eurofound.europa.eu/publications/report/2009/the-netherlands-temporary-agency-work-and-collective-bargaining> Specifically for foreign labourers, various contracts exist, including employment contracts with an agency clause, secondment contracts for a fixed period and secondment contracts for an indefinite period: <https://www.sncu.nl/uploads/sites/3/2019/10/SNCU-VOORLICHTINGSBROCH-UITZENDKRACHTEN-UK-WT-LR1510-ENGELS.pdf>

⁵¹ <https://www.rijksoverheid.nl/onderwerpen/rijksoverheid/documenten/publicaties/2022/01/10/coalitieakkoord-omzien-naar-elkaar-vooruitkijken-naar-de-toekomst>

⁵² <https://www.ser.nl/nl/Publicaties/advies-sociaal-economisch-beleid-2021-2025#:~:text=Het%20advies%20is%20bedoeld%20voor,dienstverlening%20en%20een%20duurzaam%20leefklimaat.> This body has taken over suggestions from another report, by Emile Roemer, on countering abusive practices with migrant workers. <https://www.rijksoverheid.nl/documenten/rapporten/2020/10/30/tweede-advies-aanjaagteam-bescherming-arbeidsmigranten> <https://fd.nl/opinie/1388297/uitzendsector-is-toe-aan-hervorming> <https://www.gfactueel.nl/Home/Nieuws/2020/10/Roemer-wil-verplichte-certificering-arbeidsbureaus-663090E/>

A key new reform would include **mandatory certification** for temporary employment agencies, something that was abolished in the 1990s.⁵³ The advisory report which the government pledges to introduce has suggested⁵⁴ that “companies that do work with non-certified employment agencies should be fined.”

Also a **ban for those involved to once again serve on company boards** in the future would be included, to avoid that they would be able to restart their practices after having been caught.

In response, the sectoral federation of temporary employment agencies has warned⁵⁵ that “the success of this system depends in part on monitoring and enforcement.”

Other recommendations which the Dutch government has pledged to follow include **restricting the duration** of temporary employment contracts and **improving legal protection** of temporary workers.⁵⁶ In particular, these recommendations include a **minimum salary per hour for temporary agency workers** and **increased supervision and data exchange in order to police the rules.**⁵⁷

Furthermore, when it comes to the duration of temporary agency work, the recommendations which the Dutch government involve **legally enshrining a maximum duration of 52 weeks** for “phase A”, which is the phase during which an agency worker enjoys the least rights⁵⁸, this to avoid that workers get stuck in that phase. As opposed to what’s the case right now, it will **no longer be possible to extend “phase A” to 78 weeks** by means of a collective bargaining agreement⁵⁹. On top of this, the duration of “phase B”, as discussed hereabove will be reduced to two years.⁶⁰

Specifically for **migrant workers**, recommendations include a **guaranteed minimum salary during two months**, regardless of the number of hours worked, a **ban for their employers to extend credit** to these migrant workers and **measures to disconnect housing and labour arrangements** as much as possible.⁶¹

Separately, **extra vigilance is being requested from temporary employment agencies to avoid “discrimination or racism”**, as “organizations guilty of this can be excluded from government subsidies and the awarding of contracts, and the government is going to work on

⁵³ <https://www.nbbu.nl/nl/opinies/de-weg-naar-verplichte-certificering-de-uitzendbranche>

⁵⁴ <https://www.rijksoverheid.nl/documenten/rapporten/2020/10/30/tweede-advies-aanjaagteam-bescherming-arbeidsmigranten>

⁵⁵ <https://www.nbbu.nl/nl/opinies/de-weg-naar-verplichte-certificering-de-uitzendbranche>

⁵⁶ <https://www.ser.nl/nl/Publicaties/advies-sociaal-economisch-beleid-2021-2025#:~:text=Het%20advies%20is%20bedoeld%20voor,dienstverlening%20en%20een%20duurzaam%20leefklimaat,c> <https://fd.nl/opinie/1388297/uitzendsector-is-toe-aan-hervorming>

<https://www.gfactueel.nl/Home/Nieuws/2020/10/Roemer-wil-verplichte-certificering-arbeidsbureaus-663090E/>
⁵⁷ «Roemer report», page 5-7 : <https://open.overheid.nl/repository/ronl-404846f9-9f80-400f-90c3-0c9a8b0fd036/1/pdf/Geen%20tweederangsburgers-Interactief.pdf>

⁵⁸ In the context of the phasing system, described above, which determines the salary and working conditions

⁵⁹ A collective bargaining agreement reached in November 2021 has set this duration at 52 weeks, but in the future, it would then no longer become possible to extend this with a collective bargaining agreement, as legislative change would be needed

⁶⁰ SER advice, page 19 <https://www.ser.nl/-/media/ser/downloads/adviezen/2021/sociaal-economisch-beleid-2021-2025.pdf> and <https://www.randstad.nl/werkgevers/werkpocket/personeel-aannemen/uitzendkrachten/fasensysteem#fasea>

⁶¹ «Roemer report», page 5-7 : <https://open.overheid.nl/repository/ronl-404846f9-9f80-400f-90c3-0c9a8b0fd036/1/pdf/Geen%20tweederangsburgers-Interactief.pdf>

the possibilities of applying anonymously and 'open hiring'", according⁶² to the new government's coalition deal.

2.2.2. Risk-assessment

For a long time, the Netherlands has enjoyed a relatively liberal regulatory environment when it comes to temporary agency work. This is now going to become more strict, even if mostly smaller companies active in this particular market may struggle with the extra regulatory compliance intended to prevent abuses.

Given how the new Dutch coalition government only just entered power, after 9 months of tiresome coalition talks, it is unlikely a different government will enter power soon and change tack once again. However, opposition within the government coalition may emerge against the plans to reform temporary employment, as there may be different interpretations of the suggestions made by the official advisory body, the Social and Economic Council, which the government has pledged to introduce.

2.2.3. Appendix - Decision-making process and key actors

The Netherlands is a unitary state, meaning that unlike in Belgium, there are no regions with certain powers. However, just like in Belgium, employer and employee representatives have great influence over legislation, through their conclusion of collective bargaining agreements which the government often declares to be generally binding, thereby imposing their terms on everyone.

⁶² <https://www.rijksoverheid.nl/onderwerpen/rijksoverheid/documenten/publicaties/2022/01/10/coalitieakkoord-omzien-naar-elkaar-vooruitkijken-naar-de-toekomst>

Chapter 3. France

3.1 Current regulations:

3.1.1 Licensing requirements

Temporary work is a strongly regulated activity in France. French Temporary Agency Work agencies must register with the Ministry of Labour and Employment, have a financial guarantee and send regular records of its all activities to the authorities.⁶³

The requirements to set up temporary work agencies are onerous. An expensive financial guarantee, indexed on the amount of the annual turnover before tax, with a minimum amount of more than 120.000€, is legally required in order to start. The idea of this is to ensure the agency's cash flow (this to guarantee the payment of compensation, salaries and bonuses to employees and temporary workers).⁶⁴ Furthermore, temporary work agencies must also inform a whole range of institutions that they have been set up.⁶⁵

3.1.2 Salary requirements

According to French law, employees hired by a temporary work agency in order to be seconded to client companies, need to receive a salary under the same terms as the other employees of the company where they work⁶⁶, and they also need to enjoy the same rights and protection (when it comes to things like working time, night shifts, weekly rest periods, public holidays and workplace health and safety)⁶⁷

At the end of each contract and at the same time as the last salary payable, the temporary employee must receive end-of-contract compensation, known as the prime de précarité (instability allowance). He or she is also entitled to compensation for paid leave for each assignment they perform, regardless of its duration.⁶⁸

Some differences in treatment nevertheless exist. Temporary and agency workers can for example not benefit from the company's mandatory and optional profit-sharing schemes.⁶⁹

3.1.3 Duration requirements

The maximum legal length of a temporary work assignment varies depending on the nature of the assignment. It is 18 months, including renewal, in cases of replacement of an absent

⁶³ <https://www.eurofound.europa.eu/publications/report/2008/france-temporary-agency-work-and-collective-bargaining-in-the-eu>

⁶⁴ <https://agence-juridique.com/articles/creer-une-agence-dinterim-tout-savoir-sur-les-formalites-a-accomplir#toc-choisir-le-bon-moment-pour-ouvrir-une-agence-d-int-rim>

⁶⁵ A list can be found here: <https://www.l-expert-comptable.com/a/533958-creer-une-agence-d-interim-ou-une-entreprise-de-travail-temporaire.html>

⁶⁶ This obviously needs to respect the minimum wage <https://travail-emploi.gouv.fr/IMG/pdf/dilti-salaries-International-UK.pdf>

⁶⁷ <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-contrat-de-travail-temporaire>
<https://www.welcometofrance.com/en/fiche/temporary-employment-contract>
[https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁶⁸ <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-contrat-de-travail-temporaire>
<https://www.welcometofrance.com/en/fiche/temporary-employment-contract>

⁶⁹ [https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true)

employee, an employee who is temporarily working part-time or an employee whose employment contract has been suspended.⁷⁰

It can amount to 24 months in case of exceptional export orders, assignment abroad or replacement of an employee who left before the permanent termination of their position. It is however restricted to 9 months in cases someone needs to be hired on a temporary assignment to carry out urgent work for safety purposes or when this is pending the arrival of an employee on a permanent contract. In one specific case, in the context of a training period as part of an apprenticeship, the duration can amount to 36 months.⁷¹

A temporary employment contract may be renewed twice if the total duration of the contract, including renewal, does not exceed the maximum authorized duration.⁷²

The sanction in case of a violation of these provision is that the contract is deemed to be a permanent contract with the temporary employment company from the beginning of the worker's assignment, combined with a fine.⁷³

3.1.4 Restrictions for certain sectors

There are no sectoral bans but collective bargaining agreements⁷⁴ can deviate, for example when it comes to the duration of temporary workers' contracts.⁷⁵ Within the limits of the law, things like the duration of temporary workers' contracts can be defined by collective bargaining agreements at the sectoral level.⁷⁶ In 2009, the French public sector was opened up to temporary staffing.⁷⁷

The number of temporary workers in French economic sectors, has been estimated to amount to 48.7 percent for industry, 15.8 percent for services, 13.9 percent for transport, 12% for construction and public works and 9.6 percent for trade.⁷⁸

Also, sometimes, big companies have voluntarily agreed to sign up to “commitments” going beyond the legal and regulatory obligations, enshrined in a code of conduct, something for example PSA Peugeot Citroën has done.⁷⁹

⁷⁰ <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-contrat-de-travail-temporaire>
But also in a number of other cases: <https://www.welcometofrance.com/en/fiche/temporary-employment-contract>

⁷¹ <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-contrat-de-travail-temporaire>
<https://www.welcometofrance.com/en/fiche/temporary-employment-contract>

⁷² <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-contrat-de-travail-temporaire>
<https://www.welcometofrance.com/en/fiche/temporary-employment-contract>

⁷³ Article L.1251-40, Labour Code [https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁷⁴ <https://www.worker-participation.eu/National-Industrial-Relations/Countries/France/Collective-Bargaining>

⁷⁵ [https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁷⁶ [https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-0054?transitionType=Default&contextData=(sc.Default)&firstPage=true)

⁷⁷ <https://www.weka.fr/actualite/fonction-publique/article/interim-une-nouvelle-donne-pour-la-fonction-publique-14026/>

⁷⁸ <https://gojob.com/nos-conseils/focus-metier/emploi-interim-en-france/>

⁷⁹ <https://www.eurofound.europa.eu/publications/report/2008/france-temporary-agency-work-and-collective-bargaining-in-the-eu>

In 2014, the so-called temporary employment contract (CDI intérimaire or CDII), was introduced⁸⁰, which is a special kind of arrangement for temporary agency workers. It is a permanent contract between the temporary workers and the temporary staffing company, and involving a guarantee for the worker to receive statutory minimum salary between the assignments, is open to workers in all sectors.⁸¹

3.1.5 Other

French law contains a list of permitted reasons for a user enterprise, including replacing an absent employee, a temporary increase in activity, and inherently temporary posts. This includes replacement of an absent employee, awaiting a new employee to take over, awaiting the abolition of the position of the employee who has definitively left the company,

Replacement of an employee who has temporarily gone part-time, temporary replacement of a farm manager, temporary increase in the activity of the enterprise and filling seasonal jobs.⁸²

3.2 Possible regulatory changes:

3.2.1. Planned regulatory changes and likelihood of implementation

The number of temporary workers in France has been strongly increased during the last twenty years. (including temporary contracts, fixed-term contracts of less than one month and month and fixed-term contracts), now accounting for two-thirds of new hires, compared with half in 2000.⁸³ This despite the fact that between 2013 and 2019, a number of targeted reductions in social security contributions were introduced⁸⁵, to alleviate employers and to encourage the unemployed to become active on the labour market.

This also despite the introduction of a special arrangement for temporary agency workers in 2014, the temporary employment contract (CDI intérimaire or CDII)⁸⁶, a permanent contract between the temporary workers and the temporary staffing company, involving a guarantee for the worker to receive statutory minimum salary between the assignments.

⁸⁰ <https://www.ouest-france.fr/europe/france/travail-entre-en-vigueur-en-2014-le-cdi-interiminaire-cest-quoi-3723977> <https://www.tf1info.fr/societe/le-cdi-interiminaire-cdii-dans-la-loi-avenir-professionnel-muriel-penicaud-en-quoi-consiste-ce-contrat-2094590.html>

⁸¹ <https://www.adecco.fr/candidats/tout-savoir-cdi-interiminaire/>

⁸² <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-contrat-de-travail-temporaire> <https://www.eurofound.europa.eu/publications/report/2008/france-temporary-agency-work-and-collective-bargaining-in-the-eu>

⁸³ https://travail-emploi.gouv.fr/IMG/pdf/rapport_-_rapport_t1_vdef.pdf https://travail-emploi.gouv.fr/IMG/pdf/rapport_-_rapport_t1_vdef.pdf <https://www.statista.com/statistics/1186965/france-temporary-employees/>

⁸⁴ 850,300 people were employed in temporary jobs in France in December 2021, with the number of temp workers about pre-Covid crisis level in the services sector but still below the level at the end of December 2019 in industry (-4.8%) and in construction (-5.8%) <https://dares.travail-emploi.gouv.fr/donnees/lemploi-interiminaire> <https://journals.sagepub.com/doi/full/10.1177/0143831X17695439>

⁸⁵ <https://www.latribune.fr/economie/france/le-cice-un-scandale-d-etat-587387.html>

⁸⁶ <https://travail-emploi.gouv.fr/droit-du-travail/les-contrats-de-travail/article/le-cdi-interiminaire> <https://www.ruedelapaye.com/e-mag/specificites-cdi-interiminaire/> <https://www.ouest-france.fr/europe/france/travail-entre-en-vigueur-en-2014-le-cdi-interiminaire-cest-quoi-3723977> <https://www.tf1info.fr/societe/le-cdi-interiminaire-cdii-dans-la-loi-avenir-professionnel-muriel-penicaud-en-quoi-consiste-ce-contrat-2094590.html> <https://start.lesechos.fr/travailler-mieux/flexibilite-au-travail/cdi-interiminaire-4-choses-a-savoir-sur-le-contrat-qui-monte-1179028>

Certain provisions of "classic" temporary employment contracts do not apply to these CDII workers, for example the payment of the end-of-assignment indemnity and the waiting period between two successive assignments on the same job.

In 2020, more reductions in social security contributions entered into force – the so-called “bonus malus” arrangement – meant to “encourage companies to extend the duration of employment contracts and avoid excessive recourse to short contracts.”⁸⁷ Also this was supposed to make CDII arrangements more attractive, as opposed to so-called CDD arrangements, which are short term contracts whereby employees are employed directly by the user company and not by the temporary work agency. They are renowned for their precarity, as for example the trial period with these short term CDD contracts is longer than with temporary work agency contracts: 1 month for a CDD while it is at most 5 days for an interim contract.⁸⁸ A variety is a CDDU contract, which does not even give the right to an indemnity at the end of the contract, like a classic CDD, and is therefore even more precarious.⁸⁹

French President Emmanuel Macron has pledged⁹⁰ to cut taxes and push for the French to work more, without publishing a detailed manifesto. Still, some clarity exists on his future plans. Last year, a Member of Parliament and a Senator of his political party, Jean-François Mbaye and Xavier Iacovelli, published an extensive report, at the request of the French Prime Minister⁹¹, urging to tackle specific short term CDDU contracts, without however calling for a more restrictive approach towards temporary work agencies.

They note: “CDDU, whose status has been enshrined in law since 2015 and whose employees have been covered by the general unemployment insurance scheme since 2017, are more protective of the employee and more secure than CDD fixed-term contracts”

In particular, they target the CDDU contracts, lamenting that these are extremely flexible and can be renewed indefinitely and, while lacking the right to an indemnity at the end of the contract. They thereby also point out that originally, this atypical status was supposed to be confined to sectors where “it is regular practice not to resort to permanent contracts, due to the nature of the activity carried out and the temporary nature of these jobs.” They point out that in 2019, 9.2 million such contracts were signed by 4.8 million people, or just over 16% “of all hires”.

They intend to “regulate” the system by making 19 recommendations, including minimum contract duration, intended to “reduce the overall level of CDDU hiring by 20% in three years”. They however do not call into question its very principle, as it may be, in certain situations, a “bulwark” against undeclared work.⁹²

⁸⁷ <https://travail-emploi.gouv.fr/emploi-et-insertion/bonus-malus/>

⁸⁸ <https://www.adecco.fr/faq/differences-cdd-interim>

⁸⁹ <https://fr.indeed.com/conseils-carrieres/nouvelles-fonctions/cdd-dusage#:~:text=Contrairement%20au%20CDD%20classique%20qui,le%20caract%C3%A8re%20pr%C3%A9caire%20du%20CDDU.>

⁹⁰ <https://www.reuters.com/world/europe/frances-macron-launches-bid-second-term-president-2022-03-03/>

⁹¹ https://travail-emploi.gouv.fr/IMG/pdf/rapport_-_rapport_t1_vdef.pdf

⁹² https://travail-emploi.gouv.fr/IMG/pdf/rapport_-_rapport_t1_vdef.pdf
https://www.lemonde.fr/politique/article/2021/06/16/des-pistes-pour-limiter-la-proliferation-des-cdd-dusage_6084363_823448.html https://www.liberation.fr/economie/social/emploi-precaire-un-rapport-parlementaire-pointe-les-limites-des-cdd-dusage-20210616_G526JRN35JBMNJW3CDRI6LEBA4/

When it comes to the temporary agency sector, Macron's allies write:

“For more than 30 years, the temporary work profession has created a relatively protective status for temporary workers in favor of securing professional careers”.

They furthermore stress⁹³ how “short-term contracts (...) represent an alternative to temporary work”, suggesting to tackle the former, in order to promote the existing regulatory framework of temporary agency work.

In sum, it looks like temporary agency work is likely to be spared of regulatory tightening.

3.2.2. Risk-assessment

Temporary agency work is strictly regulated in France and is likely to remain so. Any regulatory action seems likely to be focused on short term CDD or CDDU contracts.

Opinion polls currently put⁹⁴ Macron as the absolute favorite to succeed himself, about one month of the first round of the Presidential election. Of all the candidates, Macron is most friendly towards labour market flexibility.

Still, the war in Ukraine and increasing energy prices may provide surprises, either fueling the centre-right or the far right. The latter have however not focused much on Macron' labour market policies, suggesting stability when it comes to these policies is the base scenario.

In any scenario, a possible economic recession, inflicted by energy prices and the war in Ukraine, may well cause a backlash against reform to make the labour market more flexible, whether Macron is in charge or not.

3.2.3. Appendix - Decision-making process and key actors

Temporary staffing in France is governed by laws but also by collective bargaining agreements, concluded between employer and employee representatives.

These collective bargaining agreements include agreements on the representation of temporary work agency personnel, on health and safety in temporary work and on diversity and non-discrimination in temporary work.⁹⁵

⁹³ Page 19 : https://travail-emploi.gouv.fr/IMG/pdf/rapport_-_rapport_t1_vdef.pdf

⁹⁴ <https://www.france24.com/en/europe/20220304-macron-sees-ukraine-war-boost-in-polls-as-he-throws-his-hat-in-the-ring>

⁹⁵ <https://www.eurofound.europa.eu/publications/report/2008/france-temporary-agency-work-and-collective-bargaining-in-the-eu>

Chapter 4. Germany

4.1 Current regulations:

4.1.1 Licensing requirements

The provision of temporary staffing is strictly regulated by the German Temporary Employment Act (“AÜG”). An AUG (AÜG)-license is required in order to operate a labour leasing agency in Germany. Proof of minimum funds of €10,000.00 must be submitted to prove creditworthiness. This applies to cases where up to five temporary employees are to be employed. If more than five temporary employees are to be employed, proof of liquid funds of €2,000.00 must be furnished for every employee.⁹⁶ The German AUG license is limited to one year.⁹⁷

During the first three years, the Federal Employment Agency (Bundesagentur für Arbeit) audits the agency regularly, often once a year. If the temporary employment agency has operated correctly and without complaints during those first three years, the Federal Employment Agency can issue a license without time constraints.⁹⁸

If an agency is operating without a licence, it faces an administrative fine and the law deems there to be an employment relationship between the hirer and the temporary employee.⁹⁹

4.1.2 Salary requirements

Temporary agency workers must receive the same salary and treatment in terms of essential working conditions¹⁰⁰ like the permanent workers employed by the user company. This can however be delayed for up to nine months with a collective bargaining agreement, which can also foresee other deviations¹⁰¹. It is possible for collective bargaining agreements to foresee longer adjustment periods, of up to 15 months, or up to 24 months provided certain additional conditions are met.¹⁰²

This requirement was introduced by a new law which entered into force in 2017, but it was then deemed unsatisfactory by trade union representatives as a means to sustainably bridge the pay gap between permanent and temporary employees. They would have preferred to see a list of criteria distinguishing between normal and misused service contracts included in the law.¹⁰³

4.1.3 Duration requirements

⁹⁶ <https://staff-leasing-germany.com/en/application-license-operate-temporary-employment-agency/>

⁹⁷ Sec. 2 (4) sentence 1 of the German Law on Temporary Employment (AÜG, Arbeitnehmerüberlassungsgesetz).

⁹⁸ <https://staff-leasing-germany.com/en/application-license-operate-temporary-employment-agency/>

⁹⁹ <https://www.lexology.com/library/detail.aspx?g=8b2b6578-15fa-48e1-b39a-82e5d20c00dd>

¹⁰⁰ <https://www.lexology.com/library/detail.aspx?g=8b2b6578-15fa-48e1-b39a-82e5d20c00dd>

https://www.kallan-legal.de/en/newsletter/2017_01/article/artikel_03.php

¹⁰¹ <https://www.lexology.com/library/detail.aspx?g=8b2b6578-15fa-48e1-b39a-82e5d20c00dd>

¹⁰² <https://ec.europa.eu/social/BlobServlet?docId=17188&langId=en>

<https://www.taylorvinters.com/news/germany-tighter-rules-temporary-workers> <https://www.advant-beiten.com/en/blogs/new-german-law-temporary-employment> <https://www.faire-integration.de/en/article/134.3-what-rules-apply-to-agency-work.html> <https://www.eurofound.europa.eu/publications/article/2016/germany-compromise-struck-on-new-temporary-agency-work-legislation>

¹⁰³ <https://ec.europa.eu/social/BlobServlet?docId=17188&langId=en>

The maximum duration to hire temporary agency workers has been restricted to a maximum period of 18 months in Germany¹⁰⁴. Sectoral agreements arranging a different duration can however be negotiated through collective bargaining agreements, whereby it is possible to extend the maximum period to 24 months.¹⁰⁵

As a sanction, exceeding the duration limits, leads to an employment relationship being created between the hiring company and its temporary employee. The employee has a right to object to this legal fiction within one month of exceeding the time limit, but the hiring company gains a new employee even against its will.¹⁰⁶

4.1.4 Restrictions for certain sectors

In Germany, collective bargaining agreement play a very important role in setting the precise terms for temporary agency work. Special arrangements have been agreed for the steel, metal and electrical sectors, for example.¹⁰⁷ According to EU regulation, member states can avoid the obligation to treat temporary workers equally when it comes to their salary, provided this is agreed in collective bargaining agreements, which involve a say of both employer and trade union federations, provide for this.¹⁰⁸

Specifically for the construction industry, there are special, tighter arrangements for temporary work, that are so restricted that one could consider it to be banned, something which is only the case in that specific sector.¹⁰⁹

4.1.5 Other

Using temporary agency workers in companies experiencing strike action is not completely banned by the new German legislation, which went into effect in April 2017, but using such workers may not be used as a means to break the strike, at risk of a fine amounting to 500.000 euro.¹¹⁰

4.2 Possible regulatory changes:

4.2.1. Planned regulatory changes and likelihood of implementation

According to Germany's industry federation for temporary work agencies, Bundesarbeitgeberverband der Personaldienstleister (BAP), no major changes are coming up when it comes to German temporary agency work regulation, apart from the increase in the minimum wage, from 9.82 euro to 12 euro per hour¹¹¹, which is about to enter into force in

¹⁰⁴ https://www.kallan-legal.de/en/newsletter/2017_01/article/artikel_03.php

¹⁰⁵ https://www.kallan-legal.de/en/newsletter/2017_01/article/artikel_03.php

<https://ec.europa.eu/social/BlobServlet?docId=17188&langId=en> <https://www.taylorvinters.com/news/germany-tighter-rules-temporary-workers>

¹⁰⁶ <https://www.taylorvinters.com/news/germany-tighter-rules-temporary-workers>

¹⁰⁷ <https://www.eurofound.europa.eu/publications/article/2016/germany-compromise-struck-on-new-temporary-agency-work-legislation>

¹⁰⁸ This according to information provided to me by Germany's industry federation for temporary work agencies, Bundesarbeitgeberverband der Personaldienstleister (BAP)

¹⁰⁹ <https://www.iaar.de/leiharbeit-in-der-baubranche.html> <https://www.iaar.de/>

¹¹⁰ <https://ec.europa.eu/social/BlobServlet?docId=17188&langId=en>
<https://www.lexology.com/library/detail.aspx?g=8b2b6578-15fa-48e1-b39a-82e5d20c00dd>

¹¹¹ <https://www.euronews.com/2022/02/23/germany-to-raise-hourly-minimum-wage-to-12-by-october>

October 2022, but this is something covering overall labour regulation and not temporary agency work in particular.

4.2.2. Risk-assessment

The 2016 German Temporary Employment Act (Arbeitnehmerüberlassungsgesetz - AÜG), which entered into force in 2017, was criticized by some, who warned that temporary staffing would become more unattractive, and that the extra compliance may lead to unintentional breaches of the law, with severe consequences. One legal analysis¹¹² even wondered whether this new framework was in compliance with EU law, which explicitly permits temporary staffing.

The new law was passed after years of heated public debate, whereby the trade unions lamented¹¹³ the increased use of temporary agency work after the 2008-2009 financial crisis for core company tasks as well as the growing complexity of subcontracting chains.

According to Germany's industry federation for temporary work agencies, Bundesarbeitgeberverband der Personaldienstleister (BAP)¹¹⁴, the new legislation may not be violating EU law¹¹⁵, which provides for temporary agency work to be legal, but it clearly has complicated temporary agency work. The most important new restriction is the maximum length of the assignment, amounting to 18 months. Before, there was no legal limit, even if courts had been ruling that there should be a maximum, which was however unclear.

A specific problem with the new legislation is that even if equal pay is now required – with a possible 9 months transitional period – it is not always easy in practices to realise this, with questions for example on whether company cars constitute “salary”.

Another issue is that contracts – both between the temporary work agency and the worker and between the worker and the user company - need to be signed and cannot be legally arranged via email, which the Germany's industry federation considers to be particularly troubling and needlessly complicated, certainly when involving very short-term assignments.

Germany's industry federation estimates that the legislation has contributed to a reduction in the number of temporary agency workers in Germany. This amounted to around 1 million people in 2017, when the legislation was introduced, and has dropped with 120.000 people by 2019 and with another 120.000 people by 2020, even if that may have been affected by the Covid crisis. The federation adds that Germany's reduced economic growth in 2018 and 2019 may also have been contributing to this, in particular as Germany's automotive industry was suffering. Automotive used to be the most important German industry for temporary agency work, which is now logistics. In any case, the restrictions to Germany's temporary agency work sector are permanent.

4.2.3. Appendix - Decision-making process and key actors

Like in the other countries discussed, Germany's decision making model combines law-making by Parliament and government with an extensive system of collective bargaining

¹¹² <https://www.advant-beiten.com/en/blogs/new-german-law-temporary-employment>

¹¹³ <https://www.eurofound.europa.eu/publications/article/2016/germany-compromise-struck-on-new-temporary-agency-work-legislation>

¹¹⁴ In information provided to me.

¹¹⁵ As alleged by some

agreements between employer and trade union federations. The fact that EU regulation enables avoiding the obligation to treat temporary workers equally when it comes to their salary, has made collective bargaining agreements even more key.

In Germany, there are two major types of collective agreements: agreements between trade unions and employers associations on the one hand (Tarifverträge) and agreements between employers and works councils¹¹⁶ on the other hand (Betriebsvereinbarungen).

Such agreements exist for different industries, crafts, public and private services. Often, they are territorially limited. Sometimes an employers association a trade union may also make a collective agreement with a single employer, like for example Volkswagen.¹¹⁷

¹¹⁶ <https://www.german-way.com/german-workers-councils-demystified/>

¹¹⁷

http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@dialogue/documents/meetingdocument/wcms_159943.pdf

Chapter 5. The role of the European Union

The EU's Directive on Temporary Agency Work (2008/104/EC) defines a general framework applicable to the working conditions of temporary workers in the European Union. It aims "to guarantee a minimum level of effective protection to temporary workers and to contribute to the development of the temporary work sector as a flexible option for employers and workers."¹¹⁸

It sets out two principles. The first one¹¹⁹ is the principle of non-discrimination, regarding the essential conditions of work and of employment, between temporary workers and workers who are recruited by the user company.

The second principle¹²⁰ is that restrictions on the use of temporary agency work are only justified on grounds related to the protection of temporary agency workers.

An older EU Regulation, No. 1408/71, of 14 June 1971, provides that seconded workers are exempted from membership of the social security scheme of the EU member states where they come to work and from payment of social contributions.¹²¹

Also the jurisprudence of the Court of Justice of the EU is relevant, as it has been ruling on judicial disputes related to temporary workers. In 2021, it for example ruled¹²² that in order to be considered to 'normally [carrying] out its activities' in a Member State, a temporary-work agency must carry out a significant part of its activities in the territory of the same Member State.

Noteworthy is how the EU has agreed¹²³ to activate a never-used mechanism, its "Temporary Protection Directive", which paves the way for millions¹²⁴ of Ukrainians fleeing Russia's invasion to find shelter across the European Union. Otherwise, Ukrainians can enter with passports but they are then only able to stay for a maximum of 90 days. Under the mechanism, they are able to stay for up to three years¹²⁵ and also enjoy the right to work¹²⁶.

Given the massive problems employers in the EU currently face to find staff, this is welcome for them. According to an assessment by E. Peker, "Ukrainian refugees will feed into the

¹¹⁸ <https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=207>

¹¹⁹ In article 5 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0104>

¹²⁰ In article 4 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0104>

¹²¹ <https://travail-emploi.gouv.fr/IMG/pdf/dilti-salaries-International-UK.pdf>

¹²² <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-06/cp210092en.pdf>

¹²³ <https://www.euronews.com/my-europe/2022/03/03/eu-countries-agree-to-trigger-a-never-used-law-to-host-ukrainian-refugees>

¹²⁴ Currently more than 1.5 million already <https://www.politico.eu/article/ukraine-war-refugees-united-nations-russia-poland-hungary-romania-escaping-fleeing/>

¹²⁵ <https://www.euronews.com/my-europe/2022/02/28/brussels-will-apply-a-never-used-eu-law-to-host-ukrainian-refugees-how-does-it-work>

¹²⁶ It foresees harmonised rights for the beneficiaries of temporary protection, including a residence permit for the entire duration of the protection (which can last from one year to three years), appropriate information on temporary protection, access to employment, access to accommodation or housing, access to social welfare or means of subsistence, access to medical treatment, access to education for minors, opportunities for families to reunite in certain circumstances, and guarantees for access to the normal asylum procedure.

https://ec.europa.eu/home-affairs/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en

labour needs of the EU". Temporary work agencies are therefore likely to play a crucial role in helping these people to find a job.

This is also what the German federation of temporary work agencies, thinks¹²⁷, judging from Germany's experience with the large influx of refugees into Germany from the Middle East between 2015 and 2017. It considers temporary work agencies to be the most important connector to get refugees to access employment. It does however mention that currently, as a result of the conflict in Ukraine, a different dynamic is at play, disclosing that due to the sanctions against Russia, various German automotive companies already have been forced to suspend production, due to the interrupted raw materials supply from Russia.

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¹²⁷ As communicated in a discussion with the federation, Bundesarbeitgeberverband der Personaldienstleister (BAP).