Temporary Work Agencies and Western European Social Legislation

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Introduction

IN CONTEMPORARY industrialised society an important new category of persons is appearing in the labour market, namely workers who are only temporarily available to perform activities for which their services are only temporarily required.

In all organisational units in which work is done circumstances may arise—for instance, sickness of personnel, holidays, or sudden peak periods—in which the work temporarily cannot be done by the regular staff and which create a need for temporary help.

This applies to the most primitive organisation in which work is performed, i.e. the family household; it equally applies to administrative and industrial concerns and to government departments.

Obviously, dealing with this need for temporary help is particularly important when viewed in economic terms. It has repeatedly been found that during the temporary absence of regular employees the direct labour costs of ensuring continuation of the work increase considerably. Accordingly, governments, with their responsibility for the sound functioning of the economy in general, as well as industry and commerce, may be expected to welcome efforts aimed at organising the supplying of temporary workers in order to ensure that requirements in this respect can always be met.

However, before going on to describe the problems arising and the ways in which governments, together with industry and commerce, have tried to solve them, it may be useful to explain exactly what we mean by

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the supplying of temporary workers, the more so as this concept tends to give rise to a great deal of confusion.

In our view " temporary work agencies " should be taken to mean firms which make it their business to enter into contracts with persons looking for a temporary job in order to make such persons available to third parties which require the services of a temporary worker.

This notion is quite clear from an economic point of view. From a legal point of view, however, various considerations have led to different ways of approaching the matter and to different conclusions being reached in the legal systems of the different countries of Western Europe.

For the situation is by no means a simple one. This is due, on the one hand, to dishonest practices in the market for temporary workers and, on the other, especially as a result of these dishonest practices, to governments misjudging what is involved in the supplying of temporary workers. This has led to the introduction of new provisions in the labour legislation of a number of countries, and may unnecessarily put a brake on the free growth of a means of rendering important services to the economy. In this connection a comparison may be drawn with economic co-operative arrangements, such as cartels, trusts and mergers. Naturally, such arrangements are open to abuse, and when this happens countermeasures must be taken. However, they often play an important part in the economy, especially if from the social and economic point of view they operate according to the rules. Absolute prohibition of such arrangements—as experience has shown—may very often produce harmful social and economic effects and means sacrificing much that is good for fear of what can be, but is not necessarily, bad.

A summary is given below of the position taken by the International Labour Office and a number of countries of Western Europe with regard to temporary work and of the ways in which these countries have tried to solve the problems and difficulties involved. This is followed by some guidelines for ensuring sound worker-employer relations in the field of temporary work.

International and national attitudes regarding temporary work

Position of the International Labour Office

The matter under review has had to be examined by the International Labour Office in relation to the Fee-charging Employment Agencies Convention (Revised), 1949 (No. 96).[1] This Convention contains provisions concerning the progressive abolition of fee-charging employment agencies conducted with a view to profit (Part II). Article 3, paragraph 1,

[1] All the Western European countries mentioned in this article, with the exception of Denmark, have ratified Convention No. 96.

states: " Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 *(a)* of Article 1 shall be abolished within a limited period of time determined by the competent authority. " Article 1, paragraph 1 *(a)*, gives the following definition of the term " fee-charging employment agencies ":

> . . . any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers.

However, opinions differ among authors in the field and other competent authorities as to whether temporary work agencies of the kind we have in mind, and which we defined above, should be considered as fee-charging employment agencies.

The member countries of the European Communities in general entrust the public employment service with exclusive power to act as the intermediary for jobseekers. If the supplying of temporary workers were to be regarded as a type of placement, private activities in the field would be automatically prohibited. In this regard it seems important to mention that when in 1965 the Swedish Government, which was confronted with a problem of this kind, sought the advice of the International Labour Office, the Office replied that Convention No. 96 also covered the supplying of temporary workers, stating that: " It may be concluded from all the foregoing that the Convention can apply to cases in which a contractual relationship is established between the worker and an agency, and not between the worker and the person or undertaking at whose disposal he is placed by that agency, the essential test being the nature of the transaction ".[1]

The case was the following. The Ministry of Health and Social Affairs of Sweden had requested the International Labour Office to provide clarification as to the scope of the definition of employment agencies conducted with a view to profit as contained in Article 1, paragraph 1 *(a)*, of Convention No. 96. In its request the Ministry of Health and Social Affairs referred to the Swedish Act of 18 April 1935 to issue certain provisions respecting employment agencies, as amended by an Act of 30 April 1942, and indicated that the Supreme Court of Justice of Sweden had ruled in 1962 that agencies known as " ambulatory typewriting agencies " were employment agencies within the scope of this legislation, which prohibits the carrying out of placing services by private persons for purposes of gain. The Ministry appended to its request a memorandum which, in addition to outlining the development of the relevant legislative

[1] See ILO: *Official Bulletin* (Geneva), July 1966, pp. 390-396, and in particular p. 394, para. 10.

provisions, described in greater detail the nature of the operations of " ambulatory typewriting agencies " as follows:

. . . [Their] main purpose . . . is . . . to supply labour, namely office staff in the agency's own employment. Here the person at whose disposal staff is placed by the agency decides what work is to be carried out and himself supervises the job. In some cases the agency may perhaps guarantee that the staff provided holds certain qualifications, but it assumes no other responsibility for the labour product than that which may arise out of the said guarantee. The staff may be placed at somebody's disposal when, for instance, a temporary need for extra labour arises. The staff is employed and paid by the agency, but only receives pay as long as it works for an outside party.

In reply the International Labour Office stated:

The definition of employment agencies conducted with a view to profit, contained in Article 1, paragraph 1 *(a)*, of the Convention, refers to an agency which " acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer ". The questions arise, firstly, whether the use of the terms " employment " and " employer " restricts the scope of the Convention to cases in which a contractual relationship is established between the worker and the user of his services, and, secondly, whether an agency can be regarded as an " intermediary " in the meaning of the Convention if the worker is under contract with the agency itself and not with the person or undertaking for whom he performs services.

The Office went on to state that " there would seem to be nothing inherent in the terms ' employment ' and ' employer ' to give the Convention so restrictive a meaning ", basing its opinion on definitions given in the Oxford English Dictionary and Black's Law Dictionary, on the relevant preparatory work carried out with a view to the adoption of the Article in question by the International Labour Conference and on the views of the ILO Committee of Experts on the Application of Conventions and Recommendations. Furthermore, the ILO stated that the relationship between the worker and the person or undertaking at whose disposal he was placed was such as to meet the criterion generally applied by national legal systems to determine whether an employment relationship existed, namely the power to control not only what work was to be done, but the manner in which it was to be performed. It concluded that the agency which placed the worker at the disposal of the third party " acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer ".

Having regard to this conclusion that " ambulatory typewriting agencies " as described by the Swedish Ministry of Health and Social Affairs might be regarded as fee-charging employment agencies within the scope of Convention No. 96, the ILO then considered the consequences which followed in a country bound by that Convention. It found that the position would vary according to whether the country had accepted the provisions of Part II of the Convention (providing for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies) or Part III (providing for the regulation of fee-charging employment agencies).

As regards countries bound by Part II of the Convention, it noted that Article 3, paragraph 1, provided, as mentioned earlier, that " fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 *(a)* of Article 1 shall be abolished within a limited period of time determined by the competent authority ". This obligation was closely related to the development of a free public employment service. The preamble of the Convention stated that it was " complementary to the Employment Service Convention, 1948, which provides that each Member [of the ILO] for which the Convention is in force shall maintain or ensure the maintenance of a free public employment service ", and further recorded the view of the International Labour Conference that " such a service should be available to all categories of workers ". Paragraph 2 of Article 3 and Article 5 of Convention No. 96 brought out the relationship between its application and the availability of a public employment service. The former provided that fee-charging employment agencies conducted with a view to profit " shall not be abolished until a public employment service is established " (subject, in the meantime, to the measures of control and supervision laid down in Article 4). Article 5 permitted exceptions to the requirement of abolition of the agencies concerned in exceptional cases for exactly defined categories of persons for whom appropriate placing arrangements could not conveniently be made within the framework of the public employment service.[1]

In relation to the Swedish case the Office further stated that while it was not aware of any exception having been made in respect of a category such as part-time or casual office workers, the possibility of such an exception would not in principle appear to be excluded.[2] It agreed that, although public services did to a certain extent cater both for vacancies of this kind and for persons seeking employment of this kind, it was possible that the arrangements did not adequately meet the needs of the persons concerned and that the public services might hesitate to undertake the additional work—testing, taking up of references, assuming responsibility for handling questions of remuneration, taxation, social security, employment permits for foreign applicants—which might make private agencies attractive both to employers and applicants for employment. The Office added, however, that if it were felt necessary to have recourse to the provisions of Article 5, any exceptions would have to be confined to " categories of persons, exactly defined by national laws or regulations ", in respect of whom the competent authorities were satisfied that appropriate placing arrangements could not conveniently be made within the framework of the public employment service, and that all exceptions

[1] The inclusion of Article 5 was intended to provide for such special occupational categories as musicians and entertainers for whom fee-charging employment agencies exist in a large number of countries, performing functions which could not easily be taken over by the public employment service.

[2] *Official Bulletin*, July 1966, p. 395, para. 15.

would have to be subjected to the measures of supervision and control specified in paragraph 2 of Article 5.

The Office noted that in the case of countries bound only by Part III of the Convention, the obligations in regard to fee-charging employment agencies conducted with a view to profit were limited to measures of control and supervision. These were laid down in Article 10, and corresponded to the provisions applicable under Article 5, paragraph 2, to agencies in respect of which exceptions had been made under Part II of the Convention.

National attitudes

A variety of viewpoints on the matter is to be found in the countries whose legislation is examined in this article.

In the opinion of some of these countries, and in our opinion as well, the supplying of temporary workers is quite different from placement.[1] It should also be distinguished from the supplying of workers on a friendly basis as a form of mutual and non-profit making assistance, as for example when a firm makes some of its workers available to other firms at times when its own business is slack, or from the provision on a temporary basis of the services of specialised employees to install machinery and give instruction on how to use it. These types of action have never caused any difficulty, nor has special provision been made for them by law, and they will be disregarded in what is stated below.

Placement, in our view, may be said to be characterised by the fact that the relationship between the placement agency and the person for whom employment is sought ceases to exist after a work contract has been established between that person and the prospective employer.

The supplying of temporary workers, on the other hand, may be said to be characterised by the very fact that a legal relationship continues to exist between the temporary work service and the person for whom it has found temporary work, whereas the third party for whom that work is actually performed is left out of this contractual relationship.

For purposes of reviewing the legislation in force on this matter in Western Europe, the countries concerned may be divided into two groups: (i) those whose legislation takes the form of statutory regulations under which firms engaging in the supplying of temporary workers are prohibited, and (ii) those which have enacted statutory regulations to counteract abuses in the field of temporary work; in most cases a licensing system is linked to these regulations. At present Denmark, France, the Federal Republic of Germany, Italy, the Netherlands, Norway, Spain and Sweden

[1] This view is in line with the definition given by Dr. Gerhard Schnorr, Professor of Industrial and Social Law at the University of Innsbruck, in his analysis of the legal position of the member States of the European Communities and in his proposals for the harmonisation of their legislation. A summary of his analysis is given in International Institute for Temporary Work: *Cahier No. 3* (Brussels, 1972).

have specific legal regulations applying to temporary work firms and Belgium has formulated draft legislation. Of these countries, Italy, Spain and Sweden belong in the first group and Belgium (potentially), Denmark, France, the Federal Republic of Germany, the Netherlands and Norway in the second. The other countries of Western Europe still have no special legislation in this respect.[1]

As regards the first group of countries, legislation by virtue of which firms engaged in the supplying of temporary workers are prohibited has existed for some time in Italy and Sweden, and has also recently been enacted in Spain. Spain and Sweden assimilate the supplying of temporary workers to placement. In Italy the legislation in question [2] applies to all forms of private placement and the supplying of temporary workers and the 1960 Act was promulgated to counteract abuses prevalent in some firms which operated in a *mala fide* way, failing to meet their social and fiscal obligations. While it succeeded in checking these abuses, since the prohibition is total it also affects bona fide firms engaged in the supplying of temporary workers. In the Italian legislation a distinction is made between placement and the supplying of temporary workers which is based on whether or not there is a contractual relationship between the temporary work agency and the person employed by it—a distinction also made in the other member countries of the European Communities.

In Spain a decree promulgated in 1970 [3] was intended to combat serious abuses in the building industry resulting mainly from the subcontracting of labour. However, because of its general scope and tenor it also restricts the supplying of temporary workers. The decree provides that anyone who avails himself of the services of temporary workers must grant them the status of fixed employees on his staff after a prescribed period.

In Sweden legislation enacted in 1970 [4] introduces stiffer penalties for infringements of the Act of 18 April 1935 under which private employment agencies are prohibited. Under the new Act it is not only the agency itself which is punishable but also the client who makes use of the services of the personnel supplied. From the explanatory memorandum accompanying this Act it appears that the activities of temporary work agencies are also regarded as placement activities and that they are therefore punishable.

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[1] As regards the countries with no special legislation, the question arises of the applicability of general labour legislation to temporary work agencies, and in this connection it would be necessary to ascertain, first of all, whether the law and practice of the countries concerned authorise the activities of firms engaging in the supplying of labour, but this is a matter going beyond the scope of the present article.

[2] Act No. 264 of 29 April 1949 prohibits private placement and Act No. 1369 of 23 October 1960 prohibits " subcontractors or intermediaries and the intervention of third parties in the performance of work "; see ILO: *Legislative Series*, 1949—It. 2 and ibid., 1960—It. 1.

[3] Decree No. 3677 of 17 December 1970. See ILO: *Legislative Series*, 1970—Sp. 3.

[4] Act No. 877 of 29 December 1970, which entered into force on 1 July 1971.

Belgium (potentially), Denmark, France, the Federal Republic of Germany, the Netherlands and Norway belong to the second group of countries, i.e. those which have statutory regulations to counteract abuses. And in Denmark, the Federal Republic of Germany and the Netherlands a licensing system is linked to these regulations.[1]

In Belgium, regulations approved in 1969 [2] made temporary workers—and temporary work firms—subject to the social security scheme for employed persons (previously temporary workers, at least for administrative purposes, had been considered as independent workers). And more recently, a draft law has been prepared which deals specifically with the supplying of temporary workers.

Under this draft law, temporary work firms may only be established if they have been approved by the Ministry of Employment and Labour. The granting of such approval is subject to a number of conditions. In particular the firm must take the form of a company in whose articles of association it is specified that the company's business is the supplying of temporary workers to users of their services. It must undertake to comply with the provisions of the law and not to supply workers to an enterprise affected by a lockout or a strike which has the support of the employers' or workers' organisation concerned. The contract between the firm and the temporary worker must be in writing and be concluded either for a fixed period or for the performance of a specific task. Moreover, in order to ensure that the relevant labour legislation is effectively applied to the persons employed by temporary work firms, this contract is deemed to be a contract of employment, under which the temporary work firm is responsible for the payment of the worker's wages and social security contributions. The other obligations under the relevant labour legislation are the responsibility of the enterprise using the services of the temporary worker. During the interval between two periods of employment, a person employed by a temporary work firm is not covered by the general labour legislation. An obligation to pay compensation for termination of employment only arises if the worker is dismissed before the conclusion of the current contract.

The Netherlands Act to make rules for the supplying of manpower [3] deems the supplying of temporary workers on a fee-charging basis, as such, to be legitimate. However, it provides that, if the Government is of the opinion that the sound functioning of the labour market or the interests of the workers concerned so require, it may be made subject to the granting of a licence by the Minister of Social Affairs. This was done by regulations introduced in 1970.[4] Consequently, although this activity is

[1] See International Institute for Temporary Work: *Cahiers Nos. 1, 2 and 3* (Brussels).

[2] Royal Order of 28 November 1969.

[3] Act No. 379 of 31 July 1965.

[4] Royal Decree of 10 September 1970.

not in itself prohibited, it has been brought under government control. Under the Act a licence must always be granted unless there is good reason to believe that the supplying of manpower by the applicant would be prejudicial to the sound functioning of the labour market or to the interests of the workers concerned. However, again depending on either of these two eventualities, the licence may be granted subject to certain rules and restrictions. Recourse was had to this possibility in connection with the *koppelbazen*, whose activities in the field of subcontracting of labour gave rise to difficulties in 1970 in the Rotterdam area.

No special conditions are laid down as to the form or content of temporary work contracts. Throughout the period during which workers are supplied, the temporary work agency remains fully responsible for the application to them of the labour legislation concerning payment of wages and social security contributions. As regards social security, temporary work agencies are obliged to be registered with the Social Security Administration.

Interesting new Federal German legislation was adopted on 7 August 1972.[1] It makes it compulsory for temporary work agencies to have a licence, to be granted on the conditions mentioned in the Act. The licence is valid for one year. Once a temporary work agency has had a licence for three consecutive years, it may be renewed for an indefinite period. The licence expires if for one year or more no use has been made of it. A special condition imposed under the Act is that a licence may be granted only to nationals of the member countries of the European Communities.

The temporary work agency must be organised in such a way as to ensure that it fully meets the risks and obligations of a regular employer and does not engage in placement activities prohibited by the Employment Promotion Act of 25 June 1969. Thus the contract of employment between the agency and the worker must be of indeterminate duration and not limited to the duration of a particular assignment, so that between two working periods the person concerned remains the employee of the agency and entitled to wages. It must also be concluded in writing, as is the case under Danish, French and Norwegian law and under the above-mentioned Belgian draft legislation. Persons employed by a temporary work agency may refuse to work in enterprises that are directly affected by strikes. As regards social security, the temporary work agency is primarily responsible for the payment of contributions. However, in case of its failure to comply with this obligation, the firm using the services of the temporary worker is also held responsible in this respect.

As far as occupational safety and health legislation is concerned, persons employed by a temporary work agency have the same rights as the permanent employees of the firm using their services.

[1] Act governing the supplying of manpower to third parties for profit.

French legislation [1] does not provide for the granting of licences to temporary work firms. These firms are required to make a declaration to the competent authorities, providing the information specified in the Act, before they can start operations. However, the conclusion of a temporary work contract is subject to a number of conditions, as follows: the contract is required to be in writing and to provide for the payment of remuneration as well as of a " precarious employment allowance " at the end of each working period; there is a limitation on the cases in which recourse may be had to the services of temporary workers (for example *not* in the case of a collective trade dispute), and their working periods are restricted to a maximum duration of three months unless a longer duration is justified, or except where they are replacing an absent permanent worker, in which case there is no limitation. In the period during which a worker's services are supplied, it is the temporary work firm that is primarily responsible for the payment of his remuneration and social security contributions. However, should it fail to meet its obligations in this respect, the firm to which the worker is assigned is held responsible, and the latter firm is also responsible for the application to the worker of the relevant labour legislation as it affects his working conditions. In addition, the Act contains special provisions respecting holiday entitlements, maternity benefit, rights in respect of staff representation in the firm of assignment, etc.

In Denmark regulations governing the supplying of temporary workers in commerce and offices were introduced in March 1970.[2] They provide that temporary work agencies can be established only after a licence has been granted by the Director of Labour. The conditions subject to which a licence is granted include the requirement that the temporary work contract shall be concluded in writing; the obligation for the agency to pay the worker's remuneration after each working period, irrespective of whether or not the user of his services has paid the agency; and the restriction of the maximum duration of each working period to three months. More recently, in 1971, an amendment to the existing legislation [3], while it confirmed the conditions subject to which temporary work agencies may function in the sectors of commerce and offices, made the extension of their activities to other sectors subject to the authorisation of the Minister of Labour in the light of the needs of the sectors concerned.

In Norway the question of firms engaged in the supplying of temporary workers was raised in Parliament in June 1970 because of abuses that had occurred, primarily in the area of mechanical skills. As a result, a

[1] Act of 3 January 1972 respecting temporary employment; see ILO: *Legislative Series*, 1972—Fr. 1.

[2] Act No. 114 of 24 March 1970 (see ILO: *Legislative Series*, 1970—Den. 1).

[3] Act No. 104 of 25 March 1971 to amend Act No. 114 of 24 March 1970. The amendment entered into force on 1 July 1971.

government committee made a study which was completed in March 1971 and formed the basis of legislation that came into force on 1 July 1972.[1] Under the new Act, firms engaged in the supplying of temporary workers are in principle prohibited, but dispensations may be granted. Regulations governing the granting of dispensations were made in April 1972.[2] Dispensations may be granted for a period of up to five years, and applications for a dispensation are examined in the light of the needs of the occupational sector concerned and the capacity of the public employment service to meet them. The dispensation, which in effect is a form of licence, lays down the occupational sectors and geographical areas in which the firm concerned may operate, as well as the maximum number of workers who may be hired out at any one time. A maximum period of three months is laid down for each assignment; for longer periods permission must be granted in each individual case. A written contract of employment must be concluded between the temporary work firm and the worker, under which the payment of the worker's remuneration and social security contributions by the firm is guaranteed irrespective of the solvency of the undertaking using the worker's services; the contract must not bind the worker to remain at the temporary work firm's disposal beyond the end of the assignment, and his remuneration must be paid at the end of each assignment.

It will be seen from the foregoing that a variety of provisions have been adopted by the European countries considered with a view to ensuring that the temporary worker receives adequate protection. Three particular areas would seem to be covered by the measures in force. The first is that of lack of employment security; here the French legislation provides for a " precarious employment allowance " at the end of each assignment, while the new Federal German Act puts an end to the system whereby temporary workers are employed only for the period of each assignment by requiring a lasting employment relationship between the worker and the temporary work agency. Secondly, additional protection in the field of social security is sought by making the firm using the worker's services responsible for the payment of contributions in the event of the failure of the temporary work agency to pay them; in France this secondary liability extends to the worker's remuneration. Finally, as regards the application of labour legislation, the solution adopted by several countries—France, the Federal Republic of Germany, Belgium (in its draft legislation)—is to provide that, while the temporary work agency as an employer is responsible for such matters as the payment of wages, responsibility for the observance of the provisions of labour legislation on such matters as occupational health and safety,

[1] Act No. 83 of 18 June 1971 to amend Act No. 9 of 27 June 1947 respecting measures to promote employment (see ILO: *Legislative Series*, 1947—Nor. 2).

[2] Regulations of 20 April 1972 to provide for dispensations from the prohibition on the hiring out of manpower.

hours of work, night work, weekly rest and the employment of women and young persons rests with the user of the temporary worker's services.

The role of collective agreements

In the regulation of normal working conditions the most important role is played by the individual work contract and any relevant collective agreement, the latter determining to a considerable extent the content of the individual contract. Collective agreements have been able to regulate many aspects of normal working conditions that have not been and cannot be regulated by legislation. Until recently the influence of collective agreements was missing in the field of the supplying of temporary workers. It is true that in some countries a few clauses relating to temporary workers were included in ordinary collective agreements, but there were no specific agreements for this category of workers. In recent years, however, the importance of collective agreements as a means of ensuring additional protection for temporary workers has been recognised, and such agreements have been concluded in various countries of Western Europe between certain trade unions and certain large temporary work agencies or federations of temporary work agencies.

As far as France is concerned, mention may be made of the agreement concluded between the General Confederation of Labour (CGT) and the temporary work firm called Manpower on 9 October 1969. This agreement deals with temporary work contracts and with such matters as the wages, hours of work and holiday entitlements of temporary workers.[1] In the Federal Republic of Germany there has been a framework collective agreement concerning temporary workers since 1 July 1970 and a collective wage agreement for such workers since 2 October 1970. Both agreements were concluded between the Association of Temporary Work Agencies and the German Union of Salaried Employers (DAG). They stipulate that there can be no contractual relationship between the temporary worker and the firm making use of his services.

In Belgium a collective agreement applying exclusively to administrative personnel was concluded on 24 March 1972 between the Belgian Federation of Temporary Work Organisations (UPEDI) and the employees' unions affiliated to certain representative trade union organisations. This agreement provides that the work contract must be concluded for a limited period of time or for a specific task and that it shall end after the expiration of the stipulated period.

[1] The new French legislation referred to above provides for the possibility of setting a minimum rate for the " precarious employment allowance " through collective agreements and specifies that temporary workers are bound by the " contractual rules applicable in the workplace " as far as hours of work, night work, weekly rest and public holidays observed, safety and health, and the employment of women and children, young persons and aliens are concerned.

In the Netherlands a collective agreement concerning temporary workers in the clerical and administrative sector entered into force on 1 January 1972. This agreement is binding on the Federation of Temporary Work Agencies (ABU) on the one hand and on the unions of clerical and administrative workers affiliated to the three Netherlands trade union federations on the other. The agreement, which applies exclusively to temporary workers who are not bound by a contract of employment to a temporary work agency, deals with the legal position and social conditions of such temporary personnel (wages provisions, written contracts) and in case of contracts of indeterminate duration it provides for a period of notice that is calculated according to the length of the assignment.

In Denmark a collective agreement was signed on 13 May 1970 between the temporary work organisation Manpower and the Danish Electricians' Union. Under this agreement Manpower is required to assume all the responsibilities of an employer. Employment with Manpower ceases with the completion of each individual task.

Guidelines for the future

So far we have dealt for the most part with the situation *de jure constituto*. But of course it is also necessary to consider the situation *de jure constituendo*. In view of the economic and social disadvantages of automatically prohibiting temporary work agencies, mentioned at the beginning of this article, it would seem more appropriate for the legislator to consider the type of abuses that might occur and to lay down measures with a view to preventing them, if possible. As has been shown above, this can be done, for instance, through the introduction of a licensing system, and it is noteworthy that the International Labour Office, in its memorandum to the Ministry of Health and Social Affairs of Sweden concerning the applicability of Convention No. 96 to agencies for the supplying of temporary workers, recognised that the introduction of such a system, as provided for in Article 5 of the Convention, might be appropriate in the case of such agencies.[1] When considering what constitutes an abuse, the question is whether the activities of a firm engaging in the supplying of manpower are conducive to the sound functioning of the labour market or not. It is obvious that the latter is never the case if a worker who is only temporarily available is employed for temporary purposes. What, then, would constitute the most desirable arrangements in these circumstances?

When considering this question we must take into account the handling of the labour relationship by the parties concerned (temporary work agency and temporary worker), as well as the role of the govern-

[1] *Official Bulletin*, July 1966, pp. 389-396.

ment. As regards the first aspect, in practice both free-lance agreements and contracts of employment exist side by side. The essential difference between the two is that, in the case of the contract of employment, there is a relationship of subordination between employee and employer. If the matter is approached from the angle of the satisfactory supervision of employment and the prevention of abuses it may well be asked whether it would not be best always to regulate the labour relationship between the temporary work agency and the temporary worker by means of a normal contract of employment.[1] Provision could be made for this in an international labour Convention and in national legislation. Such an arrangement would have great advantages, one immediate consequence being that all the relevant labour and social security legislation would automatically be applicable to the temporary workers concerned. In addition, it would then be easier to achieve satisfactory collective regulation of the working conditions of such workers by means of collective agreements, although some issues, particularly in the sphere of participative management, might give rise to difficulties. Moreover, if the principle of a normal contract of employment were to be accepted and if this form of relationship were made compulsory under provisions not only invalidating all other types of agreement but also making them punishable, the scope for the activities of pirate firms (i.e. temporary work firms disrupting the labour market by dealing with permanent labour) would be considerably restricted.

As regards the role of the government, an important additional safeguard would be provided if the operation of temporary work firms were made subject to the obtaining of a licence granted by the government. The risk of abuses, which would already be considerably reduced by the requirements in respect of the legal form of the labour relationship, bringing about the automatic application to the temporary workers concerned of the relevant labour and social security legislation, would in fact be completely eliminated by this means.

The measures described above would make it possible, on the one hand, to combat the abuses practised in the labour market by pirate firms, and, on the other, to take full advantage of the useful economic function performed by bona fide firms engaged in the supplying of temporary workers. This is all the more important inasmuch as it looks as if the demand for temporary workers will become even greater in the future.

In conclusion we shall set forth some guidelines formulated by the International Institute for Temporary Work which we believe might usefully be kept in mind in this connection.

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[1] A different point of view is defended by, among others, L.-E. Troclet and E. Vogel-Polsky; see their *Le travail intérimaire en Belgique et dans les pays du Marché commun—étude sociologique et juridique* (Brussels, Editions de l'Institut de Sociologie de l'Université Libre de Bruxelles, 1969).

(1) Temporary work offers job opportunities for those workers who are not in a position to enter into a permanent employment contract or who do not wish to do so.

(2) Temporary work meets specific needs, of limited duration, which otherwise would not be covered. It must be complementary to, and not compete with, permanent employment. It is only justified when it corresponds to such specific needs as replacing absent personnel, filling a job for which permanent staff have not yet been recruited, meeting an overload of work, or establishing or launching a new activity.

(3) In all regulations concerning the supplying of temporary workers a distinction should be made between bona fide temporary work agencies and pirate firms, whose activities disrupt the functioning of the labour market and jeopardise the interests of the workers.

(4) The organisation of the supplying of temporary workers can be assigned to private temporary work firms, provided that the necessary measures are taken to protect the interests of both permanent and temporary workers as well as those of employers' and workers' organisations.

(5) Temporary workers should be covered by the relevant general labour legislation and they should benefit from the general social security provisions by virtue of having concluded, for each assignment, a contract of employment with the temporary work agency, which is the employer.

(6) The remuneration of temporary workers, which may be fixed through collective bargaining, should be sufficient to compensate for the fact that they are deprived of certain advantages found only in permanent employment and thus ensure over-all equality with the remuneration of permanent workers.

We are firmly convinced that these principles, adapted to national circumstances, would contribute to social welfare and economic progress, and we shall follow with close interest developments in the relevant legislation of the various countries of Western Europe.
