

Temporary work in Western Europe: Threat or complement to permanent employment?

A. S. BRONSTEIN *

Introduction

The employer/employee relationship in the industrialized countries of Western Europe has changed significantly in the past 20 years under the combined influence of international competition, technological innovation, new approaches to the organization of production and personnel management, and the evolving needs and aspirations of workers.¹ This metamorphosis has taken place against the backdrop of the debate on labour market flexibility, which has called into question the model of the "standard" or "traditional" employment relationship enshrined in the labour legislation of most European countries.² The "standard" employment relationship is characterized by an open-ended (or "without-limit-of-time") contract of employment for full-time work, performed for a single employer, and protection against unfair dismissal. In recent years, however, it has been blamed for rigidities that make it more difficult for enterprises to adapt to a changing and competitive economic environment, and an alternative model has emerged which is based on so-called "flexible" forms of employment; depending on one's bias, these are referred to as "new forms of employment", "special forms of employment" or "precarious, casual or marginal employment".

These concepts, which are certainly not congruent but do often overlap, now cover a broad spectrum of forms of employment which, although they

* Chief, Labour Legislation Section, International Labour Office. This article is based on research carried out by the author between 1988 and 1990 on temporary work and fixed-term employment contracts in Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

¹ Concerning these trends, see E. Córdova: "From full-time wage employment to atypical employment: A major shift in the evolution of labour relations?", in *International Labour Review*, Vol. 125, 1986/6, pp. 641-657.

² See H. Sarfati and C. Kobrin (eds.): *Labour market flexibility: A comparative anthology* (Aldershot, Gower, 1987).

remain in the minority, provide the legal framework for the employment of a large and growing segment of the economically active population. Viewed with contempt by some, and fervently endorsed by others, they represent the latest manifestation of the long-standing conflict between economic and social interests which, even in the nineteenth century, found expression in the clash between the respective philosophies of the Napoleonic Code and the papal encyclical *Rerum Novarum*. Irrespective of where one's sympathies lie, two things are certain: first, that these forms of employment are part of a social and economic reality which only the naïve would seek to legislate out of existence, and second, that they constitute one of the major challenges facing labour law.

Labour law sees its functions of protecting workers and regulating industrial relations seriously challenged by these new forms of employment which, in many cases, undeniably entail a worrying degree of precariousness. Initially, the labour law of most countries reacted to the new trend by rejecting such forms of employment as "non-standard" or "atypical", in other words as debased and reprehensible forms of work. But the scale of the phenomenon is such that one cannot simply look the other way or, for that matter, fail to recognize that its consequences are not entirely negative. That is why greater efforts are now being made to understand the phenomenon, and to provide for it in labour law, no longer for the purpose of rejecting non-standard forms of employment, but rather with a view to enhancing the protection of the workers concerned by giving them a legal status that ensures a minimum of social protection.

There are many forms of employment which depart from the traditional open-ended employment contracts for full-time work, but the three most commonly found are: part-time work, work performed under a fixed-term contract, and temporary work. It is with the last of these that the present article is concerned.

An outline of the debate

A single employer. An open-ended employment contract. Protection against dismissal. These are the three major features of the so-called "standard" employment relationship that are challenged by temporary work. Temporary work is a triangular arrangement in which a temporary work agency (TWA) hires a worker for the purpose of placing him or her at the disposal of a third party, the user enterprise, for a temporary assignment.³

³ In French- and Spanish-speaking countries a clear distinction is drawn between temporary work (*intérim*), as defined above, and fixed-term employment contracts. The distinction is less clear in English-speaking countries, and especially in the United Kingdom, where the term "temporary work" may also cover fixed-term contracts, seasonal employment and casual employment. Sometimes, but not always, temporary work is referred to as "agency work" or "dispatched work". The most commonly used terms in Spanish-speaking countries are *trabajadores temporarios*, *interimarios* or *eventuales*.

For the temporary worker, this implies a dual relationship with, on the one hand, the TWA by whom he or she is legally employed, and on the other, the TWA's client firm to which he or she is temporarily assigned. It is the client firm which gives the worker his or her instructions and supervises the work, although it is not his or her legal employer. This unusual situation most clearly highlights the "atypical" legal nature of temporary work, and explains why such work, although not the commonest among non-standard forms of employment, is the most controversial.

Temporary work has as many enthusiastic supporters as relentless detractors; both groups have valid arguments to support their views. The former emphasize the great flexibility that temporary work brings to the organization of work, since it enables employers quickly to adjust staffing levels to fluctuating levels of production. They point out that workers benefit too, since temporary work can provide short-term employment to many who are not interested in a full-time job, or serve as a springboard for those looking for stable employment.

The opponents of temporary work, on the other hand, contend that many of its so-called advantages are merely illusions hiding a pernicious social reality. To their way of thinking, temporary workers are precarious workers since they have no claim either to job security or to the benefits tied to length of service which their "permanent" colleagues may enjoy. Where, as is often the case, temporary workers receive only brief assignments, interspersed with relatively long periods of unemployment, they run the risk of not being able to accumulate the length of service required for entitlement to, for example, health or unemployment insurance. Nor is it easy for them to become part of the working team of their legal employer (the TWA), or that of the client firm to which they have been sent, for their assignment, by definition, is of limited duration. In addition, their presence raises the additional risk of undermining worker solidarity in the client firm. Temporary workers do not make many demands, and rarely join trade unions. "Nomadic" by nature, they are more likely than other workers to be exploited or to be assigned to dangerous or unpleasant tasks. The volatile nature of temporary assignments can facilitate labour trafficking, and the additional difficulties it implies for administrative control can open the door to fraud. Moreover, as the activities of TWAs are comparable with those of private profit-making employment agencies, it can be argued that they undermine the monopoly which public employment agencies enjoy in many countries. Lastly, the opponents of temporary work condemn it on moral grounds, arguing that TWAs treat labour as a commodity for their own gain.

Various accusations have also been levelled against the agencies that supply temporary workers. In its early years the temporary employment market developed in fairly anarchical conditions, free of the constraints of a well-defined legal framework. This made it possible for rogue operators to set up shop alongside the serious entrepreneurs and to commit various abuses, usually to the detriment of workers and social security schemes. Since it is

always difficult to separate the wheat from the chaff, the profession's reputation as a whole became so tarnished that it is still trying to shed its image as a "labour-dealer" and a modern-day "slave trader".

And yet these negative attitudes towards temporary work are softening. The trade unions, for instance, which were staunchly opposed at the outset, seem less hostile today. Increasingly, their objections tend to focus on the risks of abuse or fraud, rather than on temporary work itself. How else can one explain the attitude of the French, Dutch and Belgian trade unions that are negotiating collective agreements with TWAs? It is no longer surprising to read, e.g. in the Dutch temporary workers' collective agreement, about the "vital role which TWAs play in the labour market, by facilitating the re-entry of jobseekers".⁴ Nor are there any objections to the agreements concluded by Belgian and Dutch trade unions with employers' organizations and the Government for setting up semi-public temporary work agencies within the context of employment policy efforts to facilitate such re-entry.

This change in attitudes is not fortuitous; all the parties concerned have helped to promote a recognition of the social value of temporary work. The trade unions, for example, have acquired a better understanding of the reasons that may lead enterprises to turn to temporary workers. TWAs, for their part, have done much to purge their ranks of unscrupulous operators; they have also set up solid professional organizations, signed collective agreements and adopted codes of ethical conduct. Lastly, the authorities in many countries have worked hard to "demarginalize" temporary work by extending protective legislation to temporary workers, limiting abuses and ensuring that recourse to temporary work is not made at the expense of permanent jobs. As a result, temporary work has gained a growing degree of respectability; it is recognized as a valid form of employment in its own right which, although certainly distinct from the standard employment relationship, is not relegated to a second-class status in which temporary workers are exploited and doomed to occupational stagnation. Today, the outright assaults on temporary work have subsided. Efforts are being made instead to ensure that it remains within the limits where it is socially useful, and that its benefits are shared fairly between the users and the workers themselves.

The scale of the phenomenon

The first TWAs came into existence at the turn of the century in the United States and the United Kingdom, but it was not until after the Second World War that they truly began to proliferate. Since then temporary work has continued to grow; by the late 1950s it was already well established in the

⁴ Preamble to the temporary workers' collective agreement, signed by the Dutch Federation of Temporary Work Businesses (ABU) and the FNV, CNV and BLHP trade unions.

Netherlands, Switzerland and the United Kingdom, and not long afterwards in other Western European countries such as Belgium, France and the Federal Republic of Germany. Its importance in Western Europe today can be gauged by the results of a recent study carried out for the Dutch Federation of Temporary Work Businesses (ABU),⁵ according to which some 5 million people in the European Community⁶ were engaged in temporary work in 1988, representing the equivalent of 856,380 full-time jobs, or 0.6 per cent of the economically active population.⁷ Another study reported that some 100,000 workers in Belgium had had at least one temporary assignment between 1 April 1987 and 31 March 1988, and that in the course of those 12 months the average number of temporary workers on assignment was 20,000 per day.⁸ In the Netherlands the number of temporary workers on assignment each day averages about 100,000, while some 500,000 workers have at least one temporary assignment per year.⁹ In France approximately 6,680,000 "assignment" contracts (*contrats de mission*) were signed in 1989, with an average duration of 2.08 weeks; over a full year, this is the equivalent of 309,245 full-time jobs.¹⁰

Mention should also be made of the spectacular increase in the volume of business done by temporary work agencies in recent years. In France, for example, turnover has risen by 20-30 per cent each year. In Belgium the number of hours worked under temporary work contracts rose from 13 million in 1983 to 30 million in 1987. The number of temporary workers nearly doubled in the Federal Republic of Germany between 1985 and 1988, and in the United Kingdom between September 1985 and November 1987, i.e. in just over two years. In the Netherlands it almost quadrupled between 1982 and 1988.¹¹ This all goes to show that temporary work enjoys one of the highest sectoral rates of growth in the various national economies.

This impressive growth should not, however, mask the fact that temporary work still accounts for only a small share of total employment. For although the number of temporary assignments is very high and continues to grow, their duration is generally short. Thus, when translated into an equivalent number of full-time jobs, temporary work amounts at most to 1 per cent of annual employment, except in France and the Netherlands where the figure is closer to 2 per cent. Likewise, it makes up only a modest

⁵ Bakkenist Management Consultants: *Comparative study of organized temporary work in the countries of the European Community* (Diemen, Netherlands, 1989).

⁶ Excluding Ireland, Luxembourg and Portugal, for which the study did not provide statistics, as well as Greece, Italy and Spain, where temporary work is prohibited by law.

⁷ For the sake of comparison, the corresponding figure for the United States in the same year, expressed in the equivalent number of full-time jobs, was 850,000, or 0.8 per cent of the active population.

⁸ Source: Federation of Temporary Employment Agencies (UPEDI).

⁹ Source: ABU.

¹⁰ Source: Ministry of Labour.

¹¹ Bakkenist Management Consultants, op. cit.

share of all forms of non-standard employment.¹² In the Federal Republic of Germany, for instance, temporary workers in 1987 were far outnumbered by those with fixed-term employment contracts, the latter accounting for 1.46 million jobs – 5.4 per cent of the labour force or 7.3 per cent of all wage earners. The same goes for the United Kingdom, where 1,465,000 persons, or 5.7 per cent of the labour force, worked under fixed-term contracts in 1987, while the 129,000 temporary jobs represented barely 10 per cent of all fixed-term employment. Even in France, despite the strong increase in temporary employment, in March 1989 there were 2.14 workers with fixed-term contracts for every temporary worker.

In addition, the recourse to temporary work is very sensitive to economic conditions, rising in good times, but dropping substantially in downturns. In France, for example, temporary work in the first quarter of 1991, measured in its equivalent in full-time jobs, fell by 10 per cent in comparison with the first quarter of 1990.¹³

Lastly, mention should be made of the uneven distribution of temporary work in the various countries of Western Europe. Very popular in Belgium, France and the Netherlands, it is somewhat less so in the United Kingdom. It is even less prevalent in Germany, seems to have stabilized in Denmark, and was introduced only recently in Portugal.

Why the recourse to temporary work?

The client firms of temporary work agencies adduce a variety of reasons when asked why they resort to temporary workers. The most frequently cited are the temporary replacement of employees who are absent, the performance of occasional jobs or of tasks that require an expertise not available within the firm, and seasonal or exceptional periods of peak activity. Many firms also admit that they turn to TWAs to prospect among temporary workers for candidates who could be recruited to fill vacancies on a permanent basis.

It is therefore clear that a variety of situations exist. In some of these the work done by the temporary worker is obviously temporary in nature, and

¹² Estimates concerning the volume of non-standard employment vary widely because of differing definitions of traditional or standard employment. Nevertheless, it would be fair to say that somewhat less than one-third of the European labour force is engaged in non-standard employment; this is merely a quantitative estimate and does not imply that all these workers are employed under precarious conditions. For instance, many of those working part time do so because they prefer it. Also, statistics on fixed-term contracts in countries such as Germany include apprentices, who are not casual workers, as well as seasonal workers. For an overall study of non-standard employment, see D. Meulders and B. Tytgat: "L'émergence d'emplois atypiques dans les pays de la CEE", in *Travail et emploi* (Paris, Ministry of Labour, Employment and Vocational Training), 1/1989, No. 39, pp. 87-96. The EC Commission estimates the average daily total of direct and indirect temporary workers at around 10 million, with agency work accounting for a fairly small fraction of this total. As for part-time workers, their numbers in the Community are estimated at around 14 million.

¹³ Source: Temporary Employment Agencies' National Federation (UNETT), based on information supplied by the Ministry of Labour.

thus poses no threat to permanent jobs. This is the case of occasional jobs which require unusual skills, or of tasks whose duration is necessarily limited, such as translation or secretarial services while travelling on business, or support services for conferences or trade fairs. It is partly in response to this demand that many TWAs have specialized in offering the services of computer operators, accountants, bilingual secretaries, nurses, etc.

Nor does the use of temporary workers to replace regular employees who are absent raise any particular ethical problem; in fact, this is the "bread-and-butter" function of TWAs. Use of temporary workers for this purpose has grown even more widespread as legislation has expanded the right to paid leave and prolonged its duration, and thereby multiplied the grounds for absence. In this connection it should be mentioned that one of the reasons most frequently cited by firms for using temporary workers is to replace employees on maternity leave. This suggests that there is a causal relationship between the growing number of women in the labour force and the growth of temporary employment. Since these replacements are, by definition, temporary, there should in theory be no competition here between temporary and permanent workers. The same is true for seasonal peaks of activity such as end-of-year sales, where the temporary increase in business justifies the recourse to extra help.

On the other hand, the recruitment of temporary workers to meet a non-seasonal increase in workload, and the reliance on TWAs to recruit a permanent employee, may seem more questionable practices. In the first case, the major question concerns the meaning of "peak activity". Trade unions view this as an increase in workload over normal levels of activity; for TWA client firms, however, it generally means the surplus of work over the "trough of the wave", which they regard as the point of reference for establishing the level of permanent (or "core") employees. By this reasoning, any more or less temporary increase over this trough of activity would justify the use of extra (or "peripheral") workers from outside the enterprise, including those supplied by TWAs. This approach creates a grey area between posts which, by nature, are permanent, and posts which, by nature, are temporary; in this grey area temporary employment may evolve into permanent employment, but the converse is also true, in that permanent posts may be downgraded to a temporary status. In these circumstances there are reasons to fear that the recourse to temporary workers may become a permanent feature of a firm's personnel policy, rather than an occasional means of securing additional manpower, as it was meant to be. There is thus the potential for a misuse of TWAs, and apparently more than the potential, if one is to judge by the number of labour disputes that centre on the undue recourse to temporary work . . . and sometimes lead to the "promotion" of temporary workers as permanent employees.

The last scenario is that in which the client firm relies on TWAs for the recruitment and selection of staff: a user enterprise with a vacant post which it intends to fill permanently requests a TWA to supply a temporary worker

for a fixed, "pre-employment" period. If the temporary worker's services prove satisfactory, the firm may offer him or her a permanent contract. In this case, rather than leasing labour, the TWA is providing selection and recruitment services for which the user is unwilling or unable to assume responsibility.

It is therefore fair to ask whether in this respect the TWA is not, in fact, setting itself up in competition with public employment services, inasmuch as it is essentially performing an employment service for a fee – something which is prohibited in most European countries. But the question is a delicate one since this type of operation seems to work to everyone's satisfaction: the client firms realize savings by not having to recruit or select candidates (tasks for which they may not have the time or expertise); the workers, for their part, are steered towards potentially permanent jobs; lastly, the public authorities cannot but look favourably on any activity that facilitates the placement of jobseekers. This explains why a blind eye is often turned to what possibly constitutes a means of circumventing statutory restrictions on employment services.

For client firms, the recourse to TWAs to meet manpower needs is not necessarily an "easy way out". The hourly rate of pay for a temporary worker is higher than that for workers recruited directly, whether under permanent or fixed-term contracts, since in addition to the temporary worker's remuneration (normally the same or higher than that of his or her permanent counterparts), the client firm must pay the TWA's fee, which usually adds 20 to 30 per cent to the bill. It must also allow some time for training; the more complex the task, the longer the breaking-in period and the more time the firm must devote to training a worker who, in theory, will not be around long. The firm will also often face some hostility on the part of staff representatives, which may lead to a deterioration in the social climate within the enterprise and to disputes. Lastly, owing to the brevity of his or her stay, there is the possibility that the temporary worker's motivation, and therefore productivity, may not match that of permanent workers intending to spend their careers within the enterprise.

If temporary work has thrived in spite of these drawbacks, it is because it also offers many enticing advantages. For one thing, the users especially appreciate the speed and efficiency of TWAs, and the fact that they assume responsibility for staff selection and administration, often complex tasks which are all the more burdensome when short-term recruitment is involved. For another, there is no doubt that reliance on TWAs frees the client firm of a sense of "guilt" in personnel management, since the end of a temporary assignment is in no way comparable to the emotional upset that invariably accompanies a dismissal.

Who are these temporary workers?

The "identikit" portrait of temporary workers varies from one country to another, but in general they are mostly young people. In Belgium, for example, 70 per cent of temporary workers are under 30 years of age, while only 7 per cent are over 40. These percentages are virtually identical in the Netherlands and in France, where the average age of temporary workers is 28 years and seven months. In Switzerland only 10 per cent are over 40, and more than half are under 25. If it is true that the labour pool available to TWAs is concentrated in a fairly narrow age bracket, then it follows that this pool has a fairly high rate of turnover and that most temporary workers move on from this type of work fairly quickly. This explains why the market for temporary workers is sometimes rather tight: in France, for example, TWAs estimated in 1989 that their industry was unable to meet close to 30 per cent of the users' demand, owing to an insufficient supply of workers with the requisite skills.

The tasks for which temporary workers are hired have shown a tendency to change over time. Initially, temporary workers were hired mostly to perform non-manual and "women's" work; nowadays a sizeable part of TWA revenue comes from the placement of male workers in industry. In the Federal Republic of Germany in 1986 men accounted for 80 per cent of all temporary workers, up from 62 per cent in 1975. In Belgium 63 per cent of all temporary workers are men (a share that rises to 83 per cent among temporary blue-collar workers) and in France 74 per cent. This male dominance is less pronounced in the Netherlands and in Switzerland (where men accounted for 58 and 57 per cent respectively of all temporary workers in 1988). In the United Kingdom, where temporary workers are concentrated in commerce, offices and the paramedical sector, women still hold the edge among temporary workers (63 per cent). It should be noted, however, that these data can change very quickly from one year to the next: for example, even a brief recession in industry is inevitably accompanied by a sharp drop in the recruitment of temporary blue-collar workers; this has the effect of increasing the share of temporary workers in services, and hence the share of women.

The motivations of the temporary workers themselves are very diverse. It is true that many of them hope, through temporary work, to find a permanent position. But for many also (approximately one-third), temporary work is their first choice. This group includes: (a) young people looking for "a little job" and the pin-money that goes with it; (b) "nomadic" workers who enjoy a change of working environment from time to time; (c) married women trying to reconcile occupation and family responsibilities; and (d) workers with specialized skills (nurses, translators, bilingual secretaries, computer operators or bookkeepers), who drop off their business cards at TWAs in the hope of getting referrals, thus sparing themselves the trouble of chasing down contracts. In all four cases, these are the "permanent temporary workers", for

whom temporary work is a way of life, at least during a stage in their lives, and for whom the TWA is a sort of business agent.

As for those who turn to temporary work in the hope of finding a permanent job, they usually belong to one of two groups: (a) those who hope to acquire the experience they need to qualify for permanent employment, and for whom temporary work serves as a springboard;¹⁴ and (b) those who settle for temporary work because they are offered nothing better. It is this latter group which gives rise to the most serious social concerns, and it is not surprising to find that it is composed primarily of older workers with few or no skills, of immigrants and of housewives who would like to return to work.

It is not easy to come by reliable data on the share of this latter group in the total temporary workforce, and estimates vary considerably. According to some surveys, around one-third of temporary workers are not looking for steady work, while another 30-40 per cent eventually find permanent employment after one or more temporary assignments. This would suggest that involuntary casual employment is the lot of only the remaining one-third of temporary workers – a rather low proportion compared with the extent of precarious work in other forms of non-standard employment. It must be recalled, however, that the results of any survey are heavily influenced by survey methodologies. And indeed, trade unions often challenge these figures, claiming that the extent of precariousness in temporary work is in fact much greater. In any case, it is clear that efforts must be made to find more stable employment for those who are engaged in temporary work only for want of something better. Nevertheless, one must be careful not to confuse the causes of precarious employment with its effects: although temporary work may be a *form* of precariousness for some, it does not follow that it is also a *cause*.

The temporary work agencies

It is in the United Kingdom and in the former Federal Republic of Germany that one finds the greatest numbers of TWAs: some 2,500 agencies and 10,000 branch offices in the former, and 1,259 agencies and 1,486 branches in the latter. It is not uncommon in these two countries for TWAs to engage in other activities as well, or for temporary employment services to be ancillary to their main activity. In other countries, by contrast, where TWAs are restricted exclusively to temporary employment services by legislation or regulation, they are considerably fewer in number. In 1988,

¹⁴ In France, according to a survey conducted in July 1989 by an official institution on behalf of an association of TWAs, it was estimated that, of the 900,000 persons taking up a temporary assignment over a one-year period, 630,000 are placed by public employment agencies, 400,000 of them having until then been in receipt of unemployment benefit. After six to 11 months as temporary workers, some 380,000 find work outside temporary employment, including 180,000 in permanent positions. Only 70,000 are still looking for work. See D. Marchand and E. M. de Ficquelmont: *Travail temporaire* (Paris, Delmas, 2nd ed., 1990), p. 58.

according to the Bakkenist Management Consultants study, there were 77 TWAs in Belgium, 929 in France and 106 in the Netherlands, although each had a fairly large number of branch offices. In addition, there is a marked trend towards concentration in the profession, as a handful of TWAs account for the bulk of its turnover. In France, for example, five of the 742 TWAs operating in 1987 accounted for 43 per cent of the sector's turnover, while a mere 32 (or 4 per cent) supplied 66 per cent of all temporary workers. In fact, there are a few giants in this field, some of which have operations in several countries; they include ADIA (Switzerland), Blue Arrow-Manpower (United Kingdom and United States), ECCO and BIS (France), Randstad and Vedior (Netherlands).

The activities and structures of TWAs have changed considerably over the years. In the early days many of them needed little more than a telephone and a file of candidates who were ready to undertake temporary assignments. Nowadays, it is rare to find TWAs operating on a shoestring, firstly because the authorities are parsimonious in handing out licences to aspiring entrepreneurs and do so only after they have satisfied themselves of the applicants' bona fides, and secondly because the clients of TWAs are becoming more and more demanding. A TWA that wishes to survive and prosper must develop the capacity to know its clients and help them define their needs; to interview prospective temporary workers, test them and very frequently give them further training. The firm Manpower, for example, reported in 1990 that it had invested close to £30 million in its staff training programmes; in France it is estimated that TWAs as a whole spent about 2 per cent of their wage bill on training. TWAs must also look after their image, for they are still sometimes viewed in a negative light; this explains the importance they attach to advertising and public relations. Lastly, TWAs must find ways to foster the loyalty of their staff which, in a way, represents their "capital", and prevent it from being lured away not only by their competitors, but even more so by their clients.

In all countries TWAs have set up solid professional organizations¹⁵ which come together at the international level under the banner of the International Confederation of Temporary Work Organizations (often referred to by its French acronym CIETT), with headquarters in London. These organizations, most of which date back to the 1960s, bring together, if not most, at least the largest TWAs in their respective countries. In Belgium, for example, although the Federation of Temporary Work Enterprises (UPEDI), created in 1963, had but 39 members among the 70 or so TWAs in the country in 1988, these accounted for 90 per cent of the aggregate turnover of private sector TWAs (Belgium also has a large semi-public TWA). In the Netherlands, in 1989, the 52 members of the national federation of private

¹⁵ In the United Kingdom TWAs belong to the Federation of Recruitment and Employment Services (FRES), which is the umbrella organization grouping employment agencies of all kinds.

sector TWAs (ABU, created in 1961) accounted for 80 per cent of the aggregate turnover of the country's 120 private TWAs. Similar percentages are found in France, where TWAs are represented by two organizations, the Temporary Work Professionals' Association (PROMATT), and the National Union of Temporary Work Enterprises (UNETT). In Switzerland the affiliates of the Swiss Federation of Temporary Work Enterprises (FSETT) accounted for 734 million Swiss francs of the sector's 1989 total turnover of 1.1 billion Swiss francs. These employers' organizations participate in collective bargaining, play an important role in consultations with the public authorities and, in a way, portray themselves as the guardians of the social role of temporary work. In particular, they have adopted codes of ethical practice which govern the role of member enterprises as the employers of temporary workers, their dealings with clients and their relationships with one another.

In the Netherlands and Belgium private for-profit TWAs exist alongside not-for-profit, semi-public TWAs. Best known among the latter are START and T-Services Intérim. START (Stichting Uitzendbureau Arbeidsvoorziening) was set up in 1977 under an agreement between the Dutch Ministry of Social Affairs and Employment, the two major trade union confederations (the FNV and CNV) and the employers' confederation (the RCO), each of which holds seats on START's Board of Directors. START functions essentially as a private TWA, except for its special (but not exclusive) focus on certain target groups such as the handicapped, the long-term unemployed, immigrant workers, workers over 45 years of age and women who wish to return to the labour market but are having trouble finding work. Over the years it has grown from its original five local offices to 150 in 1989 (by way of comparison, Randstad, the largest Dutch TWA, has 200 branch offices), and in 1988 it concluded 95,891 temporary work contracts. Each day some 20,000 temporary workers are occupied on assignments received through START. Nearly one-third of them belong to one of the above-mentioned target groups, and over one-third manage to find permanent employment after one or more assignments.

The essential features of START are more or less replicated by T-Services Intérim in Belgium, the major differences being that where the former is national in scope, the latter has three divisions covering Brussels and the Flemish- and French-speaking areas, each with its own legal identity, and that fees are fixed by royal decree. T-Services has captured about 30 per cent of the temporary work market, although there are significant regional variations.

The legal context

Since the 1960s, when temporary work began its spectacular growth, a number of questions have been raised concerning its role in the labour

market and the legal problems arising from the "triangular" relationship characterizing this form of employment. The first issue was to establish the legal nature of TWAs: were they fully fledged employers of temporary workers whom they made available to their clients, or did they act more as "brokers" trading in a "commodity", i.e. labour? The second was to determine to what extent, if any, temporary work was responsible for the increasing instability of employment, and to devise suitable legal safeguards to ensure a minimum level of social protection for temporary workers and to prevent temporary work from entering into competition with stable employment.

As regards the first of these questions, it came down to deciding whether their activities brought TWAs into the category of fee-charging employment agencies. One view, held notably in employers' circles, was that TWAs had legal responsibility for the hiring of manpower that they made available to their clients and that they should therefore be treated like any other employer in the commercial sector. From a different perspective, trade unions, in particular, saw TWAs as nothing more than intermediaries between the employed manpower and client firms, the real employer being not the agency responsible for recruitment, but the firm that actually gave the worker a job and directed and supervised his or her work.¹⁶ Given the stakes, this was far from an academic debate, for it was likely that in many countries TWAs would be banned if they were equated with fee-charging employment agencies.

This debate also had international implications, given the standards adopted by the ILO, in particular the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).¹⁷ This Convention applies to "any person, company, institution, agency or other organization 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". It provides an alternative for member States which have ratified the Convention, by stipulating that they may opt to apply either the provisions of its second part, which call for the progressive abolition of fee-charging employment agencies, or those of its third part, which call for a rather strict regulation of such agencies (including the issuance of a yearly licence, renewable at the discretion of the competent authority, and the subjection of these agencies to

¹⁶ See S. Ricca: "Private temporary work organisations and public employment services: Effects and problems of coexistence", in *International Labour Review*, Vol. 121, 1982/2, p. 142.

¹⁷ As of 1 January 1991 this Convention had been ratified by 39 States: Algeria, Bangladesh, Belgium, Bolivia, Brazil (which has denounced it), Costa Rica, Côte d'Ivoire, Cuba, Djibouti, Egypt, Finland, France, Gabon, Germany, Ghana, Guatemala, Ireland, Israel, Italy, Japan, Libyan Arab Jamahiriya, Luxembourg, Malta, Mauritania, Netherlands, Norway, Pakistan, Panama, Poland, Portugal, Senegal, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Syrian Arab Republic, Turkey and Uruguay.

the control of such authority, which is empowered to approve or fix the fees charged by them).

The application of this Convention to TWAs is the subject of some controversy, inasmuch as it was drafted in 1949, in other words before TWAs came into their own. If TWAs are considered the legal employers of the temporary workers whom they send on assignment, they cannot be considered employment agencies as defined in Convention No. 96. Nevertheless, in a 1965 memorandum sent by the International Labour Office to Sweden's Ministry of Health and Social Affairs¹⁸ concerning a specific case ("ambulatory typewriting agencies"), the ILO considered that an agency which makes a worker available to a third party is in fact acting as an intermediary inasmuch as it procures employment for a worker and supplies a worker for an employer, under the terms of Convention No. 96. Although this opinion carries some weight, it cannot be considered an authentic interpretation; in accordance with the provisions of article 37 of the ILO Constitution, such an interpretation can be issued only by the International Court of Justice. The fact is that many of the States that have ratified Convention No. 96 and decided to apply the provisions of its second part, in other words to abolish fee-charging employment agencies, nevertheless authorize TWAs on the grounds that they do not act as employment agencies. These countries include Belgium, Finland, France, Germany, Luxembourg, the Netherlands and Norway.¹⁹ Other countries, however, among those which have chosen to abolish fee-charging employment agencies, have sided with the ILO's interpretation and banned TWAs. In 1986 the ILO Governing Body received a complaint alleging that, the previous year, the Government of Japan had adopted an Act which sought to secure "the proper operation of temporary work agencies and improved working conditions for temporary workers".²⁰ Although the Governing Body did not express an opinion on the nature of the activities of these enterprises, it concluded that the Act was not inconsistent with the obligations arising from Part III of Convention No. 96, concerning the regulation of fee-charging employment agencies, which Japan had chosen to apply.²¹ On several occasions between 1982 and 1986, the Governing Body was requested to place on the agenda of the International Labour Conference an item concerning the adoption of standards relating

¹⁸ *Official Bulletin* (Geneva, ILO), Vol. XLIX, No. 3, July 1966, pp. 390-396.

¹⁹ Argentina, Bulgaria, Chile, Czechoslovakia and Mexico, which have not ratified Convention No. 96, remain bound by the provisions of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), which was revised by Convention No. 96. Convention No. 34, which contains stricter provisions than Convention No. 96, provides that fee-charging employment agencies shall be abolished within three years from the coming into force of the Convention for the Member concerned. Since this instrument was revised by Convention No. 96, it is no longer open for ratification. For the record, however, Argentina has authorized and regulated temporary work agencies.

²⁰ *Legislative Series* (Geneva, ILO), 1985-Jap. 2.

²¹ ILO: Governing Body doc. GB.238/6/14, 238th Session, Geneva, 16-20 November 1987.

specifically to temporary work, but each time it chose other questions which it considered more urgent.

The European Community has also discussed the question of temporary work and considered the possibility of adopting a directive. In 1982 the Commission formulated a draft directive which it submitted to the Council of Ministers;²² a revised text was prepared in 1984.²³ Ultimately, the proposal was not adopted, owing to the opposition of one member State, since the Community's rules then in force required a unanimous vote. But the question has been raised again, following the adoption in 1989 of the Community Charter of the Fundamental Social Rights of Workers.²⁴ In June 1990 the Commission submitted three new proposals for directives on non-standard employment,²⁵ namely part-time, fixed-duration, temporary and seasonal employment. These proposals are aimed respectively at the conditions of work of atypical workers,²⁶ the maximum duration of fixed-term contracts and temporary assignments,²⁷ and the improvement of the safety and health of the workers concerned.²⁸ As this article goes to press, these proposals are under discussion by the competent Community bodies.

Temporary work under national regulations

In the absence of an international legal framework specific to temporary work, a wide range of solutions have been found at the national level. First, there are legal provisions which either authorize or ban temporary work. Temporary work is currently permitted in a growing number of countries, but remains banned in Greece, Italy, Spain (although there is a certain *de facto* tolerance), and Sweden (where it is nevertheless authorized for certain types of office work). Secondly, in countries where this form of employment is authorized, there are legal or collectively agreed rules concerning the conditions for setting up a TWA, the conditions for having recourse to temporary workers, the legal rights they enjoy, and the elimination of abuses.

²² *Official Journal of the European Communities* (Luxembourg), No. C 128/2, 19 May 1982.

²³ *Ibid.*, No. C 133/1, 21 May 1984.

²⁴ Commission of the European Communities: *Community Charter of the Fundamental Social Rights of Workers* (Luxembourg, 1990).

²⁵ Proposals for Council Directives Nos. 90/C 224/04, 05 and 06, in *Official Journal of the European Communities*, No. C 224, 8 Sep. 1990, pp. 4-9.

²⁶ In particular, equality of treatment between permanent employees and non-standard workers as regards entitlement to benefits in cash or in kind paid under a non-contributory social security scheme, access to social services within the enterprise and training programmes offered by the enterprise. The proposal also requires employers to inform staff representatives of any decision to hire workers under non-standard contracts of employment and, once such contracts have been signed, to state the reasons for its recourse to such contracts.

²⁷ This proposal would establish a limitation to the renewal of employment contracts of 12 months or less, so that the total period of employment would not exceed three years.

²⁸ This proposal aims to ensure that the workers concerned enjoy the same conditions as regards safety and health as other workers.

Among the Western European countries that authorize temporary work, the most permissive regulations are found in the United Kingdom and the most restrictive in Germany.²⁹ In the United Kingdom the legal framework is provided by the Employment Agencies Act of 1973,³⁰ which authorizes private employment agencies on condition that they are licensed by the competent authority. These agencies may supply either permanent or temporary workers who will have a direct employment relationship with the agency's client, or temporary workers who will have no such relationship. In fact, more often than not, these are considered by the courts to be "casual" workers or self-employed contract workers, with no claim to the rights established by labour legislation, even though they, like many other kinds of atypical workers, are treated as employees for tax and social insurance purposes.³¹ At the other end of the spectrum, temporary work in Germany is regulated by an Act of 1972;³² this not only requires that TWAs be licensed, but also stipulates that temporary workers shall have a permanent employment relationship with their respective TWA, which may not be suspended even if the TWA has no assignment for the worker in question. In addition, the Act defines the minimum conditions of work which must appear in the temporary worker's contract of employment.

Conditions for the establishment of a temporary work agency

Most countries confine the activities of TWAs to the provision of temporary workers. Invariably, TWAs are required to obtain a licence, issued by the competent authorities, generally after a review procedure. In Belgium, France and Portugal TWAs must also furnish a bond which guarantees the payment of their obligations to temporary workers and to the social security institutions in the event of their insolvency. The same is true in Switzerland, where a new legal framework was introduced on 1 July 1991 by the revised federal Act on employment services and the leasing of labour. Permits or licences often specify the branches or sectors of activity in which the TWA is authorized to operate: in Denmark, for example, no permits were issued prior to 1990 for sectors other than commerce and offices, while in Belgium and Germany TWAs are not allowed to operate in the construction industry, and in the Netherlands they are banned from several areas of activity, including construction, the graphic arts and certain branches of engineering in the Rotterdam area, as well as from providing drivers.

²⁹ See, in particular, B. Casey, R. Dragendorf, W. Heering and G. John: "Temporary employment in Great Britain and the Federal Republic of Germany. An overview", in *International Labour Review*, Vol. 128, 1989/4, pp. 449-466.

³⁰ *Legislative Series*, 1973-UK 1.

³¹ Casey et al., op. cit., p. 452.

³² *Legislative Series*, 1972-Ger.F.R. 2.

Conditions governing the recourse to temporary workers

Regulations may also specify the conditions in which the recourse to temporary workers is authorized, with a view to ensuring that temporary work complements stable employment rather than competes with it. Despite the growth of non-standard forms of employment, stable employment remains the preferred form of work under labour legislation. Thus French regulations, as revised in 1990,³³ stipulate that "a contract of temporary employment may not have the purpose or the effect of filling on a lasting basis a post connected with the normal and permanent activity of the client undertaking"; in addition, it establishes a limitative list of cases in which temporary work is allowed: the replacement of absent employees, a temporary increase in the workload of the undertaking, seasonal jobs or jobs for which it is the regular custom not to hire under permanent employment contracts.

Other countries, including Belgium, Luxembourg and Portugal, have adopted a similar approach. In Luxembourg, for example, in the absence of specific regulations concerning temporary workers, the cases in which recourse to such workers is authorized are defined by the rules on fixed-term employment contracts laid down in the 1989 Act on contracts of employment.³⁴ In the Netherlands legislation does not list the cases in which recourse to temporary workers is allowed; instead, such provisions are found in a framework collective agreement signed by the major trade union organizations and the national association of TWAs. As for the United Kingdom, it has already been mentioned that its regulations are more flexible, since there are, in theory, no restrictions as to what jobs can be done by temporary workers. Nevertheless, several collective agreements stipulate a maximum number of jobs in the enterprise that can be filled by temporary workers. In Germany, since the passage of the 1985 Act on employment promotion, the user enterprise is no longer required to justify its recourse to a temporary worker by the temporary nature of the corresponding job. But as in France and the Netherlands, it must consult with, or at least notify, the representative staff bodies of its decision to hire temporary workers. In Belgium, under a collective agreement concluded at the level of the National Labour Council, the employer must obtain the prior approval of staff representatives before hiring a temporary worker. Lastly, it should be pointed out that in most countries enterprises are not allowed to resort to temporary workers to replace permanent workers who are on strike.

The duration of assignments

The maximum duration of temporary assignments is another aspect of temporary work that may be subject to limitations. Certain countries find

³³ *Labour Law Documents* (Geneva, ILO), 1990/3 (1990-FRA 1), p. 69.

³⁴ *Ibid.*, 1990/1 (1989-LUX 1), pp. 46-50.

that this approach is more flexible than establishing a list of all cases or sectors in which enterprises may resort to temporary workers, because it eliminates the need for tedious verifications which may serve little purpose if an enterprise seeks simply to meet a short-term and temporary need. In Denmark, for example, the maximum authorized duration is three months; in Germany it is six months, although extensions are possible in some cases. Other countries such as Belgium, France, Luxembourg, the Netherlands and Portugal combine both types of limitations (i.e. the nature of the task and the assignment's duration). Regulations in France allow temporary assignments, including an extension, if any, of up to 18 months, or even 24 months if the work is performed abroad or if the client firm must fill an exceptional order for shipment abroad, for which its usual resources are insufficient. It should be recalled, however, that the vast majority of temporary assignments last only for a matter of weeks, since enterprises usually resort to less costly arrangements when their extra manpower needs turn out to be longer-lasting.

Social protection

Another important aim of efforts to set up a legal framework for temporary work is to ensure that temporary workers enjoy a minimum of social protection, with respect to both their individual and collective rights. A number of thorny problems arise in this area, mostly as a result of the "duplication" of employers. For example, which wage rates and other conditions of work should apply to temporary workers: those agreed with the TWA or those in force in the client firm? Who is legally responsible for the maintenance of the safety and health conditions of temporary workers: the client firm, which is not their employer, or the TWA, which is their legal employer but has no control over these conditions? With which of their two "employers" can temporary workers exercise their trade union rights: the one that hires them and pays their wages, or the one for which they work?

A variety of solutions have been adopted in this regard. Countries such as Belgium and France tend to view temporary workers as employees of the client firm, except as regards the strictly legal relationship, which continues to link them with the TWA. They have adopted regulations which seek to ensure at least a parity of wages between temporary workers and their permanent counterparts in the client firm. Other provisions entitle them to paid leave, based on the number of days worked, to remuneration for public holidays and to statutory benefits if their employment contract is suspended on account of bad weather. Upon the conclusion of their assignment, temporary workers in France also benefit from the so-called "precarious employment allowance", which is increased by 50 per cent if the TWA does not offer them a new assignment within a period of three days. As regards collective rights, the general practice is to include temporary workers in the count of the client firm's staff, for the purpose of determining whether certain legal provisions

tied to the size of staff apply to the enterprise in question (for example, provisions concerning the setting up of representative staff bodies).

In Germany, on the other hand, the emphasis is placed on strengthening the bond between the temporary worker and the TWA with which the worker has a permanent employment relationship. It is for this reason that the wages of temporary workers are negotiated with their TWA,³⁵ and that their numbers are used to determine the staff thresholds at TWAs, rather than in client firms. In the United Kingdom this matter is unregulated, while in the Netherlands temporary workers may not be paid higher wages than their permanent counterparts. The temporary employment market in this country is fairly tight, and client firms are wary of the rates charged by the TWAs, at least for certain categories of workers who are in high demand. In practice, the hourly wages of temporary workers are unlikely to be lower than those of permanent employees in comparable positions, but to the user the unit cost of an hour of temporary work will almost always be higher than that of a permanent employee.

Lastly, it should be pointed out that regulations in most countries prohibit contractual clauses that would prevent the client firm from hiring the temporary worker upon the completion of his or her assignment. This is an important point for, as noted earlier, a fairly substantial percentage of temporary assignments lead to the worker's subsequent recruitment to fill a permanent post. This prohibition is obviously not to the liking of TWAs, for they thereby stand to lose some of their best workers, many of whom they have trained. In Switzerland, however, the Act on employment services and the leasing of labour authorizes TWAs and their client firms to conclude agreements with a stipulation providing for compensation to be paid by the client firm should the temporary worker be hired by the enterprise within a period of three months following the completion of an assignment lasting less than three months. More often than not, however, the TWAs seek to meet this problem by fostering a team spirit among their workers to dissuade them from leaving.

Concluding remarks

While the initial opposition to temporary work agencies has not subsided completely, it is clear that temporary work is increasingly accepted. Given the small proportion of total employment for which these agencies account, it is unrealistic to portray temporary work as a really dangerous rival to permanent employment, especially since its prospects for expansion are

³⁵ For white-collar temporary workers there is a collective agreement between the professional association of TWAs (the BZA) and the salaried workers' trade union (DAG). There is, however, no collective agreement covering temporary blue-collar workers because the corresponding trade union federation (the DGB) still opposes temporary work. The situation in Switzerland is similar.

not unlimited. First of all, the recourse to temporary workers is expensive, as confirmed by the fact that most assignments are short. Secondly, the pool of workers ready to accept temporary assignments is finite, as is the number of posts they could fill.

In addition, there is increasing recognition of the social utility of temporary work, for workers as well as employers. It provides temporary employment for those who do not wish to sign on for the long term, and it serves as a springboard for those looking for permanent employment. It can therefore be said that, although temporary work remains a non-standard form of employment, it has become a standard means of finding work. As for employers, the foregoing pages have amply described the advantages they derive from TWAs.

Temporary work nevertheless has its drawbacks. It can lend itself to abusive practices which are not always easy to prevent or to correct. As has been shown, the "triangular" nature of the employment relationship raises problems as regards the employer's legal responsibilities. The possible disruption in the user's workforce may sour industrial relations. Lastly, although temporary work is not necessarily synonymous with precarious employment, it is often a last resort for many workers. Hence the efforts to bring as much stability as possible to this form of employment.

Unquestionably, the permanent employment relationship, coupled with protection against unjust dismissal, remains the ideal to which any socially advanced society should aspire. It is recognized as such by a majority of national legislations, as well as by two important international labour standards, the Termination of Employment Convention (No. 158) and Recommendation (No. 166), of 1982. These standards, however, allow for exceptions. It falls to national legislation to create a legal framework for these exceptions, and it is only within the bounds of this framework that temporary work should seek to make its socially useful and welcome contributions.