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Comparative Policy Brief

Key project findings

This study explored TAW in two countries at the opposite ends of national legislation on agency work in the EU, with distinct welfare regimes and political economies traditionally characterized by limited (UK) to no (Greece) social dialogue and collective bargaining above the micro/company level and weak labour law control and enforcement. With the exception of British agriculture, the regulation of temporary employment agency activities is poor in both countries studied.

Temporary Agency Work in Greece – a case study of trafficking(?)

Temporary work agency activities are practically not regulated in Greece. Agencies routinely charge workers for any placement, thrive of the flow of undocumented migrant labour and essentially offer a cheaper alternative to undeclared directly-employed labour. In the case of the exclusive nurses in Greek hospitals, agencies have aggressively carved a market for themselves despite legal restrictions.

Temporary Agency Work in UK – from company level regulation to less regulation under AWR?

The EU Agency Worker Regulations have been largely circumvented by businesses and agencies in the UK. They seem to have set a drawback from previous transition schemes from temporary to permanent employment decided at the company level. On the other hand, targeted initiatives such as the operation of the Gangmaster Licensing Authority in British agriculture have raised awareness about labour maltreatment in the sector during the last decade. All in all, the UK case study indicates that the close monitoring and enforcement of industrial cooperation on temporary labour protection may prove more effective than additional national legislation.

On the other side, the development of social and income support funds for temporary agency workers in certain continental EU Member States and the comparatively positive attitudes to TAW in these Member States (most prominently France and the Netherlands) indicate the critical role of social partner initiatives and collective bargaining above the company level for the protection of the agency workers' rights.

TAW regulation background: UK and Greece vis-à- vis the EU

The European Commission proposed directives on Temporary Agency Work, dating as far back as 1982, made a breakthrough in 2008 under the EU Agency Workers Directive ([2008/104/EC](#)). This is a crucial component in the [European Union's](#) employment law package to protect atypical working (the others being for part-time workers and fixed-term workers). Britain and Greece have been two Member States at the opposite ends of the legislative and regulatory framework on TAW. Although Britain has drafted one of the earliest legislations on TAW in the EU (Employment Agencies Act of 1973), it has been characterised by a flexible regulatory approach as regards the governance of the employment of temporary workers and the activities of temporary work agencies. Unlike most other EU MS where the agency worker is defined as the employee of the agency working in the premises of the end-user company, agency workers do not have to be employed by the agency in the UK. Greece belongs to the group of MS which introduced specific legislation of TAW only during the last decade.

Greece prohibits the use of temporary agency workers in public and private hospitals as well as in public administration. In the UK there are no restrictions to the use of agency labour. In 2003 Britain also lifted restrictions to the use of agency labour during strikes and industrial disputes unless these constitute ‘official’ disputes ‘i.e. the strike has been organised by a trade union and meets the legal requirements on balloting of members and provision of notice to the employer’.

In countries where social partners in the temporary work sector have been involved in negotiations and collective bargaining on labour and working conditions *above the micro/company level* (Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden), the EU Agency Worker Regulations consolidated or promoted further the implementation of the equal treatment of agency workers and permanent workers in a user enterprise.

In the UK case where there is no tradition of national social consultation but company level initiatives instead, the establishment of Agency Workers Regulations at the EU level functioned as the catalyst which led to the first national-level agreement on temporary agency work between the government, the TUC and the CBI in 2008, and gave some room for derogation from the equal treatment principle. The EU AWR in force in the UK since October 2011 stipulate that temporary agency workers who complete 12 weeks of continuous employment in a client firm are mainly entitled to equal pay with the directly employed permanent contract workers of the firm in equivalent positions. Concerns among temporary work agencies and employers that AWR would reduce the overall use of TAW and damage the recruitment industry trade were eventually addressed by the introduction of Swedish Derogation (SD) contracts; permanent contracts of employment offered by the agency to the temporary worker conferring the latter pay between assignments.

Countries like Greece with no collective bargaining culture in the temporary work sector and late temporary agency worker equality support provisions in labour legislation had little room for derogation from the equal pay element. Nevertheless, the latest L. 4052/2012 provides Temporary Employment Firms the opportunity not to pay its ‘leased’ employees on a par with permanent employees of the hiring employer. This national legislation which incorporated the EU Agency Workers Directive, on the other hand, leaves the worker (as opposed to employee) brokerage activities of Temporary Employment Agencies outside the regulatory framework.

Empirical Research Findings: UK

AWR have affected the labour market strategies of businesses in the food industry that recruit large numbers of temporary agency workers. They have set a drawback from previous transition schemes from temporary to permanent employment decided at the company level.

- Agencies circumvent the AWR by switching to SD contracts and sticking to the minimum of 1hr of guaranteed Pay Between Assignment provisioned by the British government regulatory guidance. The minimum 1hr per day is just enough to avoid it being regarded a Zero-Hour-Contract (ZHC) job that would have to come under the payroll of the firm where the agency worker is sent.
- Discontinued assignments are given to agency workers so that they do not qualify for equal pay.
- Extensive misuse of labour performance systems in order to discharge agency workers before they complete the 12-week qualifying period for equal pay.

Poor regulation of the agency and end-user firm strategies in the hospitality and healthcare sectors.

- Hospitality employers (mostly catering businesses) tend to recruit labour informally and directly in order to cut down costs.
- Hospitality (hotels) and healthcare employers end up using more directly employed ZHC workers rather than agency workers.
- However, their labour recruitment relies substantially on collaborations with foreign and British agencies who charge workers with placement fees. Such labour-sourcing practices are followed by commercial cleaning contractors undertaking hotel cleaning who occupy these workers full time under ZHC and 'self-employed' relationships and pay them part-time. Indicatively, Romanians were charged £1000 for a temp placement in a British hotel or care home prior to 2014.
- Home-care agency workers are not paid travel-to-work time and end up working full-time for part-time pay.

Empirical Research Findings: Greece

Temporary work agencies have been active in service sectors that rely heavily on cheap, undeclared migrant labour, namely tourism and the care sector (in particular, the supply of domestic workers in private homes and *exclusive nurses* in Greek hospitals). In Greece where informal economy accounts for a quarter of its Gross Domestic Product, TAW is a strategy that decreases the cost of undeclared employment rather than the cost of formal, full-time, permanent employment.

- Greek employment agencies routinely charge the prospective workers for a placement. They either charge only the worker or both the end-user employer and the worker. The illegal fee that the workers pay to the agency has been 250-300 Euros in 2013-14 for a guarantee of 1 to 3 months work.
- Greek agencies turnover has been slashed during the Greek debt crisis. This is related not only to the closure of businesses but, more importantly, to changes in the labour supply, namely the shrinking of the pool of exploitable migrant labour (the reduction of Greece's settled immigrant population and migrant flows from Eastern European countries) and its substitution by less exploitable local labour particularly in tourism-dominated local economies.
- On the other side, during the crisis the agencies have been carving a market for themselves in the supply of exclusive nurses in Greek hospitals. Agencies have been bribing hospital employees and administrations, using the corrupted state system of exclusive nurse licensing, and 'flooding' hospitals with workers in order to crowd out the hospitals' bank nurse supply with their own agency labour. Agency exclusive nurses work 12-hour shifts for 10-20 Euros or less and are indebted to agencies for keeping these work shifts. This supply of trafficked nurses is covered up by the Ministry of Health which recently replaced hospital bank nurse lists with a national nurse list and loosened the criteria for registration in this list. In this way the Greek MoH has effectively taken away the control over the supply of ad hoc bank labour from hospitals jeopardising the health and safety of both care workers and patients.

Main comparative conclusions

With the exception of British agriculture, the regulation of temporary employment agency activities is poor in both countries studied. Their restrictive migration policies have contributed in producing precarious categories of workers. The international growth of the temporary agency industry has also developed its own dynamic in perpetuating migrant worker exploitation.

Greece may have a stricter legal framework on TAW than the UK but the agency activities are practically not regulated. Agencies routinely charge workers for any placement, thrive of the flow of undocumented migrant labour and essentially offer a cheaper alternative to undeclared directly-employed labour. In the case of the exclusive nurses in Greek hospitals, agencies have aggressively carved a market for themselves despite legal restrictions.

The EU Agency Worker Regulations have been largely circumvented by businesses and agencies in the UK. Nevertheless, targeted initiatives such as the operation of the Gangmaster Licensing Authority in British agriculture have raised awareness about labour maltreatment in the sector during the last decade. All in all, the UK case study indicates that the close monitoring and enforcement of industrial cooperation on temporary labour protection may prove more effective than additional national legislation.

On the other side, the development of social and income support funds for temporary agency workers in certain continental EU Member States and the comparatively positive attitudes to TAW in these Member States (most prominently France and the Netherlands) indicate the critical role of social partner initiatives and collective bargaining above the company level for the protection of the agency workers' rights.

Policy suggestions

- The momentum from the national level negotiation of AWR between social partners in the UK and the operational platform that Gangmaster Licencing Authority provided for agencies and employers to work together towards worker protection needs to be sustained and to expand across the sectors of the British economy.
- The development of social and income support funds and mechanisms for agency workers needs to be considered by British policy stakeholders.
- The strategies the agencies and end-user firms employ in order to derogate from or circumvent the equal pay obligation of the AWR call a) for a revision of the British government regulatory guidance on the legal minimum of hours that agencies are obliged to pay workers between assignments and b) larger investment in labour law enforcement authorities.
- TAW regulation in Greece needs to be supported by an investment in the labour and health inspectorates' workforce and an increase of their enforcement and prosecution legal powers. The development of an enforcement authority with agency licensing and prosecution powers along the lines of the UK Gangmaster Licensing Authority should be investigated. These actions need to be coupled with targeted anti-corruption measures against professional licensing and tax-collection authorities. Prohibiting the use of agency employment in certain areas like healthcare also needs to be considered.
- Given the prevalence of small and medium size businesses in the Greek hospitality sector and the absence of collective bargaining on temporary labour, policy efforts should be directed towards the creation of functional industrial relations around temporary and seasonal work on the local economy level. In this respect, mechanisms for funding temporary labour representation structures should be considered. Any coordination initiatives at the national level need to reflect negotiations at the local level.
- Labour market and welfare restrictions for legally resident migrants need to be lifted from both countries' migration policy regimes since they breed labour exploitation.

PROJECT IDENTITY

Project aims

This research project aimed to explore how regimes of temporary and casual employment (with a specific focus on temporary agency work) operate over time for people and businesses in a comparative setting across labour markets and sectors with different settings of work and across two EU MS (Greece & UK) characterized by distinct industrial relations, welfare and migrant integration regimes.

Methodology

The exploration of the features and processes of labour supply and demand mediating the experience of TAW on the ground largely drew on qualitative interviews with (mainly migrant) temporary agency workers. This research was complemented with qualitative interviews with employment agencies and employers and additional website search of employers and agencies mentioned by workers, as well as interviews with civil society stakeholders and labour market control enforcement authorities in the two EU countries studied. In the UK the author conducted 25 interviews with workers in farms, packhouses and retailer depots, 33 interviews with hotel maids, chefs, kitchen porters and waiting staff, 26 interviews with healthcare workers and cleaners in hospitals, care homes and home-care businesses, 14 interviews with employers, 5 interviews with employment agencies and agency recruiters, 3 interviews with NFU, BHA, ALP, and 1 with GLA. For the Greek healthcare and hospitality case studies the author interviewed 19 agency and bank healthcare workers ('exclusive nurses') in 7 hospitals, 9 agency hotel maids/cleaners, kitchen porters and a chef, 3 employment agency managers and the Association of Private Employment Agencies in Greece, 3 agency recruiters, and 22 labour end-users (employers). The Greek agriculture case study comprised of 24 interviews with workers in farms, 3 gangmasters, 1 farmer, and 1 local trade union representative. The primary data collected was examined against secondary data and literature.

Terminology

Temporary agency work was defined for the purposes of this study as the non-contracted work of persons who are paid by an employment agency or third party for work in the premises of a hiring client. Agency workers under SD contracts who have a guarantee of payment between assignments were included in this definition.

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The Project Final Report and Policy Briefs can be found, as of November 2014, in the project's webpage:

<http://www.bath.ac.uk/casp/projects/migration-and-temporary-agency-work/index.html>.

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