New regulations for temporary work agencies – can a growing informal market be subdued?
A case study of the Norwegian construction sector

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1. INTRODUCTION

The volume of temporary agency work in Norway has increased dramatically in the last few years, with a doubling of the numbers of companies from 2004 to 2008 (Nergaard and Svalund 2008). This is part of an international trend of a more flexible labour market. Also in other European countries, the number of employees in temporary work agencies was more or less doubled in the period from 1996 to 2006 (Econ 2009).

One important factor that has contributed to this development in Norway is the deregulation of the manning business in 2000. Until then, hiring was limited to clerical work. Thus, construction has been one of the fastest growing sectors when it comes to use hired labour during the last decade. A major economic boom has fuelled the course. Since 2004, the construction sector has recruited a high number of workers from the new EU member states in Central and Eastern Europe. A survey among general managers in 2009 documented that more than one third of all Norwegian construction companies had recruited workforce from the new member states. More than half of these companies – 54 per cent - had *hired* the workers, either from a Norwegian or a foreign-owned temporary work agency (Andersen et.al 2009).

The temporary work agency industry in Norway is diverse. While the larger, well-organised companies control almost 90 percent of the Norwegian market, the rest of the market is divided between a great numbers of small and medium-sized firms. In the aftermath of the EU-enlargements in 2004 and 2007, there has been increasing problems with undeclared work and/or social dumping of the workforce in the industry, especially in the smaller firms (Dølvik et.al 2005, Ødegård et.al. 2007). The practice of these firms has a wide range of consequences for employees, employers and the state. Employees experience uncertainty with regard to wages and poor working conditions, clients suffer from poorly performed work and the state and community loose income due to tax evasions.

Our main concern in this paper is the conditions for the workers in the temporary agency industry. Based on an earlier study of working and living conditions among Poles in Oslo (Friberg and Tyldum 2007), it is our assumption that hired, CEE employees tend to be among the most vulnerable workers in the Norwegian labour market .

In the construction sector there are a whole range of national regulations to ensure properly registration of work, to combat low-wage competition and to secure health and safety at the sites. Despite this flora of regulations, the informal and illegal activities seem to be more widespread than before, especially in connection with labour hiring (Ødegård and Berge, 2010).

On the transnational level, the need for protection of the temporary agency workforce has been discussed in the EU for the last 30 years. To reach an agreement on European level regulations

in this field turned out to be very difficult, probably due the great diversity in national regulations in this area. However, in 2008 a directive on temporary agency work was finally adopted (2008/104/EC). The directive lays down a principle of equal treatment between the temporary agency workers and employees in the contracting company.

In this paper we will explore the consequences of the increasing informal and undeclared business activity related to labour hiring; which we here opt to call 'disreputable business activity'. A core question is whether the new EU-regulation on temporary agency work will bring changes to this dark side of the hiring industry. The inflow of labour from the new member states in combination with re-regulation of the temporary work agencies, based on the EC-directive, might create a new situation for both the formal and the informal parts of the industry. Will the change bring more workers from the illegal/informal employment relationships to the more established part of the industry? Or will the new regulation have no impact on the current situation?

The paper is based on a case study in the construction sector in Norway, where the main focus was on workers and firms from the new EU member states. We were interested in how the hiring firms, that in one way or another is said to be 'disreputable', operated towards their clients and how they treated their employees. We conducted 23 qualitative interviews with employees from this part of the industry, inspectors from the Labour Inspection Authority, immigrant authorities, representatives from some large hiring firms and the social partners (Ødegård and Berge 2010). In addition, we have carried out a document- study of the EC Directive on temporary agency work (2008/104/EC).

2. DIRECTIVE ON TEMPORARY AGENCY WORK

In November of 2008 a directive on temporary agency work was finally adopted[1], after being on and off the agenda of the EC from the late 1970s. The first draft directive was presented in 1982[2], and several others have since been drafted. The field has also been subject to negotiations by the social partners on EC level. When the partners reached a framework agreement on fixed-time work in March 1999 they also indicated their intention to consider the need for a similar agreement on temporary agency work. However, the social partner's initiative failed in 2001, and the adopted directive is based on a draft by the Commission. The directive is to be implemented by the member states within 5 December 2011.

One might say that the reasoning for a transnational regulation of this field has shifted since the question first emerged on the EC agenda.[3] However, improvement of living and working conditions has been stipulated as a social policy objective since the beginning of the European Community. In this perspective protection of labour standards is not an obstacle to free movement; it is a condition of free movement (Ahlberg et al. 2008:16). The adoption of the directive can both be seen as an answer to the need for protecting employees in atypical employment relations as well as contributing to the development of flexible forms of working.

One may ask why it took so long to get a directive in this field, and several explanations can be found. The most important might be the great diversity in national regulations in this area.

[1] Directive 2008/104/EC
[2] OJ 1982 c 128/ 2.
[3] This is described in Ahlberg et al 2008:155

South-European countries have strict restrictions on this kind of work, while countries as the UK and Denmark have hardly had any regulations since the de-regulation in the beginning of the 1990s. Getting these countries to agree on a common text was never an easy task. The main point of disagreement was the introduction of a principle of equal treatment and the possibility to make exceptions from this rule.

The purpose of the directive is two-headed. On the one hand the directive aims to protect temporary agency workers and to improve the quality of temporary agency work. This aim shall mainly be reached by implementation of a principle of equal treatment; this implies that the temporary agency worker, as regards basic working conditions, shall be treated as if he or she was hired directly by the user company.[4] The fulfilment of this aim is closely linked to the other purpose of the directive – to remove restrictions on temporary agency work. The intention is that when the protection of the employee is increased, there is no longer use for strict restrictions on this kind of work. Therefore the member states are obliged to review existing restrictions, and only restrictions that can be justified can legally be upheld.[5] As regards grounds that can make a restriction justifiable, the directive emphasises the protection of temporary agency workers, the requirements of health and safety at work and the need to ensure that the labour market functions properly and abuses are prevented. However, other grounds of general interests, as identified in the case law of the European Court of Justice (ECJ) could also be used to justify a restriction. The directive explicit lays down that registration, licensing and so on is not to be considered a restriction. This is in line with the ECJs judgment in *Webb*.[6]

As mentioned above, the principle of equality refers to basic working and employment conditions. This is defined by the directive as including pay, working time, overtime, breaks, rest periods, night work, holidays and public holidays.[7] However, the directive is a minimum directive, which might imply that the member states are free the increase the level of protection. That is when it comes to the national labour market. If the service crosses borders, another set of rules will apply. We will return to that in a bit.

Often, parts of the basic working and employment conditions will apply to all employees regardless if they are employed by a temporary work agency or another company. In Norway, all these basic conditions, pay excepted, are laid down by acts of law. In the construction industry there is also a statutory minimum wage based on an extension of the sectoral collective agreement.[8] However, other collective agreements, administrative provisions or individual employment contracts binding the user company, may lay down more favourable conditions. If so, these regulations will determine the conditions that are to be given to the temporary agency worker. The most important element of the principle of equal treatment will in many cases be the one on pay. This is especially the case in Norway as there for most industries do not exist a statutory minimum wage. And even in industries where collective agreements are extended, the minimum wage is often considerable lower than the average wage in the industry (Alsos and Ødegård 2007). This gap is also often found in countries with national minimum wages (Lismoen and Stokke 2005).

The effect of the principle of equal treatment will depend on how the Member States choose to implement its aim. An important question will be to what extent Member States will make use of

[4] Article 5
[5] See article 4
[6] C-279/80
[7] See article 3.1 (f).
[8] The same applies for a few other areas in Norway.

the opportunity to make exemptions from this principle. The directive allows for exemptions in three situations. Firstly, the member states may make an exemption as regards pay, if the employee has a permanent contract and is paid in the time between assignments.[9] The idea is probably that the combination of a permanent contract and the right to pay between assignments increases the protection level of the employee, and thereby removing the need of protection in terms of equal treatment. However, the directive itself does not lay down any requirements as regard the level of pay, either in or between assignments. If the protection level shall be maintained, member states ought to consider setting additional conditions if making use of this exception.

The second exemption makes it possible to put aside the principle of equal treatment on all areas. The Member States may authorise the social partners to conclude collective agreements which establishes working and employment conditions that are not necessarily equal to those applied in the user undertaking.[10] When doing so, the overall protection of temporary agency workers should be respected.[11] The Member States may also set other conditions for concluding such agreements. For instance on which level such agreements could be concluded, i.e. if this can be done by the social partners at company level or only by social partners at national level.

Thirdly, the directive includes an exemption that in many ways can be seen as a concession to the UK.[12] Member States that has no system for extending collective agreements or declaring them universally binding, may extend an agreement between the state and the social partners that establishes arrangements concerning the basic working and employment conditions. These conditions may not only derogate from the equal treatment principle, but also include a qualifying period. Thus, the agreement may say that equal treatment is only to be secured after the assignment has lasted for a certain period of time, and thereby excluding all short term assignments from this principle. Making use of this exemption requires that an adequate level of protection is provided for temporary agency workers.[13]

The directive covers both domestic assignments and situations where the temporary work agency and the hiring company are located in different Member States, i.e. where the service includes a cross-border element. However, in the latter situation another EC directive also applies, that is the posting of workers directive.[14] In short this directive lays down which working and employment conditions that shall apply if a worker is posted to another Member State. In such cases the host Member State shall ensure that the service provider/employer guarantee workers posted to their territory certain terms and employment conditions that are applicable in this member states. This includes, working time, holidays, minimum pay, conditions of hiring out workers, health, safety and hygiene at work, measures aimed at protecting pregnant women or women who has recently given birth, children and young people, as well as gender equality terms. In case law it is settled that the directive does not allow the Member States to make other conditions than those explicitly mentioned in the posting of workers directive.[15] In other words if a country has a national minimum wage, the state cannot allow minimum rates laid down in

[9] Article 5.2.
[10] Article 5.3.
[11] See article 5.3.
[12] KD Ewing 2009
[13] See article 5.4.
[14] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
[15] C-341/05 Laval, C-346/06 Rüffert and C-319/06 Commission vs. Luxembourg

collective agreements to apply.[16] However, as regards temporary work agencies, the directive includes a provision that allows a higher level of protection for these kinds of workers. Member States may provide that temporary agency workers are guaranteed the terms and conditions which apply to temporary workers in the host Member State.[17] In combination with the directive on temporary agency work this means that Member States can apply the equal treatment principle also for posted agency workers. This will be the case even if a Member States has included other conditions in the principle of equal treatment than those explicitly mentioned in the directive. However, a reservation must be made for the fact that the obligation for the service provider to apply certain conditions might be said to be an unjustifiable restriction on the free movement of services.

3: TEMPORARY AGENCIES IN THE INFORMAL AND UNDECLARED PART OF THE CONSTRUCTION INDUSTRY

As mentioned, our aim is to explore the consequences of the increasing informal and undeclared business activity related to labour hiring and then raise the question whether the new EU-regulation on temporary agency work will bring changes to this dark side of the hiring industry.

There are several reasons to take a closer look into the construction sector, and especially in combination with hiring of personnel. Construction is mobile in character, and the workplaces vary from one project to another. Cost issues, time constraints and high dependency on economic booms and busts, are all characteristics of this sector. In addition, the organization of production usually involves a number of sub-contractors. This floating nature requires a certain amount of flexibility, which can be solved by using temporary agency workers. Parts of the construction sector are also characterized by grey economy and social dumping, i.e. low pay, health and safety-challenges and bad housing (Dølvik et.al. 2005).

Our topic is, as mentioned above, the disreputable part of the hiring industry. It might be hard to agree on a common definition on the characteristics of this part of the industry. Our point of departure is that these kinds of firms regularly and systematically are on the edge of the law, are breaking the law or breaching what are known as good business practice. The firms appear in different forms and their breach of frankness might vary. But there are some common features: The more informal hiring-market is often characterized by smaller and medium-sized agencies that hire out foreign employees. In addition, the hiring is often combined with several other business areas within the firm.

Norwegian labour law regulations set strict preconditions for hiring of employees. Hiring employees can only be made to the same extent that it lawfully may be agreed upon temporary employment; that is replacements, seasonal work or where the character of the work differs from what is ordinarily performed in the company. Contracting companies that are bound by a collective agreement may waive the strict conditions for making use of temporary contracts. Employer and employee representatives, who represent the majority of the employees in that category as the hiring applies, may reach an agreement even if the legal requirements for temporary employment is not present. However, such agreements can only be concluded for a

[16] Unless these collective agreements are declared universally applicable, or it exists generally applicable agreements which must be observed by all similar undertakings, or agreements concluded by the most representative social partners and applied throughout national territory, se article 3.8.
[17] Article 3.9.

limited period of time. Elected trade union representatives can in accordance with their collective agreements obtain wages and working conditions of hired workers.

In the aftermath of the EU-enlargement, there has been implemented several national measures to prevent abuse of workers from the new member states. When it comes to regulation within the construction industry, parts of the collective agreement has become generally binding for all workers, including minimum provisions for wage, board and lodging. General application of collective agreements is one of the most powerful new tools that have emerged in the wake of EU enlargement (Alsos and Eldring 2008).
In 2009 a new registry for temporary work agencies came in place, established and administrated by the Norwegian Labour Inspectorate. The register is a result of the government's action plan on social dumping. From 1 March 2009 all temporary work agencies, that want to conduct in Norway, must be registered in this registry. It is not permitted for clients to lease labour from firms that are not registered.
ID-card in the construction sector is another measure implemented as a result of the government's action plan on social dumping. The purpose of the scheme is to combat undeclared work in the industry, as well as a more effective control of health, safety and environment. After 1 January 2008, all businesses that perform work on construction sites are required to provide all their workers with ID-cards. This requirement also applies to workers who are employed by foreign companies and sole proprietorships.
Despite these efforts to combat firms that don't operate in a decent way, the problems are still present, and are probably growing. [18]

The construction sector in Norway is pretty well organized, both on the employer and employee side[19]. Among the temporary agencies, the situation is quite different. While most large agencies, within the formal part of the sector, are members of employer organizations, temporary workers remain not unionized, and it has hardly been concluded any collective agreements within the sector. During the spring 2010, it was a breakthrough in the negotiations between the central social partners concerning a collective agreement for temporary work agencies. This new agreement clearly states that the wages of the employees in the hiring firms are to be linked to agreements and wage level for similar work in the client firm. The collective agreement is temporary, in wait for the national implementation of the new EU-directive for temporary agency work, which is due in December 2011.

According to the Brønnøysund Register Centre[20] there were more than 2000 temporary agencies registered in Norway in 2009. Approximately 700 of the agencies were organized as limited companies, while 750 were Norwegian branches of companies registered abroad, and more than 500 were one-man businesses. At the same time only 1550 companies were registered as temporary work agencies in the Norwegian Labour Inspection Authority's register. The major part of the companies will most probably consist of serious firms that obey regulations, and pay their workers according to the wage-levels in the industry. It is not possible for us to give any exact numbers of firms that that operate in the informal and undeclared part of the industry, or how many workers that are affected. Some of our informants estimates that the this part of the industry constitute between 15-20 percent, while others emphasize that it only constitutes a very limited part of the industry. One indicator could be how many of the companies that are members in the Confederation of Norwegian Enterprise (NHO), the

[18] Information from the Norwegian Labour Inspectorate's annual report 2009.
[19] About 40 percent of the workforce in construction is members of the trade union.
[20] The Brønnøysund Register Centre is Norway's central register authority and source of information. It is organized as an administrative agency under the Ministry of Trade and Industry.

employer organization covering the vast majority of the organized companies within this sector. The three largest temporary agencies are a member of the affiliated organization National federation of Service Industries (NHO Service), and so is around 90 percent of the remaining industry. It is reasonable to assume that the organized companies mostly are serious firms. Today less than 500 temporary agencies are members of NHO. Hence, the number of unorganized companies by far exceeds the organized. But as noted above, most workers are employed by an organized company. On the other hand, it is not possible to establish that organized equals serious and unorganized equals informal and undeclared. Our case study in the construction industry shows that there also exist companies amongst the members in NHO where the workers live with great uncertainty when it comes to wages and working conditions.

Even if we can't say anything definite about the size of this activity it is, based on our study, possible to describe some features which seem to characterize the firms in the disreputable part of the temporary agency sector. To do this, we will present four case examples to illustrate their differences and similarities.

«Alfa Agency»[21] is organized as a limited company and employs around 100 workers of different nationalities. Even though some of the workers are from Norway, the majority are migrant-workers from Sweden and Poland. The company is hiring out workers to companies working for private entrepreneurs as well as the public sector, operating nation-wide. The migrant-workers are paid according to the Norwegian standards for the industry, and they receive their salaries at the time agreed. The employees are also hired at a full time basis, and are also paid in vacant time between assignments. As a consequence of the good terms for the workers, «Alfa Agency» attracts skilled and competent workers, and it is a popular agency among the entrepreneurs. Even though the conditions for the employees meet acceptable terms, the company can be characterized as a disreputable temporary agency. «Alfa Agency» is doing tax evasion on a large scale. The company deducts tax from the workers' salaries, but does not forward the deductions to the tax authorities. After a period of time with evasion of VAT and taxes the company goes bankrupt, and the owners establish a new company with the same workers.

«Beta Agency» is organized as a limited company and is hiring out workers in a region in Norway. The company employs first and foremost migrant-workers from Poland, but also has a few Norwegian employees. The workers are paid by the hour according to the Norwegian standards for the industry. However, they are not compensated for overtime or for use of own working clothes and tools. The workers are employed on a two weeks basis, and only get paid for the time they are on assignments. This is not illegal according to Norwegian law. «Beta *Agency*» is however punishing workers they regard as too demanding with long periods – sometimes several months - without new assignments, and deny/prohibit their employees to work for other companies in work-free periods. Hence, the workers situation is distinguished by uncertainty. Even though the workers are hired on a short-term basis, they are sometimes fired from a project with immediate effect if the customer is dissatisfied with the work they have done. One of the workers had been employed by this company for around five months, and still only worked equivalent to two months and paid according to that, being prevented to take assignments for other employers. «Beta *Agency*» is registered in the Norwegian Labour Inspection Authority's register, and a member of the Confederation of Norwegian Enterprise, and appears as a proper firm for potential customers.

[21] None of the names on the four temporary agencies refers to actual companies. Alfa-, Beta-, Charlie- and Delta-Agency are only referring to company A, B, C and D in our study.

«Charlie Agency» is a company from Poland that primarily employs Polish migrant-workers. The employees are working 12 hours a day, six days a week. They are paid between 40 – 60 Norwegian kroner (5 –7 Euros) per hour, far below the standards set by the industry. The workers are hired out for an extremely low price, and it should be obvious to contracting companies that the workers are not paid in accordance with legal standards. The workers are living in apartments owned by «Charlie *Agency*». 4-8 workers are sleeping in each room, in miserable conditions. The workers have to sign a contract saying that they would have to pay «Charlie *Agency*» 15 000 Norwegian kroner (approx. 1900 Euro) if they decide to leave the company within the first six months. The employment contract also includes restrictions on their opportunity to apply for a job with a customer or contractor. If a former worker apply for a job within six months after they have left «Charlie *Agency*», the contracts states that they have to pay 50 000 Norwegian kroner (approx. 6250 Euro) as a compensation for the company's income loss. Even though these contracts are illegal and «Charlie *Agency*» thereby never could claim the «compensations» from their workers, the contracts could in practice function as binding for workers that are not aware of their own rights.

«*Delta Agency*» has no own employees, and is in fact a team of self-employed workers. However, the workers are not aware of their legal status being self-employed, and assume they are ordinary employees of «Delta *Agency*». All the workers are migrants from former Eastern-European countries. The company is arranging the necessary registration and paperwork for the workers to be established as one-man businesses, as well as facilitating board and lodging. Even though it seems clear that the workers in fact should be considered as regular employees, the fact that they formally are to be considered as one-man businesses result in strong restrictions on their rights. Firstly, the fact that they are not wage-earners but selling a service means that they in a situation where «Delta *Agency*» fails to pay out wages (fees); they have no possibility to file for joint and several liability with the main contractor. Secondly, they are not covered by collective agreements that are generally binding, and hence «Delta *Agency*» can choose to pay the workers less than the agreed levels in the relevant collective agreement. The employees in «Delta *Agency*» get paid 140 Norwegian kroner (approx. 17, 5 Euro) per hour, which is in line with the minimum-wages for skilled workers. Thirdly, self-employed are not entitled to paid sick-leave, as they would if they were employees.

These cases show that temporary agencies manifest themselves as disreputable in different ways. While some of them systematically avoid paying VAT and taxes, others pay their workers far below the wage level considered acceptable by the industry, or according to generally binding sectoral collective agreements (as in construction). This implies that who is stricken by this kind of business, could vary from company to company: the state through evasion of VAT and taxes; the customers through low quality on the work/product; but most often it would be the workers through substandard wages and working conditions. Even though the workers are of different nationalities, and even some of them are Norwegian citizens, it seems like it first and foremost are migrant-workers from the new EU member states that suffers from the worst working conditions and lowest pay.

In our study of this informal and undeclared part of the temporary agency industry we conclude that the worst consequences for the workers are the different *uncertainties* that follow their working situation. Firstly, there is an uncertainty regarding amount of work and income. Many of the workers are employed on short-term contracts, and only get paid when they are on an assignment. As mentioned above, this is not illegal according to Norwegian law but it is still to be considered as a problem because the agencies unlawfully deny/prohibit their employees to work for other companies while employed for them. Additionally the temporary work agencies are punishing workers that make demands with long periods without new assignments.

Secondly, there is an uncertainty with regards to the workers` housing situation. Many of the workers have room and board as a part of their wage agreement, and considering that their wages are extremely low compared to the Norwegian standards and price levels, this ties the workers to their current employer and firm. It is almost impossible to save enough money to find an own house as most landlords demands a large deposit paid up front. The workers know that if they quit their job to get another that pays better, they immediately will have to leave their current housing. Thirdly, there is an uncertainty regarding the obtainment of entitlements such as unemployment and sickness benefits. Many of the migrant-workers are in a situation where they have not been able to understand Norwegian regulations, and therefore lack ability to claim their rights if they get sick or unemployed. As a consequence, some workers see no other option than working in the undeclared market when they get unemployed even if they actually are entitled to unemployment benefits. Fourthly, there seems to be an uncertainty regarding training, protective equipment and safety. The workers are often in a situation where neither the temporary work agency nor the contractors take responsibility for the workers' safety because they both expect the other part to carry the responsibility. Finally, there is an uncertainty with regards to the collegial spirit. Our findings indicate that the climate between the workers is not the best. Many of the contractors are offering a permanent job for hard-working employees with high skills. As many workers seek a permanent job with contracting companies, the competition between them is strong. A typical situation is that a contractor hires 20 workers, and one of them is offered a permanent job at the end of the assignment. The contractors use this as a way of testing out new employees (try-and-hire), a practice which is not in line with Norwegian law.

4. CAN THE DIRECTIVE SOLVE THE PROBLEMS WITHIN THE INDUSTRY?

As shown in section 3, parts of the construction industry can be described as informal in many different ways. Firstly, there are problems related to employees being put in an unsecure position, both when it comes to wages and working conditions as well as the permanence of the employment relationship. These problems are related to the triangulation of the employment relationship.[22] The principle of equal treatment could have some positive effect on the level of protection of employees in such employment relationships. That is if the principle is implemented in a way that actually manages to secure equal treatment. One major obstacle comes in mind regarding the implementation; how can the employer – the temporary work agency – get reliable information on which conditions the employee would have had if the worker was hired by the user company directly? If the user undertaking is bound by a collective agreement, this might be a good source for information. However, in many cases the collective agreement only lays down minimum rates of pay, and the actual average pay rate in the user taking might be considerably higher. In such cases the employer will have to rely on information given by the user undertaking. The access to such information can be ensured through the service contract or by law. However, the pricing of the service will be closely linked to the conditions set in the employment contract. In other words the better conditions the user undertaking says they would have offered if hired this person directly, the more it will have to pay for the service provided. Thus, the user undertaking is not encouraged to refer to the actual conditions that would have been applied in a situation where the employee was to be hired directly by this company.

[22] Beside the traditional relation between employer and employees, triangulation implies an involvement of clients (Havard et al. 2009). In such relationships clients will interact directly with the employees, and internal organisation, working conditions and training will thus be affected by the client companies.

The question of permanence is not solved by the directive. This is partly related to the fact that it does not impose an obligation to pay employees in time between assignments. In accordance to Norwegian law, temporary agency worker shall as a rule be given a permanent contract, and dismissals must be based on fair grounds. However, if the temporary agency worker is not paid in the time between assignments, the protection against unfair dismissals is of little effect. If the user undertaking is not happy with the agency worker assigned to them, they might ask for the temporary worker to be replaced. This is possible without fulfilling the requirements laid down by Norwegian law regarding fair dismissals. The agency worker will not lose his job by the agency, but as he is not paid between the assignments this protection is of little value. This problem is not solved by the transnational regulation and must be addressed under national law. In Sweden the social partners have agreed on the need for increasing the temporary worker's security at this point. Both the collective agreements for blue- and white-collar workers ensure that the employees are paid in between assignments. Thus, the employees are ensured a similar level of protection as if they had a permanent position in the user undertaking. Similar regulations can be seen in other countries like Denmark and Germany, however, the latter watered down by many possibilities to make exceptions (Alsos 2010).

The second major problem found in temporary work agencies operating within the construction sector is related to neglecting of legal obligations, both to employment law as well as tax and company law. The informants in our study did not ask for new regulations, but pointed first and foremost to the need for more public control of existing regulations. Even though the construction industry lately has been subject to several new measures to increase the control of the industry, this does not seem to have had any major impact as regards disreputable temporary work agencies. And the obligation to register seems not to be sufficient to solve the problems in the industry.

The aim of the temporary agency directive to remove restrictions on agency work might make it hard for Norway and other states to implement new control measures. It can even be proved difficult to uphold existing measures. Even though the directive itself points out that registration and licensing arrangements are not in breach of the directive, this does not give the Member States an unlimited authority to put any kind of measures under this label. The sum of conditions that has to be fulfilled within such an arrangement must not exceed what is accepted under community law. If the conditions required put a heavy burden on a cross-border service provider, this can be seen as infringing the principle of free movement of services as laid down in article 56 TFEU.[23]

Countries as Sweden and Denmark have approached this problem in a different way than Norway. The social partners have agreed on an authorization scheme, where an agency that wants to be a part of the relevant employer organisation needs to fulfil several requirements. The aim is to create a distinction between companies operating in the white market and companies operating in the grey or black market. The authorisation is not mandatory, but puts a quality mark on the service provided. In this way access to the service market is not restricted, but it makes it easier for hiring companies to sort good from bad. In the Swedish scheme conditions for getting an authorisation include that the agency is bound by a collective agreement, respect the general terms of deliverance laid down by the employer organisation (Bemanningsföretagen), follow the ethical guidelines of the employer organisation (Alsos 2010). Similar the employer organisation in Denmark requires for example that collective agreements

[23] Treaty on the Functioning of the European Union. (Former Treaty Establishing the European Community article 49).

are complied with, that employment contracts is in line with applicable legislation, and a prohibition to provide workers to replace those on strike and a duty of loyalty between members (Eiro 2006). However, other conditions can be placed under such an authorisation scheme to make it fit domestic problems without infringing the directive. The authorization schemes do not represent a restriction on the free movement of services as they are not compulsory for offering services at the national market.

To sum up, the volume of temporary agency work in Norway has increased dramatically in few years, especially in the construction sector. Since 2004 there has been a major increase in the use of workers from the new EU member states in the sector, and many of the workers are hired in through temporary agencies. Even though the major part of the temporary agencies consists of serious firms that obey regulations and pay their workers according to the wage levels in the industry, there also exist temporary agencies with questionable and disreputable practices. It is not possible to say anything definite about the size of this activity, but we have in this paper tried to describe some features which characterize these agencies. Through four cases we illustrate that agencies manifest themselves as disreputable in different ways. It seems that it is first and foremost migrant-workers from the new EU member states that suffer from the worst working conditions and lowest pay. From December 2011 the new EU directive on temporary agency work is adopted. In our view, the directive may partly improve the situation for employees in the formal part of the labour market. For example, the principle of equal treatment could have some positive effect on the level of protection. However, it would probably not contribute to better protection in the informal part of the labour market. In some aspects the directive may even counters the possibility for EU member states to reduce the undeclared work in this sector, as existing restrictions are to be reviewed.

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