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### **EUROCIETT/UNI CONFERENCE ON “SETTING UP A EUROPEAN OBSERVATORY ON CROSS-BORDER ACTIVITIES WITHIN TEMPORARY AGENCY WORK”**

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#### Introductory remarks on temporary agency work

- Temporary agency work is an engine for employment growth and therefore contributes to achieving the goals of the Lisbon strategy:
  - Between 1996 and 2006, the number of temporary agency workers in Europe has more than doubled, from 1,5 million to 3,3 million workers.
  - In 2007, the total number of agency workers in Europe amounted to 3,8 million workers.
  - The total number of agency workers has decreased significantly as a result of the economic crisis. However, temporary work agencies increasingly provide new employment opportunities for thousands of workers. This is a positive signal revealing the economic upturn!
- Temporary agency work is an important flexible form of employment, which plays a positive role in the labour market, in particular to match the demand and supply of labour.
- One of the main conclusions of the project carried out by EUROCIETT and UNI is that there are very little data available on the number of agency workers in a cross-border situation. This is also true for posted workers in general. The only thing that we know so far is that posting only concerns a very limited number of workers, i.e. around 1 million or 0,4% of the EU's working age population.
- In this context, we believe that the initiative taken by EUROCIETT and UNI of an observatory on cross-border activities within agency work is a good idea. With regard to posted workers, we welcome the studies which have been commissioned by the Commission with a view to gathering updated data on this phenomenon.

#### The 2008/104/EC directive on Temporary agency work

- BUSINESSEUROPE never questioned the principle of protecting temporary agency workers against discrimination. On the contrary!



- The Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work now needs to be transposed into national law within a three-year delay, i.e. before 5 December 2011.
- In this context, it is essential that Member States lift unjustified restrictions on the use of temporary agency work.
- Social partners also have an important role to play in the implementation of the Directive and to define arrangements concerning the working and employment conditions of temporary agency workers along the lines of the Directive, including regarding the possibility to foresee a qualifying period for equal treatment.

The Posting of Workers Directive adequately governs the situation of temporary agency workers who are posted in another Member State

- The cross-border provision of services by temporary work agencies can involve the posting of agency workers. This is one of the three situations falling within the scope of the Posting of Workers Directive.
- The 2008 directive on temporary agency work clearly excludes cross-border situations from its scope (recital 22). There is therefore no doubt that the Posting of Workers Directive takes precedence over the 2008 directive for cross-border situations involving the posting of agency workers.
- The aim of the Posting of Workers Directive is to promote the transnational provision of services. In order to do so on fair terms for companies and workers, the posting of workers directive provides a nucleus of mandatory rules for minimum protection of posted workers in the host country. It imposes compliance with minimum conditions applicable in the host Member State on issues such as maximum work periods and minimum rest periods, minimum paid annual leave, minimum rates of pay, equal treatment.
- These minimum requirements must be observed whatever the status of workers. Agency workers are therefore adequately protected by the Posting of Workers Directive.
- The ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases do not affect the balance of the directive. They do not give precedence to economic freedoms over social rights or contravene the right to negotiate and conclude collective agreements. They do not call into question the nucleus of mandatory rules. But the ECJ was correct when it ensured that the right to take collective action and the aim of protecting posted workers cannot be misused to impose working conditions going beyond adequate legal requirements. There is therefore no need to revise the Posting of Workers Directive.
- However, the rulings have highlighted some problems in the implementation of the directive in some countries. These problems can only be solved in the countries concerned. Solving implementation and enforcement problems will increase protection



for all workers, including for agency workers! That being said, it is essential that the actions taken to better implement the Posting of Workers Directive do not increase administrative burdens for companies.

- In addition, there is a need for greater cooperation between national administrations, notably in order to better disseminate information on the conditions which must be observed by companies with respect to posted workers in different EU Member States.
- BUSINESSEUROPE is currently analysing with ETUC the legal, economic and social consequences of the ECJ rulings. In addition, we actively participate in and support the work of the Expert Group that has been set up by the European Commission to improve administrative cooperation between the Member States.

### Other cross-border movements of agency workers mainly occur in the framework of the free movement of workers

- There are several circumstances in which workers are moving to another Member State and are then employed in this Member State by a temporary work agency.
- These situations are in most cases adequately dealt with by national legislations on agency work. In addition, the 2008 directive on agency work will apply to these situations when Member States will have transposed its provisions as part of their national legislations at the latest at the end of 2011. From then on, the principle of equal treatment will prevail for all agency workers from their first day of work.

### Conclusion

- Due to the very limited data available, it is very hard to know the extent and the conditions in which agency workers are moving across borders. The initiative of a joint observatory on cross-border activities within agency work can therefore be useful.
- In any case, it seems clear that possible difficulties regarding the cross-border movement of agency workers have nothing to do with the legal framework. The Posting of Workers Directive, the 2008 Directive on agency work and national laws adequately cover the situation of cross-border agency workers.