



Temporary agency work: national reports

Germany

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Summary

The UK, France, the Netherlands and Germany together account for 90% of TAW in the EU. TAW is rapidly on the increase in Germany. In the course of 2000 about 700,000 temps have been engaged (flow-data). Still, TAW constitutes a small (320,000 = 1.0% of total employment - stock data) but a very dynamic segment of the German labour market (20% annual growth rate). Compared to other countries these numbers are not controversial as TAW in Germany has to be registered according to the AÜG.

In Germany TAW is widely regulated by the Labour Placement Act (AÜG) valid since 1972. This legislation reflects the special necessity for protection of temps due to the tri-angular relationship. In Germany agencies bear the full employers' risk. Utilisation of TAW was liberalised considerably in 1997 and 1998.

In the view of employers' associations and more and more the unions, TAW provides new opportunities to get out of unemployment. The profit-based agencies - ten years ago carrying a negative image - have gained increasing acceptance for promoting employment: About 50% of the temps had been unemployed before starting TAW, about 30% are said to find a permanent job in the user-company. However, there are no longitudinal data proving the long-term labour market effects.

Compared to other European societies only few labour market entrants (10%) are involved, 3% were academics. However, agencies are currently discovering this high-value-segment of the highly skilled, their better image helps them to address academics. Still, 60% of German temps are male manual industrial workers with no or low skills. This reflects the structure of the "old economy" in Germany which correlates to the structure of unemployed.

The perspective of a "social European Union" makes it necessary to shift the focus from the quantitative labour market effects to the quality of jobs created by TAW. With regards on this issue there is a lack of data particularly in Germany. Hence, only selected findings can be presented:

- There is clear evidence for poor remuneration and working conditions. Wages are by 30% lower compared to permanent workers. This comparison implies problems in defining what comparable workers are.
- There are nearly 10,000 businesses and therefore a strong price competition: Smaller companies in the unskilled segment contribute to rock-bottom-wages (8 DM/h is not rare).
- Main problems for temps are a lack of social security and of benefits connected to the status of a permanent worker. Temps have short missions both in user companies and in agencies: the majority only lasts up to three months. Many agencies do not provide training opportunities for their employees except the GAÜ (section 9) which particularly were sponsored for re-integrating long-term-unemployed as well as agencies in high-value-niches.
- Temps make up a tiny minority of unions' members. They are only marginally included in co-determination acc. to BetrVerfG both in the agencies and in user-companies.

With the exception of Randstad there is no nation-wide agreement. Although TAW is widely regulated by the AÜG (obligations for agencies to be licensed; one year limit) and by agreements at company level temps still lack equal working conditions, pay and employment stability compared to permanent full-time employees. This marginal position of TAW-workers partially results from the German corporatist model established by the Social Partners to protect a long-term employment career of skilled workers in the permanent core workforce of industrial work. During the last decades this model has undergone remarkable changes. New legislation has increased flexibility in labour markets and facilitated TAW.

Methodological approach and sources

It is the aim of this study to draw up a clear picture of TAW in Germany: what are the main trends, what are the main problems, what are the issues necessary for regulation, particularly on a European level? What opportunities and what obstacles exist for regulating TAW in collective agreements?

The study is carried out according to the following approach: It is based on an assessment of various reports and empirical studies and on authentic material. Due to the lack of data with respect to many relevant aspects it has been necessary to supplement desk research by a number of expert interviews combined with inquiries for authentic information from current internal reports on TAW. To improve the quality of this final report a variety of sources has been consulted to gather all the relevant information:

- As the various definitions and legislations in Europe on TAW are widely covered by previous studies this paper does not focus on these issues. However, section 1 deals with the legal definitions under German law (AÜG) excluding a series of exceptions of loan-work not treated as “Arbeitnehmerüberlassung” in the sense of the law, e.g. “illegal loan work” (mainly in construction sector) which is an increasing issue of interest due to globalised labour markets. Legislation on TAW has been examined, recent amendments and bills (such as the CDU/CSU bill) have been included. Scientific literature from labour law has been analysed.
- The basic source is the “9th report of the Federal Government on ... TAW” (Deutscher Bundestag 4.10.2000). Every four years the Government is obliged to describe recent experiences with the appliance of the Labour Placement Act (hereafter referred to as AÜG) which was passed in 1972.
- The main statistical source are the official numbers of the Federal Employment Service (BA) which is responsible for the application of the AÜG and hence has to give agencies allowances for their business as well as count the temps placed by these agencies. Furthermore, results of the interviews with 100 user-companies and agencies by Interconnection Consulting Group 2000 have been used.
- Viewpoints of associations (DIHT, BDA, BZA, DGB, IG Metall) have been examined, sources are mostly their Internet-pages.
- Case studies of company agreements have been analysed: Randstad Germany 2000, Adecco-Expo 2000.
- Tables from the 3rd European Survey on Working Conditions of the European Foundation in 2000 have been used to describe the structure and working conditions of temps compared to permanent workers.
- As far as possible with the available sources this report describes some of the working conditions of temporary workers: An Internet-chat-forum in February 2000 reflected a controversial discussion amongst Randstad-temps on various issues of TAW which can be considered as the flip side of the coin and reflects some experiences as perceived by temps.
- Unfortunately German mass surveys do not separate temps from other temporary workers when coding their professional status. Hence, my initial plan to present information on working conditions and subjective evaluations of temps based on mass survey data could not be pursued. The only survey on this issue (independent from the TAW-industry) carried out in Germany by Wierlemann 1995 has been used (N = 74 in Germany 1991). Some conclusions on temps can be drawn from my analysis of interviews with fixed-term-contract-workers (GSOEP 1999) as in some respects they are comparable with temps.
- Interviews with experts have been carried out in Nürnberg with the three large German agencies: Randstad, Adecco and Manpower and with one company representing the boom-sector of agencies placing experts, Dr. Städtler (5.1 and annex 2). The basis for these interviews were the questions which arose from the Bruxelles-meeting: Unfortunately, the interviews of 116 user companies in the project “Zeit- und Telearbeit” by Institut für Mittelstandsforschung (finished 1998) could not be evaluated.

Table 1: *Sample of the expert-interviews in Germany*

	Randstad	Adecco	Manpower	Dr. Städtler
Ranking in the German market	1	2	3	.
Temporary agency workers in 2000	25,000	15,000	12,000	180 AÜG 600 in projects and in software-sector
Managing clerks and other permanent staff	1500	.	750	350

The German model of employment

According to the cultural standard of life-long occupation in Germany employees only rarely switch their job and their company. This basic feature of the German model of employment explain why in Germany TAW has had much more problems to gain acceptance by institutional actors as well as by employ-ees than in the UK and the U.S.A. where job and company mobility are higher.

Table 2: *Regime of production and employment in Germany and the U.S.A.*

	Germany	U.S.A.
	Rhein-capitalism	Anglo-Saxon capitalism
Leading branch	Industry	Services
Leading service branch	For production	For households
Financing of companies and corporate governance	Long-term financing through credit by bank	Financing through stock exchange shareholder-value
Consequences for investment	Avoidance of risks	Readiness to take risks
Regime of innovation	Slow, but fundamental	Break-through-innovations
Model of production	Diversified quality production	Low quality, low cost, mass production
Educational system	Professionalism dual training system skilled worker's tradition	- generalist qualification
Staff policy of companies	Protection against unfair dismissals Long-term concentration on internal resources	Hire and fire low interest in long-term commitment to staff
	↓	↓
Job and company mobility	Low	High
Working less than one year for the same company OECD 1995	10%	25%
Mean job tenure OECD 1995	9.7 years	7.4 years

See: Garhammer 2001. Modified acc. to Wittke (SOFI-Göttingen) 2001, Albert 1992 and Soskice 1999

In its extreme this was specific of the German skilled workers society of the sixties and seventies (Garhammer 2001). However these standards are still culturally vivid (cf. Schmid 2000):

Every fifth German who currently or formerly is employed considers himself to be a skilled worker (EU-ROMODULE 2000). A concept of education geared to occupations is almost universally in practice: 60% of young people receive dual job training, a further 30% at university receive an education preparing them for a profession. There is no other country where "one's school education and vocational training and one's professional status are so interconnected" (Müller/Shavit 1998, Cattero 2000). This occupational organisation of the working world also provides the basis for the evolution of a "professional habitus" of actors. It enables

and demands strategic acting in one's life course, e.g. by financial and time investments in education and further training.

Today we have indicators for the erosion of this standard of life-long profession and long-term employer tenure: For instance the “reasonability criteria” in the ALG-regulations do not protect the previous occupation of unemployed receiving insurance benefits: This forces an occupational mobility in order to promote the employability of the unemployed.

Legislation on TAW

TAW is characterised by a triangular relationship. This relationship differs from other forms of atypical work such as fixed-term contracts. This relationship involves a worker, a firm acting as a temporary work agency and a user firm, whereby the agency employs the worker for a fee and places her or him at the disposition of the user firm so that the worker is under the supervision and control of the user company while working (cf. Michon 2000).

According to the EIRO-Report Germany comes under the “regulated model”. Regulations refer mainly to the duration and renewal of contracts. Rules ensuring parity between TAW workers and similar permanent workers in the user companies in terms of pay and/or employment conditions are not laid down by the AÜG.

In Germany limitations are mainly time-based (contracts are limited to one year since 1997), on the other hand, the legislation does not allow TAW in construction sector. Here the German model differs from the liberal model (e.g. in UK) and from the reason- and time-restricted model (e.g. in Belgium).

- In liberal models there are few restrictions or these restrictions are mainly based on collective agreements (e.g. Austria, Denmark, Finland, Ireland, Netherlands, Sweden and the UK). In Greece, TAW remains practically unregulated.
- In “reason models” user companies have to state reasons for using TAW (e.g. Belgium, France, Italy, Portugal and Spain)

Table 3: *Legislation on TAW in the EU*

	sectoral limitations (0 = general ban, 4 = no limits)	limitations to the renewal of contracts	Maximum period for contracts in months
Finland	4	No	No Limits
Ireland	4	No	No Limits
USA	4	No	No Limits
UK	4	No	No Limits
Denmark	4	No	No Limits
Sweden	4	No	12
Netherlands	3½	Yes	42
Austria	3	Yes	No Limits
Germany	3	Yes	12
Japan	2	Yes	36
France	2	Yes	18
Belgium	2	Yes	15
Portugal	2	Yes	9
Spain	2	Yes	6
Italy	1	Yes	No Limits

OECD for the end of the 1990s

The AÜG is applicable to both the private and the public sector with the exception of the construction sector. Utilisation of TAW was liberalised considerably through the amendments in 1988, 1997 and 1998.

Since 1994, the Employment Promotion Act legalised private placement agencies although the state placement service is still dominant in this area. Private personnel-services offer recruitment and selection, placement and temporary leasing of employees. Compared to these profit-based agencies the BA is a public body self governed by employees, employers and the central federation, the individual states, municipal associations and local authorities. In Germany, the BA finances employment promotion and is responsible by law for providing careers guidance and placing individuals in training or employment.

As a public body directly associated with the Federal Government, the BA is subject to legal supervision by the Federal Ministry for Labour and Social Affairs (BMA). All organs are tripartite (i.e. labour, management and public institution representatives participate as equals) with representatives appointed on the basis of recommendations from the responsible associations or bodies.

The third volume of Social Security Code (Sozialgesetzbuch - hereafter referred to as SGB III) forms the legal basis for implementing labour market policy instruments, including employment agency services. It replaced the Labour Promotion Act of 1969 in January 1998.

The collaboration between the Public Employment Services and temporary work agencies has recently been improved (cf. BZA 1.9.2000): A BA-directive provides guidelines for an improved co-operation with the agencies: These should be treated in the same way as any other employer and should no longer be subject to any discrimination. Here, the change in the public attitude is obvious: TWA now is recognized as a instrument for creating jobs.

In Germany, legal regulation of TAW focuses on the relationship between the agency, the user company and the worker as this relationship includes specific risks for the employees and hence a special necessity for his protection. Germany has comprehensive legislation governing the:

- activities of agencies (including their licensing in § 1). However, since 1972 only in 1 out of 100 cases the appliance for a licence was refused by the BA. 142 licences were revoked due to “personal unreliability” (9th report, 8, 22, 75).
- conditions of use of TAW
- contractual responsibilities between the agency, the worker and the user company
- contents of the contract between the agency and the worker
- rights of agency workers: The agency employee is not entitled to refuse missions in certain user-companies as they can in the NL. Their contract obliges them to carry out their “service” for client companies and they are subject to periods of notice if they refuse a mission (Wierlemann 1995, 181f.).

The AÜG aims to protect temporary agency workers as regards their labour law and social insurance status. The agencies therefore are subject to a more rigid control by law than other private companies. This includes comprehensive obligation for information to compensate the “weaker position of the loan-workers” (9th report, 17):

- As temps fluctuate frequently amongst various firms industrial safety is a main area regulated by the AÜG: Besides the user-companies the managing clerks of the agencies are required to control work places in client-companies and to inform their temps on any risks in the user-company. They have to ensure an appropriate security behaviour of temps such as wearing security helmets. In the case of violations of standards by the client-company the agency may withdraw its temps but this does not occur frequently according to results of my interviews with experts. In 1996 a project was launched to integrate industrial safety in quality management systems. Since 1998 a higher “risk tariff” of the “Berufsgenossenschaft” is in effect which assesses the risk of accidents to be higher than in 1995 and reflects the special exposure of temps to these risks (9th report, 19).
- From 1996-99 the BA observed the delay of payment of taxes and social insurance contributions in 545 cases.
- The BA also controls agencies in complying their labour law obligations such as regulations of working times, holiday pay, sick pay etc. Some agencies try to bypass their obligation to pay wage in “unproductive times” by paying wage substitution only on the base of 35 hours regardless of the fact that these temps usually work longer hours. This wage-cutting has been possible based on the amendment of the Bundesurlaubs- and the Entgeltfortzahlungsgesetz.

Today labour regulation is faced with a European and globalised labour market which constrains the nation state opportunities to regulate agencies. The 9th report states several cases where the BA’ control possibilities are limited by national borders when attempting to control foreign agencies (21). Hence the Federal Government is currently concluding bi-lateral agreements with France, Denmark and the Netherlands.

The AÜG defines exceptions when “leasing” is not regulated as “placement” as defined by law:

- Since 1998 it is possible for companies in the building industry which are covered by the same collective agreement to hire out blue-collar workers to one another temporarily (Art. 63 no. 5).
- According to § 1 Abs. 1 Satz 2 AÜG the “delegation” of employees to another company collaborating with the leasing company in a “working team” is not defined as “loan work” if the same collective agreements are valid for all members of this working team and they are contractually obliged to independent sub-contracting (9th report, 16). The European Commission has taken the Federal Republic of Germany to court for this article as for the previous noted “Kollegenhilfe” in construction sector as these articles are perceived to discriminate foreign companies within the EU.
- According to § 1 Abs. 3 Satz 1 AÜG the “delegation” of employees to another company is not defined as “loan work” if a collective agreement in special branches provides this possibility to avoid dismissals and “short-time work”. This applies to the “electricians branch” in various regions (9th report, 16).
- An increasing variant which also is defined as exception is temporary leasing of employees between members of the same company. BDA favours the extension of this allowance to a long-term leasing.
- To avoid “short-time work” or dismissals employers with less than 50 employees are allowed to lease their staff to an agency.

BZA the Federal Association of Temporary Work represents about 1,200 agencies. BZA has adopted its own declaration regulating “working and social conditions (ABS)” which recommends that remuneration must be paid “in accordance with the market” (§ 1) and with applicable collective agreements, that temporary workers

are entitled to take 24 working days paid annual leave (§ 8) and that it is prohibited to employ temporary workers in enterprises where there is a strike (§ 11). Extra pay for vacation or Christmas is facultative (§ 6)(Internet).

The Employment Promotion Act valid till 2000 allowed a contract to be limited to two years. It was possible to renew a temporary contract three times. Such “chain contracts” - possible over a period of six years - are to be banned from 2001 according to the BMA bill from September 2000. The employers associations urged the Ministry of Labour to renew the right for temporary contracts (SZ 13.9.2000). Now fixed-term-contracts may be used when there are “objective grounds” to justify their use and duration (to be proved by Labour Courts) or if employers only have a temporary need for supplementary work. If labour market entrants are employed the company is not in need of any justification for the limitation.

BZA favours this right also for temporary work agencies. According to the amendment of the Employment Promotion Act however the company is not allowed to employ anyone on a non-permanent base who was previously employed by the same employer.

Acc. to AÜG the contract with the agency regularly establishes a full-time-employment-relationship with about 37 weekly hours. The standard case is a non-limited work contract. Every employee receives a written contract (which is necessary to mention compared with the market for day-labourers in former times) including insurance for retirement, sickness, accidents and paid vacation, wage pay in case of sickness and protection against unfair dismissals.

Furthermore these general laws apply:

- Arbeitnehmer-Entsendegesetz - AEntG 26. Februar 1996, zuletzt geändert 19. Dezember 1998
- Arbeitsförderungsgesetz zuletzt geändert 22. Oktober 1997
- Arbeitsplatzschutzgesetz - ArbPlSchG
- Gesetz über den Schutz des Arbeitsplatzes bei Einberufung zum Wehrdienst 19. Dezember 1998
- Arbeitsschutzgesetz - ArbSchG vom 7. August 1996, zuletzt geändert 19. Dezember 1998
- Arbeitssicherheit - ASiG vom 12. Dezember 1973 zuletzt geändert 19. Dezember 1998
- Arbeitszeitgesetz - ArbZG vom 6. Juni 1994; zuletzt geändert 9. Juni 1998
- Beschäftigungsförderung - BeschFG vom 26. April 1985, zuletzt geändert 25. September 1996
- Betriebsverfassungsgesetz - BetrVG 15. Januar 1972, zuletzt geändert 24. März 1997
- Bundesurlaubsgesetz - BUrlG vom 08. Januar 1963, zuletzt geändert 25. September 1996
- Entgeltfortzahlungsgesetz vom 26. Mai 1994, zuletzt geändert 19. Dezember 1998
- Kündigungsschutzgesetz - KSchG 25. August 1969, zuletzt geändert 19. Dezember 1998
- Mutterschutzgesetz - MuSchG 17. Januar 1997
- Nachweisgesetz - NachwG 20. Juli 1995, zuletzt geändert 24. März 1999
- Schwerbehindertengesetz - SchwbG 26. August 1986, zuletzt geändert 03. Mai 2000

- Sozialgesetzbuch Fünftes Buch - SGB V 20.12.1988, zuletzt geändert 24.03.1999
- Tarifvertragsgesetz - TVG 25. August 1969, zuletzt geändert 29. Oktober 1974

Recent trends in legislation

Since 1996 the obligations of the user company regarding industrial safety of temps have been newly defined. This amendment put a EU-directive on industrial safety into place: Both the user and the agency are responsible now for the industrial safety of the temps. However, one can assume that despite of this regulation temps are not as well informed about the risks at their workplace as permanent workers: Within the EU 26% of temps approved to this statement compared to only 9% of the permanent workers (Q13 of the 3rd European Survey).

The most comprehensive change took place with the amendment of the Employment Promotion Act in 1997 which de-regulated numerous obligations of AÜG (9th report, 22ff.). The opposition SPD/Grüne as well as the unions disapproved of this amendment as they feared a weaker protection of temps and a substitution of permanent jobs:

- § 1 Abs. 3 no. 3 now excludes cases from the AÜG where agencies lease their employees into a joint venture in foreign countries. This enables them to go beyond the 12 months limit which is only valid in Germany.
- The allowance to lease staff to an agency to avoid “short-time work” or dismissals now also covers employers with 20-50 employees and has been extended to 12 months.
- § 3 Abs. 1 no. 3 extends the right for a limitation of work contracts. Now agencies are allowed to limit these contracts one time and do not need to justify this limitation through personal reasons of the temp. Agencies are now also allowed to renew fixed-term-contracts if this new contract follows the previous contract immediately. The problem that agencies shift the risk of paying wages to social insurance is not evident in this case. The right for single limitations has been utilised often by agencies since 1997 in contrast to the right for multiple limitations. § 3 Abs. 1 no. 4 now licences agencies to dismiss employees and give them a new contract within three months. This opportunity was not often taken advantage of.
- Since 1997 a single synchronisation of the period of the contract with the agency and the leasing period with the user-company is possible. This possibility mainly applies to elementary occupations which are needed by client-companies only for a limited period. As a result the average duration of the contracts with the agency decreased since 1997.
- The maximum duration for leasing temps was extended from nine to twelve months though this maximum was not taken advantage of by most agencies. Smaller mixed companies however which have oriented their leasing-business only to one user-company demand a further extension of this maximum. The BA assumes that as a result of this extension permanent jobs in user-companies have been dissolved as this extension allows them to plan with temps within a framework of a “mid-term staff policy”. In some cases the limitation of 12 months is bypassed by the multiple leasing of the temp after short interruptions at other user-companies. However, the 9th report resumes that the de-regulation of the AÜG has led to less violations of the law as it has met the needs for a more flexible handling.
- In June 1999 the CDU/CSU in parliament launched a bill which widely followed proposals of BZA to extend the maximum period from 12 to 36 months, to allow generally limitations of contracts of temps and to cancel the ban of synchronisation if the agency and the user-company follow the same collective agreement on wages. Currently this bill is being discussed. In its press release of January 24 2001 the BZA favours the acceleration of this de-regulation: “We think that at least mid-term this change of AÜG will come as this liberalisation would relieve the labour market considerably” (BZA-speaker Denkhaus).

2 Views of employers, trade unions, political parties and public opinion

All employers' associations demand a further liberalisation and complain about the discrimination of TAW which is seen in the AÜG-term "loan-worker" which "is more reminiscent of 'day worker' than of modern employment" (iwd 6/2000).

In February 2001 DIHT-speaker Schoser complained once again about "too little flexibility" in German labour markets. He demanded the extension of the possibilities for temporary contracts along with a liberalisation of protection against unfair dismissals as well as better conditions for TAW. This de-regulation was favoured particularly in order to promote the New Economy which requires more flexibility than the old one (SZ 12.2.2001).

According to the BDA as well as to the BZA the AÜG is in need of liberalisation: "TAW could contribute to the fight against unemployment in Germany to a much higher degree" (Denkhaus in July 2000 and in January 2001). In the view of BZA Germany should learn from the success of the "Dutch model".

BDA and BZA demand the release of the following limitations by the AÜG which are not to be found in other countries in order to create more jobs in the labour market (McKinsey et al. 2000, SZ 17.4.2000, 9th report, 25ff., BZA-internet):

- cancelling the ban on hiring-out in the construction sector
- unlimited allowance of fixed-term contracts for agencies based on the general labour law. Currently § 3 Abs.1 Nr. 3 constrains multiple contracts.
- cancelling the ban on synchronisation (§ 3 Abs. 1 Nr. 5). This article makes the duration of the contract with the agency independent of the duration of the hiring-out. In this way the agency is required to guarantee temps permanent employment regardless of how long they are needed in the user-company. However, also under current law the BA allows for a renewal of contracts if the second contract at least is concluded for 25% of the length of the preceding contract (in the case of one year = three months). In this case the same worker may be employed on the base of an infinite number of temporary contracts. BDA demands a shortening of this period to one month. BZA complains that many agencies do not employ more workers because they have to guarantee a second client or full payment for the duration of a quarter of the length of the first employment even if there is no client contract at hand.
- cancelling the limitation of renewed contracts within three months (§ 3 Abs. 1 Nr. 4): The dismissal of a temp for economic reasons is invalid if the agency re-employs the worker within three months after the dismissal. However, according to my interviews with branch-offices of agencies this limitation of renewed contracts is a minor problem as client-companies can bypass this restriction by founding nominally different companies which follow up in leasing the required temps.
- most important: cancelling the maximum-period for hiring-out (BZA), at least lengthening this to three years (BDA). In this way, temps could substitute also regular employees who stay in parental leave for three years.

Acc. to my interviews with experts the general attitude of agencies towards these limitations in legislation was the acknowledgment that legislation is driven by the idea of promoting TAW and hence of de-regulation: The current law provides several exceptions and ways for bypassing limitations (e.g. "founding" of nominal companies). From this perspective, the detailed restrictions of the AÜG are viewed as out-of-date and

meaningless. Hence legislators are expected to cancel these restrictions which in practice do not help in limiting the use of TAW.

Views of political parties

In most of these issues, BDA and BZA are backed by Liberals (F.D.P.) and by CDU/CSU. In the mean-time, the extension of the maximum-period is also supported by the Green Party (SZ 17.5.00): An internal paper of their Members in Parliament demands a longer period of hiring-out. The current 12 months are regarded insufficient mainly for small enterprises. They are in need of longer periods to train their temporary staff.

Public opinion

Up until 1990 the public image of TAW was very poor. This attitude becomes evident during the scandal which arose after author Günter Wallraff disguised himself as a Turkish temporary agency worker "Ali" at Thyssen and published a book. Often media focused their reports on illegal loan work, particularly organised by gangs. In 1991 61% of the 18 interviewed agencies saw themselves affected through this poor image of TAW - compared to 10% in the NL (Wierlemann 1995, 234).

The problems in German economy and labour market around 1993 marked a turning-point in the attitude towards TAW. In the course of the 1990s its role has been newly defined, the previous image of a modern slave-trade has been weakened. Reports in German media have increased in number and have changed in attitude.

This re-definition of the image is illustrated by the term "personnel services" which is used today by agencies to define their task: What still is "loan work" in a labour law sense is expressed in terms of a service carried out for the employee as well as for the client-company. The profit-based agencies only fulfil a service for other parties in this definition.

This change in public image due to more information about TAW is evident when comparing two representative surveys: Whereas in 1997 17% of the surveyed knew what "Zeitarbeit" meant this percentage increased to 25% in 2000. Amongst this group every second knew someone working as a temp. Whereas in 1998 45% of the surveyed regarded TAW as a possibility to fight unemployment this percentage increased to 57% in 2000 (NN 11.11.2000).

Views of the trade unions

In the German corporatist model unions tend to defend the privileged position of "core permanent workers" and therefore have had reservations about temps until recently. Specific organisations for TA-workers do not exist and temps are excluded from the range of collective agreements (cf. Keller & Seifert 1994, 544). Up to the mid-1990s, trade unions opposed the use of TAW. In 1995 the metal workers' union, IG Metall, voted for a ban of TAW. It was seen to be destructive to harmonious industrial relations. The unions refused to negotiate any collective agreement on TAW. They criticised that temps are not included in the system of co-determination in the user company.

These discussions within the unions on limiting the use of TAW by stipulating a maximum quota of temps per enterprise now have finished. The DGB is no longer in favour of limiting the use this employment, as in this statement from 1997 "DGB demands a stronger control and limitation of loan work" (Handelsblatt, November

3, 1997). Here my assessment based on various interviews with unions (recently on Friday 2nd March 2001) differs from the assessment of the Federal Government in its 9th report (26) which speaks of a “very critical assessment of TAW by the DGB”. While acknowledging negative aspects of TAW and seeking the return to the previous limitations of TAW before 1997 trade unions increasingly see TAW as a potential for facilitating labour market entry (9th report, 25). Apart from that, DGB endeavours to safeguard the rights of temps.

The most important union, IG Metall, has meanwhile adopted a resolution which recommends negotiating collective agreements covering temporary agency workers. In 1999 IG Metall concluded a wage and working conditions agreement with a agency for the first time. In addition to wage rates and structures, it covers working time, holidays and pension arrangements.

The view of the Euro-works-council of Randstad Holding is representative of this new attitude of the employees’ side towards TAW (cf. Stark 2000). Along with Randstad-director Junggeburst 2000 this works council favours the Dutch model of flexible labour markets and the role of agencies. When reading his statement on the function of a works council “to create together with the company management and the unions ... structures which make TAW attractive for all kinds of job seekers” (173) one may conclude that the previous task of trade unions - to build up a counter-power to fight for the improvement of working conditions - has in this case nearly disappeared.

Acc. to the AÜG workers' rights are exercised mainly in the agency but they have some entitlements in the user company. TAW workers may not vote or stand for works council elections at the user company, but they can use works councils consultation hours and attend staff meetings.

One reason why unions still have some reserves against TAW is that all forms of outsourced employment undermine the German corporatist participation: This consensus-regulation of “social partners” within large companies replaced the state control to a certain extent which is usual in other EU-countries (on a minimum wage or on industrial safety). Whereas in 1980 the majority worked in companies where the BetrVerfG applied 20 years later this percentage has dramatically decreased through outsourcing and TAW.

The participation of works councils fails both in the case of the agencies due to high fluctuation and in the case of the user-companies: The user companies have to inform their works councils when they employ temps but do not require permission from the works councils.

Hence unions see the danger of “social dumping” as the participation and control of works council is missing. DGB demands the withdrawal of the BA-licence for agencies where a works council has not been established within one year after the prerequisites are fulfilled. The unions favour “equal treatment” of temps and permanent staff in the user companies as regards their participation through councils and the collective agreements valid in these companies. Whenever such an agreement provides better conditions this agreement should be valid. Aware of the bad prospects to conclude a sectoral agreement for the TAW-industry IG-Metall proposes a law which ensures that temps in the client-companies should be included in the appliance of collective agreements valid in this company (9th report, 27).

Collective agreements at sectoral level

3

Although sectoral bargaining is the norm for industrial relations in Germany the TAW-industry has not yet been included - in contrast to the Netherlands where negotiations between the major unions and the ABU has been usual for several years.

One reason for this exception from the German corporatist model is that only few temps are organised in unions. Acc. to the 3rd European survey (EF20.2) 95% of the European temps declared that they “never are involved in political or trade union activity” compared to 86% of the permanent workers.

The other reason is that the market in Germany is extremely fragmented (5.1): The five leading agencies account for 25% of the market - compared to a 40%-share for Randstad in the NL (Stark 2000, 172). “The next years in Germany will see the development of a oligopolistic sectoral structure” (Randstad-Henseler). Hence, sectoral collective agreements as in the Netherlands will also become more probable in Germany.

Compared to France etc. collective bargaining at inter-sectoral or sectoral level up until now have only played a marginal role. However, the code of conduct elaborated by the BZA is of significance (see 1).

According to the 9th report (20) many agencies do not feel the need for collective agreements except the larger ones and the GAÜ (section 9, for instance START NRW has conducted an agreement with IG Metall and ÖTV).

In 1970 DAG and BZA concluded a wage and a framework agreement. The parties failed to renew this agreement in 1989. However, it still applies for the signatory parties since according to law collective agreements continue to apply until they are replaced. The agreement was not, however, declared binding for all employees since DAG as the white-collar workers' union is not entitled to close agreements for blue-collar workers.

4

Agreements at company level: Randstad, Adecco and VW

In the German work regime there is a clear trend towards “Verbetrieblichung” since the collective agreements in 1985: The location where decisions on working conditions are made switches to a lower level, from regional to company level. Thus the regulation set down by institutions is losing its universal and rigid character. Simultaneously, the influence of the unions which previously fought for nation-wide standards is diminishing. The more decisions on working conditions at national or sectoral level are replaced by contracts at company and individual level the less counter-power by workers is possible, particularly in the face of high unemployment and globalised labour markets.

Working conditions of temps are under German law unilaterally decided on either by individual employers or collectively by member companies of BZA.

However, some agencies have concluded agreements with their works councils. Some companies, amongst them Manpower, have declared their willingness to negotiate collective agreements, on the condition that the agreement takes the peculiarities of the industry into account and is declared generally legally binding for the whole sector through the mechanism of the extension of collective agreements. As an alternative to a sectoral collective agreement Reitz, director of Manpower Germany, proposes to attach the TAW-sector to existing sectoral agreements: “It would make sense if like in France all temps are paid the same wage as the next permanent worker in the workplace”. This equal treatment would require an additional § of the AÜG (Financial Times Germany 29.2.2000).

The intention of these agencies’ proposals is to improve the industry's image by forcing all companies to stick to collectively-agreed rules, especially those with a reputation for bad working conditions. However, there are problems in organising companies with the necessary market share to meet the precondition for an extension of an agreement - i.e. that the agreement should cover 50% of the employees in the sector. “Due to the sectoral structure it is difficult to reach a collective agreement with a general coverage” (Randstad-Henseler).

Since 1970 Randstad (no. 1 agency in Germany) has co-operated with a works council, since 1989 there has been a “supervisory board” which is filled on equal terms, since 1996 there has been a European works council. Company agreements have regulated working conditions of internal and external employees for a long time. This Randstad-model is representative of the consensus-model of corporatist working regimes in this extremely flexible segment of labour markets. The European works councils and managers of Randstad have also discussed the further de-regulation of the AÜG and hence contributed to its liberalisation in 1997 (cf. Stark 2000, 173).

In April 2000, Randstad agreed with DAG/ÖTV on a collective agreement (cf. Randstad 2000 and BZA 28.4.2000). This is considered a milestone in collective regulation of TAW in Germany (Randstad 2000) as Randstad is the biggest member of BZA. The agreement came into effect without labour disputes. DAG-representatives declared satisfaction with the contract particularly as it improves the chances of the long-term-unemployed.

- Randstad increased the basic wages for skilled workers by 7%, for “service and sales workers” by 6%, and for “manual workers” by 3% “in order to decrease wage-differences between temps and permanent workers in the user companies”. The “wage structure list” defines wages acc. to three groups of staff in “administration”, for “technicians” and “manual skilled and unskilled”.

- The wages for temps vary considerably not only acc. to these occupational differences but according to extra payments increasing with longer employer tenure (six months, 1 year, 3, 5, 10 years; § 1.4 of the agreement). Furthermore the “basic wage” differs according to an assessment of individual vocational training, experiences and skills (1.3.1). According to “market situations” (regions, local competitors) newly hired employees may be paid a reduced wage (3.1). These regulations in the collective agreement leave widely defined opportunities open to Randstad to differentiate wages according to specific local and regional market situations. According to IG-Metall these wages agreed on by DAG are seen as “dumping” as they allow for hourly wages of 10.89 DM in the West and 8.28 DM in the East (monthly wages of 1818 and 1382 DM before tax).
- The Internet-chat-forum (job-pilot.de in February 2001) reflected a controversial discussion amongst Randstad-temps on this issue of pay: One temp engaged on January 25th 2001 for an “elementary occupation in store and production” was paid a low basic wage. Each of his 40 colleagues from Randstad employed with him was paid a different hourly wage as they were engaged in other branch offices of the New Länder. According to the agreement with Randstad which is valid nation wide there is considerable variation in wages due to differences in employer tenure, in vocational experience and training and in individual skills (Harseim, Randstad 14.2.01).
- The “regular monthly working hours” amount to 151,666 hours (2.1 of agreement) (i.e. 7 hours per day; 35 hours per week, in months with 20 working days 140 hours). However, the actual amount of daily, weekly and monthly hours is adapted to the needs of the user companies (2.4, 2.6) and to individual contracts (4.1). The period necessary in advance to announce alterations is four days. The daily minimum is 3, the maximum is 10 hours.
- Overtime is paid a extra payment of 25% as well as work from 23.00 to 6.00, work on Sundays 50%. Overtime beyond individually contracted working hours is accumulated in a working time account which can be resolved by the employee either through leisure time or payment. Hours worked after the 48th hour in week are regularly accumulated in these accounts - creating a “time buffer” for the user companies to adapt their work to the needs of markets.
- One Randstad-employee in the Internet-forum complained that the “usual 10 weekly hours overtime” were not paid but transferred to his working time account. However due to low basic wages extra payment for overtime is highly needed by temps. Acc. to the answer of the Randstad-executive these savings in working times accounts can be paid after some time. In principle Randstad here joins the practice of the user companies. If they pay extra beginning from the 41st hour so does Randstad.
- In the case of sickness, leave or lack of work employees continue in contracted pay. Besides an annual extra payment of 4.2% of annual wage they are guaranteed 30 days vacation and vacation-payment.
- A “cafeteria wage system” (similar to § 16 in ABS-standards of BZA) provides the opportunity for employees to replace nine days of their annual leave allowance (then only 21 days), the annual bonus payment etc. - instead of being paid on the due date - by extra pay supplementing their monthly income (10% more). However, this system created due to the “specifics of the TAW-industry” (section 7 of the contract) i.e. the relatively poor pay of most temps leads to less vacation which also is necessary.

Randstad considers these “improved standards in wages and working conditions” part of its strategy to enhance company-affiliation of their long-term employees (Präambel). The higher cost is considered to be compatible with the challenges of the market.

BZA considers the agreement a sign for “social partnership” and “improved social standards” in TAW. However, BZA is not willing to recommend these agreements as an uniform model for all members of this association, because of specific “market conditions”. BZA is considering the preparation of a “sectoral collective agreement” but it is not able to represent the majority of companies due to the low participation rate in this association. The existence of sector-specific bargaining for TAW is dependent on the existence of a bargaining mandate of employers' associations. Whereas this is the case in the Netherlands, in Germany these organisations have had no bargaining role up to now.

Randstad favours such a sectoral uniform agreement. Executives consider their agreement to be a signal for the whole industry in regulating working conditions of temps together with the trade-unions who now accept TAW. DAG and ÖTV make their contribution to promote TAW in Germany by “removing obstacles which ... hinder a positive development of TAW” (preamble of the “Mantel-Tarifvertrag”).

Acc. to Randstad-directors Henseler and Pieper the contract is based on the previous company agreement of “Randstad Zeit-Arbeit”. Whereas previous Randstad-employees did not experience a change in their working conditions the previous Time-Power-employees receive improvements in a “step plan” until the end of 2001. Even when bearing the higher cost combined with this contract user companies are expected to appreciate it by receiving highly skilled and motivated temps.

These regulations are hoped to attract highly skilled job-seekers into the agencies. The previous image offering only “second class jobs” can be changed and employer tenure can be increased. This agreement indicates a trend in the whole industry towards improving quality of services instead of low-cost-offers.

Randstad Germany also has agreed for its 100 enterprises with DAG to create a regional works council. According to IG Metall after the approval of the BMA now in six regions works councils will be elected. Both DAG/ÖTV and IG Metall have concluded own contracts with Randstad. However, DAG has tried to organise these elections without waiting for the required approval of the BMA to promote their “executives” as candidates for the works councils elections.

Adecco (EXPO 2000)

A further milestone for the development of TAW can be seen in the agreement which covers temporary agency workers employed in the EXPO 2000 in Hanover. In June 1999, a bargaining cartel of six trade unions led by IG Metall and Adecco agency signed a agreement to cover 7,000 agency employees (23,000 employees in total) working at the EXPO from May to November 2000.

This agreement took place after “tough negotiations”. Unions left “under protest” negotiation rounds and criticised the wage offer of Adecco of 13-20 DM/h to be “dumping”. The Green Party had criticised in parliament of Hanover that the SPD-government Niedersachsen as “share-holder of EXPO-company” did not make sufficient efforts for minimum wages and for a minimum percentage of German workers at Expo-construction places where low-wage-workers from Eastern Europe were employed.

In despite of the poor wage-contract the leading IG-Metall Niedersachsen Meine sees the “EXPO-agreement” an “important step towards the opening of the TAW-sector”. The agreement should indicate that it is possible “to set minimum social standards” even in this relatively difficult sector. Adecco-Uhlemann sees the agreement a “milestone in the history of TAW”. The “Tarifvertrag EXPO 2000” is attached to the annexes.

- § 8 regulates the wage structure according to seven “wage groups” reaching from 1 (e.g. kitchen helpers) to 7 (pavilion-manager) from 13.50 to 25 DM. Initially unions had declared 15 DM a minimum for unskilled manual workers but agreed to 13.50 DM which no longer was perceived as “dumping” (Junge Welt 23.6.99). Adecco has legitimised their proposals referring to “usual market wages” of temporary agency workers.
- § 2 provides for the promotion of unemployed: Adecco promises to give priority to unemployed (particularly long-term unemployed) when hiring employees - provided the same qualifications are at hand.
- § 3.5 provides for a period of notice of 4 weeks during probation 2 weeks.
- § 4 provides for regulations for further training which usually takes place during working hours. Employees receive a certification on attending this training at the end of their job.
- § 5 entitles Adecco to lengthen working hours by 5 hours weekly without extra pay. The difference between the regular working hours of 35 hours and the actual working hours is accumulated in a working times accounts which enables employees to take free days at the end of their employment period (7 hours per day). A rotating distribution of the working hours should ensure that employees have to the same extent free Saturdays and Sundays. Within five months at least 7 Sundays have to be free excluding weekend-shifts.
- Short-term alternations of the schedule as well as employers proposals which are the free days acc. to § 5.2 are to be notified at least 2 days before, in the case of an agreement with the employee within even a shorter period.
- Overtime premium is paid from the 41st hour (the 36-40th hour is regularly paid although exceeding the 35-hour-standard), from the 46th hour 30%. Night work (23 - 6) is paid a 25% premium. Saturdays und Sundays are paid normally - compared to a 25-50% premium in German industry and a 50-70% extra payment on Sundays: Most of these regulations on overtime result in worse regulations compared to usual agreements (cf. Tarifarchive of the WSI).
- § 11 provides for regular paid vacation of 30 working days provided the employee does not quit his job before the end of the contract. Vacation has to be taken at the end of the EXPO-job.

Adecco employed 5,600 temps at the EXPO. Since June 2000 629 employees were dismissed due to lack of visitors in Hanover. In these first weeks the unions did not protest (Financial Times 19.6.2000). Further 1,180 did not begin their work although they had signed contracts (SZ 20.6.2000).

According to the works council Fischer the first 123 temps were laid-off without co-operation with the works council (SZ 15.5.2000). After the first experiences with less visitors the works council and Adecco agreed on an additional contract according to which temps are entitled to gather up to 100 minus-hours on their to balance them out during the peak-periods.

The establishment of a 6-person-works-council of IG Metall at the temporary project EXPO anticipates the amendment of the BetrVerfG. Current law provides for a works council beginning with a employment relationship of six months whereas EXPO is only open for five months.

VW

Company-level bargaining on TAW takes the form of both agreements with agencies themselves and agreements on the use of TAW in other firms. In 1997, Volkswagen created several hundred temporary jobs. According to an agreement between the company and IG Metall the new temporary staff, although being hired on the terms of the current company agreements, are paid 10% less than permanent employees. This agreement establishes a two-tier wage system at VW.

5

Trends in temporary agency work

The structure of the industry

Compared to the Netherlands and France, the TAW-industry in Germany is more fragmented (cf. Brose et al. 1994, 36; Wierlemann 1994, 104): The more proliferated TAW is in one country the more concentrated this industry is.

In 1999 only 16% of the licensed agencies employ more than 50 employees. The percentage of agencies which employ less than 10 temps has more than doubled from 1995 to 99, from 24% to 57%. 2% of all agencies have their company headquarters in other countries, mostly in France (9th report, 8f.). 1,200 of the 9,232 agencies are organised through BZA. They account for 30% of the sectors sales.

There are two types of licensed agencies: first companies exclusively engaged in leasing temporary workers and “mixed companies” which are both engaged in leasing but also in other services for client-companies. In the past decade both types have expanded, the “mixed companies” make up 55% in 1999 (8). Most of such mixed companies only apply for a licence as a precaution to cover themselves if a certain activity in the framework of a sub-contract is considered as “AÜ”. In some cases the user-companies require such a licence as a precaution to cover themselves against the consequence of § 10 AÜG: This article defines an employment contract between the employee and the user company if the agency does not have a licence. Another reason for mixed companies to apply for a licence is to gain the opportunity for leasing their employees in case of a lack of work in their own company. Hence more than 50% of these mixed companies did not employ any temp in 1999 (8).

At the end of 1999 the number of licensed agencies amounted to 9,232 (6,370 at the beginning of 1996)(75). The annual growth rate in the past four years amounts to 7-9%. The new Bundesländer have increased their share from 12% to 14% in this period. One of three agencies (3,813 on June 30th 2000) have an unlimited licence which is given by the BA if the business of an agency ran without any complaints (7).

More and more large agencies consider themselves “personnel services” offering companies consulting, project-management, outsourcing, outplacement, temporary management and full-service-personnel-concepts along with in-house-solutions. BZA estimates an increasing demand for these services (Personalwirtschaft 6/1996).

Randstad Germany

Randstad Holding is the third largest agency worldwide (more than 200,000 temps per day) and no. 1 in the Netherlands (40% of the market), in Germany (9%) and in Belgium/Luxembourg (Stark 2000). In 1999 turnover was 1 bio. DM.

Acc. to the “report of the President and Chief Executive Officer” for 2000 Randstad was able to advance its market share in Germany, Italy and Spain. Campaigns were run to address new target groups and more generous employee benefits were introduced. The training effort was intensified.

Randstad Zeit-Arbeit and Time Power merged in 2000. Randstad Germany employs 1,500 staff, about 1,000 managing clerks in 270 branch offices in 185 towns. The amount of temps in 2000 is estimated at 25,000, in the following branches:

- manufacturing
- automobile sector
- media and communications
- chemical and pharmaceutical, bio-technology etc.
- office & finance
- transport, trade, merchandising, re-cycling, tourism, catering, restaurants
- call flex: full-service of development of customised client-concepts along with staff-leasing, individual “flex-pools”, in-house-solutions via hotlines and customer-assistance-centre
- IT-services
- service intensive large projects

Since the merger the company strategy pursues a segmentation of branches. The new trend in agencies' strategies is this segmentation of branches according to “functions”. Through this strategy they can meet specific clients' needs.

Adecco Germany

170 employees in Fulda, 50 employees in Hamburg. Adecco merged with Olsten GmbH in March 2000, turnover in Germany 750 mio. DM (1999), 180 branch offices and 15,000 temps, no. 2 in the market (worldwide with 625,000 the largest “personnel service company”). The company was founded 1957 in Switzerland (ADIA). In 1997 ADIA and ECCO merged to Adecco.

The strategy is to supersede the average market growth rate by 50%. However, the “organic growth rate” is to be differentiated by the growth resulting from merging. The low rate of return of 1.5% indicates that Adecco particularly makes its profits through mass-markets of temps.

Adecco also is engaged in the market of personnel-placing particularly of the highly skilled.

42% are women, 58% men, 51% less than 30 years old, 10% over 50 years, 44% work in administration and office, 56% in the manufacturing sector.

11,000 client companies in

- large events like EXPO 2000, German Open München, IWF Berlin
- automobile sector
- banking
- electronic sector
- logistics
- IT

- world wide market leader in accountants on call
- engineers and technicians
- human resources outplacement services

Manpower Germany

Since 1965 a player in the German market. TAW-turnover in 1999 455 mio. DM.

Spread of temporary agency work

The German work regime was a model for the standard employment relationship. This standard has been replaced in the 1990s by a large variety of deviations: In 1999, according to ISO only 15% of employees are covered by the standard employment relationship (cf. my report on “Actual and Preferred Working Hours” in Germany submitted to the EF).

Particularly the category of employment which is “non-permanent” and within this category temporary agency work is increasing. This just-in-time-flexibility is utilized to adapt the actual need for temporary labour speedily to the needs of markets which are rapidly changing.

In this respect TAW competes with the utilisation of over-time. Along with the spread of TAW paid and unpaid overtime spread in the past two years. In 2001 paid over-time will increase by 2% to 1.887 bio hrs: On average every third day one extra hour is paid. However, the amount of unpaid overtime is estimated to be even higher by the unions, at 2.4 bio hrs.

When staffing new employees more and more companies prefer temporary contracts instead of taking the risk of committing themselves to a long-term-contract. In recent years large companies have replaced part of their permanent staff through external resources. The use of TAW has become a steady element of staff policy (9th report, 14).

Table 4: Percentage of employees with non permanent contracts in the EU, the U.S. and Japan

	All non permanent contracts 3rd European Survey 2000	All non permanent contracts European Foundation 1998	Fixed-term contracts European Commission EIRO 1997
Spain	32.8	26.5	33.6
Japan	23.4	.	.
USA (data from 96)	20.5	.	.
Finland	16.9	16.2	17.1
Greece	15,7	17,1	10.9
Portugal	15,5	19,5	12.2
Italy	14,7 10 Banca Italia 2000	14,9	8.2
Netherlands	14,6	21,0	11.4
EU	14.4	16.5	
Ireland	14.2	20.3	9.4
France	14.2	17.6	13.1
UK	12.6	12.3	7.4
Germany	11.5	15.9	11.7
Austria	11.0	11.1	7.8
Denmark	10.3	14.2	11.1
Sweden	10.1	16.6	12.1
Belgium	8.8	16.1	6.3

Europe 2000: 3rd European Survey on Working Conditions, temporary workers: trainees included

Japan: Special Survey of the Japan Labour Force Survey (August 2000)

According to the Microzensus 1999, 9% of German employees had short-term contracts. The European Foundation's Study on actual working hours indicate 16% (about the EU-average). The 3rd European Survey in 2000 reveals that if you include trainees the figure amounts to 11.5%. However, Germany does not reach the EU-average of 14% or Spain (32.8%) with this spread of non-permanent contracts. Although the trend is evident towards the dissolution of this German feature of highly skilled workers society.

Every third newly created job is only on a short-term base. Amongst employees under 30 years (excluding trainees) 21% work in a temporary contract.

TAW is a variant of non permanent employment. According to the ETUI-survey 1999, between 1972 and 1995 TAW increased from 0.2% to 0.7% of the total employment covered by social security contributions. The 3rd European Survey indicates a similar proportion of 0.6% for Germany in 2000 which is significantly below the EU-average of 2.3%. According to these figures Ireland (5.5%) and Italy (5%) top the table. Figures presented by iwd 6/2000 for the Netherlands, the UK and France indicate a more advanced progress: The relation NL/Germany should amount to 7/1, the relation UK/Germany to 5/1.

Temporary Agency Work: Germany

According to other (more reliable) sources the Dutch top the European table with 4.5% (ABU-figures), compared to 1.0% in Germany (BA 1999). The gap between the Dutch and the German model becomes clearer when one compares the significance of TAW amongst all temporary jobs: Whereas all non-permanent jobs make up 11.5% in Germany and 14.6% in the NL in 2000 every eighth job in Germany is TAW whereas in the Netherlands this applies to every third non-permanent job. Junggeburst 2000 (179) refers to similar proportions and points out that this Dutch model of “flex en zeker” (flexibility and security) has contributed to this trend.

Table 5: *Temporary agency work in the EU, the U.S.A. and Japan (Percentage of all employees)*

	3rd European Survey 2000	CIETT 1998	National sources EF-national working papers 1998/99
Ireland	5.5	.	5.2
Italy	5.0	.	5.0
Greece	4.4	.	.
France	3.3	2.2	3.3
Belgium	2.6	1.9	3.3
Netherlands	2.5	4.6	4.5 acc. to ABU
Spain	2.4	1.1	11.8 (?)
UK	2.3	3.7	4.0
U.S.A.		.	3
EU	2.3	.	.
Austria	1.7	0.5	1.0
Denmark	0.9	0.3	0.2
Japan	0.8	.	
Germany	0.6	0.6	1.0 acc. to BA
Sweden	0.5	0.3	0.7
Portugal	0.4	1.0	1.3
Finland	0.3	0.5	1.6

3rd European Survey 2000, tables Q.4b.r1

U.S.A.: SZ 17.4.2000

Japan: Special Survey of the Japan Labour Force Survey (August 2000)

Workers from temporary work agencies 0.38 Mio. = 0.8%

1998: CIETT acc. to Interconnection Consulting Group 2000

column 3: information from the Bruxelles-meeting and the national papers

However, these figures are derived from samples of all employees which cannot secure representativity for temporary agency workers. Consulting the statistics of the BA which has to register all temps their number increased steadily until the end of 1999 to 286,362 which equals 1% of the total dependent employment of 32,029 mio. in 1999 compared to 0.5% in 1992 (9th report, 14 and iwd 6/2000).

The latest available figure (February 2001) reveals a further increase of up to 320,000 (IGZ in SZ 25.2.01). According to the BA-January 2001 17% more temps were employed in June 2000 than one year before. (The number of temps varies considerably according to seasonal cycles and reaches its peak in the summer.)

The growth of TAW has taken place rapidly over the past few years. McKinsey Company & Deloitte Touche Bakkenist estimate an annual growth rate of 21% until 2010 (BZA 10.11.00) as well as Inter-connection Consulting Group 2000. Acc. to its prognosis TAW will double from 1999 on within the next five years. The turnover of agencies will rise even more from 14 bio. to 31 bio.

TAW still makes up a small proportion of total employment: 1.0%. However, as regards its importance for the flow of people into employment, it plays a greater role: The number of contracts conducted within 12 months is 1.4 times higher than the number of temps counted at the last day of 1999 due to pronounced fluctuation. Within 1999 673.000 contracts were counted (compared to 422.000 in 1995).

Illegal loan work

Illegal loan work is of a considerable amount. The AÜG differentiates between licensed and illegal "loan work". Therefore the Government's report on the AÜG covers both the experiences with the appliance of TAW and with illegal loan work from 1996-1999 (28ff.): According to § 16 an agency which leases loan workers and a "borrower" both act "against regulations" if the agency is not licensed. They can be sentenced with a fine of up to 50,000 DM. Furthermore leasing is defined "illegal" if a user-company employs a foreign employee if he does not have a "work licence". This applied to 429 cases from 1996-99. The fines imposed (1.2 mio. DM) doubled in 1999 compared to 1998.

From 1996 to 1999 14,410 cases of illegal loan work were persecuted. In 84 cases a "warning fine" and in 6,435 cases a fine were imposed. These fines amounted to 109 mio. DM which was nearly three times as high as in the previous reported period. The same increase can be observed concerning borrowers: 16,711 cases compared to 11,340 cases were investigated (30). Loan work in construction sector attracts special attention from the state as it is forbidden acc. to § 1b AÜG. Here 2,037 cases were detected compared to 490 cases in the four years previously.

Borrowers are accused of a "criminal offence" if employees work in conditions "considerably differing from working conditions of German temps" or if he employs more than five foreign loan workers for at least 30 days without the required licence (28f.). From 1996-99 charges were brought against 84 companies. In 2000 115 mio. DM fines were imposed for illegal employment of foreigners (SZ 22.2.01).

The 9th report resumes that in the last four years these figures have not reached a high level although they showed an increasing trend within the 1990s. Acc. to a press-release from the Ministry of Finance on February 21st 2001 illegal work is booming in construction and in some service sectors. Foreign companies bypass the temporal limitation in the "Arbeitnehmer-Entsendegesetz" through nominal sub-contracts with German construction companies "passing on" their employees within six months from one firm to the next. Some pseudo-companies (GmbH-Hüllen) are bought especially for this purpose. Acc. to an estimation of "Zentralverband des Deutschen Handwerks" the whole black economy accounts for 16% of official GDP. IFO-München estimates an increase from 11% to 15% from 1990 to 1998.

6

Reasons for using TAW

The extent to which firms make use of TAW is increasing: A recent survey reported that almost one in two employers had some experience. In 1991 82% of the surveyed companies said that they employ a percentage of 0-10% of their staff as temps which was significantly less than in the NL (Wierlemann 1995, 108).

TAW is utilised for several reasons which are ranked here in importance. 100 German companies (selected from 200 top companies) were interviewed in 2000 on the main reasons why they use TAW (Interconnection Consulting Group 2000; only one answer was possible).

41% approve of:

- meeting a temporary increase in workload (in 1991 this reason was stated by 64%) or
- enabling to meet tight deadlines or
- performing work that is inherently temporary (e.g. seasonal work)
- 30% temporary replacement of a permanent employee who is absent for sickness or maternity leave
- 29% temporary replacement of a permanent employee who is on vacation. However, the interviews with Manpower point out that more and more firms do not spend money on such workers who stand in for those on vacation but shift the additional work load on to colleagues. Whereas in 1991 66% of the surveyed user-companies stated this replacement in case of sickness or vacation (Wierlemann 1995, 111), these reasons in the 1990s have lost importance.
- 4% find employees with specialist skills which are only needed for a short period or for special projects (which has been of increasing importance since 1991 and which is more widespread in the NL cf. Wierlemann 1995, 115)
- 4% filling in until a permanent post is filled
- 6% other reasons

The function of “bridging a temporary tight situation” is dominant in administration & office (15). Amongst the 100 German companies the following agreed on these main advantages of TAW (one answer possible):

- 42% faster availability of temps compared to permanent workers
- 13% fast reaction to the highest demand
- 11% flexibility
- 7% bridging tight situations
- 6% a long-term relationship is not necessary
- 3% hope to find a long-term employee in this way
- 8% other reasons
- 6% do not see any advantage

Recent trends in reasons for users according to the 9th report and to local interviews with experts:

- More and more TAW helps client companies in recruiting appropriate staff. Agencies support them in selecting the “right people”. The reason of “testing staff” applies at least to 30% of the interviewed companies in 1991 (less than in the NL; Wierlemann 1995, 129) as well as in 1999 (iwd 6/2000). The alternative for companies is the “probation period” of six months for a permanent worker provided by the KüSchG.

This support of user-companies in recruitment occurs by externalisation of seeking-and-information-costs through the agencies. They select appropriate employees by means of aptitude-tests: Manpower carries out programmes for those interested in working in call-centers (“tele-skill”). The company has also developed programmes to test capabilities of the unskilled (“Cultrate”). Skills like ordering figures speedily and exactly are tested. The aim is to develop an archive of skills-profiles required by clients and an appropriate archive of job-seekers. Some agencies (e.g. Randstad and Manpower) help companies in building up call-centers through assessment-centers and telephone-hotlines.

My interviews with local representatives give evidence for the basic conflict between agencies and clients concerning highly skilled temps: When hiring out capable employees agencies run the risk of losing them. Capable temporary workers form the basis of the agency's economic success: these employees are responsible for an over proportional share of turnover. § 9 (4 and 5) of AÜG refers to this problem: “Clauses in the contract where the user is prohibited from engaging the temporary worker at the end of the term are void”. Clients are interested in hiring these employees on a permanent basis. Interested in a good and stable relationship with their clients agencies bow to this “takeover”. This conflict is pronounced in the case of head-hunting managers.

- More and more user-companies avail of a fixed budget for TAW and have planned regularly a certain amount of TAW for the next years. Wierlemann 1995 confirms that TAW is not only an instrument for bridging temporary tight situations based on interviews in 1991 (115). The amount of permanent staff is planned at the minimum-level of the expected business-cycle. Each deviation upwards can be met through use of TAW. Besides the usual reason of bridging temporary increase in production and coping with peak periods TAW is increasingly used as a normal instrument of long-term staff-planning. The SPD/Grüne-Government sees this trend in a positive way.
- Hence, the previous rule for companies to plan a staff-reserve of 5-10% permanent workers in order to cope with extraordinary demand is replaced by staff-planning at average-demand and just-in-time-staffing in the case of deviations. Hence, the main function of TAW is to create a buffer peripheral workforce as a hedge against market uncertainty. As businesses are moving towards flexible ways of staffing, the utilisation of temporary workers increases. As opposed to permanent workforce, using TAW serves the firm as a means of achieving flexibility to meet fluctuations in product demand. Usually they only need to observe a 5-working-day-period of notice in order to dismiss temps when they are no longer needed for the temporary work acc. to the AÜG. This period is required by the agencies to organise a following job for the temp who is no longer required at the user-company (Wierlemann 1995, 120).
- The reason to reduce labour cost is evident (for at least 30% of surveyed user-companies 1991 by Wierlemann 1995, 127). TAW helps user-companies to get out collective agreements on wages as temps are not bound to these agreements compared to permanent staff. This is the case for instance at VW where a special company hires temps who are paid less than according to the high VW-domestic-agreement.

In Germany the fee to be paid by the user-company includes the costs for administration and service of the agencies (which includes an “insurance for the risk of non-employment of the temp) and the profit of the

agency apart from the temps' wage itself. There are case studies of companies in 1991 that they "save money" for up to a period of six months when staffing a temp compared to a permanent worker. 47% of the surveyed companies regard TAW to be "too expensive" however they are not aware of the full costs of a permanent worker and only compare the hourly wages (Wierlemann 1995, 125ff.).

The reason for companies to re-organise the control of their staff in this way are the demands of the new "flexible capitalism" (cf. Piore & Sable 1985, Sennett 1998). The discussion on this issue cannot take place here. These new markets risks are being handled by companies in two ways:

- Job-enrichment within the company organisation: Tasks previously done separately based on the occupational division of labour are bundled up. They are expected to realise the need of co-ordination.
- Outsourcing of tasks to "nominal self employed" and to temporary agency workers: Labour is called upon as it is needed. This method may have negative feedback through the erosion of worker's loyalty. Hence companies still have an interest in a core staff. This creates a counter-tendency to short-term employment. The dualisation of the staff into permanent workers for whom the standard employment relationship is maintained and into marginal workers who are used in case of demand serves the maintenance of an "internal homogeneity" through "externalisation of heterogeneity". In this manner the German model of employment is continued but simultaneously adapted to the American model.

Employers were also asked in 2000 for the "most important disadvantage" they perceive in TAW (Inter-connection Consulting Group 2000):

- 20% bad quality staff
- 16% high costs
- 12% vocational training necessary in the firm
- 11% fluctuation
- 7% problems with reliability
- 29% other disadvantages
- 5% no disadvantage

Sectoral and occupational structure

TAW in Germany concentrates on industry. It is mainly a manual and male workforce. This partially reflects the sectoral structure of the “old economy” which has been more stable in Germany compared to service economies like Scandinavia, the UK and the Netherlands.

For instance in the NL TAW in public administration and in health services is more advanced - also due to the better image of TAW in public opinion and to more acceptance amongst all kinds of job-seekers (cf. Wierlemann 1995). In 2000 0.9% of the employees in “national or local government services” work on a TAW-basis (Q6 of 3rd European Survey) - which does not apply to Germany.

As 50% of German temps were unemployed in 1999 before their TAW-contract and every second unemployed comes from industrial work (compared to 25% in the NL), this structure also reflects the problems of the old economy in Germany.

Hence some agencies like Randstad say they have difficulties in meeting the special needs of the expanding service sector: The skills differ on the demand- and the supply-side. Furthermore the agencies complain that temps are used to the high standards linked to the German standard employment relationship which was based on industrial work. These high standards are not fulfilled in the new service-jobs. This “inflexibility” of unemployed regarding wages and regional mobility is considered a barrier for the expansion of TAW in Germany compared to the Dutch model through Randstad (cf. Junggeburst 2000, 180f.). However, Junggeburst’ “second explanation” on the weakness of the German TAW-industry seems contradictory: As the market here is highly fragmented the numerous agencies compete especially through dumping wages which is possible as there is no statutory minimum wage (181).

26% of German temps in 1999 were unskilled workers. One reason is that missions in user-companies are short. Hence the time necessary for the training for this job has to be short and tasks cannot be “too complex”. Indeed, more than 80% of TAW-jobs in 1991 were regarded as “routine tasks” (Wierlemann 1995, 236). However, this also applies for other European economies and does not explain the German concentration on manual industrial work.

A further 37% were metal industry production staff, 13% - few compared to other EU-countries - were administrative staff, 4% technicians, 9% other construction and manufacturing jobs. However, this classification is rather “technical” and not sufficient for further social structural analysis. In the meantime a growing number of highly-skilled university-graduates are entering the labour market via this job avenue.

Only 2% of temps are engaged in the construction sector as § 1b AÜG allows this only in exceptional cases (9th report, 9): “Kollegenhilfe” where a construction company leases his staff to another construction company. This decreases public subsidies for this branch in case of cyclical and seasonal fluctuation in work demand.

Table 6: Sectoral and occupational structure of temporary agency work in Germany 1999 and prognosed growth rates 2000-2004

	percentage June 99	% growth 1997-1999	% growth 2000-2004 estimated
Metal & electrical manufacturing	37	24	49
Elementary occupations "Helfer"	26	45	65
Services	13	130	118
Administration & office	12	54	100
Others: construction, other manufacturing occupations	9	42	111
Technicians	4	40	91
Absolute numbers	286,394	43	62

9th report 2000, 9

Interconnection Consulting Group 2000

Table 7: Occupational structure of temporary agency work 31.12.1999

Shop and market sales workers	1036
Chemistry workers	1136
Additional building trades	1159
Health services	1604
Construction	3464
Other occupations	5115
General services	6452
Metal workers	8575
Technicians	10431
Assemblers and metal working occupations	12468
Other manufacturing occupations	15224
Electricians	25908
Other services	28478
Administration & office	34845
Locksmiths, mechanics ...	56411
Unskilled	74056
All	286362

9th report 2000, 90

In 1999 13% of TAW takes place in services (end of 1998: 9%). This low percentage working in the service-sector, above all in the retail trade (compared to the NL) and in hotels and restaurants (4.4% in EU 2000), also results from the low wage level in this sector (cf. Wierlemann 1995, 107 based on interviews with experts):

Where 630-DM-, other low-wage- and black jobs are alternatives TAW is only the second choice for the employers. Throughout the EU in 2000 the percentage in retail trade at 1.7 is lower than the percentage of temps in the whole economy (3rd European Survey).

Amongst the sectors the service sector in Germany is the most dynamic. There is a shift from work in industry to services and to technicians when comparing 1996 and 1999 (9th report, 9). Acc. to the prognosis of Interconnection Consulting Group 2000 services will have the most rapid growth from 2000 until 2004, 118% compared to "other sectors" (111%), to "administration & office" (100%), to "technicians" (91%), to elementary occupations (65%) and to "metal manufacturing & electricians" (49%).

The growth rates in the number of temps in the various sectors are not the same as the growth rates in the **turnover** made by agencies with these occupational groups: Very attractive in this sense are "technicians" (40% growth 97-99, 53% more turnover), "administration & office-sector" (54% - 70%) and "others" (42% - 60%).

The occupational structure listed above is confirmed by the 3rd European Survey which indicates a higher share of "craft and related trades", of "plant and machine operators and assemblers" and of "elementary occupations" amongst temps compared to permanent contracts.

In Germany, 60% of TAW-workers are "unskilled or other blue-collar-workers" (iwd 6/2000). According to iwd 6/2000 enterprises have difficulties in finding appropriate staff in this segment, particularly for a limited period.

16% of temps surveyed in 1991 did not have a school degree, 20% did not have any occupational training - significantly less than in the NL (Wierlemann 1995, 157).

Only 3% in 1999 have an university degree (SZ 9.2.00). This percentage is also lower than in the NL (7% in 1991, Wierlemann 1995, 157). In the past years there has been an increased demand for skilled experts (SZ 17.4.2000): "The demand for skilled staff such as clerical workers fluent in foreign languages has increased in the last years" (Deutsche Industrie Service AG acc. to Zander 1999). This agency also places temps for "accountancy, engineers/CAD" and for the IT-sector.

In Germany the unskilled and lowly skilled still account for the majority. However, this proportion of 72% in 1999 is estimated to decrease to 67% until 2004 as this segment contributes to a lower degree to the agencies' profit (Interconnection Consulting Group 2000). Agencies are interested in attracting highly skilled experts. This creates a market-segmentation. For instance Dr. Städtler in Nürnberg refuses to lease "Helfer" with respect to its image for client companies and concentrates on consulting and leasing of the highly skilled.

In 1991 German agencies needed significantly more time than Dutch agencies to place a highly-skilled temp according to the requirements of a client (21 compared to 8 days). This is explained by Wierlemann 1995 through the better acceptance amongst highly skilled in the NL (118).

After the dissolution of the monopoly in placing job-seekers by the BA agencies are gaining new ground in placing experts. New economy companies use freelancer-pools consisting of engineers, computer experts. According to my interviews with local agencies the IT-sector is growing rapidly.

According to the model of the U.S.-agency Kelly Services which places scientists for research projects German agencies are focusing on placing highly skilled employees. Last September Kelly Scientific Resources opened the first branch office in Köln for placing scientists in Germany e.g. for pharmaceuticals and bio-technology, currently with more than 100 applicants. Adecco is also developing this segment: It has analysed that 6,700 job offers for natural scientists had been offered in the first half of 2000 in the big German print media, 28% more than in 1999. Kienbaum Executive Consultants the largest German personnel consultant has organised an “executive search” of scientists. More and more labour market entrants coming from university are interested in getting onto these applicants-files. More and more are willing to work as freelancers like “research assistants” in organising clinical studies.

Gender and age structure

Still, 76% of temporary agency workers are male. Compared to the EU-average in 2000 (52% - 3rd European Survey EF.10) German temporary agency work is male work. However the share of women is slightly increasing: From 1995 to 99 81% more women were engaged as temps compared to 58% more men (9th report, 9).

The percentage of temps amongst the 15-25-olds is three times higher than of all employees (3rd European survey: 34% compared to 9% of permanent workers EF11r9). Only a small proportion of German temps is over 45 years. In 1992 27% of the temps were younger than 25, 4% older than 50 (Wierlemann 1995, 154). The reason for this age-structure is that younger employees are ready for job and regional mobility as required by TAW.

For instance 5.0% of European temps need more than two hours for travelling from home to work and back (compared to 4.5% of the permanent workers - table Q15).

Younger age is associated with lack of family attachments - in 1991 51% of the temps surveyed were singles, a further 13% divorced or widowed, 56% did not have children (159)(66% in the European sample 2000). Like in the European sample of 2000 (EF7) about 73% of the temps were not married in Germany - compared to 44% of the permanent workers.

18% of temporary agency workers counted in Germany in 1999 were foreigners. This percentage has been rather stable in the 1990s (9th report, 10). They come particularly from France, Italy, the UK and Ireland.

In the second half of 1999, 12% of the contracts concluded and terminated through an agency were for a period of less than one week, 55% for a period between one week and three months and only 33% for a period of more than 3 months (9th report, 10). This relation has been rather stable in the 1990s (Bäcker et al. 2000, 301).

The duration of use in the leasing company is not recorded by official statistics. However, the main part of TAW is short-term not reaching the statutory maximum of one year. In any case these figures indicate the high personnel turnover in user companies. This leads to instable job careers of the most temps. However the higher skilled temps stay longer.

The official BA-figures on the duration of TAW-contracts refer to contracts which were terminated in the course of one year. Interviews on the average employer tenure of all employees hence lead to higher values: 10% of the 73 temps surveyed in 1991 were employed for less than 3 months, 35% for more than three months

to one year and 55% were employed for more than one year. This was significantly longer than in the NL (Wierlemann 1995, 162f.).

The 3rd European Survey confirms that most temps stayed for less than one year with their agency (four times as often than in the entire sample of the employees), for one year (twice as often). This also refers to the experience in their “present main paid job”. This survey also shows that many temps have 41-50 working hours a week (20% compared to 2% of their percentage in the sample).

As regards regional structure East Germany has caught up in recent years. The main region is Nor-drhein-Westfalen where 24% of the temps were engaged in 1999, followed by Bavaria with 14%.

The structure of temporary agency workers in Germany is summarised in the following table:

Table 8: *Structure of temporary agency workers in Germany*

Gender	80% male
Age	Majority younger than 30, 4% older than 50
Family status	64% living as singles
Education	Low – medium level, 3% university degree
Occupation	60% industrial manual workers
Sector	Industry

Working conditions and labour market integration

Concerning the quality of loan-work jobs there is a lack of data. What happens within TAW is more or less a “black box”. There is no representative survey identifying the status of temps (neither in GSOEP nor in Microzensus nor in ALLBUS). Due to the lack of mass data on the perception of working conditions by temps only some selective findings can be presented.

The only methodological instrument to discover specific effects of the TAW-status on working conditions is a multivariate analysis which is not possible here. As loan work is often associated with unskilled labour in risky branches it is not clear whether the worse working conditions of temps derive from their employment status or from conditions which also affect permanent workers in the same branches and occupations and working times schemes.

There are some interviews with German TA-workers but the employers associations who published these results do not refer to sample-size and representativeness of these surveys (iwd 10.2.2000). More reliable is the only university survey on this issue (independent from TAW-industry) carried out by Wierlemann 1995 (N = 74 in 1991). He compared TAW in the Netherlands and in Germany and interviewed 76 agencies in Germany and 60 in the NL supported by ABU in the NL and BZA in Germany (93). These agencies accounted for 50% of the market share in Germany and for 75% of the market share in the NL. 500 questionnaires were sent to employees of these firms which seems to bias the sample-selection as mostly large agencies participated. 74 of them were sent back and contained answers (15%; NL: 9%). 50 of 500 questionnaires were sent back from the contacted user-companies. These low response rates indicate the problems of surveying this sector both the firms and the workers. Therefore a bias in the sampling (towards positive evaluations by the temps) can be assumed (89% of the 74 interviewed temps were “satisfied” with their agency, 64% felt themselves “well looked after” by their agency - 189).

Major reasons for employees to look for TAW - results from iwd 10.2.2000 (1999) and Wierlemann 1995 (1991)

For the employees, TAW offers special advantages and special risks. Two major groups of temps can be found:

1. those who hope to find a permanent job. When asked about their reasons in deciding for TAW they state the following “advantages”. Job-seekers in this first group differ in the extent to which they are pressurised to select this “final chance” to get a job as they had not found a permanent job:
 - One major reason for the readiness to look for temporary contracts is the continuous high unemployment in Germany. This pressurises job-seekers into lowering their expectations on the benefits of an employment relationship. For about 50% TAW opens the way out of unemployment (BA 1999). For 47% of those interviewed in 1991 it was very important to “avoid unemployment”, for 30% to “terminate unemployment” (Wierlemann 1995, 173)
 - The agency is obliged to pay wages even when it does not find use for its employees in client companies. This is an advantage compared to constantly changing jobs which many job-seekers have to do anyway. The obligation to pay social insurance and wage tax provides the temps with the same social protection which permanent workers have. In the 1991-survey 44% stated this “job security” as “very important”.
 - TAW offers varying job challenges and opportunities for qualifications: According to interviews in 1999 nearly every second temp appreciates this opportunity to build up contacts with various firms or to learn various vocational skills through short-term jobs (35% appreciate “further training” via TAW in 1991).

2. A second group of temps (appr. every fourth) has decided them self more or less voluntarily for this kind of employment according to their preferences. This group consists of

- married women looking for a job besides their family-obligations
- younger people who look for jobs only for a fixed period in life (students, “time-pioneers”). For every fourth interviewee the freedom associated with TAW was “very important” for their decision to look for TAW in 1991.
- life-style-groups not willing to commit themselves to one employer for longer than one year (Interessengemeinschaft deutscher Zeitarbeitsunternehmen IGZ acc. to SZ 25.2.01). They appreciate the varying missions: In 1999 four of ten temps appreciated the opportunity to move from one workplace to the next and hence to get to know new colleagues. In 1991 this applied to 15%.

In 1991 39% regard the opportunity “to get to know new things” as very important for their decision to work as a temp, every second states the “interesting activities” offered through TAW. When asking the 57 temps about the “main advantage of TAW compared to another job” this advantage was the most frequently stated (26%), followed by “change of workplace and colleagues” (16%) and “more freedom” (14%). 12% “feel proud to be a temp as this is something special” (185) - this statement may characterise the inner circle of voluntary temps.

Disadvantages

- In 1991 39% stated their “poor pay” as the main disadvantage compared to “another job” (compared to 13% in the NL). This indicates the wage-gap with comparable employees (Wierlemann 1995, 182ff.; N = 44).
- In 1991 14% stated a “lack of contact with colleagues”, another 14% the “need for steady flexibility”, 7% the dirty work (“Drecksarbeit”), further 7% “a lack of responsibility” (other reasons 19%) when asked about the “main disadvantage” (one answer possible).
- There is no information on workplace conditions of temps in Germany in detail. One can assume that the special exposure of European temps compared to permanent workers to vibrations (15-11%), painful or tiring positions (20-17%), carrying heavy loads (14-11%) and repetitive movements (38-29%) also holds true for German temps. This also refers to the necessity to work more than 10 hours per day, in the evenings and on Saturdays (not on Sundays)(3rd European Survey). More European temps compared to permanent workers say that their working hours do not fit in well with their family or social commitments outside work (20% compared to 17%). 28% of European temps are “not very” or “not at all satisfied with working conditions” compared to 15% of permanent workers. 26% do not get any extra payment for overtime compared to 22% of permanent workers.
- Every second German temp in 1991 complains about the lack of “career chances within the agency” (Wierlemann 1995, 194).
- Although TAW is regulated by labour and social law and the AÜG temps are only marginally included in the benefits of the standard employment relationship: Preferences included in collective agreements which are valid in certain user companies do not apply for temps - temps are not entitled to the collectively agreed wage in the company nor to special provisions in the company. Temporary workers can be legally excluded from occupational pension schemes both in the agency and in the user company.

Hence, in 1991 14% of the temps “felt themselves as inferior compared to permanent staff” and as “outsiders” (Wierlemann 1995, 185, 198). 34% regard the “training-in in the user-company” as insufficient (198).

- Some temps have problems with their agency when wishing to switch to the client company. Some agencies attempt to exclude this transition through special clauses in their work contracts which are not allowed by the AÜG.
- Due to short missions the legal protection against unfair dismissal does not apply for most temps.
- Within the user companies temps are only marginally represented by works councils. Within their employer-company often no works council is elected due to high fluctuation. These problems for the German consensus model was one reason for the amendment of the Law of Industrial Relations (BetrVerfG): In 2001 the bill proposed by the Federal Government is being discussed. The SPD along with the unions want to prevent that this specific feature of German labour law becomes out-dated: "Structures in companies have fundamentally changed. Increasing competition and the pressure to curb costs and flexibility in the market have forced companies to find new organisational forms ... Whereas in 1981 the share of employees in companies with works councils amounted to 51% it decreased until 1994 to 40%" ("reasons for the bill"). According to BMA the function of works councils for the German model is that the recession in metal manufacturing in the 1990s could only be coped with works councils engaging for necessary reforms" (Handelsblatt, 21.11.2000). In this respect the German corporatist regime is regarded as advantageous in international competition.

Stability of the employment relationship

There are no official data on the length of missions in user-companies. Acc. to Wierlemann's interviews of 65 temps in 1991 3% of the missions lasted up to one week, 11% 2-4 weeks, 12% 1-2 months, 35% 2-4 months and 39% 4-6 months which on average was considerably longer than in the NL (168). Although legislation in France also provides longer maximum periods for hiring-out missions in France in 1989 were shorter than in Germany (Brose et al. 1994, 37).

Contracts with agencies are concluded for short periods:

- 90% of the employment relationships between agencies and workers terminated in 1996 lasted for up to one year. 1% lasted for more than 3 years (ETUI 1999).
- 12% of the contracts terminated in the second half of 1999 lasted for up to one week, 55% for one week to three months, a further 33% for longer than three months (9th report, 93).
- According to DGB one in five contracts terminated in 1996 had been concluded for more than six months - the minimum period for the appliance of the KüSchG.
- According to Brose et al. 1994 (35) the average employer tenure (also based on samples of terminated contracts) amounted to 4.6 months in 1989.

However, when investigating the stock of contracts, the average tenure is higher: 57% were employed longer than six months by their agency, 20% longer than one year. The 3rd European Survey indicates that in the EU 47% of temps have been longer than one year in their company - more than the 20% in Germany.

Employer tenure increases with age: Amongst the 36-to-45-year-olds 45% were employed longer than one year by the agency, particularly the higher-skilled (Brose et al. 1994, 109f.).

As the 3rd European survey indicates the low employer tenure of temps in Europe is associated with low job stability: Whereas only 8% of permanent workers are less than one year in their "present main paid job" this applies to 48% of the temps.

Substitution of permanent jobs in the user firms

BZA does not see any substitution-effect: TAW should have a “complementary function” besides the employment of the “permanent workforce” which even makes their jobs more secure (cf. CIETT-study). Without TAW user enterprises would only employ 14% more permanent workers, 38% of work volume would be done through overtime, 17% of the work would not be necessary (McKinsey Company und Deloitte Touche Bakkenist acc. to BZA 10.11.00). However, in its 9th report the Government assesses that TAW is increasingly used for “long-term planning of staff” and hence it may contribute to the substitution of permanent staff (15).

Labour market integration effects

Whereas ETUI 1999 stated: “Temporary work generally does not lead to permanent employment relationships with the temporary work agencies as intended by law” BZA 2000 estimates a percentage of 30% who stay with the client-company. This percentage has been stable for several years (9th report, 15). However, there is a lack of valid information, particularly a lack of longitudinal flow- or life-event-analysis. One major problem is that there is no information on how long these 30% temps stay with their new employer in the first labour market.

In 1999, 200,000 of 630,000 temps switched to permanent jobs (BZA; 150,000 acc. to iwd 5/2000). This applied to 35% of the Adecco-temps. According to my interviews with Städtler/Nürnberg this percentage amounted to 80%. Acc. to interviews with Manpower Nürnberg and to experiences made with the 089jobs.de in Munich 40-50% stay with their client-employer.

These figures show that TAW helps unemployed escape the stigma of unemployment. Temporary employment may provide an opportunity of re-entering the labour market, acquiring on-the-job experience, and becoming acquainted with a number of firms without having to switch companies.

Acc. to the 9th report (11)

- 10% entered the labour market for the first time. This group includes academics. These 10% are relatively few compared to other European countries.
- 40% were employed before, every fourth of them was employed by another agency
- 50% of the temps were unemployed before starting TAW. Among all TAW-workers 11% were long-term-unemployed (longer than one year), 39% were unemployed for a shorter period.

in the second half of 1999. This proportion did not change considerably in the first half of 2000 (BZA 24.1.01).

TAW is a diving board helping to switch to permanent jobs. Temps are able to apply to other firms while in a secure job, something which experience shows is more successful than applying for a job while unemployed. In addition, the work experience gained by employees during their various jobs along with appropriate training during non-employment times may improve their chances of integration.

BZA sees in TAW an option for “problematic groups of the labour market ... building bridges from unemployment to steady job careers” and thus saving mio. in public unemployment insurances (Denkhaus). TAW should provide special opportunities for

- older job seekers (Manpower representative: “If a 59-old-man demonstrates his performance in TAW this is an extraordinary chance for him to get a job which he would never have had in the ‘free market’”).
- As 27% of temps are unskilled and 17% are foreigners TAW is an opportunity for these “handicapped” to enter the labour market
- mothers after their parental leave
- labour market entrants. In Germany they only make up 11% of the temps compared to the majority in the Netherlands (cf. 4th report, 11)
- re-entrants in the labour market after longer breaks in the job career
- students (however relatively few compared to the NL and other countries)

Pay

This paper joins the assessment of ETUI “For employees, TWA may often be associated with lower than usual remuneration and benefits, as well as less favourable employment conditions in terms of employment duration, training by the company and opportunities regarding advancement in internal labour markets.”

BZA refuses to base the agency-workers-wages on the collectively agreed wages which apply to the user-companies like in the case of START-NRW (section 9). Its argument is that the agency fully plays the role of the employer and hence is free in negotiating on wages with the temps. Furthermore many temps apparently would not wish a wage-structure based on the different wages of various user-companies (9th report, 26). According to § 4 of BZA-standard (ABS) contracts are allowed in which overtime is free of extra-pay.

Figures issued by DGB for full-time temporary agency workers in the industrial sector show that in 1980 they are paid 77% and in 1995 63% of monthly wages earned by comparable workers (9th report, 15). This gap varies from 22-40% (26). Interviews with Manpower/Nürnberg reveal a wage-gap of 20% on average compared to permanent staff, not including the missing extra payment linked with long-term employment (Die Woche 16/2000, 21). “Whereas five years ago a low skilled worker received 12 DM brutto today he receives 14 DM” (Randstad Köln, acc. to Zander 1999). However, in East Germany hourly wages of 7.50 DM are not rare. This is less than the statutory minimum wage in other European societies like Ireland allow.

Case study (cf. Zander 1999):

Monika Behrendt has been employed for several years in Frankfurt am Main at one of the market leaders for two and a half years on a permanent base. The 54-year-old woman had worked for some years temporarily in projects as a executive-secretary, then she became unemployed. “I am therefore used to working flexibly and am lucky to be supported by my family. Otherwise the stress of changing jobs would be too much for me”. Previously she earned 5,200 DM before tax now 3,500 DM one third less. Instead of 18 DM hourly wage she has agreed on 19.50 DM in exchange for receiving only 21 vacation days. “I do not know whether this deal is worth it.”

Psychosocial effects of short-term-employment

The more often people change their job the more difficult it becomes to grow attached to one's own place of residency, to friends and to colleagues and a permanent loyalty to one's company. Hence temps have difficulties in building up permanent relationships as they have to switch firms very often.

Permanent affiliations are replaced by those whose duration is limited and whose personnel changes. However many people feel the need for their grass root communities: 77% of the gainfully employed Germans asked in GSOEP 1999 feel a strong attachment to the region where they live. This feeling correlates with employer tenure (.1).

Personal and social identity are based on a continuity of a common history. The embedding of individuals into communities - families, neighbourhoods, friendships, work colleagues - depends on the development of trust and hence on the memory of a shared tradition (Sennett 1998).

The stability of life careers in the previous period of institutionalised capitalism corresponded to a certain social character. After the "end of fordist life cycle" a new social character is being created (Mayer 1995): Actors become interested in increasing their short-term-profits. They try to improve their income at the cost of job security and quality.

My analysis of EU-data from 1998 shows some correlation measures in the following table: sickness and age are the most important factors worsening the health situation. However the more pronounced worries about job security are the worse one's health is assessed ($r = .1$). The status of short-term-employment also significantly diminishes satisfaction ($r = .03$).

Table 9: A worse health status of gainfully employed Europeans 1998 correlates

with:	Pearson r sig. < .05 partial correlation
Sickness	.43
Age	.23
Worries about job security	.11
Short-term employment	.06
Dependent employment	.06
Female gender	.03
Experience of unemployment in past 5 years	.03

Own analysis of data of the European Foundation 1998

Table 10: *Worries about job security corresponds with fatalism for German employees in 1999* (Pearson r)

I am not responsible for what happens in my life	I have very little control over the things that happen to me in life	What one achieves in life is basically a question of fate or luck	I often realise that other people decide my life for me
.08	.12	.13	.16

Winners and losers in job mobility

Increasing job mobility is a trend in European economy which not only affects temps (cf. Garhammer 2001). This trend discriminates groups of the labour force who are not able to meet the demands of labour market flexibility. The following resume proposes a very rough typology of people coping with the demands of flexible capitalism (cf. Sennett 1998). Gains and losses are distributed unevenly amongst these groups.

Winners presumably are individuals who are capable of finding the required competencies necessary in competition:

1. Experts who are highly skilled, flexible and used to training and hence have the material and information resources to manage their jobs and the training. These people (often freelancers) work in the new economy, in media or in R&D. They are able to handle their portfolio of jobs according to those offers which improve their income and their qualification status. The flip side of this flexibility is their unlimited availability to the firm or to the client. "To be able to take some pressure" is demanded. Work is not regulated by collective agreements, the company expects extraordinary presence as a symbol of engagement in the company.

Those are presumably losers who haven't got the prerequisites of flexibility:

2. Immobile persons: When occupational, social and regional mobility become criteria for the availability for TAW and for labour market success in general immobile people become handicapped: Their economic and psychological costs of releasing attachments are high. They are committed to families and are not ready to move to another town.

Hence, family attachments presumably are being eroded through TAW: Only a small proportion of temps is over 45 years. Mainly younger ones without family attachments are ready for the job and regional mobility required by TAW. Temps in Europe 2000 are less engaged in caring for children (42%-37%), for elderly (71%-68%) as well as in cultural (60%-47%) and certain leisure activities (25%-16%) than permanent workers (3rd European Survey).

3. Workers in illegal loan work: This potential is recruited mainly by foreigners immigrating from the third world not allowed to work. In Germany one million illegal immigrants particularly asylum seekers are estimated. This labour force is nowhere included in statistics. It is forced into extreme loan-work and day-to-day-jobs.

The corporatist system of public employment services in Germany

Involvement of the social partners is specific to the German model: The government works together with them to develop guidelines for employment policies; the social partners contribute ideas. One aspect is the participation of social partners in job creation schemes which are supported by public employment services: the foundation of companies in the service industries - which hire unemployed persons and then “lease” them to different employers for particular assignments. These companies secure support from the employment office for a limited time so that the employees receive part of their salary as unemployment benefits. The involvement of social partners should help to better fulfil employment policy objectives such as employability.

TAW should provide the opportunity for labour market entrants and unemployed to gather vocational experiences in various fields and thus to improve their chances for a permanent integration into the labour market. The legislator of the AÜG hoped that a promotion of TAW would facilitate this integration of unemployed and labour market entrants. Non-profit temporary employment as opposed to profit-based TAW aims to reintegrate them into the working world permanently. The legislator anticipates that non-profit temporary employment will have an effect which commercial TAW would not have automatically.

For this reason, a federal promotional programme was set up in October 1994: “Guidelines for promoting the integration of those unemployed persons for whom work cannot be easily found, through loans and subsidies to temporary employment agencies” (AÜGRi). The aim of this programme of 51 Mio. DM which was conducted in a limited period from 1994 to 1996 was to reintegrate unemployed (long-term unemployed, over 50-year-olds, severely disabled and rehabilitated former addicts or those who had interrupted their job career for more than three years in order to care for children or other people and were unemployed for half an year while seeking a job) into the first labour market by promoting temporary employment agencies. The promotion included 27 Mio. DM for wages of permanent staff of the agencies and a further 24 Mio. DM for active labour market measures like re-training.

During the non-employment phases, GAÜ-employees also receive vocational training in line with business requirements. When employed by the GAÜ, employees receive a work contract lasting 11 months. They no longer receive unemployment or welfare benefits but an income subject to tax and social insurance contributions, both during the loan-work phases and the training times in between. Employees are thus able to apply to other firms while in a secure job themselves. Work experience gained during various jobs along with appropriate training during non-employment times should improve their chances of integration.

The 9th report reports on the experiences of this project: This programme resulted in a wave of 73 “non-profit temporary employment agencies” (founded through social associations, employment agencies, local authorities and educational organisations) and to an expansion of the operating area of existing non-profit-making organisations. However, 14 commercial agencies were also promoted as they were expected to be successful in the placement of those unemployed for whom jobs cannot be easily found. The condition for this promotion was that agencies had to ensure that the percentage of those unemployed accounted for at least one fourth of their temps (11f.).

In introducing the two-year direct sponsorship (knock-on-financing) of non-profit agencies, the legislator was testing a new instrument. The idea was to see which non-profit agencies would be able to survive in the market following a directly sponsored starting phase. As a result, 50 of the original 90 promoted agencies survived,

40 were not able to survive (12). As a rule, those enterprises were able to continue which were supported by larger sponsors for which the non-profit-making temporary employment was only one area of activity.

All promoted agencies engaged 11,800 unemployed in this period of 1994-96, but only every eighth of them, 1,500, received a permanent contract at the user-company which was the aim of this programme (9th report, 12). In 1997 the "Bundesrechnungshof" complained about the efficiency of most of the promoted agencies. BZA has also commented on this programme very critically as intervention in the free TAW-market through public promotion programmes. The profit-based agencies organised here perceived some cases of discrimination as trade unions which were engaged in GAÜ like in START NRW expected their works councils in some user-companies to collaborate only with these agencies and not with the profit-based agencies when hiring new temps (12).

Although the direct sponsorship of non-profit temporary employment agencies is no longer possible, there are still a number of indirect forms of sponsorship by the employment offices which enable the survival of the 50 agencies since 1996. The Free Sponsorship (§ 10 SGB III) also allows a subsidy for labour costs in certain individual cases. Special financing models can also be developed as part of the Free Sponsorship: e.g. increasing the subsidies paid to the institution if employees are placed in permanent work as quickly as possible. In addition to this, there are other forms: funds from the individual state, the European Social Fund, wage subsidies from the welfare office etc.

GAÜ can therefore still be applied in a positive way as a labour market policy instrument, this nevertheless depends on the region: "In summarising, we can say that larger firms from traditional branches of industry which generally are diminishing in size are interested in making use of the TAW-option. They are more a potential employer for future temporary agency workers than companies from young services industries which generally are expanding and are marked by a high fluctuation and far-reaching structural flexibility. As a labour market policy instrument, temporary employment is ... more suitable for regions with a high percentage of old industries" (Almus et al. 1998, 27).

In Bavaria the GAÜ operated by the BfZ since 1994 has offered TAW to more than 3,100; approximately two of three entered a permanent job afterwards. Another example is the "Gesellschaft für Arbeitnehmerüberlassung Thüringen mbH" (GeAT) which also placed two of three long-term-unemployed successfully. User companies were motivated through combination of leasing employees with "advantages in competition" and offering wage subsidies for the handicapped (13).

One effect of the GAÜ-programme was that public bodies (cities, hospitals etc.) used this institution to outsource certain departments to cut public expenses (9th report, 14).

The recently founded "Initiative for Employment" is a joint initiative of 400 companies to promote employment particularly to fight long-term unemployment. A few TAW-agencies such as Randstad Germany are participating. These agencies collaborate with Employment Offices and institutions organising further education in a network. Its target is to develop "innovative solutions for the labour market at re-gional level" (Randstad 2000).

START NRW - an example for GAÜ

START Zeitarbeit GmbH was founded in 1995 by DGB-NRW, employers associations, the state NRW et al. based on a knock-on-financing of 17 Mio. DM. START only engages unemployed, besides the handicapped

groups listed above those who are younger than 25, unskilled and foreigners. According to IAT from 1995-1999 8,500 unemployed persons were hired-out. 46% found permanent jobs in the first labour market. However, the 9th report calculates a percentage of 30% (13).

In 1996 START agreed with ÖTV in NRW on a collective agreement. Temps receive 95% of the wages during a “testing period” of six months in the user company (14). This led to problems for START to place their temps successfully as profit-based agencies offered their staff at lower wages (9th report, 14). This problem reflects that regulations on working conditions and wages can be undermined by the dumping of profit-based agencies.

When the managing clerks of START had problems to place temps in certain user companies the works councils in these companies were asked for support. “We explain that we adhere to the usual wage conditions of the user company ...” When in 1999 temps from START were staffed by the refuse-company Duisburg problems arose with their works council. The agreement was that temps only should be engaged for “simple tasks” (more or less dirty work). “The use of TAW is the second-best-choice for avoiding outsourcing” (works council acc. to Mitbestimmung 11/99).

At the beginning of the 1990s Brose et al. regarded the specific feature of the German TAW-sector compared to France to be a "complement to the standard employment relationship geared towards this standard" (40). The conclusion can be drawn from my analysis of the reasons for employers using TAW and for employees looking for TAW that this evaluation is no longer valid. On the one hand user-companies more and more utilise TAW not only for bridging unexpected situations, they also use temps for long-term staff-planning in order to meet fluctuations in demand. This leads to a substitution of permanent jobs - at least of those 5-10% permanent jobs which in former decades were recommended as staff-reserve.

This transition to a standardised use of TAW corresponds to a change in motives of the workers: Whereas the majority still regard TAW as one way to avoid unemployment an increasing but still minor group accepts and demands TAW as an equivalent to a standard employment. It is difficult to assess if this trend is based on changing employees' attitudes towards job security or on the fact that throughout the whole labour force job insecurity and mobility is growing, and hence TAW loses its exceptional character.

Four "big trends" can be identified when assessing the future development of TAW in Germany:

1. Europeanisation of labour markets

A major problematic issue in the regulation of TAW derives from increasing globalisation and Europeanisation of labour markets. Similar to cross-border tourism of beef a policy which aims to re-regulate atypical work is faced with increasing cross-border placement (cf. the Irish report). German-based agencies are placing an increasing number of agency workers with employers outside Germany. This is part of the free movement of labour. There is a lack of legislation with regards to the posting of temporary agency workers cross-border. Domestic law does not have extra-territorial effect. Such workers can only be protected either by reliance on the labour law of the host country which may be precarious, or by bilateral agreements between governments as they are now pursued by the German government.

The more decisions on working conditions for temps at national law or sectoral agreements' level are replaced by contracts at company and individual level the more probable unequal treatment. The less counter-power of workers is possible, particularly in the face of high unemployment and globalised labour markets.

2. Further flexibilisation of labour markets

3. Spread of the new economy

4. Spread of the service industry

However, in contrast to agencies' assessments (Junggeburst 2000, 174) this paper does not join the thesis that the "new economy" is replacing the "old economy" that "knowledge" is replacing "products" and that "services" are replacing "production". In the German model of employment job security was defended by the regulation of labour markets and the corporatist participation of the unions. The new economy requires more job mobility and individual efforts for more "employability". On average one of ten jobs is being destructed every year and replaced by a new job. An important mechanism for companies to cope with these job flows is seen in TAW. Hence Randstad-director Junggeburst considers the role of the large agencies similar to the role of "banks in industrial capitalism": They provide flexibility in the use of labour combined with security for employees (Junggeburst 2000, 181). However, trends on the demand-side of labour markets promote weaker shorter employer tenure and hence promote TAW (cf. Garhammer 2001). The role of changed attitudes on the supply-side, i.e. the employees towards flexibility and mobility as it is highlighted by agencies (cf. Stark 2000) does not carry the same relevance.

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Abbreviations

AÜG	Arbeitnehmerüberlassungsgesetz (Labour Placement Act)
BA	Bundesanstalt für Arbeit (Federal Employment Office)
BeschFG	Beschäftigungsförderungsgesetz (Employment Promotion Act)
BetrVerfG	Betriebsverfassungsgesetz (Workers Co-determination Act)
BfZ	Berufliche Fortbildungszentren der Arbeitgeberverbände
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände
BMA	German Federal Ministry for Labour and Social Affairs
Bündnis	für Arbeit, Ausbildung und Wettbewerbsfähigkeit Alliance for Jobs, Training and Competitive Strength
BZA	Bundesverband Zeitarbeit Personaldienstleistungen e.V. (Federal Association of Temporary Work Agencies)
BA	Bundesanstalt für Arbeit Nürnberg = Federal Institute for Employment
DGB	Deutscher Gewerkschaftsbund
DIHT	Deutscher Industrie- und Handelstag
GAÜ	Gemeinnützige Arbeitnehmerüberlassung (non-profit temporary employment)
IG Metall	Industriegewerkschaft Metall (metal workers' union)
SGB III	The third volume of the Social Security Code (Sozialgesetzbuch III)
SZ	Süddeutsche Zeitung München
TAW	Temporary Agency Work
Temp	Temporary agency worker

Annex 1

ETUI report 1999

1. Legislation of the relationship TAW business/agency/worker

1.1 The status of the agency as employer and the ensuing obligations

- The agency is considered to be the employer of the temporary worker.
- Control measures are provided to ensure that the agency fulfils its obligations with respect to the payment of wages and social security contributions. The user is liable if the agency does not pay social insurance contributions.

1.2 Recognition and control of the agency and the role of government

- The Federal Employment Office (BA) monitors temporary agency work. It is a combination of a state agency and a tripartite organization, which insures that the social partners are also involved in this monitoring process.
- There is also a fund to guarantee the payment of temporary workers in the event of bankruptcy of the agency.
- A licence can be refused for several reasons such as the following cases:
 - (1) if the applicant fails to observe the provisions of social security legislation and labour law,
 - (2) if, due to the organization of the establishment, the applicant is unable to properly fulfil the usual employer's obligations,
 - (3) if a fixed-term contract is concluded with a temporary worker, unless the worker himself justifies the limitation,
 - (4) if the agency concludes an open-ended contract with the temporary worker or dismisses and re-engages him/her within 3 months,
 - (5) if the agency limits the duration of the employment relationship to the period of the first assignment, and
 - (6) if the agency hires the worker out for a period longer than the maximum duration of 12 months.
- Most licences are issued for a limited period and expire at the end of the term. The licence automatically expires if for any reason it is not used for a period of 3 years.
- In principle the same rules apply to agencies from other EU/EEA member states, but in reality their position is more favourable.
- In principle the agency can charge fees only to the user enterprise. There are several exceptions, however, where the agency can also charge the worker a fee.

2. The temporary worker

2.1 The contract between the worker and the agency

- The AÜG includes ban on synchronization. It requires that the duration of the contract be made independent of the duration of the hiring-out. In this way the agency that supplies temporary workers is required to guarantee those workers permanent employment.
- The contract must contain: ... (4) the nature of the work to be performed, (5) the beginning and end of the employment relationship and the reasons for the limitation of its duration, (6) the periods of notice, (7) the amount of remuneration and method of payment, (8) any benefits in the event of illness and temporary non-employment, (9) the date and place of the establishment of the employment relationship.

2.2 The individual rights of the temporary worker

- The temporary worker is protected by all existing labour laws.
- It is the responsibility of the user to inform the worker of the duties that he/she will be required to perform and in particular of the health and safety situation at the workplace.
- As far as statutory social security rights are concerned (pensions, continued payment in the event of sickness, unemployment and family allowances), the temporary worker enjoys the same benefits as all other workers. Payment in the event of sickness is continued even when the temp cannot be hired-out temporarily.
- With regard to entitlement to paid leave, which is often regulated in collective agreements, the temporary worker has to bargain individually, except in the case of workers who are employed by a member of the BZA.
- As regards occupational pension schemes, the employer is in principle free to choose whether he wants to exclude certain categories or not. However, the exclusion of temporary workers may violate the principle of equal treatment. But the fact remains that temporary workers can be legally excluded from occupational pension schemes both in the agency and in the user company.
- Temporary workers have to negotiate the duration of their weekly working time with the agency individually.
- As regards the beginning and end of daily working hours, the situation for the temporary worker depends on the consultations between the user and its works council, which has a co-determination right in this matter.
- Temporary workers must have access within the undertaking to the social services normally made available to the other workers. But since it is left to the employer's discretion to decide who is to be entitled to these services, temporary workers do not always have access to them. The user can also exclude temporary workers from the social services in his undertaking on objective grounds (e.g. child-care facilities, etc.).
- Temporary workers are entitled to be informed of full-time job opportunities within the undertaking. This has only been the practice hitherto in the case of enterprises with works councils.
- Since in Germany temporary workers have open-ended contracts with the agencies, the normal termination rules apply. The contract can be terminated by (1) mutual consent, (2) ordinary dismissal, and (3) extraordinary dismissal.

- There is a special arrangement for the dismissal of temporary workers for economic reasons, again because the temporary worker is not considered to be an employee of the user. The dismissal of a temporary worker for economic reasons is invalid if the agency re-employs the worker within 3 months after the dismissal. As a result, the employment relationship continues even during the time between dismissal and re-employment.

2.3 The collective rights of the temporary worker

- Temporary workers can take part in the elections for a workers' representation body in the agency but not in the user's enterprise, since they are not considered to be employees of the latter. Given the loose relationship between worker and agency, a works council in the agency is extremely rare. Temporary workers can consult the works council in the user's enterprise, but they have no right to vote or to stand as candidates for the works council in that enterprise. It has been established by case law that the works council co-determination rights in social matters must also cover temporary workers in as much as these subjects are an effect of the actual integration of those temporary workers into the user enterprise.

3. The company using temporary workers

- The user has no contractual relationship whatever with the temporary worker. His rights and duties are stipulated in the assignment contract. In this regard he has the right to specify the contractual obligations of the worker by issuing instructions concerning the amount and content of the work to be performed.
- If the contract between the agency and the worker is declared void for any reason, an employment relationship between the user and the temporary worker is implied.
- Clauses preventing the temporary worker from entering into an employment relationship with the user at the end of the assignment are invalid, because this is considered to be a violation of the constitutionally guaranteed right for every individual to choose a place of work freely.
- The user firm is obliged to inform its works council in good time of the intention to have recourse to temporary workers; this must be done at the beginning of the assignment. The works council can reject the employer's request to engage temporary workers, in which case the user can apply to the labour tribunal for a final decision.
- When the user wants to engage a temporary worker after the end of the term, the works council must be consulted.

Case study of a TAW-business in Nürnberg: Dr. Städtler

This medium-size and high-tech company (founded 1961 in Nürnberg) now has 6 local departments in Germany, e.g. in Berlin, Köln, München and Vienna. It consists of 6 departments which have clients in the top companies in Germany (Daimler Chrysler, Siemens etc.). Various competencies concerning special needs of companies, branches and IT-sectors are packaged to offer solutions for special problems including consulting clients as well as recruitment and leasing of appropriate staff.

In contrast to the other “big three” Städtler is not a member of the BZA. Together with ten other medium-size agencies in Munich Städtler offers an Internet-platform where “089-jobs” are marketed. This loose co-operation of small companies allows them to form a higher market influence compared to the big companies.

- specialised staff acc. to the AÜG in these sectors: along with the “classical area” of metal manufacturing and secretaries in administration & office, in special areas of the construction sector (Baunebengewerbe), science & medicine, automobile manufacturers in Zwickau
- focusing on highly skilled IT and office clerks. These temps avail of the special “informational resources” which flow within the Städtler-company and also in the client-company
- IT & Services (networks, call-centers, developing etc.)
- personnel consulting (recruiting, training & coaching, manager on time, external management)
- systems for time control, i.e. flexible systems supporting companies in measuring working hours and introducing new working time models
- transport consulting
- company consultancy

The strategy of Städtler is to win special niches in the markets for the highly-skilled apart from the “mass markets” for elementary occupations (only 10%), particularly in the framework of “project business” and of out- and in-sourcing of IT-and other staff. In this sector the percentage of academics is relatively high (30-40%).

The average hourly pay is 3-5 DM more than paid by comparable agencies, however the clients appreciate this higher cost as they receive higher quality. Particularly in regions such as Munich (with an unemployment rate of 5%) the shortage of appropriate skilled workers is increasing and hence contributes to the higher wages. Therefore most temps are paid more than according to collective agreements. This also promotes a long-term attachment of the worker to his agency.

Städtler also engages in further training and re-training of its temps. The company attempts to meet the wishes of the employees as well as the needs of the client-companies. For instance the employment office pays the wages for a six-weeks-course in SAP. The BA also bears 70% of wages during the first 3 months and a further 50% in the following months to promote integration of the unemployed. Amongst the temps employed by Städtler 80-90% were unemployed before or were women (re-)entering the labour market.

- One of three employees stay less than three months, they often obtain a permanent job in the user-company. In many cases the testing of staff is the reason for these users. Head-hunting in the IT-sector is not unusual.
- One of three stay 3-8 months, one of three stay 9 months and longer. The company strategy is to increase this share in order to increase its “high-value-segment” of TAW.

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