



Temporary agency work: national reports

Spain

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Summary

The Law 14/1994, of 1st June, regulating the Temporary Work Agencies, defines a temporary work agency ('Empresa de Trabajo Temporal' or ETT in Spanish) as an enterprise whose main activity is intended to 'transfer' ('ceder' in Spanish) hired employees to user enterprises ('empresas usuarias' in Spanish), always on a temporary basis. In this context, temporary agency work is defined in Spain as the workforce employed by the temporary work agencies themselves and 'transferred' to the user enterprises.

The legislative development of the TAW issue in Spain is quite recent in time, in the sense that the first law that fully regulates this issue dates back just to 1994 (Law 14/1994, of 1st June, regulating the Temporary Work Agencies). This Law has been subsequently completed and even modified with the passing of several new regulations: i) the Royal Decree 4/1995, of 13th January, developing the Law 14/1994, of 1st June; ii) the Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies and, finally, iii) the Law 29/1999, of 16th June, intended to modify the Law 14/1994, of 1st June, regulating the Temporary Work Agencies. The legislative corpus on the topic can be currently labelled as complete.

Since the 'legalisation' of the TAW issue, the sector has experienced a remarkable development. Thus, the number of temporary work agencies operating in Spain has passed from 86 in 1994 to 411 in 1999, whereas the number of 'put at disposal' contracts has been increased from 378,739 contracts in 1995 to 1,993,221 in 1999¹. Meanwhile, the number of labour contracts carried out by the Spanish temporary work agencies and registered in the INEM² has passed from 381,816 in 1995 to 1,892,284 in 1999. Finally, the number of workers hired by the Spanish temporary work agencies has gone steadily up from 442,511 people in 1997 to 587,678 and 618,875 in 1998 and 1999 (4,5 % of the total workforce), respectively.

The average worker hired by the Spanish temporary work agencies can be defined (data for 1999) as a man (57% of cases), very young (nearly 86% of the workers are less than 34 years old and 52.7% less than 25) and with a low level of educational attainment (65% of them have followed compulsory education or below, in comparison to the 6.8% with university education).

Unfortunately enough, the empirical evidence on the real working conditions of the temporary work agencies' workforce is very scarce. In any case, the available data suggest that a large percentage of TAW employees are unhappy with their current temporary working relationship although, and for reasons beyond their control, they are obliged to accept this kind of temporary relationship. There is no information on the probability of suffering an accident at work by TAW employees, although empirical official information shows that the probability of suffering an accident at work is four times higher amongst the temporary workers in comparison to the permanent workers. Notwithstanding this, it is worth mentioning that only a minority share of the Spanish temporary workers is hired by temporary work agencies (around 16% in 1999). As far as payment conditions are concerned, the new Law 29/1999 has corrected a previous situation in which TAW workers were paid less than their counterparts for the same jobs. Finally, occupational health and safety issues are strictly regulated by the Spanish legislation on the topic.

¹ Data for 1999 are preliminary.

² INEM stands for "Instituto Nacional de Empleo" or National Institute for Employment. The contracts registered in INEM (National Institute of Employment) refer to those hiring contracts carried out by temporary work agencies. These contracts include contracts with workers to be subsequently "transferred" to user enterprises (most of them), as well as contracts with workers to carry out their activities within the temporary work agencies themselves (structural workers).

So far, three National Collective Bargaining Agreements on Temporary Work Agencies have been signed up between the employers' associations and the most important Spanish trade unions in 1994, 1997 and 2000. In this sense, the Third National Collective Bargaining Agreement on Temporary Work Agencies has been recently signed up last 28th July 2000, with a time applicability for the period 2000-2002. The most remarkable traits of this III Collective Bargaining Agreement include an updating of wages, a reduction in annual working times, the setting up of a collective insurance intended to cover any possible contingency derived from working accidents and, finally, the definition of several professional categories.

Despite the strong growth experienced by the Spanish TAW sector since its 'legalisation' in 1994, the sector is currently affected by an excessive degree of fragmentation. Thus, the 12 most important enterprises operating in the sector, mainly linked to large multinational groups, concentrate approximately 80% of the total turnover. By way of contrast, the rest of the sector is mainly composed of a wide array of small enterprises, mainly started up after the sector 'boom' in 1995. However, and since 1998, this supply oversize is being gradually corrected, basically through the disappearing of the smallest TAW agencies.

According to several experts' opinions, the sector has got a moderate growth potential in the very short run (at least in number of 'put at disposal' contracts), due mainly to the recent legal reforms that imply added costs and limitations for the TAW enterprises and have made the TAW employment no longer cheap for the user enterprises. In any case, the future consolidation of the sector requires an effort in terms of specialisation and service quality improvement. Additionally, the sector is expected to suffer a dramatic restructuring process, basically intended to increase the average size of the agencies operating in Spain. For this purpose, strategies of concentration and inter-firm alliances/agreements, either at national or international level, are being pursued. The smallest, less specialised agencies are expected to have difficulties to survive in the coming years.

Introduction

This research project is intended to increase the current understanding and knowledge of the situation regarding Temporary Agency Work (TAW) in Spain. For this purpose, this research will try to provide a thorough description of the existing situation of the Spanish TAW, with special attention to the relationship between temporary agency work and aspects related to working conditions, labour market organisation, and collective bargaining.

Ikei (Instituto Vasco de Estudios e Investigación, SA or Basque Institute of Research and Studies, Inc) is carrying out this research, commissioned by the European Foundation for the Improvement of Living and Working Conditions (EFILWC). For this purpose, the EFILWC has launched an Open Tender No 00/0203/1 (2000/S 84-054877) relating to the carrying out of national reports on Temporary Agency Work (Project no. 0203.), under which this Spanish report is carried out.

This intermediate report is structured around six main sections. Thus, section 2 will present the Spanish definition of TAW according to the existing legislation on the topic, as well as the specificity of the TAW employment relationship. Meanwhile, section 3 will provide a brief overview of the existing Spanish legislative framework on TAW, paying for this purpose special attention to the main topics included within each piece of legislation. Subsequently, section 4 is interested in providing a brief quantitative description of the importance of the TAW in Spain.

Section 5 will look into the Spanish temporary work agencies' and trade unions' behaviours and strategies concerning TAW, whereas section 6 will pay attention to the topic of working conditions amongst those workers employed under the TAW modality, where special references will be made to the health and safety issues. Meanwhile, section 7 will review the topic of TAW collective bargaining, whereas final section 8 will try to synthesise the main obtained results and provide some general conclusions on the topic.

Legal definition

According to the definition included within the Law 14/1994, of 1st June, regulating the Temporary Work Agencies, a temporary work agency ('Empresa de Trabajo Temporal' or ETT in Spanish) is defined as an enterprise whose main activity is intended to 'transfer' ('ceder' in Spanish) employees to user enterprises ('empresas usuarias' in Spanish), always on a temporary basis. These employees are employed (under an employment contract) by the temporary work agencies.

In this context, temporary agency work in Spain is defined as the workforce employed by the temporary work agencies themselves and 'transferred' to the user enterprises.

The Law 14/1994 expressly establishes in its article 1 that this kind of hiring of workers to be subsequently transferred to an user enterprise is only possible through those temporary work agencies duly authorised according to the conditions stated by the same Law. For this purpose, the temporary work agencies have to fulfil a number of conditions for carrying out their activities, such as special administrative permissions, availability of a minimum organisational structure, solely involvement in temporary work activities or fulfilment of salary and Social Security obligations.

Specificity of the temporary agency work employment relationship

The temporary agency work employment relation is characterised by the existence of a labour relationship between a temporary work agency (the employer) and the worker, where this worker is subsequently transferred on a temporary basis to work for and under the supervision of an user enterprise.

In this way, the user enterprise satisfies its temporary workforce needs through resorting to a temporary work agency, who will select, hire and train personnel to put at the disposal of the user enterprise.

This supplying of personnel is structured through a triangular relationship in which the following sub-relationships are established (see Graph 2.1):

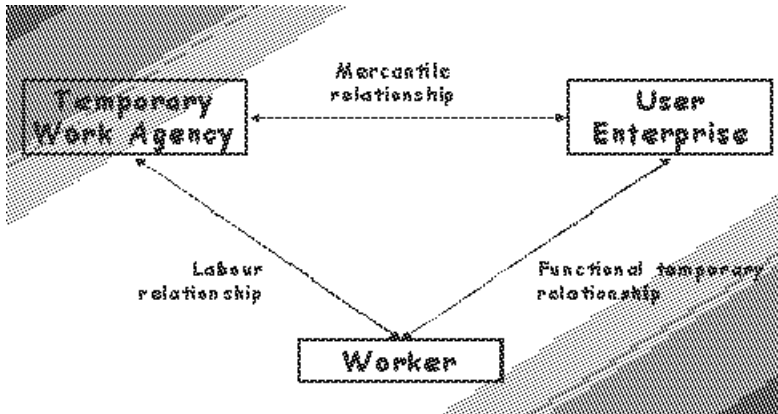
- Firstly, a labour relationship is established through a labour contract between the worker and the temporary work agency (who becomes the employer). Therefore, the temporary work agency is in charge of all the obligations and responsibilities derived from this relationship.
- Secondly, a mercantile relationship is established between the temporary work agency and the user enterprise. This relationship is channelled through what the Spanish legislation calls 'contrato de puesta a disposición' (Put at disposal contract).
- Finally, a functional temporary relationship is established between the worker and the user enterprise during the time period when the contracted service takes place.

In other words, the 'classical' labour relationship as a legal 'bilateral' relationship³ gives way to a new triangular relationship. In this new relationship, the worker contracted by a temporary work agency renders

³ Where the relationship actors are two for whom rights and obligations are derived.

his/her services within the organisational scope of a different enterprise (the user enterprise). This fact produces subsequent effects derived from the worker's presence in a working environment (with subsequent working conditions and therefore labour risks) different from his/her labour employer's one.

Graph 1: *Triangular relationship within a temporary work agency employment relationship*



This 'triangular' relationship generates several circumstances already regulated by the Spanish legislation:

1. Thus, and on the one hand, the 'transferred' worker depends from the user enterprise from a functional point of view. Therefore, the user enterprise is responsible of the functions of management and control of the worker's labour activity, as well as of protecting him/her in safety and hygiene at work issues. However, and from an economic and administrative point of view, the 'transferred' worker depends of his/her hiring temporary work agency. Thus, the hiring temporary work agency is responsible of the recruitment, training and remuneration of the 'transferred' workers (art 12 of Law 29/1999).
2. On the other hand, the temporary work agency assumes the possible risks derived from the relationship with the user enterprise. Therefore, in case of 'transferred' workers' absenteeism derived from illness or accident, the temporary work agency is responsible of substituting this worker.
3. Finally, between the user enterprise and the temporary work agency the so-called 'contrato de puesta a disposición' (put at disposal contract) is established. The aim of this contract is to "transfer" the TAW's employee to the user enterprise with the purpose of carrying out a service on a temporary basis. The Spanish Law (art 7 of the Law 29/1999⁵) foresees three main reasons for the 'transfer' process:
 - To carry out an specific service or work, where the 'transfer' is only possible until the service or work is over.
 - To attend circumstantial market needs or to satisfy excess of orders or accumulation of work.
 - To substitute employees with a right to job reservation.

⁴ Specially as far as the prevention of labour risks linked to the working position are concerned.

⁵ This article makes a reference to the article 15 del estatuto de los Trabajadores.

Meanwhile, the Spanish Law also foresees several situations when these "transfers" can not take place (art 8):

- To substitute user enterprise's employees on strike,
- To carry out especially hazardous activities (legally recognised),
- To cover jobs made redundant by the user enterprise under certain circumstances and, finally,
- To transfer employees to other temporary work agencies.

Spanish legislative framework

Main legislation regulating the issue

The main existing Spanish legislation regulating the issue of TAW is given by the following Laws and Royal Decrees:

- Law 14/1994, of 1st June, regulating the Temporary Work Agencies.
- Law 29/1999, of 16th June, intended to modify the Law 14/1994, of 1st June, regulating the Temporary Work Agencies.
- Royal Decree 4/1995, of 13th January, developing the Law 14/1994, of 1st June.
- Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies.

A brief description of this legislation will be provided in the next subsection ⁶.

As it can be appreciated, the legislative development of the TAW issue in Spain is quite recent in time, in the sense that the first law that fully regulates this issue dates back just to 1994.

Thus, and from an historical perspective, the need to increase both the employment creation process and the flexibility of the existing labour relationships in comparison to EU standards induced in 1993 an in-depth reform of the Spanish labour market.

For this purpose, the Spanish Government decided to take the initiative in order to speed up the process. Thus, the first regulation underpinning the reform was established in the Royal Law-Decree 18/1993, of 3rd December, about Urgent Measures for Supporting Employment ('Medidas Urgentes de Fomento de Ocupación' in Spanish). This Royal Law-Decree included not only a substantial modification of the existing Spanish labour hiring process but also several changes in the labour market regulations ⁷.

In this sense, one of the most important changes is related to the legalisation, for the first time in Spain, of the so-called Temporary Work Agencies ('Empresas de Trabajo Temporal or ETTs' in Spanish).

This legal reform was conceived to cover two main goals:

- Adapt the Spanish regulation to those ones already existing in the most important EU countries.

⁶ Additionally to this legislation, it is worth underlining the existence of other relevant legislation directly affecting the TAW issue. Examples include the following ones:

- Law 31/1995, of 8th November, on prevention of labour risks.
- Royal Decree 2720/1998, of 18th December, developing the article 15 of the Employees' law (Estatuto de los Trabajadores) on fixed-term contracts.
- Law 45/1999, of 29th November, on the displacement of workers within the framework of a trans-national provision of services.

⁷ This Royal Decree was passed by the Socialist Government and it was harshly criticised by the Spanish Trade Unions, who subsequently called for a general strike.

- Establish a suitable mechanism for fostering the creation of employment

The legalisation of the temporary work agencies begun with the Royal Law-Decree was subsequently converted into the Law 14/1994, of 1st June, regulating the Temporary Work Agencies. This Law gives way to an stable legal regime regulating the relationships between the three main actors involved, this is, the temporary work agency, the user enterprise and the worker. As it has already been stated in a previous section of this report, this ‘triangular’ relationship broke definitively up the Spanish classical bilateral employer-employee relationship.

This legal framework has been subsequently completed and even modified with the passing of several new regulations, such as the Royal Decree 4/1995, of 13th January, developing the Law 14/1994, of 1st June, the Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies and, finally, the Law 29/1999, of 16th June, intended to modify the Law 14/1994, of 1st June, regulating the Temporary Work Agencies.

Additionally, three National Collective Bargaining Agreements on Temporary Work Agencies have been signed up so far between the employers’ associations and the most important Spanish trade unions. These agreements have been signed up in the years 1994, 1997 and 2000, respectively.

Brief description of main legislation on TAW

The above sub-section has identified four main pieces of legislation directly regulating the TAW issue in Spain. This sub-section is intended to provide a brief insight into these different legislative developments.

Law 14/1994, of 1st June, regulating the Temporary Work Agencies

The Law 14/1994, of 1st June, regulates for the first time within the Spanish legal framework the activities of the temporary work agencies. The objective of this Law is twofold:

- On the one hand, to harmonise the regulation of these institutions with the regulations existing in the EU member states.
- On the other hand, to guarantee the labour rights and social protection levels of those workers hired by the temporary work agencies to be subsequently ‘transferred’ to user enterprises.

From a formal point of view, this Law is composed of five main chapters, three Additional Dispositions (‘Disposiciones Adicionales’ in Spanish) and one Final Disposition (‘Disposición Final’ in Spanish). In essence, the five chapters are related to the following issues:

- Chapter 1, on Temporary Work Agencies (articles 1 to 5). This chapter includes the definition of a temporary work agency, as well as the main administrative and financial requirements needed for its setting up and functioning.
- Chapter 2, on the ‘Put at disposal’ contract. It provides information on the existing relationship between the temporary work agency and the user enterprise. Specifically, this chapter identifies the different modalities for hiring, the duration of contracts and the possible exclusions to be identified.

- Chapter 3, on working relationships within the temporary work agencies. This chapter is concerned with regulating the working contract between the temporary work agency and the workers to be subsequently 'transferred'. Items dealt with include the type and duration of contracts, the workers' rights, the temporary work agency's obligations or the collective bargaining procedures.
- Chapter 4 on relationships between the TAW worker and the user enterprise. It regulates the existing relationship between the TAW worker and the user enterprise, especially in those issues related to the user enterprise' obligations and the working rights of these TAW workers within the user enterprises.
- Chapter 5, on infractions and sanctions. This chapter includes an specific and detailed treatment of those behaviours and omissions that can be regarded as infractions, as well as the corresponding sanctions.

Finally, it is worth underlining that this Law has been modified by subsequent legal developments, such as the Law 29/1999, of 16th June, or the Law 45/1999, of 29th November, on the displacement of workers within the framework of a transnational provision of services

Royal Decree 4/1995, of 13th January, developing the Law 14/1994, of 1st June.

The Royal Decree 4/1995, of 13th January, develops the previously explained Law 14/1994 with a twofold objective:

- On the one hand, this Royal Decree allows fulfilling the obligation suggested by the own Law 14/1994 for the development of several issues included in the Law.
- On the other hand, the Royal Decree develops the list of obligations the temporary work agencies have to fulfil, basically in order to assure the 'transferred' workers' rights and the transparent functioning of the temporary work agencies themselves.

In this sense, the Royal Decree establishes a number of concrete obligations for the temporary work agencies in the following domains:

- Inventory of the required administrative authorisations,
- Description of the required financial guarantees,
- Registration of the Temporary Work Agencies,
- Description of the 'put at disposal' contracts and the labour contracts and, finally,
- Inventory of the information obligations to be fulfilled by the temporary work agencies, both for the Administration as well as for the user enterprises

Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies

This Royal Decree establishes, within the framework of the Law 31/1995, of 8th November on Prevention of Labour Risks, the minimum specific dispositions on health and safety issues for those workers hired by temporary work agencies to be subsequently labour 'transferred' to user enterprises .

⁸ These dispositions are explained in detail in chapter 6 of this same report.

Obviously enough, the aim of this Royal Decree is to guarantee to these workers the same level of protection as the user enterprises' remaining workers, as well as to identify the activities and concrete jobs that, due to their specific danger potential, cannot be fulfilled through 'put at disposal' contracts.

In this sense, the Royal Decree regulates several dispositions concerned with the 'put at disposal' and labour contracts, as well as the main obligations to be fulfilled by the user enterprise. Finally, the Royal Decree underlines several dispositions linked to the management of the preventing activities, both by the user enterprise and by the temporary work agency.

Law 29/1999, of 16th June, intended to modify the Law 14/1994, of 1st June, regulating the Temporary Work Agencies.

The Law 29/1999, of 16th June, intended to modify the Law 14/1994 has introduced important modifications within the Law 14/1994. Amongst these modifications, it is worth underlining the following ones:

Temporary work agencies' organisational structure and working scope

According to the reform, new organisational requisites for temporary work agencies have been introduced. Examples include a minimum number of structural workers, the maintenance of the organisation structure or the geographical scope of action. In this sense, the Law recognises the possibility to develop activities in geographical limits where the temporary work agency is not authorised, always under certain circumstances and conditions.

Rights and obligations within the information field

The legal reform has introduced a number of new developments in the information field, which imply both a higher degree of control of the activity and the assumption of added obligations. These new obligations refer to new information to be submitted to the Labour Authority and to the workers' representatives in the user enterprise.

Causation in the hiring process and time limits

The new Law allows to carry out 'put at disposal' contracts under the same assumptions and conditions that the user enterprise may carry out a temporary hiring contract. On the other hand, new time limits are established concerning the different existing hiring contracts.

Labour risk prevention activities: training and risk appraisal of working posts

The new Law 29/1999 introduces the new developments included in the Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies. Two items are specially dealt with, that is to say, training and risk appraisal in the working position. In this sense, the new Law reinforces the importance of training in risk preventing issues. The temporary work agency has to make sure that the 'transferred' worker has got the theoretical and practical expertise required for his/her working position, where the temporary work agency is responsible of providing it in case it is required. On the other hand, the new Law states the impossibility of fulfilling a working post by a TAW employee if the user enterprise has not conducted a proper risk appraisal of the working post to be covered.

Wage equalisation

According to experts, the most important and radical effect of the new Law 29/1999 is linked to the wage equalisation of those ‘transferred’ workers with the workers actually employed by the user enterprises, according to the salaries stated in the corresponding collective bargaining agreements. Obviously, this wage equalisation has got a direct impact on the fees applied by the temporary work agencies to the user enterprises.

Infractions and sanctions

The new Law 29/1999 implies an increase in the obligations both for the temporary work agency and for the user enterprise. This fact is directly reflected in an increase in the infraction causes.

Introduction

Chapter 4 is interested in providing quantitative information on the TAW issue in Spain. For this purpose, information obtained from the Statistics on Temporary Work Agencies ('Estadística sobre Empresas de Trabajo Temporal' in Spanish) will be used. This statistical source is elaborated on an annual basis since 1995 by the Spanish Ministry of Labour and Social Affairs, and provides information on the following issues:

- Number of temporary work agencies operating in Spain, by geographical scope of activity and location
- Number of 'put at disposal' contracts⁹, by economic sectors and branches
- Number of contracts registered in INEM¹⁰ by temporary work agencies¹¹, according to the type of contracts, time duration, gender, age and educational profile of the contracted people.

This chapter is therefore intended to provide evidence on these issues

Number of Temporary Work Agencies

The number of temporary work agencies operating in Spain has experienced a remarkable increase since 1994, when they were firstly legalised. In fact, the figures for 1994 are relatively low, due to the fact that precisely that year the activity was firstly legalised in Spain. Subsequently, and since 1995, a remarkable upward trend can be noticed, due to the existence of both a specific legal framework and excellent business perspectives (see Graph 2).

Interestingly enough, and since 1997, it is possible to identify a more moderate growth in the number of agencies, where in 1999, and for the first time, this upward trend actually begins to change. The increasing process of maturation and competition within the sector, together with a growing trend towards enterprises' take-overs and mergers may explain this trend¹². In fact, this decreasing process is continuing during the first months of year 2000 (see Graph 10).

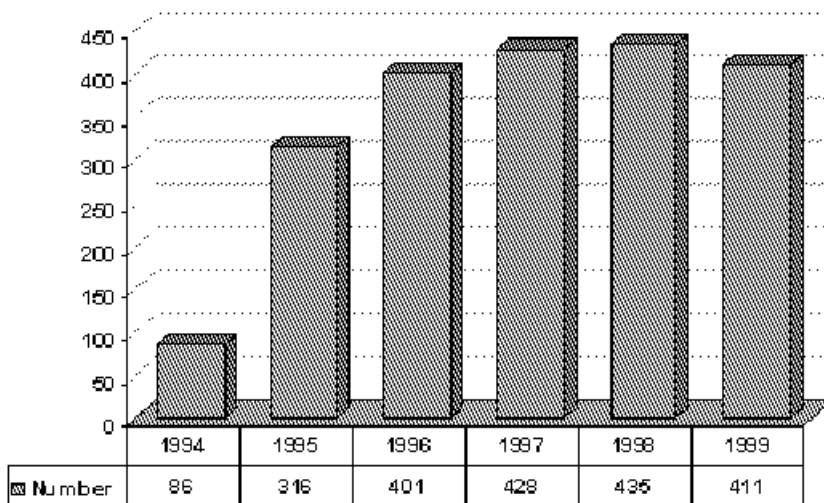
⁹ The 'put at disposal' contract is carried out between the temporary work agency and the user enterprise with the purpose of temporarily 'transferring' TAW workers to the user enterprise. Information for 1999 should be taken with caution, since available data are preliminary.

¹⁰ INEM stands for 'Instituto Nacional de Empleo' or National Institute for Employment.

¹¹ The contracts registered in INEM refer to those hiring contracts carried out by temporary work agencies. These contracts include contracts with workers to be subsequently 'transferred' to user enterprises (most of them), as well as contracts with workers to carry out their activities within the temporary work agencies themselves (structural workers).

¹² For a more detailed qualitative description of the TAW sector as an economic activity, please see chapter 5 of this report.

Graph 2: Number of TAW's operating in Spain, 1994-1999



Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*

Concerning the geographical activity scope of the Spanish temporary work agencies, the available data for 1999 shows that around 37% of them exclusively operate on a provincial level, whereas 36% and 27% operate on a regional and national level, respectively (see Table 1). However, and interestingly enough, data also show that precisely those temporary work agencies operating at national or provincial level are increasing their share, in comparison to those agencies working exclusively on the regional domain.

Table 1: *Distribution of Temporary Work Agencies operating in Spain, by geographical scope of activity, 1994-1999*

	1994	1995	1996	1997	1998	1999
National scope	18	66	92	109	112	112
Regional scope	46	120	160	158	158	148
Provincial scope	22	130	149	161	165	151
Total	86	316	401	428	435	411

Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*

Finally, and as far as the distribution of temporary work agencies by regions is concerned, the data shows that both Madrid and Catalonia concentrate the largest share of agencies, followed although at larger distance by other economically relevant regions such as Andalusia, Valencia and the Basque Country.

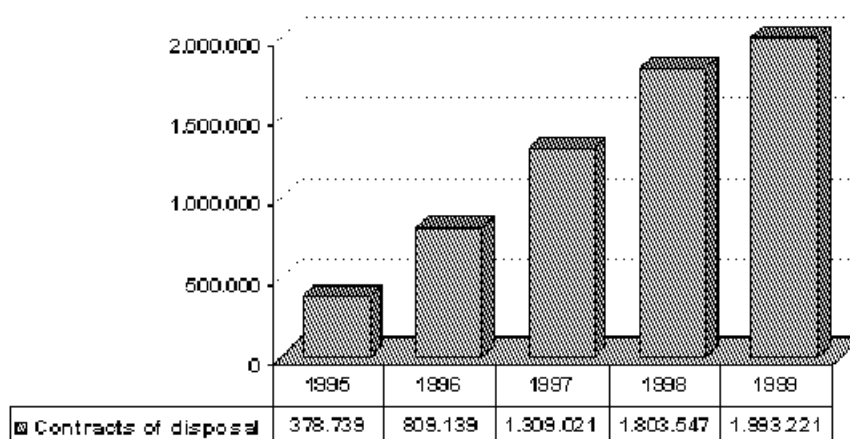
'Put at disposal' contracts

A 'put at disposal' contract results from the mercantile relationship between a temporary work agency and an user enterprise, with the purpose of temporary transferring personnel from the agency to the user enterprise, always under certain assumptions.

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The number of these contracts has experienced a remarkable upward trend in the time period 1995-1999, since during this period the figure has been multiplied five times from 378,739 contracts in 1995 to 1,993,221 in 1999, although this growth seems to be less relevant during the last two years.

Graph 3: Number of 'Put at disposal' contracts signed between Temporary Work Agencies and User Enterprises, 1995-1999*



(*) Data for 1999 are provisional.

Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*

Concerning the economic sectors and branches where these contracts take place, the available empirical evidence shows that most contracts take place both in the tertiary and the industrial sectors (55.0% and 34.9% of all contracts in 1999). Meanwhile, the share of the agrarian and construction sectors is less important (4.8% and 4.6%, respectively). Interestingly, and from a dynamic perspective for the time period 1996-1999, all big sectors have constantly increased their number of contracts with the only exception of construction. In this sense, it is worth underlining the tertiary and agrarian case studies (see Table 2).

Table 2: Number of 'Put at disposal' contracts by large economic sectors, 1996-1999 (*)

Main economic sectors	1996	1997	1998	1999
Agrarian	5,021	12,095	94,306	95,068
Industry	296,472	497,729	613,441	694,854
Construction	37,869	74,355	104,911	92,631
Services	429,757	710,917	948,957	1,096,737
Non classified	40,020	13,925	41,932	13,931
Total	809,139	1,309,021	1,803,547	1,993,221

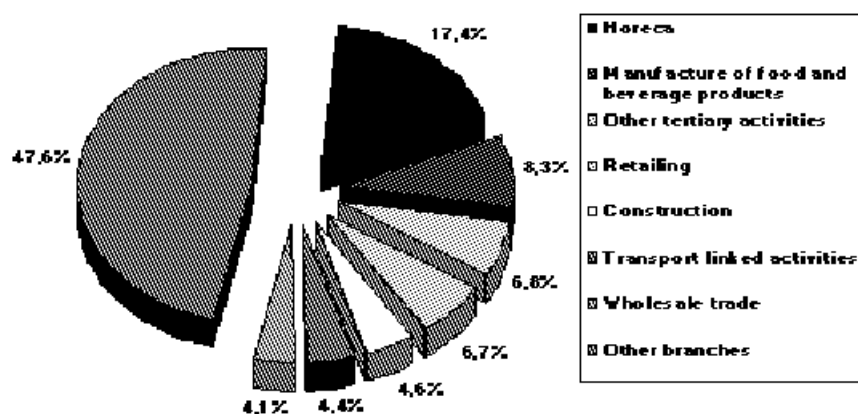
(*) Data for 1999 are provisional.

Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*

By concrete economic subsectors, and taking into account the 1999 data, the most important demander of 'put at disposal' contracts is the HORECA¹⁴ sector (17% of all contracts). Other important subsectors include

¹⁴ HORECA stands for Hotels, Restaurants and Cafeteria services.

Manufacture of food and beverage products, Other tertiary activities, Retailing and, finally, Construction (8%, 7%, 7% and 5%, respectively of the total). These sectors seem to be repeated throughout the whole time period 1996-1999 (see Graph 4). The important seasonal variations that characterise these activities may explain this result.



Graph 4: Main economic branches according to their use of TAW: number of put at disposal contracts, 1999(*)

(*) Data for 1999 are provisional.

Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*.

Contracts registered in INEM by Temporary Work Agencies

The number of labour contracts carried out by the Spanish temporary work agencies and registered in the INEM¹⁵ has passed from 381,816 in 1995 to 1,892,284 in 1999, that is to say, nearly five times bigger (see Table 3)¹⁶. The comparison with the total number of temporary contracts registered in INEM shows an increasing share of this type of contracts. Thus, if in 1995 they represented 5.5% of the total, in 1999 this percentage had increased to represent up to 15.7% of the total, although the peak was reached in 1998 (16.0%).

Table 3: Number of contracts registered in INEM by Temporary Work Agencies and percentage out of total, 1995-1999

	1995	1996	1997	1998	1999
Contracts registered in INEM by Temporary Work Agencies (1)	381,816	748,923	1,260,524	1,707,842	1,892,284
Number of total temporary contracts registered in INEM (2)	6,963,047	8,273,175	9,386,084	10,692,315	12,017,063
Percentage (1/2)	5.5	9.1	13.4	16.0	15.7

Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*

¹⁵ The contracts registered in INEM refer to those hiring contracts carried out by temporary work agencies. These contracts include contracts with workers to be subsequently 'transferred' to user enterprises (most of them), as well as contracts with workers to carry out their activities within the temporary work agencies themselves (structural workers).

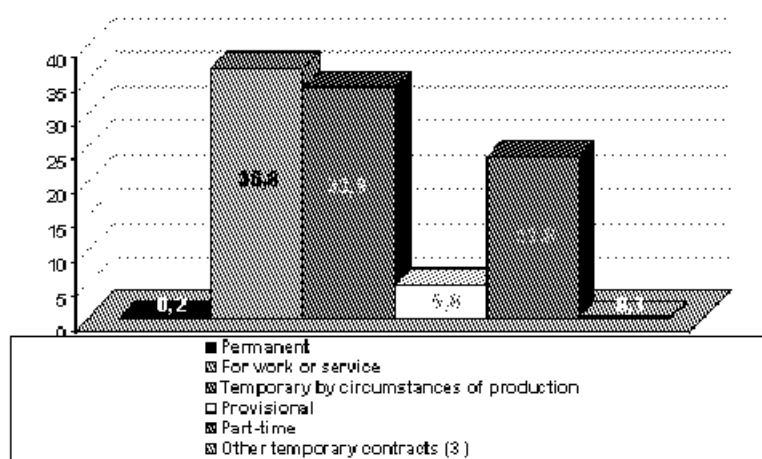
¹⁶ According to the opinion collected in AGETT (the employers' association representing the Spanish largest temporary work agencies), a significant share of this employment has come directly from the black labour market.

Temporary Agency Work: Spain

The distribution of these working contracts per types of contracts and their duration shows that, referring to 1999, most of the contracts carried out by the Spanish temporary work agencies can be characterised by being of a temporary nature (see Graph 5) and short in time (see Table 4). Thus, and on the one hand, the most important types of contracts offered by the Spanish temporary work agencies are related to contracts for work or service ('obra o servicio' in Spanish), followed by temporary contracts by circumstances of production ('eventuales por circunstancias de la producción') and part-time contracts (36.8%, 33.9% and 23.8% of the total, respectively).

On the other hand, and linked to the previous point, up to 43.6% of these contracts were signed to last less than 1 month, whereas the other relevant share (49.1%) is given by those contracts with undetermined duration. Meanwhile, permanent contracts only represent a 0.2% of the total.

Graph 5: Distribution of contracts registered in INEM by Temporary Work Agencies according to the type of contract, 1999



Source: Spanish Ministry of Labour and Social Affairs, Statistics on Temporary Work Agencies

Table 4: Number of contracts registered in INEM by Temporary Work Agencies according to the duration of the contract, 1995-1999

	1995	1996	1997	1998	1999
1 month or less	129,758	354,306	696,100	957,828	825,277
1-3 months	18,600	34,075	60,877	81,321	107,893
3-6 months	7,801	14,277	22,439	26,063	25,978
6 months- 1 year	1,004	1,314	1,151	1,396	1,260
More than 1 year	145	201	316	395	192
Indeterminate	203,989	344,076	477,510	637,649	928,372
Permanent	519	674	2,131	3,190	3,312
Total	361,816	748,923	1,260,524	1,707,842	1,892,284

Source: Spanish Ministry of Labour and Social Affairs, Statistics on Temporary Work Agencies

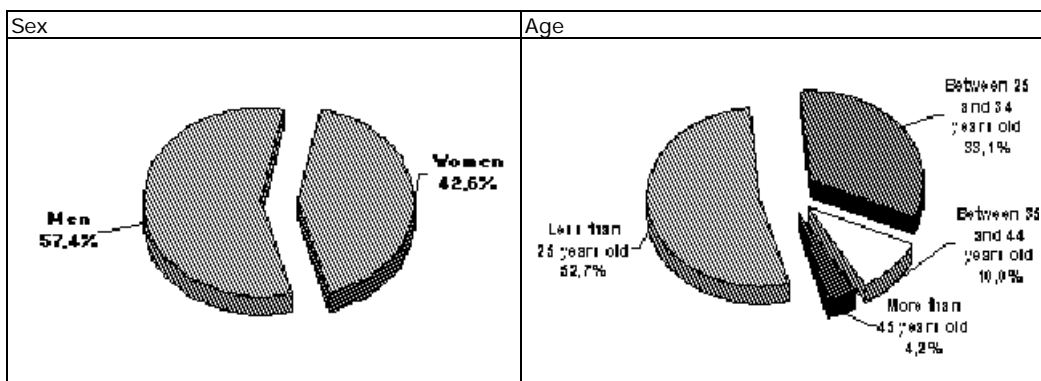
Workers hired by Temporary Work Agencies

The information obtained from the contracts registered in INEM¹⁷ allows obtaining a clear and accurate profile of the average worker hired by the Spanish temporary work agencies. To start with, it is worth stressing that the number of workers hired has gone steadily up from 442,511 people in 1997 to 587,678 and 618,875 in 1998 and 1999, respectively¹⁸. In comparison to the total Spanish occupied population, these figures represent a 3.5%, 4.5% and 4.5%, respectively of the total.

Referring specifically to 1999 data, the average worker hired by the Spanish temporary work agencies can be defined as a man (57% of cases), very young (nearly 86% of the workers were less than 34 years old and 52.7% were less than 25) and with a low level of educational attainment (65% of them had followed compulsory education or below, in comparison to the 6.8% who had an university education) (see Graph 6 and Graph 7).

Notwithstanding this, and from a gender perspective, the distribution by sex shows that women are slightly more represented in the TAW labour market (42.6%) than in the total Spanish labour market (36.4% of total Spanish occupied people are women).

Graph 6: Percentage of workers hired by Temporary Work Agencies according to sex and age, 1999

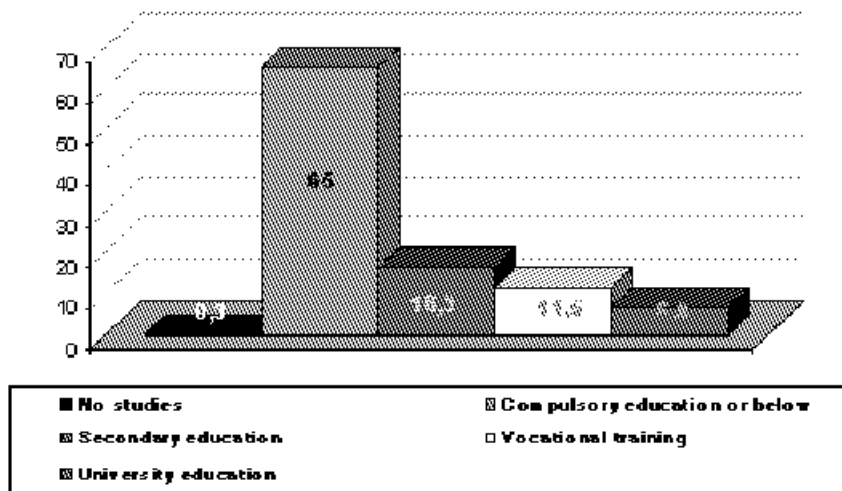


Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*.

¹⁷ For obtaining this data, the data from the contracts database is refined in order to eliminate the duplicities created by the hiring of a same person in more than one occasion during the year.

¹⁸ This data has been officially produced since 1997, and includes workers to be subsequently 'transferred' to user enterprises (most of them), as well as structural workers (to carry out their activities within the temporary work agencies themselves).

Graph 7: Percentage of workers hired by Temporary Work Agencies according to their levels of studies, 1999



Source: Spanish Ministry of Labour and Social Affairs, *Statistics on Temporary Work Agencies*.

A dynamic evolution perspective for the time period 1995-1999 shows several interesting results¹⁹. Thus, women and people over 35 years old are increasing their share, although in this last case this share is still on a minority basis. Interestingly also, temporary work agencies are increasingly contracting people with lower levels of study, where this result proves that TAW employment is currently becoming an employment source for the less skilled Spanish workforce.

¹⁹ These results have been obtained through a dynamic analysis of the working contracts registered in INEM by temporary work agencies.

Views of the social partners

The Temporary Work Agencies as an economic sector: current challenges and strategies of the enterprises

According to the statistical results explained in the previous chapter, it is possible to notice the strong growth experienced by the Spanish TAW sector since its 'legalisation' in 1994. Thus, and in the time period 1995-1999, the number of working contracts managed by the Spanish temporary work agencies has increased approximately five times, where this increase has had a positive impact on the creation of this type of enterprises in the same time period.

From an economic point of view, the total sector turnover reached in 1998 an approximate total of 200,000 million pesetas (1,202 million euro), where the forecasts for year 2,000 suggest a total turnover of 350,000 million pesetas (2,103.5 million euro)²⁰.

Notwithstanding these expectations, the sector is negatively affected by a number of weaknesses. In this sense, one of the most important challenges for the Spanish TAW sector is related to its excessive degree of fragmentation. Thus, the 12 most important enterprises operating in the sector, mainly linked to large multinational groups, concentrate approximately 80% of the total turnover. By way of contrast, the rest of the sector is mainly composed of a wide array of small enterprises, mainly started up after the sector 'boom' in 1995. According to several opinions collected, the current supply oversize will be corrected in the next years²¹, basically through the merging and take-over of the smallest TAW agencies by the largest ones.

In this sense, large enterprises operating in the sector are increasingly adopting specialisation strategies, basically intended to work with more concrete and fragmented market segments and therefore providing clients with a more accurate service.

The existing tension between large and small enterprises within the sector is better shown when looking into the existing structure of employers' associations. In this sense, the sector is currently composed of four large associations:

- AGETT ('Asociación de Grandes Empresas de Trabajo Temporal' or Association of Large Temporary Work Agencies), which currently comprises the seven largest enterprises in the sector (Adecco, Alta Gestión, Flexiplan, People²², Randstad, Umamo and Vedior-Laborman, as well as their subsidiary companies). These enterprises represent more than 60% of the total sector turnover in Spain. It is important to underline that AGETT was recently created last 14th December 1999 as a split from AETT (see next).
- AETT ('Asociación Estatal de Empresas de Trabajo Temporal' or State Association of Temporary Work Agencies), which represents around 100 small and medium enterprises.
- FEDETT, which comprises around 70 smaller enterprises and, finally,

²⁰ Ribyero J (1999), see bibliography.

²¹ In fact, in 1999 and beginning of 2000 a remarkable decrease in the number of temporary work agencies can be detected in comparison to the peak reached in 1998 (see Graph 10).

²² Sesa Start España

- ACETT ('Asociación Catalana de Empresas de Trabajo Temporal' or Catalan Association of temporary Work Agencies), comprising around thirty enterprises located in Catalonia.

The sector in general is very concerned with some of the existing legal and administrative requisites for the temporary work agencies in order to carry out their activities since, according to the enterprises, these requisites result in added costs and limitations to the development of the sector. Examples include:

- The Law 14/1994 and the subsequent modification by the Law 29/1999 establish a special rule for financial guarantees, so the temporary work agencies have to provide a guarantee of 25 times the minimum legal salary and a 10% of the salary volume during subsequent years.
- The legislation requires at least 12 permanent employees per 1000 'put at disposal' contracts.
- The Spanish temporary work agencies have to pay higher social contributions to unemployment fund when they contract employees.
- The current legislation impedes TAW employment in certain risky sectors, whereas any other enterprise may hire employees for these risky activities.
- Certain regional public administrations (i.e. Madrid and Extremadura) do not hire temporary work agency personnel within the own administrations.
- The legislation states the need for investing, at least, 1% of the total salary volume in training activities, where the Third Collective Bargaining has added an additional request of 0.25%. This requirement is not compulsory for any other economic sector in Spain.
- Any transferred employee has to receive an economic compensation of 12 working days per worked year when the 'put at disposal' contract is finished, provided that this contract is for a determined time duration. This compensation is not compulsory for those enterprises in other sectors employing temporary workers.

Finally, it is worth underlining the 'unfavourable' social image that, generally speaking, the temporary work agencies have amongst the Spanish population in terms of inadequate working conditions, long working hours, low pay, etc. Conscious of this reputation, several sector employers' associations have designed a number of 'behaviour codes' intended to improve the social perception of the TAW sector. Thus, AGETT has developed a 'Code of Quality' and a 'Code of Behaviour', which is compulsory to be followed by all the enterprises belonging to the Association. Meanwhile, AETT has designed an 'Ethical Code', compulsory to all associated members.

The Trade Union's view

From the trade unions' point of view²³, the temporary work agencies have continued to play an important role in the, according to them, increasingly precarious situation of the Spanish employment relations. Thus, and according to the unions, the temporary work agencies have increased their share in the management of the Spanish temporary employment, although this fact has not redounded to any further improvement in the quality of this employment.

²³ The information included in this section has been mainly obtained from Commisones Obreras (1999), see bibliography.

In this sense, the Spanish trade unions' main criticisms against the temporary work agencies are the following ones:

- The share of permanent labour recruitment is very low.
- Generally speaking, the signed up temporary contracts have got a very short time length.
- The working conditions amongst the TAW employees are, according to the trade unions, worse than in other more traditional working relations.
- The employment structure of most of the temporary work agencies (mainly young, low skilled and temporary people) does not favour the presence of trade unions and other forms of workers' organisations.
- The existing working relationships between temporary work agencies and their employees can be labelled as weak and unstable, due mainly to their temporary nature.

Having in mind these criticisms, the Spanish trade unions' actions have been mainly aimed at both improving the working conditions amongst the TAW employees as well as reducing the currently existing labour segmentation. In this sense, these unions' actions have been concentrated around the following axis:

- Increase of the daily unions' attention to those people employed by a temporary work agency, either within the user enterprises or within the own temporary work agencies.
- Improvement of the trade unions' presence within the temporary work agencies.
- Improvement of the working conditions through the collective bargaining process.
- Denunciation of any illegal practice made by the temporary work agencies.
- Modification of the existing Spanish legal regulation on temporary work agencies.

According to the Spanish trade unions, during the last years several important and valuable steps have been given by the Public Administration in order to solve the existing deficiencies. In this sense, the most important forward step is related to the new Law 29/1999, intended to modify the previously existing Law 14/1994. Several improvements can be suggested:

- Wage equalisation.
Regulation of the temporary work agencies' involvement in those risky activities for employees, including several activities where this involvement is forbidden.
- Recognition of more competencies for user enterprises' trade union representatives in relation to the 'transferred' TAW workforce.
- Signing up of the new III National Collective Bargaining Agreement on Temporary Work Agencies and, finally,
- Carrying out of elections for selecting unions' representatives within certain temporary work agencies.

Looking ahead, Spanish trade unions are planning to concentrate their future activities in the following domains:

- More stability in employment for those who work 'transferred'.
- Improvement of the working conditions and equalisation of these conditions with the rest of workers.
- More real development of vocational training with two main goals: improvement of workers' skills and prevention of labour risks.
- Establishment of mechanisms and compromises intended to eliminate fraudulent practices.

In any case, it is worth underlining that there has been a significant shift in the most important Spanish Trade Unions' perspective. Thus, they currently accept the existence of the temporary work agencies in Spain, provided they are fully regulated as they are.

TAW and working conditions

Existing evidence on the topic

The TAW issue is currently perceived as a controversial issue within the Spanish social and political debate. Thus, and on the one hand, the temporary work agencies themselves (together with the main employers' associations) defend these working relationships and their interest for the Spanish productive tissue. By way of contrast, the trade unions argue against the temporary work agencies since, according to their opinion, they offer 'bad quality' employment, both in terms of salaries and general working conditions. The general Spanish public opinion mostly shares this last opinion.

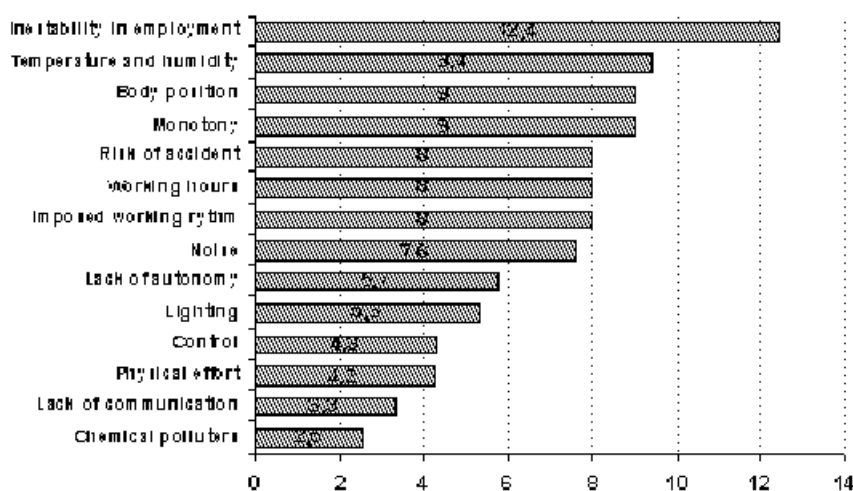
Unfortunately enough, the empirical evidence on the real working conditions of the temporary work agencies' workforce is very scarce, specially if we compare this empirical evidence with the 'relatively' huge amount of qualitative information on the issue, always influenced by the different pursued interests.

This section is intended to present, on a concise way, an approach to the existing working conditions amongst the temporary work agencies' workforce. For this purpose, the scarce available empirical information will be used. Topics to be dealt with will include the workers' perception on the instability in employment and the expectations of temporary agency workers, the number of accidents and, finally, the payment conditions.

Workers' perception on the instability in employment

To start with, and generally speaking, it is possible to assert that the Spanish workforce has got a strong opposition against the lack of stability in employment, whatever form it may take. In this sense, and according to the results contained in the III Spanish Annual Survey on Working Conditions, the Spanish workers regard instability in employment as the most disturbing element within their current working conditions. Thus, up to 12.4% of the surveyed workers valued this situation as quite or very troublesome, where this percentage is higher in comparison to other elements (see Graph 8).

Graph 8: Percentage of workers who regard as quite or very troublesome the following aspects related to the working conditions



Source: Ministerio de Trabajo y Asuntos Sociales (1999), 'III Encuesta Nacional de Condiciones de Trabajo' (III National Survey on Working Conditions).

The previous data are confirmed when checking the expectations of TAW employees concerning their employment. Thus, a recent study conducted in 1999 by two lecturers of the University of Valladolid²⁴ showed that only 10% of the TAW employees were happy with their temporary situation. Students, women trying to reconcile their labour and family activities and, finally, groups of workers with very special skills, form up the typical profile of this last group.

By way of contrast, up to 90% of the TAW employees suggested to be unhappy with their current temporary working relationship. However, and for reasons beyond their control, they are obliged to accept this kind of temporary relationship although they are looking forward to finding a more stable situation. Reasons linked to the uncertainty of this employment relationship (for instance, you can not plan neither when you are going to be hired nor for how long) may explain, amongst other reasons, this rejection.

This last group mainly includes two different employees' profiles: on the one hand, those workers who accept this type of jobs because they cannot find anything better. On the other hand, workers who want to obtain a working experience that may subsequently allow them to find a permanent job in the future. In this sense, this last strategy seems to be correct in a high number of cases since, according to several estimations made by FEDETT, a 30% of the 'transferred' employees finally find a permanent job position within the user enterprises themselves.

Number of accidents

One of the main conflict arguments between trade unions and TAW employers' associations is related to the 'attributed' high accident rate amongst the TAW employees, where this element also explains the bad social image of the TAW sector²⁵.

The own Law 29/1999 states in its introductory exposition that the remarkable increase in the activity of the temporary work agencies in Spain has been accompanied by a remarkable worsening of the TAW employees' labour rights and working conditions. In this sense, the main Spanish trade unions have repeatedly denounced the higher risks affecting temporary workers in general and TAW workers in particular. The more repeated accusations are referred to the no information on the risks derived from the working post to be covered, the no vigilance of the employees' health, the long working hours and, even, the carrying out of specific works specifically forbidden by the Law.

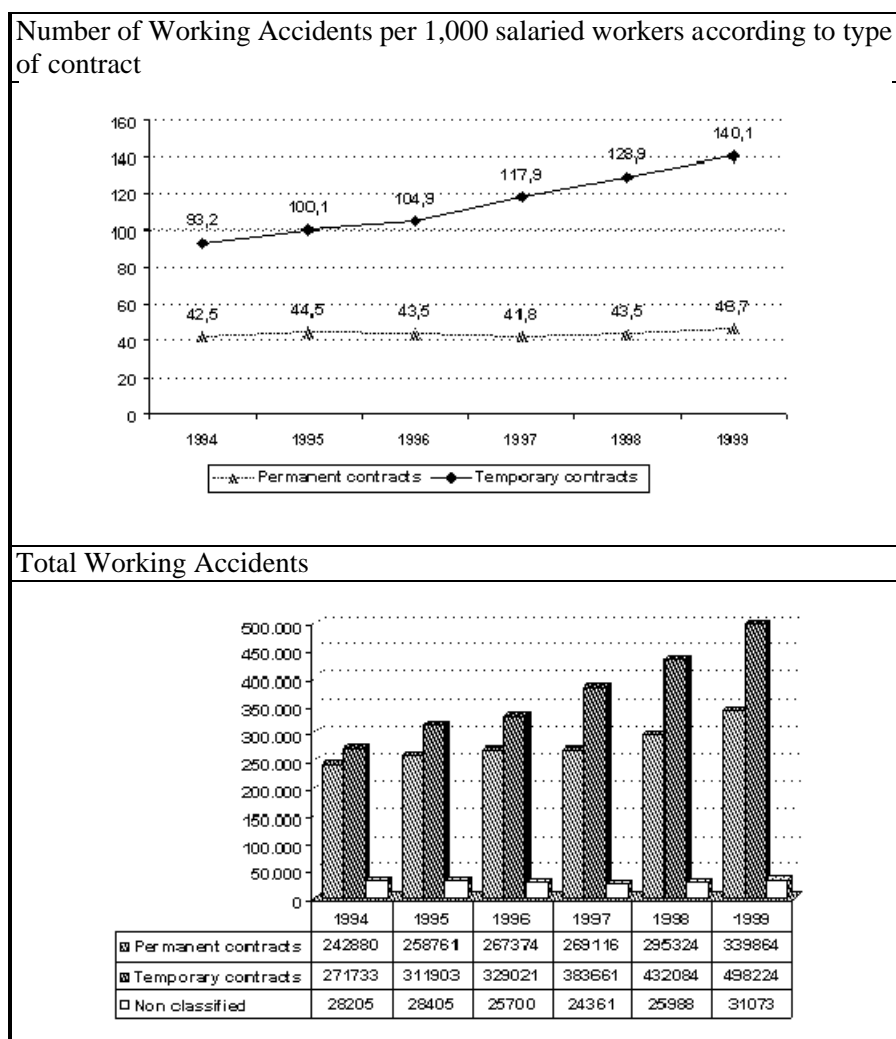
In this sense, the Spanish official statistical information on working accidents shows that the probability of suffering an accident at work is four times higher amongst the temporary workers in comparison to the permanent workers. Thus, and taking 1999 as the reference year, in Spain there were a total of 869,161 working accidents, out of which 39.1% were suffered by permanent workers and the remaining 60.9% by temporary workers (contracted by temporary work agencies or not). These figures imply that in 1999, a total of 46.7 accidents per thousand permanent employees did take place, whereas this ratio was of 140.1 amongst the temporary workers (see Graph 9).

²⁴ In Martínez García M & García Gómez B (1999), see bibliography.

²⁵ Just to give an example, and due to the existing social alarm on this accident issue, the Catalan regional government has launched a plan to monitor the existing working conditions within the Catalan temporary work agencies.

Moreover, a dynamic analysis in the time period 1994-1999 shows that the accident rate amongst the temporary workers has been steadily increasing, going from 93.2 accidents per thousand temporary workers in 1994 to 140.1 in 1999. By way of contrast, the accident rate amongst permanent workers has remained quite stable overtime.

Graph 9: Working Accidents according to type of contract, 1994-1999



Source: *Ministerio de Trabajo y Asuntos Sociales and Instituto Nacional de Estadística.*

Notwithstanding these results, and from the temporary work agencies' point of view, this list of accusations are replied with the following lines of argument:

- To make the link between temporality - probability to suffer an accident with TAW employment is not correct at all. Thus, it should be borne in mind that only 15.7% of the total temporary contracts carried out in Spain during 1999 were actually made by the temporary work agencies themselves, whereas the remaining 84.3% were carried out by other enterprises²⁶.

²⁶ This reason is suggested in Morillo I (1999), see bibliography

- The average profile for the Spanish worker suffering an accident shows that he/she is a young, low-medium skilled person. Precisely, this is the type of person typically contracted by the Spanish temporary work agencies, according to the information already provided in previous chapters of this report.
- According to the different Collective Bargaining Agreements, the Spanish temporary work agencies devote a large share of resources to training activities (by law, 1% of the total salary volume plus a percentage included in the collective agreement), and preferably in activities related to risk prevention and security and health at work. According to different sector sources, this percentage is well above the existing one in other Spanish productive sectors.
- Finally, the AETT employers' association has conducted a study intended to prove that the accident index²⁷ amongst the Spanish temporary work agencies is much lower than the general index (including both temporary and permanent workers) for the whole of the Spanish productive sectors (24.09 in comparison to 64.9, respectively)²⁸.

Payment conditions

One of the main reasons behind the remarkable increase in the TAW hiring during the time period 1994-1998 in Spain is not only due to the hiring flexibility (which redounds into a higher labour precariousness for the worker), but also to the lower salary costs. This has been precisely one of the main incentives for the hiring of personnel through temporary work agencies in the past.

In this sense, the hiring of TAW employees has been used in Spain not only as a tool for solving temporary needs of personnel by the user enterprises, but also as a tool for reducing labour costs.

In order to solve this situation, the new Law 29/1999 has tried to amend this situation, basically through its article 11. This article regulates that the worker providing his/her services through a temporary work agency should receive the total payment regulated by the collective bargaining agreement applicable to the user enterprise and established for the working post to be developed. Other salary complements regulated on an ad-hoc basis such as profit distributions or extra-salary complements are out of this base salary.

Generally speaking, this reformulation included in the new Law has been positively regarded by the Spanish trade unions, whereas the Spanish temporary work agencies have had a more diversified reaction. Thus, and according to several sector's estimations, the wages of those people hired through temporary work agencies has increased an average 20% since the new Law has been put into effect. Subsequently, and due to this increase, the number of managed TAW employment contracts has suffered a remarkable decrease.

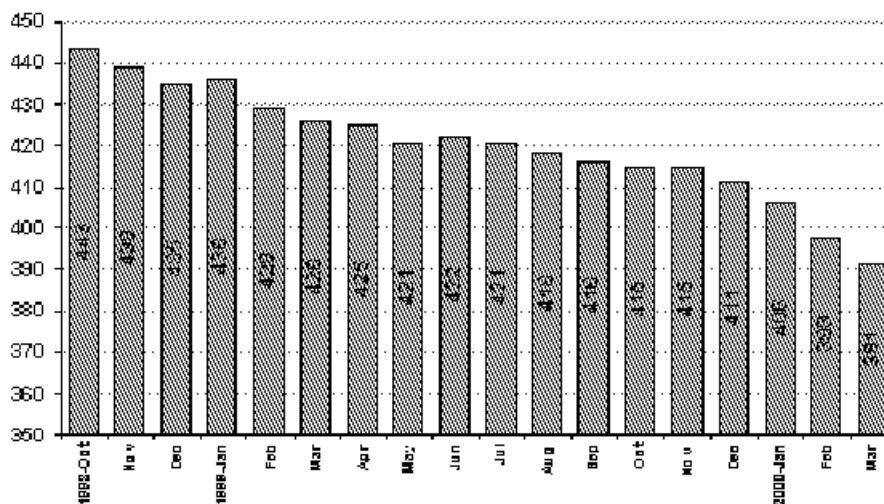
From an entrepreneurial point of view, and according to the sector's estimations, this Law may have important negative effects on the sector, specially on the smallest enterprises and on those less specialised enterprises who may have difficulties to increase the charges to their clients. The lack of a wide historical perspective renders difficult to evaluate the real impacts derived from the new Law, although the first available data suggest a negative effect on the sector.

²⁷ This index is defined as (Number of accidentes*1000/Number of workers)

²⁸ Information obtained from Rodríguez Castañón R (1999), see bibliography

Thus, and having in mind both the number of existing temporary work agencies and the contracts managed by them, the available statistical information for the first three months of 2000 suggests that the number of contracts managed has been reduced in a 6.3% in comparison to the same period in 1999. Meanwhile the number of registered temporary work agencies has gone down from 426 in March 1999 to 391 in March 2000, with an steady downward trend (see Graph 10). Nevertheless, it is worth underlining that this downward tendency was already begun before the new Law was passed.

Graph 10: Number of Authorised Temporary Work Agencies, October 1998-March 2000



Source: *Ministerio de Trabajo y Asuntos Sociales*.

Occupational health and safety policies in relation to Temporary Agency Workers

The specific 'triangular' relationship generated by a temporary agency work employment relationship implies a need to treat on a special basis the TAW employer's and the user enterprises' obligations as far as the prevention of labour risks amongst the TAW employees are concerned.

The Spanish legal framework on security and labour health within temporary work agencies is regulated by two main rules:

- The Law 29/1999, of 16th June, intended to modify the Law 14/1994, of 1st June, regulating the Temporary Work Agencies, and
- The Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies.

²⁹ The concrete description of this risky activities is regulated in the article 8 of the Royal Decree 216/99. Examples include mining activities, activities in marine platforms, activities directly linked with the manufacturing and handling of explosives or toxic products, etc.

Both legal rules establish a number of obligations in the labour health and security issue for those TAW employees hired by the temporary work agencies in order to be 'transferred' to the user enterprises. The final goals of both rules are two. On the one hand, guarantee to this type of temporary workers the same level of protection in comparison to the user enterprise's workers. On the other hand, establish those jobs²⁹ and activities for which, due to its special risky nature, it is not possible to carry out 'put at disposal' contracts .

In essence, the previously quoted legal rules establish several obligations both for the user enterprises and for the own temporary work agencies. Additionally, both rules regulate the obligations and rights for the TAW employees.

Obligations for the user enterprise

- Generally speaking, the user enterprise is responsible of protecting the TAW worker in health and safety at work issues during the life of the 'put at disposal' contract. Additionally, the user enterprise is responsible of the increased charge for the contributions to the Social Security System in case of a work accident or professional disease, and always during the life of the 'put at disposal' contract.
- Previously to the enlistment of the TAW employees, the user enterprise has to inform to the temporary work agency (and this one to their employees to be 'transferred') on several aspects. Examples include the required professional skills, the general enterprise's risks and the specific risks derived from the working post, the more appropriate protection measures or the need for special medical checking-ups.
- The user enterprise may not allow starting the activity of a 'transferred' worker until the firm is informed on the transferred worker's general good health state and his/her skills for the development of the contracted job.
- The user enterprise's employer has to inform to the internal risk prevention services on the enlistment of TAW workers.

Obligations for the temporary work agencies

- The temporary work agency is responsible of assuring that the 'transferred' worker has got, before his/her enlistment to the user enterprise, the theoretical and practical skills required for the job to be fulfilled. These skills include also the labour risk prevention domain.
- If this is not the case, the temporary work agency will be responsible of training its employees. The intensity and characteristics of training will obviously depend on the employees' experience and professional skills, as well as on the nature and importance of the foreseen risks. If training is carried out by the own user enterprise, this training will be subsequently be charged to the temporary work agency.
- The temporary work agency has to prove (providing documents in evidence) to the user enterprise that the 'transferred' worker has received all the information on risks and preventing measures linked to his/her new working position. Additionally, this same evidence has to be provided as far as the employee's general health situation in relation to the job position to be covered is concerned.
- The temporary work agency and the user enterprise have to co-ordinate their activities in order to fully guarantee the 'transferred' workers' health and security.

- The temporary work agency will be responsible of periodically checking-up its 'transferred' employees' health situation.

Obligations for the TAW employees

- The 'transferred' workers are responsible of taking care both of their own security and health at work and of those who might be affected by their professional activity. In this sense, these 'transferred' workers have to fulfil the same obligations³⁰ as the user enterprise's remaining workers.

³⁰ These obligations are described in the Law on Labour Risk Prevention ('Ley de Prevención de Riesgos Laborales', in Spanish), article 29.

Collective bargaining within the Temporary Agency Work sector

Up to now, a total of three National Collective Bargaining Agreements on Temporary Work Agencies ('Convenios Colectivos Estatales de Empresas de Trabajo temporal', in Spanish) have been signed up³¹. The most important traits of each one of these three agreements are presented next:

The First Collective Bargaining Agreement

The First National National Collective Bargaining Agreement on Temporary Work Agencies was signed the 22nd February 1995, a few months after the Law 14/1994 came into force. This agreement can be described as a short document, where the most important elements dealt with included a wage scale, a disciplinary regime, several references to continuing training activities, a detailed description of professional groups and levels and, finally, several issues related to the trade unions' action.

The Second Collective Bargaining Agreement

This Second National Collective Bargaining Agreement on Temporary Work Agencies, signed up the 31st January 1997, was mainly involved with the regulation of the working conditions between the temporary work agencies and their dependant workers, either those to be 'transferred' to other user enterprises or their own structural workforce. This agreement was signed by three sector's employer associations (GEESTA³², UETT³³ and ACETT³⁴) and the two most important Spanish trade unions (UGT and CCOO).

The configuration of this Second National Collective Bargaining Agreement is structured around the following chapters:

- Chapter I on General Dispositions (art 1-11): Functional, territorial and personnel scope of the agreement, general structure of the sector collective agreement procedures, guarantees of the agreement.
- Chapter II on Work Organisation (art 12-16): Powers of the TAW agencies and user enterprises, rights and obligations of the 'transferred' workers, hiring modalities, assumptions of labour hiring.
- Chapter III on Access to Work (art 17-19): Trial periods, contents of the work.
- Chapter IV on Professional Groups and Levels (art 20): Professional classification of workers.
- Chapter V on Workers' Mobility (functional and geographical mobility), as well as Modifications of Working Conditions (art 21-23): Functional and geographical mobility, modifications in the working conditions.

³¹ It is important to underline that, besides these three national agreements, in Catalonia two regional collective agreements have been signed up to now.

³² GEESTA stands for 'Asociación Española de Empresas de Trabajo Temporal' (Spanish Association of temporary Work Agencies)

³³ UETT stands for 'Unión de Empresas de Trabajo Temporal' (Union of temporary Work Agencies)

³⁴ See definition of ACETT in section 5 of this report.

- Chapter VI on Salary Rules (art 24-31): Structure of the wage determination, salary complements, volunteer improvements, extra-salary receipts, retribution to ‘transferred’ workers.
- Chapter VII on Working Hours (art 32-37): Ordinary/extraordinary hours, night work, week rest and festivities, work leaves, holidays.
- Chapter VIII on Suspension of Working Contracts (art 38): Activity suspensions in the user enterprise.
- Chapter IX on Extinction of Working Contracts (art 39-42): Extinction of working contracts by initiative of the worker, by ending-up of the contract, anticipated extinction, incorporation of ‘transferred’ workers to the user enterprises’ personnel.
- Chapter X on Continuing Vocational Training (art 43): Regulation of continuing vocational training .
- Chapter XI on Prevention of Labour Risks (art 44): Prevention of labour risks.
- Chapter XII on Creation of Stable Employment (art 45): Procedures for the creation of stable employment
- Chapter XIII on Disciplinary Rules (art 46-47): Infringement graduation, sanctions.
- Chapter XIV on Trade Unions’ Representation and Action within the Enterprise (art 48-51): Powers of TAW workers’ representation structures, trade unions’ quotas, election of representatives, union rights.

as well as including one Additional Disposition, a Final Disposition and an annex with the wage scale according to different professional levels.

From a qualitative point of view, one of the more relevant aspects included within this Second Collective Bargaining Agreement is referred to the salary regime of the workforce ‘transferred’ to an user enterprise. In this sense, the agreement intended to reach on a gradual basis an homogeneity in salary conditions between the temporary work agencies’ and the user enterprises’ employees. Thus, the article 30 of the Second Collective Bargaining Agreement pointed out that, since 1st January 1998, those workers ‘transferred’ to an user enterprise by the temporary work agencies should receive a salary corresponding, at least, with the 80% of the salary indicated by the sector’s collective bargaining agreement where the user enterprise is regulated by. This percentage would be subsequently increased up to, at least, 90% and 100% in 1999 and 2000, respectively.

Another issue particularly relevant included within the Second Collective Bargaining Agreement was related to the trade unions’ rights. In this sense, and on the one hand, article 48 enlarged the Working Committees’ and Personnel delegates’. On the other hand, article 51.2 reduced the number of workers needed within the enterprise in order to elect an union representative.

The Third Collective Bargaining Agreement

The Third National Collective Bargaining Agreement on Temporary Work Agencies has been recently signed up last 28th July 2000, with a time applicability for the period 2000-2002. The main four sector’s employer associations (AGETT, AETT, FEDETT and ACETT) and the two most important Spanish trade unions (UGT and CCOO) have signed up this agreement, which substitutes the Second National Collective Bargaining Agreement. Up to 506,000 TAW employees are covered by this Third Agreement, that is to say, 82% of the total TAW employment.

From a qualitative point of view, this Third Collective Bargaining Agreement is basically a continuation of the dispositions agreed in the Second Collective Agreement. Notwithstanding this, the Third Collective Bargaining Agreement includes several important improvements that can be summarised in the following points:

- For those employees working within the temporary work agencies (structural workers), their basic salaries are brought up to date a 4.5% plus the real inflation rate since 1st January 2000. Additionally, and for the 2001 and 2002 years, the wage increase will be the forecasted inflation rate plus one point, on the basis of the previous years' wage scales. If so, differences between forecasted and real inflation rates will be covered, as well as several wage complements according to the different working positions.
- The duration of the annual working time for the structural workers is fixed for year 2000 in 1,785 hours, 1,777 for year 2001 and 1,770 for year 2002.
- Meanwhile, salary and working time conditions for 'transferred' employees are regulated, following legal requirements, according to the conditions arranged in the respective sector's collective agreement.
- For the first time, all the sector employers' associations have set up a collective accident insurance scheme intended to cover any possible contingency derived from working accidents.
- Interestingly also, TAW enterprises do engage themselves for the first time to have at least 50% of their structural employees hired on a permanent contract basis, where several penalties are envisaged for those TAW enterprises that do not fulfil this compromise.
- Finally, the agreement establishes several professional categories for those structural workers employed by the temporary work agencies.

Generally speaking, it is possible to argue that the different involved social agents have positively regarded this III Collective Bargaining Agreement. In this sense, the trade unions have underlined the importance of this agreement, both for those employees 'transferred' to the user enterprises and for the temporary work agencies' structural employees. On the other hand, the four signing employers' associations believe that this agreement can be a good tool for obtaining a period of 'social peace' within the sector since, according to these associations, the sector has received a large number of 'unjustified' criticisms.

Provisions of Temporary Agency Work issues in other sectors' collective bargaining processes

Generally speaking, it is possible to argue that the collective bargaining processes in other economic sectors have dealt, to different degrees, with the issue of those workers 'transferred' by temporary work agencies. In this sense, the collective bargaining agreements have reflected several compromises as far as TAW is concerned. These compromises can be classified according to the following groups³⁵ :

³⁵ Information obtained from Consejo de Relaciones Laborales (2000), see bibliography.

- Wage equalisation between the ‘transferred’ TAW workers and the personnel employed by the user enterprises.
- Support of the ‘working contract’ (‘contrato de obra’ in Spanish) in order to avoid the hiring of workers through temporary work agencies.
- Delimitation of the maximum period for hiring any ‘transferred’ workers from temporary work agencies.
- Rejection of TAW hiring.
- Limitation of TAW hiring to concrete and detailed cases.
- Finally, several collective bargaining agreements admit this type of hiring without any limitations.

Temporary Agency Work (TAW) issue is currently perceived as a controversial topic within the Spanish social and political debate. Thus, and on the one hand, the temporary work agencies themselves (together with the main employers' associations) defend this type of working relationships for the interest of the Spanish productive tissue. By way of contrast, the trade unions argue against the temporary work agencies since, according to their opinion, they offer 'bad quality' employment, both in terms of salaries and general working conditions. The general Spanish public opinion mostly shares this last opinion. Spanish temporary work agencies are developing several actions (i.e. behaviour codes) to upgrade this bad social image. In any case, the recent signing up of the Third National Collective Bargaining Agreement on Temporary Work Agencies and the recent approval of the Law 29/1999 have improved the Spanish trade unions' perceptions on the issue.

The Law 14/1994, of 1st June, regulating the Temporary Work Agencies, defines a temporary work agency ('Empresa de Trabajo Temporal' or ETT in Spanish) as an enterprise whose main activity is intended to 'transfer' ('ceder' in Spanish) hired employees to user enterprises ('empresas usuarias' in Spanish), always on a temporary basis. In this context, temporary agency work in Spain is defined as the workforce employed by the temporary work agencies themselves and 'transferred' to the user enterprises.

The 'triangular' relationship derived from TAW is structured around the following three sub-relations:

- Firstly, a labour relationship though a labour contract between the worker and the temporary work agency (who becomes the employer).
- Secondly, a mercantile relationship between the temporary work agency and the user enterprise. This relationship is channelled through what the Spanish legislation calls 'contrato de puesta a disposición' (Put at disposal contract).
- Finally, a functional temporary relationship between the worker and the user enterprise during the time period when the contracted service takes place.

The legislative development of the TAW issue in Spain is quite recent in time, in the sense that the first law that fully regulates this issue dates back just to 1994 (Law 14/1994, of 1st June, regulating the Temporary Work Agencies). This Law has been subsequently completed and even modified with the passing of several new regulations: i) the Royal Decree 4/1995, of 13th January, developing the Law 14/1994, of 1st June; ii) the Royal Decree 216/1999, of 5th February, on minimum provisions on security and health at work issues within the scope of Temporary Work Agencies and, finally, iii) the Law 29/1999, of 16th June, intended to modify the Law 14/1994, of 1st June, regulating the Temporary Work Agencies. The legislative corpus on the topic can be labelled as complete.

Since the 'legalisation' of the TAW issue, the sector has experienced a remarkable development. Thus, the number of temporary work agencies operating in Spain has passed from 86 in 1994 to 411 in 1999, whereas the number of 'put at disposal' contracts has been increased from 378,739 contracts in 1995 to 1,993,221 in 1999³⁶. Meanwhile, the number of labour contracts carried out by the Spanish temporary work agencies and registered in the INEM³⁷ has passed from 381,816 in 1995 to 1,892,284 in 1999, that is to say, nearly five

³⁶ Data for 1999 are preliminary.

³⁷ The contracts registered in INEM (National Institute of Employment) refer to those hiring contracts carried out by temporary work agencies. These contracts include contracts with workers to be subsequently 'transferred' to user enterprises (most of them), as well as contracts with workers to carry out their activities within the temporary work agencies themselves (structural workers).

times bigger. Finally, the number of workers hired by the Spanish temporary work agencies³⁸ has gone steadily up from 442,511 people in 1997 to 587,678 and 618,875 in 1998 and 1999, respectively.

The average worker hired by the Spanish temporary work agencies can be defined (data for 1999) as a man (57% of cases), very young (nearly 86% of the workers are less than 34 years old and 52.7% less than 25) and with a low level of educational attainment (65% of them have followed compulsory education or below, in comparison to the 6.8% with university education).

Despite the strong growth experienced by the Spanish TAW sector since its 'legalisation' in 1994, the sector is currently affected by an excessive degree of fragmentation. Thus, the 12 most important enterprises operating in the sector, mainly linked to large multinational groups, concentrate approximately 80% of the total turnover. By way of contrast, the rest of the sector is mainly composed of a wide array of small enterprises, mainly started up after the sector 'boom' in 1995. However, and since 1998, this supply oversize is being gradually corrected, basically through the disappearing of the smallest TAW agencies. According to experts, this situation is expected to continue in future years, basically through enterprises' mergers and take-overs.

The sector is also challenged by the costs derived from the new Law 29/1999. Thus, this Law forces the temporary work agencies to equalise the salaries of those workers 'transferred' by the temporary work agencies with the salaries established by the user enterprises' collective bargaining agreements. In addition to this, the sector enterprises are subject to certain obligations (see chapter 5 of this report) that implies added costs and limitations for them. These costs are rising the fees applied by the temporary work agencies to the user enterprises, which obviously implies an increased competition and a direct threat for the survival of the sector's smallest or less specialised enterprises.

Unfortunately enough, the empirical evidence on the real working conditions of the temporary work agencies' workforce is very scarce, specially if compared with the 'relatively' huge amount of qualitative information on the issue, always influenced by the different pursued interests. In any case, the available data suggest that a large percentage of TAW employees are unhappy with their current temporary working relationship although, and for reasons beyond their control, they are obliged to accept this kind of temporary relationship. There is no information on the probability of suffering an accident at work by TAW employees, although empirical official information shows that the probability of suffering an accident at work is four times higher amongst the temporary workers in comparison to the permanent workers. Notwithstanding this, it is worth mentioning that only a minority share of the Spanish temporary workers is hired by temporary work agencies (around 16% in 1999). As far as payment conditions are concerned, the new Law 29/1999 has corrected a previous situation in which TAW workers were paid less than their counter-parts for the same jobs. Finally, occupational health and safety issues are strictly regulated by the Spanish legislation on the topic.

So far, three National Collective Bargaining Agreements on Temporary Work Agencies have been signed up between the employers' associations and the most important Spanish trade unions in 1994, 1997 and 2000. In this sense, the Third National Collective Bargaining Agreement on Temporary Work Agencies has been recently signed up last 28th July 2000, with a time applicability for the period 2000-2002. The most

³⁸ For obtaining this data, the data from the contracts database is refined in order to eliminate the duplicities created by the hiring of a same person in more than one occasion during the year. This information has been officially published since 1997.

remarkable traits of this III Collective Bargaining Agreement include an updating of wages, a reduction in annual working times, the setting up of a collective insurance intended to cover any possible contingency derived from working accidents and, finally, the definition of several professional categories.

According to several experts' opinions, the sector has got a moderate growth potential in the very short run (at least in number of 'put at disposal' contracts), due mainly to the recent legal reforms that imply added costs for the TAW enterprises and have made the TAW employment no longer cheap for the user enterprises. In any case, the future consolidation of the sector requires an effort in terms of specialisation and service quality improvement. Additionally, the sector is expected to suffer a dramatic restructuring process, basically intended to increase the average size of the agencies operating in Spain. For this purpose, strategies of concentration and inter-firm alliances/agreements, either at national or international level, are being pursued. The smallest, less specialised agencies are expected to have difficulties to survive in the coming years.

Finally, the medium-term development of the sector is subject to the future reforms of the Spanish labour market, currently at discussions between employers and trade unions' associations. In this sense, both social agents suggest that a plausible future should be one in which all the Spanish temporary employment should be managed by the temporary work agencies (and not around 16% as it is currently the case).

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Annex

Spanish definitions of other forms of atypical employment

Spanish definitions on other forms of atypical employment (part-time and fixed-term contracts) can be taken from the Spanish Labour Force Survey, where these definitions are in accordance to Eurostat's ones. Thus,

- Fixed term contracts refer to those salaried personnel who have a fixed dead-line for finalising their contracts or they labour contract is finished under certain objective causes (finishing of a certain deadline, conclusion of a determined task, etc).
- Part-time employment is referred to those occupied people who usually work per week no more than 35 hours.

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