



EUROPEAN COMMISSION
DG Employment, Social Affairs and Inclusion

Employment and Social Legislation, Social Dialogue
Social dialogue, Industrial Relations

Brussels, 8 November 2011

**SECTORAL DIALOGUE
COMMITTEE
TEMPORARY AGENCY WORK**

Minutes of the meeting of 16 September 2011

1. Adoption of the agenda and adoption of the minutes

The meeting was chaired by the Commission. The agenda was adopted after changing the order of some of its items. The minutes of the last meeting (7 June 2011) were approved.

2. Commission proposal for a directive on seasonal employment

As agreed at the last meeting, DG Home Affairs was invited to present the spirit of the proposal for a Directive on seasonal employment and to discuss what would be possible implications for temporary agency work (TAW). The Commission representative, Ms Lach, presented the proposal of 13 July 2010¹ which had as its legal basis migration policy. It concerned third country nationals who were coming from outside the EU to carry out a seasonal activity for a maximum period of six months. This was a particularly vulnerable group of third country nationals. The objective of the proposal was to better define the conditions of entry and residence for these workers as well as their rights (working conditions, social security etc.) and, at the same time, to ensure that the EU employers had the necessary workforce. The proposal was now being discussed within the Council. The Working Party on Integration, Migration and Expulsion was the leading one, but others were also involved (EPSCO and Visa). In the European Parliament, three committees were dealing with the proposals: Civil Liberties, Justice and Home Affairs (lead); Employment and Social Affairs; and Women's Rights and Gender Equality. At this stage it was difficult to predict how fast the Directive would be adopted by the co-legislators.

The question the social partners were most interested in concerned the link between this proposal and other seasonal workers hired through an agency (thus not having a direct work contract²). Their fear was that if migrant workers were sent via an agency they

¹ See also http://ec.europa.eu/home-affairs/policies/immigration/immigration_work_en.htm#seasonal

² See Article 3b of the proposal: '*seasonal worker*' means a third-country national who retains a legal domicile in a third country but resides temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third country national and the employer established in a Member State

would not be protected as well as the seasonal workers under the future Directive. According to UNI Europa, this could be an incentive to circumvent the new rules once they would be in force. This had also been pointed out by the EP Rapporteur³. Eurociett was unhappy about the fact that temporary agency work was now (in the Council's draft text) expressly excluded from the scope of the Directive. That would mean that agencies could not play a role whilst subcontracting was possible. Ms Lach stressed that the text was now in the hands of the legislator and that proposed changes would not always reflect the spirit of the Commission's original proposal. Ms Lach was thanked for the valuable information provided.

3. Promoting national social dialogue

On behalf of both sides of industry, the Dutch employers' representative Mr de Leeuw gave a presentation on agency work in The Netherlands. This included general information on the Dutch market, legislation and self-regulation (see slide presentation). It was pointed out that the government's support to the self-regulated system was very important, for instance by encouraging user companies to use agencies which do respect the collective labour agreement in force.

4. Project on TAW and transitions in the labour market

Mr Pennel (Eurociett) informed the participants that the project proposal had been submitted under the social dialogue call for proposals at the end of August. The preparation had been done in close cooperation with UNI Europa who thanked the employers' side for having taken into account their comments. If accepted the project would start in mid-December 2011.

5. Posting of workers/cross-border provisions of TAW

Ms Durst (DG EMPL) informed the participants that the Commission's forthcoming proposals were announced in Commissioner Andor's speech at the Conference on fundamental social rights and the posting of workers in the framework of the Single Market⁴. In addition, the social partners would get more information at the next committee of experts on 14 October to which Eurociett and UNI Europa were invited as observers. The social partners expressed their wish to have a first information/discussion with the Commission on the proposed enforcement Directive at the next meeting (provided that the Commission would have adopted its proposal by then).

The parties took stock of the different fact sheets on TAW regulation. The sheets on FR, NL and PL were finalised. There were different versions for BE which should be consolidated. Work on the fact sheets on DE and UK should be started.

³ See minutes from the last meeting (7 June 2011).

⁴ See <http://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=347&furtherEvents=yes>

6. Labour market policies

Based on the discussion at the last meeting, Eurociett had drafted a draft Eurociett and UNI Europa Joint declaration on the Europe 2020 Flagship Initiative "New Skills and Jobs". The agenda foresaw the discussion and possible adoption of a joint text. However, comments made yesterday by UNI Europa on the latest draft (v. 0.6 – 6 Sept) had raised questions which were essential points for the employers.

Ms Muntz (Eurociett) said that UNI Europa should first clarify these points; only then could the draft text be further discussed. For the employers' side, these were two points related to UNI Europa's comments in paragraphs 15 and 16 of the text. First, Eurociett had the impression that the workers' side did not recognise the agencies as employers and denied the temporary agency work sector's right to negotiate and conclude collective labour agreements. Second, it seemed as if UNI Europa did not accept the possibility given by the TAW Directive (Article 5.3) to establish – via collective agreements – different arrangements concerning the working and employment conditions of temporary agency workers (derogation from the principle that the basic working and employment conditions shall be at least those of the user undertaking). This second point was also related to the principle that agencies can negotiate their own collective agreements.

Ms Castaldo (UNI Europa) explained that the comments submitted the day before were preliminary comments. Of course did UNI Europa recognise the employers' side – otherwise this sectoral dialogue committee would not exist. Also, the workers' side did not deny the employers' bargaining role where it was existent⁵. However, UNI Europa was not in a position today to delete the sentences added in paragraphs 15 and 16. Ms Castaldo asked Eurociett to send the two questions of principle in writing in order to provide the requested clarification.

Eurociett thanked UNI Europa for their commitment to provide a clear (formal) answer and expressed its readiness and openness for any informal contact between secretariats on this important issue.

Since the clarification of these two points was of utmost importance for Eurociett before resuming the formal sectoral social dialogue, the remaining points of the agenda (tour de table on the implementation of the TAW Directive; ILO Global Dialogue Forum) were postponed to the plenary meeting of 8 November 2011.

⁵ Both sides of industry acknowledged that the situation throughout the EU was diverse, which made things complicated.

List of participants 16/92011

<p>Employers (7 ♂, 3 ♀)</p> <p>Mr Auth (DE, corporate member) Mr Bonardo (IT) Ms Bonnichon (FR) Ms Cordero (ES) Mr de Leeuw (NL) Ms Muntz (NL, Eurociett President) Mr Pennel (Eurociett) Mr Pettineo (Eurociett) Mr Tietge (DK) Mr Vink (NL, corporate member)</p>	<p>Workers (10 ♂, 9 ♀)</p> <p>Mr Black (UK) Mr Boton (FR) Mr Calado (PT) Ms Castaldo (UNI Europa) Mr Catala (ES) Mr Cecchi (IT) Mr Colapinto (IT) Ms Jakabowits (FR) Mr Leblanc (FR) Ms Lelyte (UNI Global) Mr Leroy (BE) Ms Mulligan (IE) Ms Pohjola (FI) Ms Riboni (IT) Mr Toth (HU) Ms Unterschütz (PL) Ms Varas Maroto(ES) Mr Vicioso Alfaro(ES) Ms Wirken (BE)</p>
<p>European Commission</p> <p>Ms Durst (DG EMPL) Ms Lach (DG HOME) Mr Muller-Schleiden (DG EMPL)</p>	