



EUROPEAN COMMISSION

Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change
Social Dialogue, Industrial Relations

Brussels, 6 April 2011

MINUTES OF THE WORKING GROUP MEETING TEMPORARY AGENCY WORK (TAW) 8 OCTOBER 2010

1. Adoption of the agenda and approval of the minutes from the last meeting

The meeting was chaired by the Commission. The agenda of the meeting was adopted with some changes in the chronological order of items. The minutes of the 17 May meeting were adopted. The social partners reiterated their wish to get a written feedback from the expert group meetings (see below under point...).

2. Information from DG MARKT (Internal Market and Services) on current infringement procedures regarding Article 56 TFEU

At the last meeting, the social partners had asked to get information on this issue by DG MARKT. Ms Helmryd from the unit "Free movement of services and establishment I, Services Directive" hence presented the background and state of one infringement procedure against Belgium. The Commission decided to refer the case to the European Court of Justice¹. She also informed about current references for preliminary rulings: Case C-298/09² and Cases Case C-307, 308 and 309/09³. Whilst the first case referred to by a Hungarian court was similar to a case on which the ECJ had already given its judgement (Case C-279/00⁴, the ruling for the other three cases referred to by a Dutch court was expected at around the end of the year.

¹ See also http://ec.europa.eu/internal_market/services/infringements/index_en.htm (press release IP/10/307 of 18 March 2010):

"According to EU principles, any company providing a service in a Member State (in conformity with the national law in force) has the right to provide the same service without restrictions in all other Member States. However, Belgium imposes a number of requirements on temporary employment agencies established in other Member States that wish to provide their services in Belgium. In particular, their scope is limited to activities related to human resources and they have to take on a specific legal form. In the Commission's view, these requirements are disproportionate and have the effect of limiting competition in this field. This situation is also likely to disadvantage employers and Belgian workers who use the services of these companies. For these reasons, the Commission has decided to refer Belgium to the Court of Justice."

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:288:0014:0015:EN:PDF>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:267:0034:0035:EN:PDF>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000J0279:EN:HTML>

There was a brief exchange on the follow-up of Court rulings by the Member States concerned. Ms Helmryd was warmly thanked for her detailed synopsis.

3. Review of the functioning of the Sectoral Social Dialogue Committee on TAW

Ms Durst from the Social Dialogue Unit (DG EMPL) presented the Commission Staff Working Document *SEC(2010) 964 final* on the review of the functioning and potential of European sectoral social dialogue⁵. She specified that the Commission would not establish a "ranking" of committees when assessing their work. Eurociett drew the attention on a factual error in the document (related to the NACE code), asked for faster reimbursement of travel costs and wanted to know if there were plans to update the representativeness study for their sector. The Commission representative took note of the remarks and informed the social partners that given that Eurofound had recently assessed industrial relations in TAW, there were no plans to update the representativeness study at this stage. The social partners also discussed their attitude towards pluri-sectoral cooperation. While Eurociett feared that such initiatives gave a too active role to the Commission and could negatively interfere with the cross-sectoral social dialogue, UNI Europa considered it very helpful if some sectors with similar challenges address these together.

UNI Europa then gave a presentation on the achievements of the sectoral social dialogue (see slides). Eurociett broadly agreed with the presentation, reiterating the importance of social dialogue, of EU-level exchange and of better understanding of temporary agency work in general (facts and figures). The social partners had sent a couple of questions to their respective affiliates. The collected responses would feed into the preparation of the next work programme. Some delegates gave some of their responses directly at the meeting (workers: IT, FR; employers: DE). A proper discussion would take place at the plenary meeting on 30 November. Both sides of industry called upon their members to send their replies soon.

4. Presentation on the Dutch approach to flexicurity

The presentation by Ms Houwing (UWC) and Mr Nuyten (FNV) was done as a complement to the presentation of the report carried out for Eurociett's Dutch member ABU made during the social dialogue meeting of 22 February. The presentation led to some questions on the advantages for TAW workers to be covered by a collective labour agreement (CLA) which was less favourable than the law. The researcher and the employers' side explained that the CLA was the result of a package deal in 1999 which upgraded the situation for workers compared to the situation before. The Dutch workers' representative nevertheless stated that they were not happy any more with equal pay after 26 weeks.

5. Update on the European Observatory on cross-border activities within TAW

Eurociett informed the participants on the research for further funding for the Observatory, which the social partners intended to continue in 2011-2012. The secretariats were working together on this aspect.

⁵ Available in all official languages on www.ec.europa.eu/socialdialogue

Employers' and workers' delegates from Poland presented jointly the situation in their country (see slides). The factsheet would be added on the Observatory's website⁶.

6. TAW regulation

The social partners reiterated their wish expressed at the last meeting to receive a written feedback from the expert group on the implementation of the TAW directive as well as the Commission's presentation on the interaction between the TAW directive and the posting of workers directive. The Commission representative Mr Muller-Schleiden stressed that as indicated in his earlier e-mail response, the said presentation had been an oral one. He invited the social partners to put any specific further question in writing.

He also informed about the fourth expert group meeting on the implementation of the directive held on 12 July. This meeting –which the social partners partly attended – focussed particularly on Article 4 of the directive. Mr Muller-Schleiden confirmed that the review of restrictions would not imply the obligation to lift all of them; however, the result of this review would be more than a simple list of existing restrictions. Restrictions had to be justified by a general interest.

The next meeting (12 October) would focus on Articles 6, 7 and 8. Eurociett thanked the Commission for the possibility to participate in part of the meeting and said they would be interested in the state of play with regard to the implementation by Member States. UNI Europa regretted that the social partners had not been invited on Article 5. On this, UNI Europa's regional secretary would send an official letter to the Commission next week.

Social partner representatives from a number of countries (DE, FR, ES, IT, IE, BG) reported on their countries' progress and the involvement of the social partners with regard to the implementation of the directive.

Eurociett and UNI Europa informed the participants on the joint work at global level aiming at promoting further ratifications of ILO Convention 181 on Private Employment Agencies (now ratified by 23 States, the majority of it from EU-27).

UNI Europa deplored that there was a tendency in the UK to replace striking workers by TAW workers and strongly objected to the CBI position to change the law regarding the covering of strikes by temporary agency workers. This was in contradiction to the Memorandum of Understanding signed with Ciett Corporate Members. The Eurociett delegate from the UK specified that these were proposals by the CBI. Eurociett referred also to the joint declaration on the TAW directive where one of the social partners' guiding principle was that "the provisions of the Directive on temporary agency work are without prejudice to national legislation or practices prohibiting striking workers being replaced by temporary agency workers".

7. Other issues

Eurociett informed about their letter to the Commission on the Commission's call for proposals VP/2010/016 ("Pilot project to encourage conversion of precarious work into work with rights"). Eurociett and other employers' organisations had complained that the

⁶ <http://www.euro-ciett.org/index.php?id=172>

title was misleading and that the content would make an amalgam between temporary agency work and work without rights. A French workers' representative considered that even though temporary agency work did not fall under the category of illegal employment, it had nevertheless to be considered as precarious work. The Commission representative announced that the response to the letters would follow soon. He presented the context of this call for proposals and explained why such a broad definition of "precarious work" had been used for the specific purpose of this pilot project.

The social partners confirmed that the roundtable in Turkey would take place in Istanbul on 7 December. It would have a similar structure than the one in Bulgaria. The next meeting would dedicate a specific point on the roundtable.

It was decided to postpone the remaining items on the agenda to the next meeting. The next social dialogue meetings will take place on 30 November (plenary meeting).

List of participants

Employers (9 ♂, 6 ♀)	Workers (15 ♂, 6 ♀)
Ms Bonnichon (FR) Ms Borodunova (LV) Ms Cordero (ES) Mr de Leeuw (NL) Mr Freytag (Eurociett) Mr Gibcus (NL) Mr Kris (LT) Mr Marseaut (DE) Ms Muntz (NL, Eurociett President) Mr Pennel (Eurociett) Mr Raykov (BG) Mr Richards (UK) Ms Schaller (corporate member)- Mr Vink (NL, corporate member) Ms Zielinska (PL)	Mr Aguayo (ES) Mr Boton (FR) Mr Calado (PT) Mr Campeotto (IT) Mr Cecchi (IT) Mr Colapinto (IT) Mr Coulouscou (ES) Mr Depner (DE) Ms Houwing (NL) Mr Labeeuw (BE) Mr Leblanc (FR) Ms Lelyte (UNI Global Union) Ms Mulligan (IE) Mr Nuyten (NL) Ms Owens (UNI Europa) Mr Pennati (IT) Ms Riboni (IT) Mr Toth (HU) Ms Unterschütz (PL) Mr Vicioso Alfaro (ES) Ms Wirken (BE)
European Commission: Ms Durst (DG EMPL/F.1) Ms Helmryd (DG MARKT/E.1) Mr Muller-Schleiden (DG EMPL/F.2)	