



Brussels, 05 October 2016

**SECTORAL SOCIAL DIALOGUE
COMMITTEE
TEMPORARY AGENCY WORK**

Minutes of the working group meeting of 17 June 2016

1. Adoption of the agenda

The agenda was adopted with a reversal in the order of some points.

2. Approval of the amended version of the minutes

The minutes were adopted with a further modification on page 4 (Italian case of commercial open-ended contracts). The referenced sentence will be removed from the minutes.

The secretariats are encouraged to invite EUROSTAT to a next SSDC meeting to discuss the case of statistics in the area of temporary agency work and discrepancies as seen by the social partners.

4 Posting of Workers

- Presentation DG Employment on the proposed revision of the Posting of Workers Directive
- Exchange of views between EU sectoral social partners
- Information on new factsheets on the posting of workers (Eurociett/UNI Europa observatory).

Mr. Fernando Perreira (DG Employment, Unit D1: Free movement of workers, EURES) gave a presentation on the proposed targeted revision of the rules in the posting of workers directive, as presented by the European Commission on the 8th of March¹. The proposed revision was announced in the 2016 Commission work programme and forms part of the mobility package. The revision translates a commitment of the Political Guidelines for the Juncker Commission to promote the principle equal pay for equal work at the same work place.

Mr. Perreira referred to the latest developments and notably the launching of the yellow card procedure by 11 Member States. This is only the 3rd time that this procedure has been raised and it sends a strong political message to the Commission. The Commission will analyse the reasoned opinions received and decide on a follow-up. Following the yellow card, discussions at the Council on the file have paused, except at technical level. The Council presented a progress report to the EPSCO Council in June. Slovakia, who is

¹ <http://ec.europa.eu/social/main.jsp?catId=471>

taking over the Presidency of the Council of the European Union in July, is one of the countries that launched a reasoned opinion against the Commission's plans. The Commission is conducting discussions with national parliaments at the same time, whilst a meeting at the COSAC committee is scheduled for July.

In terms of the content, the targeted revision will introduce changes in three areas:

- a) remuneration of posted workers i.e. the application of equal mandatory rules on pay
- b) the rules on temporary work agencies i.e. to ensure equal treatment also for cross-border posted temporary workers as defined in article 5 of the TAW directive.
- c) long-term posting i.e. for posting lasting for more than 24 months, unless another agreement is in place, the law of the host country will apply to the posted worker.

In response to a question on the transposition of the enforcement directive, Mr. Pereira mentioned that only two national laws have currently fully transposed the Directive. The Commission may launch infringement procedures against those MS that do not fully transpose the Directive. Assessing the quality of implementation will only come later in time.

Following the presentation, Ms. Lelyte took the floor and said that ETUC sent a letter to the European Commission and President Juncker last month, expressing its support for the revision of the Directive. She underlined that the trade unions are in line with this position even in those MS that launched the yellow card procedure.

Ms. Muntz presented the Eurociett position notably that in principle there is no need to revise the posting of workers directive, but rather to focus more on a better implementation of the enforcement directive. Eurociett is currently developing a position paper on this. It will focus on the need to fight abusive practices. She referred to the joint letter of 27 May 2013 sent by Eurociett and Uni-Europa to the European Commission requesting for a legal analysis and clarification about the interrelation between the Agency Work Directive and the Posting of Workers Directive. She also referred to the research study commissioned by the social partners of the TAW SSDC in 2008-2009 on the issue of cross-border mobility of workers and expressed the opinion that the findings of this study remain valid. As a result of this study, an Observatory on cross-border activities² has been set-up, which produces country factsheets. Nine such country factsheets have been produced to date, whilst others are under way. In conclusion, Ms. Muntz highlighted that UniEuropa and Eurociett agree on the need to address abuse and secure equal pay, as well as on the importance of information sharing, but do not see eye to eye on the need to revise the Posting of Workers Directive.

3. Adoption of the updated SSDC work programme.

An exchange took place on updating the work programme. The main changes were discussed in the previous meeting (linked notably to the new proposed joint project and the platform on undeclared work). A technical fine-tuning will be carried out (i.e. to align the title of initiatives to the EU wording, and to separate the points on the implementation of the Directive and open-ended contracts which will become a new point). The work programme will be finalised in written procedure and a final version will be circulated.

² <http://www.eurociett.eu/index.php?id=172>

5. Presentation on open ended contracts for agency workers/case study France (tbc)

Two presentations took place on the French case for open-ended contracts for temporary agency workers. The trade union French representative referred to the legal basis for this which is the agreement of 10 July 2013. ‘Forces ouvriers’ has not signed this agreement for a number of reasons. The possibility offered by this agreement to give temporary workers consecutive contracts may lead to precarious and deteriorating working conditions for these workers. There is also a possibility to terminate the contract. The contract has a voluntary nature: the agency makes a proposal, which the employee may refuse. He presented a number of examples where the implementation of this agreement has resulted in several challenges, such as the same person being given different functions and pay, challenges linked to work-life balance (i.e. difficulty in planning holidays, reduced freedom and control over working schedule, unpredictability of conditions, unemployment precariousness etc.) as well as to equal pay (different conditions in terms of paid holidays for workers on open-ended contracts). Fixed-term contracts are 21% more expensive for businesses than open-ended contracts. The presenter underlined that in his opinion the combination of the various rules creates a chain of constraints.

Finally, he referred to the 10% of pay which goes into a dedicated fund which is destined for training, covering unemployment benefits when the person is not working etc. However, some funds have instead been vested into the companies managing them, instead of being used for the purposes of the worker’s working and life conditions. In his view, the trade unions do not see an added value resulting from this provision/fund, given that it is left up to each individual company to decide what to do with the funds.

The employer’s French representative referred to the main aim of the July agreement, namely to give a push to open-ended contracts and help increase the volume of work. She condemned the bad practices which were presented by the union representative. On 19 August 2015, the agreement was modified in two respects: there should be no more waiting time between two assignments, and the limit of 18 months has been extended to 36 months. She referred to the results of a survey carried out in February 2016 (2 years after the agreement was signed): open-ended contracts also appear to concern primarily non-qualified workers; the average duration of assignment is 31 days; 67% of contracts are without gaps; the average period of breaks in between contracts is 3 days; 91.7% are men, and 58,4% are in the age group 22-44 years old. The changes introduced in August appear to have given a big boost to open-ended contracts: there has been an increase in the duration of employment by 5.9%. She went on to refer to the ‘FSPI’ fund. Companies appear to under-use these funds.

The Dutch example for open-ended contracts, which is very different to the French one, was also mentioned. Mr. Pennel mentioned that this system also exists in NL, IT, DE, AT, SE and the UK to some extent. In some EU member states, national law does not allow open-ended contracts for TAW workers. There is a variety of models (and implementation). It is important for TAW to be able to offer wide types of contracts. It is difficult to compare these contracts with other types of contracts (what should one compare with, regular contracts or other TAW contracts?). It is nonetheless in his view a contract that aims to combine flexibility with security. These contracts are not specific to the TAW sector. The discussion continued long and rich and touched upon the economic aspects for this type of contracts (Note: it was agreed that it was not in the remit of the SSDC to discuss this), the protection of workers on open-ended contracts and how to best promote equal pay, monitoring arrangements which may be necessary and other.

6. Update on national social dialogue and changes in temporary agency work regulation

In Germany, a draft law on TAW has been adopted by the Federal Cabinet on the 1st of June. It is envisaged to come into force on the 1st of January 2017. It foresees equal pay after 9 months of work. It includes a possibility for derogation but only for the client industry, and not for TAW. Furthermore, the draft law aims to introduce a maximum length of assignments of 18 months. The German Eurociett member raised doubts on whether the changes to the law are in line with the German constitution.

7. Round Table Turkey: Discussion on programme and main speakers

The draft programme had been circulated in advance of the meeting. UniEuropa had proposed some changes to Eurociett. One change concerns the role of TAW in the new world of work. The agreed programme will be sent to TAIEX by the end of July. The list of attendees and list of experts should also be compiled. In terms of local developments, a new law on TAW has been adopted in Turkey. Ms. Lelyte mentioned that UniEuropa has sent a letter to the Turkish government expressing its concern over the lack of sufficient consultation of trade unions on the draft law. Many complaints have been received by UniEuropa on this. Ms. Muntz highlighted that the law has now been adopted and the work should now focus on how to promote ethical TAW in Turkey. The roundtable will help foster social dialogue in the country and enhance the capacity building of the national social partners.

8. Discussion and update on the planned next joined project on the changing world of work

Mr. Pennel presented the scope of the next proposed joint project on ‘‘new forms of work’’. This is a timely project, as it links closely with the EU policy agenda. Ms. Lelyte referred to the position of UniEuropa, namely to ensure that the developments in the digital world bring with them a secure working environment. She asked for a clarification on what Eurociett means by ‘‘online talent platforms’’ (definition). Mr. Freytag made the link to the EU pillar of social rights³ and the work of the European Commission on the collaborative economy. The file is being finalised, backed up by the work of a steering committee and will be submitted to the European Commission to request a grant in the frame of call for proposals VP/2016/001.

9. AOB

Reference was made to two recent communications by the Commission which are relevant to the work programme of the SSDC: the communication on the collaborative economy published on the 2nd of June, and the new skills agenda for Europe package published on the 10th of June. The latter will be presented by the Commission at the next liaison forum on the 5th of July.

³ http://ec.europa.eu/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights_en

List of participants 17/06/2016

<p>Employers (7♂, 6♀) <i>8 Member States</i></p> <p>Mr. Cruañas (ES) Ms. Lucas (ES) Ms. Bonnichon (FR) Mr. Kersten (DE) Ms. Spangenberg (NL) Ms. Zielinska (PL) Mr. Bonardo (IT) Mr. Hagelien (NO) Ms. Shoemith (UK) Mr. Freytag (Eurociett) Mr. Pettineo (Eurociett) Mr. Pennel (Eurociett) Ms. Muntz (Eurociett)</p>	<p>Workers (9♂, 6♀) <i>9 Member States</i></p> <p>Ms. Goneva (BG) Ms. Hoffritz (DK) Mr. Toth (HU) Mr. Pentenga (NL) Mr. Håkansson (SE) Mr. Falk (SE) Mr. Brännström (SE) Mr. Calado (PT) Ms. Dominguez Garrido (ES) Mr. Faintrenie (FR) Ms. Varas (ES) Ms. Lelyte (Uni Europa) Ms. Riboni (IT) Mr. Borghesi (IT) Mr. Wagmann (FR)</p>
<p>European Commission</p> <p>Ms Hadjiantoni (DG EMPL) Ms Barrero Florez (DG EMPL) Mr. Fernando Perreira (DG EMPL) Ms. Christa Milo (DG EMPL)</p>	<p>Other</p>