



Brussels, 17 March 2016

**SECTORAL SOCIAL DIALOGUE
COMMITTEE
TEMPORARY AGENCY WORK**

Minutes of the working group meeting on 17 February 2016

1. Adoption of the agenda

The agenda was adopted with some changes. The meeting started with the presentation of the representativeness study by Eurofound. The presentation by BUSINESSSEUROPE and ETUC was cancelled. All other agenda items remain valid.

2. Approval of minutes of the last meeting (2 October 2015)

The minutes were adopted with the following changes as proposed by UniEuropa:

Under point 2 of the agenda, last paragraph, point c), the sentence is changed as follows: ‘*IT unions informed about the new regulation between agency and user contract, IT employers spoke in favour of these changes*’

Under point 5 of the agenda, last paragraph, the last sentence is changed as follows: ‘*Uni Europa agreed to have further internal discussions on restrictions considering they do not detriment the principle of equal treatment*’.

4. Presentation by Eurofound of the preliminary results of the update on the representativeness study on temporary agency work

4.1. Presentation of the key findings of the report from Eurofound

Mr. Welz from Eurofound presented the results of the recently published representativeness study in the TAW sector. Eurofound is a tripartite agency (board comprises employers, trade unions, national administrations and the E. Commission). He explained the legal basis and the concept of representativeness studies, which are conducted at the request of the E. Commission and may function as a criterion for the list of organisations to be consulted under article 154 of TFEU and for setting up new sectors or for sectors to be merged. It is also important for agreements to be concluded at EU level under Article 155 of TFEU.

The criteria for representativeness are defined in a Court of Justice judgement and in COM decision no 500 of 1998 and include: *the actors have to relate to specific sectors and categories of workers, they have to consist of organisations that are recognised in the MS’ industrial relations scene and have the capacity to negotiate, and must embody the representativeness of several MS, and to have adequate structures.*

A separate project to map the concept of representativeness at EU and national level is ongoing. The study includes a top-down and a bottom-up approach to identify whether there are other actors who are not already represented. Restricting the study to NACE code 78.2 would only identify actors representing the sectors as an activity; therefore a broader definition was used.

It was also highlighted that social partners are involved at all stages of the representativeness studies. Per this, a stakeholder meeting was organised around the TAW representativeness study, to which cross-sectoral social partners were also invited (ETUC, BUSINESSEUROPE, CEEP, UEAPME). In terms of the main findings: difficulty to get reliable data; 62 trade unions in 22 Member States; 41 employers in 26 Member States; it identified a number of other sectoral trade union European-level actors in the TAW sector i.e. IndustriAll, EPSU, as well as ETUC. It discovered that the social partners currently represented in the committee, namely UniEuropa and Eurociett have a statutory mandate to negotiate. Moreover, Eurociett, with 25 sector affiliations in 25 Member States, is by far the most representative employer organisation at EU level. UniEuropa is found to be the most important EU-wide trade union organisation.

The full study is available on Eurofound's website: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/representativeness-of-the-european-social-partner-organisations-temporary-agency-work-sector>

4.2. Exchange of views of the social partners on the implications for the structure of the committee

Mr. Pennel from Eurociett welcomed the results of the study. Eurociett is pleased with the conclusions of the report. The report showed a lack of mandate for several members to negotiate at national level. There is an east-west division with social dialogue underdeveloped in some central and eastern European Member States. Further, Eurociett represents 63% of existing national federations. Eurociett's membership takes into account the market share that its affiliates represent and opts to have the most representative organisation at national level rather than less representative members. He pointed out to a discrepancy with regard to the statistical data presented (Eurostat data). He recommended inviting Eurostat to join the committee to discuss the data used.

Ms. Lelyte of UniEuropa thanked for the report. She too highlighted the geographical divide and the lack of mandate in some countries to negotiate. It is something that can be jointly addressed through this committee. She invited the members of Eurociett to be more pro-active in advancing national sectorial social dialogue.

With regard to the identification of other actors, Ms. Lelyte mentioned that UniEuropa is in contact with other actors such as IndustriAll. She addressed the high share of representation for EPSU, which may be attributed to the profession of nurses. Uni Europa will continue the exchange with other ETUFs indicated in the report.

Ms. Muntz, president of Eurociett, highlighted Eurociett's membership policy is to have one strong federation in any country. There are no federations in Malta and Cyprus. Another policy is to promote social dialogue, if relevant and if there is a representative partner on the other side. Social dialogue has to deliver results.

Mr. Welz also stressed that the capacity to negotiate collective agreements has increased in importance. He inquired as to the criteria used by Eurociett to identify the most representative national organisations.

It was established that Eurostat may be invited to the committee to have an exchange of views on the size of the industry etc. However, separate contact would be established with Eurostat in order to have a technical exchange on the data relating to the sector. Eurociett will provide the Commission with a letter, and possibly a technical annex explaining their position on the data used by Eurostat, to be used as a basis for the initiation of discussions with Eurostat.

3. Update of the work programme 2015/2016, comments

Mr. Pettineo presented the changes to the joint work programme as proposed by Eurociett. He referred firstly to the roundtable in Turkey which was postponed from 2015 to 2016 due to the political situation in Turkey. Some linguistic changes have been proposed to reflect what has been achieved so far in line with the EU TAW Directive.

The main change is the theme of the joint project which changes from innovative solutions of the social partners to improve the conditions for agency workers, to looking into the future of work.

Mr. Freytag referred to the EU Commission's proposal for a platform against undeclared work (*a negotiated text was formally adopted by the Council on 24 February 2016*). He suggested including this into the committee's work programme. Finally, reference to the PARES strategic dialogue is proposed for deletion as the reformed EU network of public employment services, which also addresses the need for cooperation with private employment services.¹ The Commission has invited the cross-industry social partners and (7) sectoral partners in those (4) sectors with the highest incidence of undeclared work to participate in the EU platform. Mr Freytag considered that the TAW sector should be represented as an observer in the platform (thus the temporary agency work sector should be selected among the sectoral social partners to participate in the platform). The launching conference is foreseen for 27 May.

Uni Europa agreed that it is a good initiative as such, but expressed concern linked in particular to cases of some agencies involved in sourcing to undeclared work in different forms. These concerns should be reflected in the work programme i.e. to include reference to fighting rogue players on the employer's side. Ms. Lelyte proposed a modified formulation along the lines that *well regulated TAW can facilitate work with rights and to reiterate that the committee commits to fighting rogue agencies involved in undeclared work*. A counter formulation will be provided by Eurociett in order to agree on the text of the work-programme.

The next suggested change in the work programme is linked to regulation. UniEuropa mentioned that both equal treatment and restrictions should be addressed in the debates of the committee. Ms. Lelyte suggested adding a point in the work programme, stating that Eurociett and UniEuropa will work jointly to promote the implementation of equal treatment and monitor any derogation. Mrs. Muntz proposed an alternative formulation:

¹ Decision No 573/2014/EU of the European Parliament and of the Council of 15 May 2014 on enhanced cooperation between Public Employment Services (PES)

Under point c) *‘Eurociett and Uni Europa will continue to use the sectoral social dialogue committee meetings to discuss and assess compliance with the EU TAW Directive at national level.’*

Under point b) *‘Uni Europa and Eurociett will monitor the compliance of equal treatment as defined in article 5 of the EU TAW directive, with a view to comply with the dual objective of that directive as stated in article 2 of the Directive.’*

It was agreed to use the wording of the specific articles of the EU TAW Directive (on equal treatment and worker’s rights) as the compromise solution.

The discussion continued on open-ended contracts with UniEuropa presenting concerns that the use of open-ended contracts might be misused as to replace permanent employment. It was agreed that further discussion was necessary on open-ended contracts, with Eurociett emphasising their impact on working conditions and career development, while for UniEuropa, it is more a case of examining the incidents of misuse.

Ms. Muntz mentioned it was important to look into the current practices and see what works and what doesn’t. She referred to recital 15 of the TAW Directive where it is stated that employment contracts of an indefinite duration are the general form of employment relationship.

A discussion followed with namely a representative of the Uni delegation underlining that the restriction of open-ended contracts is not be considered as a restriction or prohibition under Article 4 of the TAW Directive. He also expressed concerns that the open-ended contracts could be used in detriment of the principle of equal treatment. Mr Pennel reiterated that the idea of Eurociett was to have a comprehensive panorama of the situation. He stressed that open-ended contracts do reconcile flexibility (temporary nature of assignments) with stability and security (once the missions are over). As to the Uni’s concern about open-ended contracts replacing permanent positions, he referred to the FR national legislation which provides a 36 month limit per assignment. The French Uni member contested the interest for the worker of open-ended contracts. An Italian Uni delegate referred to the fact that in IT, in addition to the possibility of open-ended contracts for temporary agency workers, the legislation foresees the possibility of commercial open-ended contracts between the temporary agencies and the user undertakings. He considered the latter has a positive impact in fighting bogus self-employment and social dumping.

The text of the work-programme will be reworded and agreed between the social partners.

3.1. Discussion and approval for the theme of the next joint project

5. BUSINESSEUROPE-ETUC presentation on the key findings of their joint research on labour market analysis

The presentation did not take place as the presenters cancelled their participation. It remains thus to be decided if this point should be transferred to the next meeting or not.

6. Promotion of national social dialogue

6.1. Organisation of the roundtable to promote sectoral social dialogue in Turkey; discussion on dates, venue (25-26 April, Istanbul) and draft agenda

A discussion on dates for the event in Turkey took place. As a next step, Eurociett will propose (*within a week*) new dates for the event, so that a final decision on place and time can be taken. An application for TAIEX funds has been submitted.

6.2. Latest developments in national sectoral social dialogue From Eurociett and Uni Europa, if relevant

The ES, PL, DE and FR members of Eurociett and UniEuropa presented relevant national developments. In Spain, a Supreme Court has handed a sentence in favour of the social representatives by declaring the 5th collective agreement valid. However, the negotiations on the 6th collective agreement are blocked and the ES Uni delegate asked the employers for cooperation. The Eurociett Spanish member confirmed the ruling. He underlined that there was no discrepancies on the working conditions but rather on the promotion of the role of the temporary work agencies related to the effective application of the TAW directive. In Poland, a new ‘social dialogue council’ has been set up to continue the work on draft legislation on TAW. In Germany, a draft law on TAW is expected in February/March; it will affect social dialogue. In a preliminary assessment he considered the draft law to be in breach of the DE Constitution, the EU Charter of Fundamental Rights and the TAW Directive. Ms. Barrero-Flórez (DG EMPL/ working conditions unit) said that the Commission is aware and closely monitors the national developments. The Commission does not comment on draft legislation by Member States. It will carefully analyse the compatibility with the EU legislation of the bill once it is adopted. In France, a new agreement provides for the portability of health rights (supplementary health).

7. Presentation by Eurociett (Denis Pennel) on the ‘Changing World of Work’ and discussion among sectoral social partners

Mr. Pennel gave a presentation on the changing world of work. Europe is faced with a 4th industrial revolution. The role of labour market intermediation is changing. Demographic ageing, technological innovation, new production patterns, new forms of work and a new diversity of working relationships (job sharing, telework, voucher-based work, and portfolio work) are some of the shifts occurring. TAW is now more of a standard form of work. There are a rising number of market engines for job matching (such as passive matching as carried out by stepstone, monster or candidate databases or on-demand work engines). This working environment revolution requires ‘simplicity’, ‘flexicurity’ and ‘adaptability’. This can form the basis of discussion on a joint project.

The UniEuropa NL member pointed out that in his opinion there are two main drivers of change, technological developments, and the desire to achieve more gains with less money. A part of the new jobs created is not accompanied by new contracts. There is a need to address the impact on the social protection of workers and to discuss the facilitating role of TAW in these new forms of work.

UniEuropa referred to a study that it recently contracted and which showed that in the UK only, there are currently 5 million crowd workers. 55% of them are under the age of 35.

Automatisation and new technologies are a threat to the working society as we now know it. A wide discussion followed.

The Commission emphasized that a joint project on this would be welcome and work would have to be further developed shortly (to enable to apply for a grant in the context of the next call to be launched by the Commission in the spring).

8. Cross-border mobility

8.1. State of play of the different fact sheets on TAW regulation (FI and SE)

An update on the state of play of the various factsheets was provided. The SE factsheet is at the hands of Eurociett for approval. The NL factsheet is also being updated and should be finalised. The trade union members were encouraged to move faster in updating the Finnish factsheet. The next factsheet to be compiled is the Danish one.

9. Any other business

9.1. Update of the two joint letters sent to the European Commission (Labour Mobility and Promotion of ILO Convention No. 181)

Two letters have been addressed to the Commission. Responses have been provided.

Mrs. Muntz referred to a report by the European Labour Law Network on the posting of workers. It is not a public report.

List of participants 17/02/2016

<p>Employers (7♂, 6♀) <i>7 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>Other</p>

Ms Hadjiantoni (DG EMPL) Ms Barrero Florez (DG EMPL)	Mr. Welz (Eurofound)
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