SI Ad Hoc Query on Temporary Work Agencies

Requested by SI EMN NCP on 19th February 2013

Compilation produced on 15th April 2013

Responses from Bulgaria, Czech Republic, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovak Republic, Slovenia, Sweden and United Kingdom (18 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information
Republic of Slovenia is currently in the process of amending Labour Market Regulation Act, which, among others, transposes the Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work. Due to this fact and with the aim of improving the regulation of temporary work agencies, domestic as well as foreign, we would appreciate your reply to the following questions:

1. In relation to the Art. 4 of the Directive 2008/104, does your national legislation foresee any requirements with regard to registration, licensing, certification, financial guarantees or monitoring of domestic and foreign temporary-work agencies and if so, what are the conditions for registration, licensing etc.?
2. How is the fulfilment of these conditions verified in the case of foreign (based in another EU/EEA/Swiss confederation Member State or based in a third country) temporary-work agencies?
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## 2. Responses

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| Bulgaria      | Yes                  | 1. The Employment Promotion Act provides that the activity of providing workers with temporary employment must be granted on the basis of a registration in the Employment Agency, which is proven by a registration certificate issued by the Minister of Labour and Social Policy and valid for five years. For registration of a business can apply local natural or legal persons and foreign legal entities carrying out commercial activities in Bulgaria, which meet the following conditions:  
   - Must have no outstanding debts to the state and the municipality of registration;  
   - Must not have declared bankruptcy or be in the process of liquidation;  
   - Must be represented by persons who have not been convicted of an intentional criminal offense;  
   - Must have no administrative sanctions against them for operating the business without a valid registration for a period of three years before the date of registration;  
   - Must not have had a canceled registration for violations of the labor laws regulating the conduct of business for a period of three years before the date of application;  
   - Must have concluded a group insurance or have deposited a bank guarantee in the amount of 200,000 lv. for the claims of workers who will be employed by them to provide a temporary employment;  
   - Must have established internal rules for carrying out the business incl. a draft contract with the enterprise user and a draft contract with workers to send in for performing temporary work.  
  
2. To operate a business in the provision of temporary work in the territory of the Republic of Bulgaria, foreign entities need to be registered with the Employment Agency, once the conditions for registration set in paragraph 1 (above) have been fulfilled. Persons registered under the laws of another country /incl. EU and EEA/ prove the circumstances referred to in paragraph 1 according to the laws of the state of registration. |
| Czech Republic| No                   | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
| Cyprus        | No                   | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
| Estonia       | Yes                  | 1. Temporary agency work services may be provided by a legal person in private law who has been registered as an intermediary of temporary agency work in the register of economic activities. In order to be registered in the register of economic activities as a labour market service provider of temporary agency work, a legal person or a sole proprietor shall submit the registration application. The registration application shall set out:  
   1) acting as an intermediary of temporary agency work;  
   2) a confirmation that the job mediation service will be provided in conformity to the requirements established by Labour Market Services and Benefits Act – an intermediary of temporary agency work shall not demand remuneration from the employee performing temporary agency work for the intermediation of such employee to the user undertaking for performance of duties or for entry into an employment contract with the user undertaking; |
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| **Finland** | Yes | 1-2. There are no requirements with regard to the registration, licensing, certification or financial guarantees of temporary-work agencies in the national legislation of Finland.  
Section 48 of the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) provided that anyone offering private employment services (temporary agency work included) was obliged to give prior notice of starting the activity. However, this provision has been annulled.  
The national legislation of Finland does not explicitly restrict temporary agency work. When implementing the directive (2008/104) the Government of Finland has also taken into consideration whether or not national legislation restricts indirectly temporary agency work in certain occupations or fields and monitored, for this purpose, the industry-specific collective agreements. This monitoring has not resulted in any legislative amendments. |
| **France** | Yes | 1. Yes. A prior declaration must be sent by the temporary work agency to the Labour Inspectorate, in which the following points are mentioned: name and legal status of the agency, trade register number, financial guarantee, compliance with the French legislation regarding temporary work.  
2. Controls may be carried out by the Labour Inspectorate. According to Article R1263-1 of the Labour Code, temporary-work agencies which are based in another EU/EEA/Swiss confederation Member State or based in a third country should provide the Labour Inspectorate with some documents certifying that they fulfil the above-mentioned conditions, such as a document certifying the regularity of the social situation with regard to an international convention on social security (or a certificate of declaration to the French authority in charge of the recovery of social security contributions), work permits of the employees, etc. |
| **Greece** | Yes | Until 2/07/2011, in order to engage in this particular activity the granting of a license to set up and operate a Temporary Working Agency was required, in accordance with specific terms and conditions.  
From 2/07/2011 and onwards, with the national law 3919/2011 regarding “the principle of freedom in practicing professions and the abolishment of unjustified constraints in accessing and practicing a profession” the administrative license that was issued for the operation of a Temporary Working Agency is abolished as well as the requirement for certain corporate form (that of SA). In particular, the legislation regarding the Temporary Working Agencies was amended in order to comply with the latter law, with the L. 4052/2012 (articles 122-133). Nowadays, the service providers that wish to operate a Temporary Working Agency should notify the Directorate of Employment of Ministry of Labour and Social Security the “announcement of practicing the Temporary Working Agency’s activity”. Nonetheless, the applicant should prove that fulfils the specific preconditions and rules of functioning. In this case, the public administration can –in three months period-verify if the applicant fulfils the necessary requirements and permit the exercise of this activity. If the applicant does not meet the necessary criteria, the competent authority can ban the operation of the Temporary Working Agency. |
Working Agency. Thus, under the spectrum of the new law, the administrative procedure of issuing the necessary license is abolished, though, the specific preconditions and rules of functioning are maintained in order to safeguard the public order, public security and the protection of service recipients. The TWA is still obliged to submit a report of activity (including in general elements of the contracted TWA work contracts) to the Ministry of Labour, Social Security and Welfare every six months. A copy of the report should also be submitted to the National Institute of Labour and Human Resources.

Legal Framework: L. 4052/2012 (articles 122-133) (Gazette 41 A), as it was amended by the L. 4093/2012 (article first, Chapter IA, subparagraph IA.8) Ministerial Decisions 1517/34/2013, 1519/35/2013 (Gazette 155 B).

Requirements: The following conditions must be satisfied regarding the natural person or legal entity applying for the “announcement of practicing the Temporary Working Agency’s activity.

The natural person that applies for the announcement of practicing this activity has to be Greek citizen or citizen of an EU member state or citizen of the European Economic Area Countries or a Greek homosexual who legally resides in Greece.

When the announcement of the commencement of that activity is made by a legal person, the persons who, according to the law and the statutes of Operation Temporary Employment, have been given responsibility for the administration, management of this property and its representation should be Greek nationals or nationals of Member States of the European Union or nationals Member States of the Single European Economic Area or expatriates legally residing in Greece.

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<th>Hungary</th>
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1. Section 215(1) of the Labour Code of Hungary sets out that the following may function as temporary-work agencies: a) a company established in an EEA Member State that is authorized under national law to engage in the activities of temporary-work agencies, or b) a business association established in Hungary whose members have limited liability, or a cooperative society in respect of employees other than its members; who satisfies the requirements prescribed in this Act and in other legislation and must be registered by the government employment agency.

Government Decree 118/2001 (VI. 30.) on the registration of temporary work agencies and the conditions of their operations regulates the specifics of registration. At this point, however, it does not contain any detailed rules regarding the registration of companies with their registered offices in a European Economic Area member state.

By virtue of the above regulations, it is mandatory for both Hungarian temporary work agencies and for companies with registered offices in a European Economic Area member state to have themselves registered with the Hungarian public employment service.

2. When inspecting whether a company can function as a temporary work agency, the labour inspectorate does not verify if the company fulfils all the criteria laid down in the government decree. It is only authorised to verify whether the registration has been completed. The public employment service may verify whether the company still complies with the conditions prerequisite for registration.

The competence of the labour inspectorate when inspecting temporary work agencies:

Pursuant to Section 1 (1) b) of Act LXXV of 1996 on labour inspection (hereinafter: Labour Inspection Act), both the lender (ie. temporary work agency) and the borrower of workers fall under the scope of this act.

The competence of labour inspection includes checking compliance with:

- rules on temporary agency work and the rules conferring the right to function as a temporary work agency (Section 3 (1) k))
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<td>Italy</td>
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<td>In order to implement Directive 2008/104/EC, Legislative Decree of 2 March 2012, n. 24 was published on Official Journal of 22.03.2012, n. 69, amending the law on labor supply contract. However, art. 4 of Legislative Decree n. 72/2000 already governed the possibility of transnational labor supply, i.e., the possibility for companies providing temporary labor established in a European Union Member State of posting workers to companies with headquarters or production units in Italy. 2. The above-mentioned provision, in the 3rd paragraph, provided for the issuance, by request of a company interested in working in Italy, under an administrative measure of another Member State, of a certificate of equivalence by the Minister of Labour within thirty days. This statement had the same effectiveness of the authorisation granted to companies operating in the country, for the purposes of enrollment in the labour suppliers register. In implementation of the EU principle of free movement of services, this paragraph was repealed by the Legislative Decree no. 276/2003, as amended by Legislative Decree no. 251/2004. It follows that currently temporary labor supplying companies established in a Member State other than Italy, to operate legally in our country, do not require authorisation under Article 4 of Legislative Decree no. N. 276/2003, if they provide proof of &quot;operating under an administrative measure equivalent&quot; to the one required by Italian law, issued by the competent authorities of the Member State of origin (see Circular of the Ministry of Labour no. 7 of 22 February 2005). In this regard it is worth recalling the requirements of art. 5, paragraph 2, of D. Decree no. 276/2003 concerning the income of those agencies wishing to operate in the labor market. In particular, it is expected, in the first two years of activity, the payment of a deposit and then the signing of a bank guarantee, which is to make concrete and effective protection of the worker in the event of any default by the agency. Article. 5, paragraph 2, letter. c), provides, in particular, the exemption from the provision of such guarantees for companies that have complied with &quot;similar obligations&quot; in accordance with the legislation of another Member State of the European Union.</td>
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<td>Latvia</td>
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<td>1. According to Support for Unemployed Persons and Persons Seeking Employment Law Chapter VI „Restrictions on the Provision of Work Placement Services” Section 17, Work placement services are also services regarding securing a workforce within the scope of which the work placement service provider as an employer sends employees for a specified time period to a person for whose benefit and under whose management work shall be performed. The provision of work placement services (except manning of a ship) shall be permitted to merchants whom the State Employment Agency has issued a relevant licence. An administrative act regarding the issuing of a licence, as well as regarding the suspension of the operation of a licence or the cancellation of a licence, shall be issued by the State</td>
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<td>Lithuania</td>
<td>Yes</td>
<td>Employment Agency. A dispute or appeal of an administrative act regarding the issuing of a licence, as well as regarding the suspension of the operation of a licence or the cancellation of a licence shall not suspend the operation thereof. Within the scope of labour provision services the contract entered into by the provider of the labour provision services and the recipient of the labour provision services, which prohibit or restrict the right of the provider of the labour provision services to establish employment legal relationships with the designated employee, directly with the recipient of the labour provision services, shall not be in effect. The provider of labour provision services and the recipient of the labour provision services may reach agreement regarding a reasonable compensation to the labour provision services provider for costs, which have arisen through placement, recruitment and training of the employee, if the employee of the labour provision provider establishes employment legal relationships with the relevant recipient of the labour provision services. A provider of work placement services shall not have the right to specify a payment for work placement services from a person seeking employment or an employee. Condition for licensing are included in Cabinet Regulation No.458 “Procedures for Licensing and Supervision of Merchants – Providers of Work Placement Services”, adopted 3rd July, 2007. 2. According to Support for Unemployed Persons and Persons Seeking Employment Law Chapter VI „Restrictions on the Provision of Work Placement Services” Section 17, if a merchant registered in another Member State of the European Union has the right to provide work placement services in accordance with the regulatory enactments of the relevant state, the referred to merchant, prior to commencing the provision of such services in Latvia, has a duty to inform in writing the State Employment Agency of this, indicating the date of provision of the service, the place where it shall take place and the duration of the planned service, and submit a copy of the document issued by such competent institution of the relevant Member State, which certifies, that the merchant is entitled to provide work placement services in the relevant Member State.</td>
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<td>Luxembourg</td>
<td>Yes</td>
<td>Since 1 December 2011, the Law on the employment through temporary work agencies is valid in the Republic of Lithuania, which implements the European Parliament and the Council directive 2008/104/EC on temporary agency work. Article 11 regulates a monitoring of employment through temporary work agencies and responsibility for the violation of this Law: 1) Temporary Work agency has to provide information for the Lithuanian State Labor Inspectorate about the started employment undertaken by the temporary work agencies and number of temporary employees. 2) Lithuanian State Labour Inspectorate monitors how temporary work agencies comply with the requirements laid down in this law, laws regarding the safety of employees, health requirements and other legal acts. The law does not impose any requirements regarding registration, licensing, certification or financial guarantees of domestic and foreign temporary-work agencies. 1. A temporary work enterprise to be able to exercise the activity is subject to two different ministerial authorizations: one issued by the Ministry of Small and Medium-sized Enterprises and the other issued by the Ministry of Labour and Employment. The authorisation of the Ministry of Labour and Employment (Ministère du Travail et de l’Emploi – MTE) can be only given to temporary work enterprises whose head offices or principal establishments are located in the European Union.</td>
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The person or persons undertaking the activity must have the necessary good repute and professional qualifications. The application must be accompanied by the following documents: criminal record of the manager, diploma of the manager (this diploma cannot be inferior to a CATP (apprenticeship diploma of office clerk) or equivalent), proof of participation, completion and achievement of the specialized training of the Ecole Supérieure du Travail (Advance School of Labour) and an attestation of an internship of three years in a managerial position in a temporary work enterprise (Grand ducal regulation of 14 December 1994).

In all cases, the authorisation of the MTE is subordinated to following conditions:

a) The enterprise must submit a financial guarantee ensuring at all times, in the event of default, the payment of remuneration and incidentals, as well as social security contributions and taxes. This financial guarantee has to be issued either by a bank, a financial establishment or an insurance company. This guarantee is fixed in accordance with the yearly turnover of the company (Law of 19 May 1994). The minimum amount of the guarantee is of 87,000€.

b) The authorisation is issued for a maximum duration of 12 months. If the enterprise wants to renew its authorisation it has to file the renewal application three months before the expiration.

The authorisation of the Ministry of Small and Middle-Sized Enterprises is only granted after the authorisation of the MTE is issued.

Enterprises established in the European Union, or the EEA that wants to place workers at the disposal of enterprises in Luxembourg have to fulfil the same requisites as the national enterprises mentioned above. The Inspectorate of Labour and Mines (ITM) and the Administration of Employment (ADEM) effectuate regular preventive inspections or requested inspections order by the MTE on this kind of enterprises to verify that all the legal conditions are fulfilled. The Inspectorate General of the Social Security supplies on regular basis information to the MTE on the temporary work enterprises established in Luxembourg.

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<th>Poland</th>
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| Conducting economic activity within the scope of employment agencies (including temporary work) requires entry into the register of entities running employment agencies conducted by marshal of voivodship competent with respect to the seat of the entity applying for the entry. The document confirming the registry is a certificate issued for unlimited period. The entity intending to run an employment agency submits an application for registry to the marshal together with a declaration as set out in the article 19 paragraph 3 of Act of 20 April 2004 on promotion on employment and labour market institutions (Journal of Laws of 2008, No. 69, item 415 with further amendments) and a copy of confirmation of required payment. The entity applying for the entry into the abovementioned register has to fulfil the following conditions:

a) shall not have arrears in respect to taxes, contributions to social insurance, health insurance as well as the Labour Fund and Fund of Guaranteed Workers' Benefits as far as they are obliged to pay them;

b) shall have no criminal record for crimes of offences referred in the article 121-121b of act on promotion of employment and labour market institutions on employment such as (for example) running the employment agency without the register, collecting the fees from person for whom the agency is seeking the employment or charging another unlawful fees;

c) shall not be subject to liquidation on bankruptcy proceedings.

There is no requirement of financial guarantees regarding temporary agencies. Conditions on conducting temporary employment agencies are stipulated in article 18-19, 85, 86 act of 20 April 2004 on promotion on employment and labour market institutions (Journal of Laws of 2008, No. 69, item 415 with further amendments) and Act of 9 July 2003 on employing temporary workers (Journal
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| **Portugal**     | 1. In Portugal, Law 260/2009, from 25nd SET, regulates the Temporary Work Agencies licensing and operation rules, as well as the contractual relationships between temporary workers, TWA’s and the client companies using the temporary work. According the Law, temporary work agency (domestic as well as the ones) must have a valid license (authorisation) to operate in the labour market, which is granted by the Portuguese Public Employment Service (IEFP), after a strict checking of several idoneousness and capacity criteria  
1.1. Minimum requirements for Temporary Work Agency licensing:  
a) Regularized tax and social security contributions situation  
b) Existence of an adequate organizational structure (adequate facilities, a Technical Director with a suitable qualification and experience in human resource management, as foreseen by the Law)  
c) Idoneousness: a clean criminal record of the applicant (and, in case of collective person, of its managers, directors or administrators)  
d) Lodging by the applicant of a surety equal to 200 x (minimum wage + social security contribution rate)  
e) Social denomination: must include the “Temporary Work” (“Trabalho Temporário”) designation  
2. The Portuguese Public Employment Service IEPF, I.P. annually verify the legal requisites of the Temporary Work Agencies and makes available on-line a regularly updated list of all the Portuguese Temporary Work Agencies allowed to operate, as well as lists of all the TWA’s whose license has been suspended, lapsed or revoked. For each of these Agencies, the following data are made available: number of license, social denomination and headquarters address. |
| **Slovak Republic** | 1. The principles of the functioning of the temporary-work agencies are set in the Slovak legislation, more specifically in the:  
- Act on Employment services (No. 5/2004)  
- Labour Code (No. 311/2001)  
In line with this legislation the temporary-work agency is defined as a legal entity or a natural person which employs an employee for the purposes of his/her temporary work with the customer employer under his/her supervision. The legal entity or natural person acting as a temporary-work agency has to fulfil several conditions set by the law.  
- natural person – has to proof his/her integrity, has to have a finished university degree (at least first level) and have a permission for this activity  
- legal entity – the conditions as in case of the natural person have to be fulfilled by the person acting on behalf of this legal entity  
Legal entity or a natural person may act as a temporary-work agency on the basis of a permission issued by the Central Office of Labour, Social Affairs and Family following a written request. The permission states:  
- name, seat, identification number of the natural person and the type of the economic activity of the legal entity or name and address |
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<td>Slovenia</td>
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<td>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</td>
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| Sweden      | Yes      | 1. The Migration Board is not responsible for Labour Market issues and cannot answer the questions related to the implementation of the Directive 2008/104/EC. However we can inform that the national legislation concerning work permits do not contain any restrictions on granting work permits for third country nationals being assigned by domestic or foreign temporary work agencies.  
2. See the answer above. |
| United Kingdom | Yes | 1. In the UK, temporary work agencies do not need to be licensed or registered. However all agencies in England, Scotland and Wales supplying temporary and permanent staff are required to comply with the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. Agencies in Northern Ireland are required to comply with the Conduct of Employment Agencies and Employment Businesses (NI 2005).  
2. This legislation does not apply to temporary work agencies based outside of the UK. |

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