

Cross-Border Temporary Staffing

Working Brief 01

Patterns of cross-border temporary agency work in inter-regional comparison: the EU and East Asia

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Introduction

Temporary agency work is a triangular employment relationship, whereby a temporary staffing firm employs a temporary agency worker with the aim of assigning the worker temporarily to work for a user or client firm, which takes responsibility for supervising and directing the work. Characteristic of temporary agency work is thus the separation of the employment contract from the place and supervision of work. The placement of temporary agency workers across national borders is a relatively new variation on the triangular employment relation, and adds a national/geographic dimension to the separation of employment and work. The aim of this working brief is to distinguish common patterns of cross-border temporary agency staffing in Europe and East Asia in comparison, and to provide a backdrop for subsequent working briefs analyzing the role of regional, organizational and regulatory factors in the making of cross-border labor markets for temporary agency work.

Patterns of cross-border temporary agency work in Europe

The factors driving labor-market-making for temporary agency work in Europe include the expansion of the European Union into Eastern Europe, the transnational organizational capacities of temporary staffing firms based in their dense web of branches throughout Europe and most recently, the transposition of the 2008 Temporary Agency Work (TAW) Directive (European Union 2008) into national labor regulations. Based on the EU principles of 1) freedom of movement of labor and 2) freedom of provision of services, two clear patterns of cross-border temporary staffing have emerged: a) *posted agency work* and b) *migrant agency work* (Rodríguez and Miranda 2008)¹. While in both cases, temporary staffing agencies function as labor market intermediaries, the main difference between these two patterns concerns the location of the employment contract. Posted agency workers are employed by staffing firms located in their country of origin (or other location at the time of entering into the employment contract). Migrant agency workers are those who are employed by staffing firms in the country of destination, i.e. the country where the work assignment is executed and supervised. According to industry experts, migrant agency work is now the dominant pattern, and expected to grow in importance as national regulations align more closely with the 2008 EU TAW Directive (Muntz, 13 February 2014; Rodríguez and Miranda 2008:18).

Posted agency workers and variation thereon

The employment relation of posted agency work is governed by the 1996 EU Posted Workers' Directive (European Union 1997). According to the legal framework of the country of destination, the posting of temporary agency workers often requires licensing or registration requirements for the temporary staffing agency as well as for the worker in the country of origin (Sudmann n.d.:9). While the number of European workers posted to another EU member country has increased considerably in recent years (European

¹ Rodríguez and Miranda (2008:13ff) use the terms “posted worker with a triangular relationship framework” and “temporary migrant agency workers”. Since all agency workers are in a triangular relationship and temporary, we have simplified these patterns to “posted agency work” and “migrant agency work”.

Commission 2012:4)², available data does not provide specific breakdowns for posted agency workers. Furthermore, staffing agencies are regularly involved in what employers' representatives now call "indirect posting" (Sudmann 2009:258; Sudmann n.d.:9) This means that not only the recruitment of the temporary agency worker but also the placement at the client firm takes place in the country of origin in advance of posting. Once placed at the client firm in the country of origin, the temporary worker is posted by the client to its premises (or work site) abroad. Thus posting follows placement by a temporary staffing agency. In another variation of posting following placement in the country of origin, the employment contract with the temporary staffing firm is suspended, so that the client can employ the worker directly prior to posting. Sudmann refers to these cases as "project-related" posting (n.d.: 9). In the case of project-related cross-border temporary staffing, the intermediary role of the temporary staffing firm in the country of origin comes closer to the function of broker rather than employer vis a vis temporary agency workers.

Migrant agency work

While the cross-national branch structure of temporary staffing firms is central to how migrant agency labor markets are emerging, EU enlargement and the transposition of the 2008 TAW Directive into national regulatory frameworks have shaped the increasing importance of the pattern of migrant agency work, whereby migrant workers are employed by staffing firms located in the country of destination (Rodríguez and Miranda 2008:18). Member states vary considerably in relation to how well they have transposed the TAW Directive (Eurociett 2013), and migrant agency work appears to be expanding in those destination member states which have lifted most "unjustified restrictions" on temporary staffing (as Defined in Article 4 of the TAW Directive, EU 2008: L 327/12). The Netherlands represents a key case of few restrictions on temporary staffing leading to an increase in migrant agency work (Rodríguez and Miranda 2008:19).

² According to a report on the Number of posted workers in the EU member states, Iceland, Norway and Lichtenstein based on A1 portable documents the number of postings increased from 1.21 million in 2010 to 1.51 million in 2011 European Commission, Employment, Social Affairs and Inclusion DG. 2012. "Postings of workers in the European Union and EFTA countries: Report on A1 portable documents issued in 2010 and 2011." *European Commission*.

Cross Border Temporary Staffing in East Asia

Preliminary research in Taiwan and Japan suggests that posted agency work and migrant agency work are also increasingly practiced in East Asia. Despite the absence of similar supra-national regional regulations, the regional integration of transformation market economies (China, India, Vietnam) as well the well-developed cross-national capacities of the Japanese temporary staffing industry in East Asia indicate developments (Coe, Johns and Ward 2012), which parallel some of the driving forces for the expansion of migrant agency work in Europe. The relative absence, however, of established national-level regulations on temporary agency work outside of Japan means that global and regional staffing firms tend to play the role of labor brokers, rather than employers of agency workers. Where staffing firms do act as employers, the absence of regulations governing temporary staffing limit their business, or force staffing agencies to position themselves in a quasi-legal domain of labor sub-contracting. Labor sub-contracting (*ukeoi*) was also the dominant pattern in Japan, before the introduction of the 1985 Worker Dispatch Law. The case of Taiwan is exemplary for the East Asian pattern outside of Japan.

Conclusion

Cross-border temporary staffing is organized either as the posting of agency workers from branches or clients in the country of origin, or as the employment of migrant workers by staffing firms in the country of destination. Variations on these patterns involve staffing agencies in brokering labor. In Europe, enlargement of the European Union and the 2008 EU Directive on Temporary Agency Work are driving a shift from posting agency work to migrant agency work. A similar shift in patterns is not evident in East Asia, where the absence of regulations encourages staffing firms to focus on brokering activities or to act as labor sub-contracting firms. Nonetheless, the economic integration of transformation economies in Europe and East Asia, and the organizational capacities of transnational temporary staffing firms in these two world regions are similarly driving the emergence of cross-border labor markets for temporary agency work.

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Appendix: Cited Interviews

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