CHAPTER 1
APPROACHES TOWARDS TEMPORARY WORK

1.1. Introduction

The Swedish labour market – as in other industrialised countries – has undergone considerable changes during the last decades. The industry’s share of employment is diminishing, the earlier growth in the public sector has become stagnant. The private service-sector has, on the other hand, increased rapidly since the 1980s. So has the demand for flexible and specialised employees.

All this influences the organisation of work. One tendency is that the “typical employment relationship”, defined as a full-time employee hired for an indefinite period and performing his/her work on his/her employer’s workplace is replaced more and more by other ways of performing work. Only a core of employees is employed on a full time basis and with a permanent employment contract. Various forms of so called “atypical work” has contributed to the greater flexibility in Swedish working life. Part-time and fixed-term employment as well as temporary work have become more and more common. Almost one fourth of the Swedish work force are part-timers, mostly women. In 1996 fixed-term employment comprised more than 10 per cent of the Swedish workforce and in 1999 these figures had risen to 14 per cent.¹ The figures seems to stay on this level. Many of these employees nevertheless have strong ties to the workplace and stay there for a long duration.

The economic crises, changes in production, just-in-time production etc. have contributed to a business organisation with a minimum of permanent staff. The Swedish employers also maintain that labour law constitutes an obstacle to employ workers. The business organisations are so in shape today that the need for supply in case of illness, maternity or peak-periods is not possible to provide for by transfers among the ordinary employees. To use temporary workers is one way to handle this. Employers also occasionally seem to use temporary employees as a recruitment tool. Temporary work is a way of testing the employee without considering the limitations in the Employment Protection Act (see infra Sec. 1.3.1.). Data indicates that the majority of temporary employees seem to get permanent employment at the user after some time.

Public employment service enjoyed a monopoly in Sweden in the years between 1935 and 1993. Temporary work² was in principle forbidden in the years 1942-1991. In recent years employment exchange and temporary work legislation has changed completely. Deregulation was completed in 1993. The relevant legislation is applicable to all kinds of employees, blue-

¹ The Social Situation in the European Union 2001, eurostat.
² The concept ‘temporary work’ is not used in Sweden. This expression can be to mixed up with short-time/fixed duration/fixed-term employment, temporary and casual employment which all are opposites of more permanent engagements. The Swedish expression is ‘hiring-out of labor’ or ‘hiring-out of employees’.
collar and white-collar, private and public, and as a main rule both to Swedish and foreign employees.³

Private employment agencies and temporary work are treated in the same Swedish Act and it is sometimes difficult to draw a demarcation line between them. The emphasis in this report is on temporary work, but often it is necessary to discuss also other parts of private employment agencies’ activities to get a complete picture.

Since the deregulation process started in the beginning of the 1990s the sector has expanded very quickly. Private employment agencies are still not very common on the Swedish labour market and temporary work still includes only a small number of employees. The European Foundation for the Improvement of Living and Working Conditions established 2001 that within the European Union the Nordic and the southern European countries had the lowest levels of temporary workers, but the countries where this form of employment currently was increasing most rapidly were Italy and Sweden.

Temporary work has always been and still is most common in the office sector (office and economy work), but appears also in other trades, e.g. technical and computer service, stockroom work, nursing, education, transports, retail trade, construction and manufacturing industry. It is common in expert knowledge businesses. There are no specified official statistical data on temporary work. It is difficult to say how many temporary employees there are at the Swedish labour market today, but it is less than 1 per cent of the workforce. In December 2001 the branch organisation SPUR estimated that 38,000 employees, or 0.87 per cent of the workforce were temporary employees.⁴ (More figures are related supra, Sec. 3 and 5.)

In this report we will see that there are difficulties to adapt temporary work to general Swedish labour legislation. We will also see that the labour market parties have – after the initially rather negative view from the trade union-side – inserted temporary work into the ordinary “Swedish model” for labour market relations by means of collective agreements. This means that there are variations in working conditions between different categories of employees owing to the applicable collective agreement. (About collective agreements in the temporary work sector, see further infra Sec. 6.3.)⁵

1.2. Developments in the Regulation of Temporary Work

Private employment agencies have existed for a long time on the Swedish labour market. The agencies were often fee-charging and profit-oriented. Job seekers were frequently given unsatisfactory conditions with high fees and sometimes were assigned jobs that did not exist. The Swedish Government tried over one hundred years ago to gain some control by a system of recognition. In the beginning of the twentieth century municipal public employment agencies started, which eventually became the State public employment services. In 1935 a statute on employment agencies was enacted to comply with the 1933 ILO Convention No. 34 concerning Fee-Charging Employment Agencies. The 1935 Act outlawed profit-oriented

³ Non-EEA citizens need a labour permit, though.
⁴ Others have estimated these figures to be a bit lower.
employment exchange. The private employment agencies, which generally were very small and concentrated on women’s labour market, were gradually wound up.\(^6\)

In 1942 the 1935 Act was amended so temporary employment under certain circumstances was regarded as employment exchange undertaken as a gainful occupation, which was prohibited. Even under circumstances that allowed temporary work it was looked upon with disapproval, almost not tolerated. The legislation was also adjusted to the 1949 ILO Convention No. 96 concerning Fee-Charging Employment Agencies.

In 1976 the 1935 Act was further amended and profit-oriented international exchange of musicians and stage artists was allowed under certain conditions. The cultural work area was considered to be very special and it has continually been debated in what way employment exchange best should be organised in the sector.

By permission from the Labour Market Board, which is a Government agency responsible for implementation of the Government’s employment policy, non-profit-oriented fee-charging employment exchange was allowed under certain conditions under the 1935 Act. In practice, a very small number of organisations of employers or of employees or of both parties were given permission. Non-profit oriented free of charge employment agencies had to notify the Labour Market Board of their activities.

Profit-oriented employment exchange was considered a crime according to the 1935 Act and so was the use of employees assigned by a profit-aiming employment agency.

In spite of the restrictions in the 1935 Act temporary work firms had to some extent been in operation for a long time in Sweden. That was especially the case in the typewriting business, the so-called ‘ambulatory typewriting firms’, but also in areas like transportation, printing and cultural work. Their legality was questionable, and sometimes they were found to be in contravention of the ban on temporary work, but the line of demarcation between legal and illegal was difficult to ascertain. The prohibition caused a lot of confusion in its application. In court practice the 1942 amendment was applied to typewriting agencies that had sent their employees to user undertakings to perform work there. If the employment contract still was with the typewriting firm but it was the user who directed and allocated the work and the employee was being integrated into the user’s organisation the prohibition applied.

Developments in the labour market gradually led to a situation where the notion of employment exchange was difficult to interpret. A large amount of small companies offering different kinds of services emerged, for instance in the cleaning, account- and computer businesses. Regarding many of these firms’ activities it was uncertain if they were contract work or temporary work. Temporary work agencies in the office staff sector were therefore not entirely uncommon and could operate quite openly. Users of the temporary work agencies could be found even in the public sector. Some of them even concluded collective agreements with trade unions already in the 1980s, which of course was a confirmation of their seriousness.

The number of cases brought to court was very small. One reason for this was a rather well-spread notion that some temporary work firms (i.e. the ambulatory typewriting firms) were in fact acceptable, even more or less desirable, although illegal. Nevertheless society and the trade unions were rather concerned about this, and the Labour Market Board did not accept

\(^6\) Historical developments, see also e.g. Fahlbeck 1995:1 pp 593-597, and Nyström 1999 pp. 338-340.
the state of things. The question was debated for many years and has been thoroughly
discussed in Swedish legal doctrine and by State committees.\textsuperscript{7}

In the 1980s discussions towards a more favourable attitude towards temporary work begun.
There were several proposals on amending the 1935 Act. The debate was more or less
concentrated to temporary work in the office-work area, the existence of and need for the
ambulatory typewriting firms. Office work underwent radical changes during the 1970s and
the 1980s and there was an enormous growth in the number of ambulatory typewriting firms
during the 1980s.

In 1991 the Job Placement and Hiring-Out of Labour Act was enacted. The Act introduced an
entirely new approach to temporary work.\textsuperscript{8} Temporary work was in principle legalised. It was
separated from, and no longer to be considered as a form of employment exchange. The close
connection between temporary work and employment exchange is nevertheless clear from the
fact that they are regulated in the same statute. Still, private profit-oriented employment
exchange was considered a crime. One additional exception, besides the one for profit-
oriented international exchange of musicians and stage artists, was added in the 1991 Act:
head-hunting. For a long time there had been businesses operating for recruiting employees at
highly qualified levels, mainly business executives. The agencies argued that their activities
did not constitute employment exchange since all they were doing was to propose the best
candidates to a future employer, and now their activity was formally legalised. The Labour
Market Board could give license for headhunting agencies as well as musicians and stage
artists agencies for a year at a time. Non-profit oriented fee-charging agencies also had to
have licenses from the Labour Market Board.

There were still rather strict limitations on temporary work. \textit{Inter alia} the user had to show
that there was a temporary need for extra manpower and the possibilities for temporary work
firms to use employees under fixed-term employment contracts were limited compared to
generally applicable rules under the 1982 Employment Protection Act. It was not possible to
post a temporary employee at a user for a longer period than 4 months. But temporary work
was not dependent on any form of permission from public authorities.

A social democratic Government introduced the 1991 Act. In 1993 an entirely new Act, under
a non-socialist Government, did away with the rest of the restrictions.\textsuperscript{9} The explicit aim was
to achieve a better functioning labour market. The public monopoly on employment exchange
was abolished.

The 1993 Private Job Placement and Hiring Out of Labour Act\textsuperscript{10} legalises profit-oriented
private employment exchange as well as temporary work firms and treats them like any other
business. The only remaining restriction is that the private employment exchange and
temporary work firms are forbidden to charge job seekers and employees any kind of fee. It is
still a criminal offence to do so. The recognition and surveillance system undertaken by the
Labour Market Board was abolished by the 1993 Act and so are the rules concerning
temporary work that demanded a special need, prescribed time-limits and restricted the use of

\textsuperscript{7} Earlier doctrine, see e.g. Sigeman, Contract Labour in Sweden, 1970, Adlercreutz, Temporary Employment,
1970.

\textsuperscript{8} See also Fahlbeck 1995:1 pp 597-599.

\textsuperscript{9} See also Fahlbeck 1995:1 pp 599 ff.

\textsuperscript{10} \textit{Lag (1993:440) om privat arbetsförmedling och uthyrning av arbetskraft.}
fixed-term contracts. The Employment Protection Act nowadays applies to temporary workers in the same way as other employees.\textsuperscript{11}

The prohibition against profit-aiming private employment agencies and temporary work firms was founded in the 1949 ILO Convention No. 96 concerning Fee-Charging Employment Agencies. Sweden had to denounce the ILO Convention 1949 No. 96 in order to enact the 1993 Act. Sweden ceased to be bound by the Convention in June 1993, and the new Act came into force in July the same year. Like many other countries Sweden found that the ILO-Convention No. 96 no longer corresponded to the realities of modern labour market. But as Sweden traditionally has been in the forefront of the ILO work the revocations was very disputed. The contribution of \textit{bona fide} private employment agencies to a well-functioning labour market was widely recognised though. The intention behind the legislation from the 1930s – the risk for job seekers and employees – was still valid, but had to be viewed in the light of well-functioning public employment agencies, strong trade unions and extensive protective legislation in the social policy field.

By the 1993 Act Sweden was amongst the countries with the least legislation in this area. It was decided that the effects of the new regulation (or rather deregulation) should be evaluated after a 3-year period. Especially important was a.o. to follow the effects of deregulation on temporary work. The State Committee for Evaluation of the Deregulation of the Monopoly on Employment Exchange was set up in 1996 with a one-man investigator,\textsuperscript{12} who reported in March 1997.\textsuperscript{13} The Committee found that temporary work was an efficient way of organising different forms of work for a limited duration and stated that there was no reason to believe that temporary work agreements led to a diminishing amount of permanent employment contracts. The Committee was nevertheless not satisfied with the situation concerning private stage artists agencies, where several agencies were found to charge the job seekers fees. The Committee proposed that, contrary to the prevailing state of things in practice, employment exchange and other services should be strictly separated.

The employment situation for temporary workers was however in some ways by the 1996 Committee considered being a problem. Some temporary employment agencies engaged employees only commission-by-commission.\textsuperscript{14} The economic situation for the hired out employees was according to the Committee insecure when only certain sectors of the business applied permanent employment contracts and guarantee wages. The Committee proposed the appointment of a Public Board consisting of representatives from the business sector, the labour market parties and independent lawyers. Temporary employment agencies with staff would have to be registered at this Board and certain standards should be fulfilled for registration, economically and concerning labour law. The Board should survey the activities of the registered firms and have the opportunity to revoke recognition. The Committee also proposed that it should be clear from the wording of the act that commission-by-commission employment in principle was forbidden and that the employment contract with the temporary employment agency as a main rule was for an indefinite period.

\textsuperscript{11} The labour market parties in the sector have to some extent used the opportunities to deviate from the Employment Protection Act by collective agreements, see further infra. Sec 6.3.

\textsuperscript{12} The investigator Mr. Björn Rosengren was the former president of the Central Organisation of Salaried Employees (TCO) and has later been Cabinet Minister in a social democratic Government.


\textsuperscript{14} An employment contract for an indefinite period not only gives job security, it is also important for instance when the employee wants to borrow money from a bank, get a credit card or rent a flat.
The Committees’ report did not lead to any legislation. The Government referred to emerging voluntary branch registration (see further infra, Sec. 6.2.), and the growth of collective agreements in the area (see further infra, Sec. 6.3.). The Government stated though that it intended to follow the developments closely, and if needed suggest new legislation. In 2002 a Government Working Group was appointed with representatives from the Government and the labour market parties, which were supposed to follow the developments in the area (see infra 1.4.).

1.3. Other Relevant Legislation

1.3.1. Security of Employment

The 1991 Job Placement and Hiring-Out of Labour Act limited the possibilities to use temporary employees under fixed-term contracts compared to generally applicable rules in the Employment Protection Act. In the 1993 Act there are no special rules regarding fixed-term contracts and the Employment Protection Act is today fully applicable for temporary employees.

Fixed-term employment is regulated in detail by collective agreements and the 1982 Employment Protection Act. A Swedish employer with a temporary shortage of labour can hire an employee for a fixed-term employment in specific situations described in the Act. In 1974 the first Employment Protection Act introduced the principle into Swedish labour law that the employment contract as a main rule would last for an unspecified period/permanent employment. The employer needs a just cause to end the employment relationship and the employee is entitled to 1-6 months notice (often more according to collective agreements). Hiring agreements of a limited duration could only be concluded in certain particular cases, i.e. when the employment contract was concluded for a season, for a specific task and if required by the special nature of the job, for replacement work, for practical work experience.

The 1974 Act was replaced by the new Employment Protection Act in 1982. The main reason for passing the new Employment Protection Act in 1982 was to widen the right to use fixed-term contracts. The 1982 Act permits in addition to the 1974 Act probationary employment agreements not exceeding six months and contracts referring to a certain period of time (not exceeding six months out of two years) due to temporary piling-up of work. In amendments of the Act in 1996 a new type of fixed-term employment, besides those already mentioned, was introduced. For no special purpose a fixed-term employment may be agreed for a total of 12 months (in certain cases 18 months). An employer is only permitted to have at the most 5 persons employed under this provision, and the aim is to encourage small undertakings to employ new personnel. The regulations governing fixed-term employment in the Employment Protection Act may be replaced by collective agreements. The labour market parties have made considerable use of this opportunity. There are collective agreements more generous than the Act in these respects and also agreements that are more restrictive. (About fixed-term employment and collective agreements regarding temporary work, see further Sec. 6.3.)

The question about the opportunity to hire employees for limited periods has been one of the most frequently discussed between employers and trade unions since the legislation about security of employment was enacted in the beginning of the 1970s. The developments during the 1990s with high unemployment rates and calls for flexibility in production has highlighted
this question even more. The Government has tried in several ways to encourage the labour
market parties to formulate a solution themselves, but for the employers’ organisations
flexibility has been the answer to most problems, and on the trade union side every suggestion
of changes have been considered to be serious attacks on the employees and their job security.

In 2000 a State research institute was given the task to review central aspects of Swedish
labour law, a.o. fixed-term employment. The researchers had an expert panel with
representatives from the labour market parties to their disposal. The review was finished at the
end of 2002. The report underlines that employment contracts as a main rule are for an
unlimited period and suggest the abolishment of the different cases of fixed-term work set out
in the Employment Protection Act. Instead, it should be possible to conclude fixed term
contracts for up to 18 months for whatever reason within a period of reference of five years.
If a fixed-term contract lasts longer, the employer will, according to the proposal, not be liable
to pay damages, which is the general consequence when infringements of labour law occur,
instead he/she shall pay special compensation amounting to one third of the employee’s
monthly salary for every month the employment relationship endures, or at least three months
pay. There doesn’t seem to be much enthusiasm for this proposal, and it is not probable that
it will lead to new legislation.

1.3.2. The Trade Union Veto

It has always been allowed to use contract work and subcontracting in Sweden. Before the de-
regulation of temporary work, therefore the demarcation between contract work and
temporary work was very important. With the enactment of the Co-determination Act in
1976 a right of veto for national trade unions under certain conditions when an employer
intends giving a job to someone not employed by him, was introduced. The intention was to
counteract the evasion of employer duties that could arise in such situations. In some trades,
e.g. the construction business, a complex system of numerous contractors and sub-contractors
is not unusual. This creates opportunities for the evasion of tax and social security
contributions. Also in temporary work situations there sometimes is a purpose to circumvent
provisions in legislation and collective agreements.

If an employer intends to use a contractor for the performance of a certain task or otherwise to
allow non-employed persons to perform work in his/her business the employer is, according
to the Co-determination Act, obliged to initiate negotiations in advance with the trade union to
which he/she is bound by a collective agreement covering the work in question. The employer
must give all information that the trade union might need and have to postpone his/her
decision until the negotiations have been concluded. If the measure planned by the employer
can be presumed to involve the setting-aside of law or of a collective agreement for the work,
or of what is otherwise generally approved within the industry concerned, the union have the
right to block (veto) the proposed decision. This is very rarely the case. Nevertheless, the
employers’ duty to initiate negotiations gives the trade union information about the situation
and a possibility to influence the employers’ decision. The right of veto is not to be used for

15 With the exception of probationary employment agreements, where no changes are proposed, i.e. such
agreements are permitted if the probation period not exceeds six months. For replacement 18+18 months should
be possible.
16 Ds 2002:56 Hållfast arbetsrätt – för ett föränderligt arbetsliv (Stable labour legislation – for a flexible
working life).
17 Also known as the Act on Joint Regulation in Working Life, or the 1976 Act on Employment Consultation
and Participation in Working Life.
the purpose of preserving jobs for members of the union and does not authorise the union to veto contract work or temporary work situations as such. It merely confers upon unions the authority to veto illegal practices.

The employer is not obliged to initiate negotiations if the planned arrangement essentially corresponds to what earlier has been approved by the trade union. Still, in this situation it is possible for the trade union to request negotiations with the employer. Another general exemption from the employers’ duty to enter into negotiations regarding occasional and short-term work, or work which requires special expert knowledge, is not applicable in a temporary work situation. It is possible for the labour market parties to conclude collective agreements and deviate from the veto rules, there are for instance examples of agreements from which follows that the employer is exempted from the duty to negotiate when engaging certain named contractors.

The employer may in certain cases (urgent reasons) be exempted from the duty of postpone his/her decision until the negotiations are concluded. The employer may also disregard the veto if the union lacks good reason for it. If the employer sets aside his/her duty to negotiate or overrules the veto he/she may become liable in damages to the union concerned. As well as a trade union exercising the right of veto without justification.

Criticism has sometimes been voiced against the right of veto and the controversial rules were revoked in 1991 by a non-socialist Government but were reintroduced with some amendments in 1994 when a new social democratic Government came into power. In the case of purchase in accordance with the 1992 Public Procurement Act, which is based on EC law, a union veto can be imposed only if it is based on certain circumstances enumerated in the Act, e.g. that the supplier was been declared bankrupt. In the legal doctrine it has been questioned if the right of veto is in accordance with EC law regarding discrimination. But a veto which discriminates is probably illegal according to the Co-determination Act. The veto rules have also been questioned because there is not any possibility for the contractor who doesn’t get the commission because of a trade union veto to appeal to any kind of authority or to go to court.

From the foregoing it is clear that as a main rule it is not possible to use the right of veto in a situation where an employer uses temporary workers instead of hiring in new employees. In a case before the Swedish Labour Court in 1980 a similar situation was discussed.\footnote{AD 1980 No. 54.} The circumstances in the case were the following: An employer had dismissed employees because of redundancy. According to the Employment Protection Act former employees dismissed for reason of redundancy enjoy a preference for being taken back into employment in the enterprise where he/she previously was employed within 9 months from the termination of the previous employment (preferential right of re-employment). In this case the employer had loaned employees from another employer instead of taking back former employees. The Labour Court found that in this situation it was not a circumvention of the Employment Protection Act. One of the main reasons for this was that the loan of workers was for a limited period and not aimed to be permanent. The legal boundaries here are however not quite clear and recently a new case where the Swedish Metal Workers’ Union sued an employer who engaged temporary workers instead of taking back former employees with preferential right to re-employment has been followed with great interest in Sweden. The Labour Court’s judgement came on 15\textsuperscript{th} January 2003.\footnote{AD 2003 No. 4.} Also in this case the Labour Court found that under the circumstances this was not a circumvention of the Employment Protection Act. They
referred to the 1980 case and considered that temporary work since 1992 is permitted in Swedish law, so there was no reason for a strict interpretation when compared to the 1980 case. In the 2003 case there was nothing indicating that the employer used temporary employees for other reasons than difficulties in planning the work.

The cases indicates though that there might be situations where dismissals followed by the engagement of temporary workers during the period when the dismissed employees still have preferential right of re-employment in some (rare) situations could be considered a circumvention of the Employment Protection Act.

1.4. EC law

EC-law has brought a number of changes to Swedish labour law, and has to some extent influenced also this area. Regarding the work environment for temporary employees Directive 91/383/EEC aimed at improve health and safety for temporary employees\(^{20}\) has been implemented into the Swedish Work Environment Act (see infra Sec. 4.2). The Directive 96/71/EC on posting of workers guarantees a.o. temporary workers hired out to a user in another Member State some of the important terms and conditions of employment in the Member State where the work is carried out.\(^{21}\) Special Swedish legislation about posted workers implements this Directive.\(^{22}\) However cross-border temporary work situations is so far rare in Sweden.

In Sweden there are no statutory rules or procedures of formal requirement concerning the employment contract. The implementation of the Council Directive 91/533/EC on the employer’s obligation to inform employees of the conditions applicable to the employment contract\(^{23}\) has not brought any changes in this respect. In 1993 a new rule was added to the Employment Protection Act which prescribes that employers generally have a duty to inform in writing a new employee about certain particulars concerning the employment agreement. A similar rule in the 1993 Act on Private Job Placement and Hiring-Out of Labour was then repealed.\(^{24}\)

At the European level the European federation for temporary work agencies (CIETT-Europe) and the trade union for agency workers (Uni-Europa) in October 2001 signed a joint position for a European directive on agency work. The declaration was negotiated in the framework of the European sector social dialogue committee for hiring-out of labour. In the social dialogue UNICE, ETUC and CEEP had tried to negotiate a framework agreement but the negotiations broke down. The Commission proposed in March 2002 for a Directive on working conditions for temporary workers.\(^{25}\) The proposed Directive is based on the principle of non-


\(^{22}\) Lag 1999:678 om utstationering av arbetstagare (Law about posted workers).

\(^{23}\) OJ L 288, 18.10.1991, s. 32.

\(^{24}\) The abolished rule in the 1993 Act prescribed a written contract regulating the type of employment, salary and other general conditions of employment. The new rule in the Employment Protection Act requires more specified particulars. However, in reality it seems to have weaker conditions, because it only requires written information and not a written contract.

discrimination and that a temporary worker should not be treated less favourably than comparable workers in the users’ company, unless different treatment is justified for objective reasons.

If the proposed Directive will be accepted, Swedish labour legislation will have to be supplemented with the principle of non-discrimination as elaborated in the Directive (Articles 5 and 3 of the proposal). According to Art. 6 of the proposed Directive, the user will have some duties, and Swedish implementation of the proposed Directive will need new legislation about information about vacancies in the undertaking (Article 6.1 of the proposed Directive). Regarding the proposed Article 6.4 (access to the social services of the user undertaking) it is difficult to ascertain what social services is supposed to mean here. Is it social insurance, health care or childcare facilities, free coffee or what? Swedish temporary workers – as other workers - enjoy the state social insurance system, and sometimes some complementary social insurance/service from their employer, i.e. the temporary work agency, e.g. company medical service (see further infra Sec. 5.3.). The proposed Article 7 (representation of temporary workers) and Article 8 (information of workers’ representatives) will not need any new Swedish legislation.

There is in Sweden an ongoing discussion regarding the possibility to regulate wages in an EC-Directive. The non-discrimination principle in Article 5 of the proposed Directive includes wages. It is argued that wages explicitly falls outside the Treaty. (This is mainly the Swedish employers’ point of view.) The proposed Directive is based on Article 137.2, and it is clear from Article 137.6 that Article 137 not is applicable on wages. EC-law, on the other hand, already has several regulations regarding wages: the Directive on Equal Pay, the Directive on Posting of Workers, the Directive on Transfers of Undertakings, the Directive Establishing a General Framework for Equal Treatment in Employment and Occupation etc. The proposed Directive on Temporary Work seems to have a similar aim as these regulations; to protect an employee against discrimination or to protect his/her wages from deterioration. This is a support for those (mainly the trade union side) who argue that the Directive is within the competencies of the EC. Nevertheless, there is a consensus in Sweden that wages is a subject for the national social partners and collective agreements and/or individual employment contracts only. There is not any tradition on wage-legislation or state wage-policy arrangements.

The Swedish employers are rather negative to the proposed Directive, and doubt if temporary work is a subject well suited to EC regulation. On the employee side the Swedish trade unions are cautiously positive; they want an EC directive with minimum standards and a principle of non-discrimination in order to prevent social dumping. They underline the importance that a directive allows implementation and derogation from the directive by collective agreements, in accordance with established Swedish traditions. The proposed Article 5.1 therefore is important. The Swedish Federation of Trade Unions (LO) and the Federation of White-Collar Workers (TCO)26 also are critical to the proposal regarding some particulars. They do not like the proposed possibility to deviate from the Directive for employees with an unlimited employment contract and for postings shorter than six weeks, because this will in their opinion only lead to circumvention of the Directive. They want a new rule about prevention of abuse of temporary employment, inter alia that it should be illegal for an employer to dismiss his/her own employees and replace them with temporary workers. (See also the referred case from the Swedish Labour Court, above Sec. 1.3.2.) They also demand an article prescribing permanent employment contracts as a main rule and that the employer should be

26 About LO and TCO, see infra Sec. 6.1.
obliged to negotiate with or at least consult the trade union at the work-place before he/she decides to use temporary workers. (About the trade association SPUR, and its views on the Directive, see infra Sec. 6.2.)

The above mentioned Swedish Government Working Group for temporary work was supposed to have completed its work in November 2002 by a report to the Government. Instead, the Working Group will probably receive new instructions from the Government to follow the Swedish implementation of Directive 2000/78/EC, Directive 2000/43/EC and the expected Directive on temporary work, which of course are of fundamental importance for the Working Group’s report and proposals.

CHAPTER 2
DEFINITIONS AND POSSIBLE CHANNELS

2.1. Legal Definition of Temporary Work

Temporary employment (or, as it is called in Sweden, hiring-out of employees) was introduced as a legal concept in 1991, and is defined as a legal relationship between a client and a temporary employment agency whereby the agency in return for a fee, places its own employees at the disposal of the client (the user) to perform work in the latter’s business. In other words, two conditions must be met: that it is a remunerative relationship, and that the third party (the user) has a business where the employee shall perform work.

If the temporary work agency does not charge the user a fee the agreement seems to be a loan of workers instead of a hiring-out of labour situation. In another occasion it could be a matter of employment exchange, for instance when the employment relationship between the worker and the temporary work agency seems fictitious (see further infra).

2.2. Some Definitions and Demarcations

A method, especially for large companies and large employers in the public sector, to solve the problem of getting competent extra manpower within short notice is something that has been called a personnel pool or a manpower pool. This means that employees (initially often a surplus of manpower in connection with organisational changes) administratively are brought together in a pool, from where they are called to perform work at different places in the organisation. This differs from employment exchange and temporary work in that all tasks are performed for the employer himself.

Another kind of manpower pool more adapted to small undertakings has become more and more common. In this kind of manpower pool several employers are figuring. In order to meet changes in the need of manpower employers put their redundant employees in the same pool from where anyone of them can hire in manpower when needed i.e. a temporary work situation. There are examples of special agreements about lending or hiring in/out manpower between different employer’s e.g. in the construction business and regarding pilots. These

arrangements are often short-termed and aimed at avoiding a situation where one employer temporarily is short of manpower while another casually is above strength. Lately this phenomenon has been growing. It is cheaper for the employers compared with using the services of a temporary work agency and the employee remain his/her employment contract with the old employer and it is therefore considered to be more secure for the employee.

The difference between temporary work and *lending of manpower* is unclear. A rather common situation has been that someone temporarily needs manpower from another enterprise, it may for instance be for the performance of a complicated task which demand particularly skilled labour, or to meet a casual accumulation of ordinary work. There are also examples of employers lending or hiring out their employees to another employer on a more permanent basis, for instance with groups of companies where the employees are employed by the parent company but perform work permanently in a subsidiary. Rights and obligations between the three participants and the legal status of their relationship could be somewhat unclear. There are sectors in the Swedish labour market where lending of manpower is regulated in collective agreements.

*Contract work*, subcontracting, franchising, consultants and free-lance are examples where the person who has undertaken the work is an independent contractor, and where we are not dealing with an employment relationship. The boundaries are however difficult to establish, e.g. the difference between a temporary work arrangement that lasts for a long time and a contract work situation. The former is a contract for supplying labour (manpower) and the latter a contract for supplying work result. In practice this dividing line may be blurred. *Contract work* is rather common in Sweden. There are only estimated figures, but in 1999 over 10 per cent of the employed in Sweden were self-employed.\(^{28}\)

A new phenomenon, *outsourcing*, which could be the use of temporary workers or contractors instead of one’s own employees, has become rather widespread. A common example is reduction of divisions so that only the very essence of the business’ activities remain and where for instance service-, repair- and training divisions are closed down. The employees who used to work in these divisions are very often continuing to perform the same work but now as independent contractors or subcontractors which receive most of their commissions from the former employer. Another example is that business A closes down for instance its telephone exchange, staff restaurant and porter’s office and puts these divisions on contract work with contractor B. The former employees in A’s business continue to perform their usual work in the same workplace but are now employed by contractor B.

*Call-centres* are something that has grown popular during the last years. Employers contract out their telephone operating and booking service to a call-centre, which often is situated in a geographical region where unemployment is high. Communication is done by telephone, data-operating or the like, and is independent of geographical distance and can serve firms and customers all over the country.

The above mentioned examples of new and flexible forms of performing work are of different kinds and sometimes it is difficult to establish what kind of contract we are dealing with. But to summarise, agreements to perform work fall on the whole into two main categories: *employment agreements* and *independent contract work agreements*. The distinction between them is very important. Only the employment relationship is covered by labour law, which on the whole aims at protecting the weaker party, i.e. the employee. There is no legal definition

\(^{28}\) The Social Situation in the European Union 2001, eurostat.
of an employee. The Swedish concept of employee has been designed in the application of several different statutes and legal practice has given it a rather wide scope. In most cases there is no difficulty in deciding whether an employment relationship exists or not. Employees are more dependent on the opposite party, whereas contract workers are more independent. In difficult situations a method applies involving a thorough investigation of many different circumstances established from the employment contract and the factual circumstances in which the work is performed. The rules about who is considered to be an employee are mandatory in order to protect the individual who performs work.

The increasing number of atypical work arrangements is often seen as a problem by the trade unions and also to some extent by the legislator. Atypical work agreements can undermine the employees’ positions and what has been achieved through labour legislation and collective agreements. Labour and social laws are to a considerable extent modelled on the ‘typical employment relationship’ and more or less applicable on “atypical work”. Some examples with reference to the above mentioned situations: Employees which after outsourcing become independent contractors are not covered by labour law, and social security rules apply in a different way. Temporary workers are employees and covered by labour law. But most of the rights they are entitled to through the labour legislation, e.g. co-determination and security of employment, can only be maintained against the temporary work agency and not against the user’s firm where they work. In the same workplace it is possible that there are workers with a permanent employment contract with the employer in question, employees with fixed-term contracts, temporary workers, workers loaned form a subsidiary, contractors with their own employees, consultants and free-lancers etc. All these persons may perform practically the same job, but different rules apply and the conditions may differ considerably.

CHAPTER 3
THE TEMPORARY WORK ORGANISATIONS

3.1. Some Definitions and Demarcations

Before the 1991 Act temporary work agencies were in principle forbidden. By the 1991 Act they were legalised and have since then worked under the same conditions as other organisations. Since the 1993 Act there is not even a system of licensing. The temporary employment agency has all employers’ rights and responsibilities towards the temporary employee, except for working conditions at a user company, where the user has the authority (see further infra. Sec. 4.2.). Labour and social security legislation generally is applicable to the employment contract; i.e. towards the temporary employment agency and not towards the user. It is the temporary employment agency, which pay wages, taxes etc. for the temporary employee.

As we have seen above labour exchange is in the 1993 Act defined as an activity aimed at procuring work to work applicants or manpower to employers, which is not temporary work (hiring-out of labour). It is however, as has been mentioned before, not possible to distinguish between different types of businesses here. The market for private employment agencies could be divided into different categories. The mains are temporary work, recruitment and outsourcing (contract work). Other areas are e.g. search (headhunting), selection and

29 Regarding self-employed there is some protective legislation.
30 For 2001 the figures were 86 per cent temporary work, 6 per cent recruitment and 8 per cent contract work.
outplacement. Demarcations between different kinds of activities (temporary work, employment exchange, contract work etc.) are very difficult to ascertain and in Sweden most agencies are active in several areas.

Recruitment agencies handle employment exchange for different kinds of specialised and qualified staff. They work at employers’ request but interested applicants contact the employment agency themselves.

The need for recruitment of specialised manpower was recognised many years before the new legislation and different types of private ‘middlemen’ services emerged, although they were on the demarcation line between legal and illegal. Already in the 1991 Act headhunting was legalised. Search agencies operate in headhunting. At the request of an employer they search for candidates responding to a special profile looked for by the future employer. Executive-search concerns absolute top-jobs; executives, managing directors’ etc. This market is small. Most search agencies on the Swedish labour market are owned by foreign undertakings.

Selection agencies are not searching for candidates. Their main task is to form an opinion of candidates to a job. They use advertising to get as many job applicants as possible and then try to grade the interested applicants and advise the employer.

On commission from an employer an outplacement agency tries to help redundant executives and other redundant employees to find new jobs or to develop a self employed activity. Outplacement agencies work mostly with analyses and consultations. This is more of an advisory than a placement activity. Because of high unemployment (by Swedish standards) since the beginning of the 1990’s outplacement activities have also increased.

A few very large companies dominate the temporary work sector in Sweden. However, many of the temporary employment agencies are small. Some of the largest firms operating in Sweden are foreign-owned and belong to a group of companies operating in several countries. The firms have expanded their activities during the last years, and are also carrying on for instance contract work, recruitment and selection, as well as training of personnel.

The dominating geographical region for private employment exchange and temporary work agencies is the capital Stockholm with more than 50 per cent of the branch’s activity. Four large firms employ about 90 per cent of the employees. The largest companies have about 10,000 employees or more, but totally there are not more than about 230 private employment agencies or temporary work firms with at least 10 employees in Sweden.

Certain agency functions are also upheld by various forms of councils set up by the labour market parties in collective agreements in order to try to place employees that are in danger of becoming unemployed as a result of rationalisations, operation cost cuts etc. These so-called redundancy programme agreements contain rules on help, e.g. with training, outplacement, and financial support in redundancy situations. The councils work on the behalf of both the employer and the employees. As early as in the 1970s a Council established by the Swedish Employers’ Federation (SAF) and the Private Sector White-Collar Workers’ Cartel (PTK, a ‘negotiation cartel’ for trade union in the private white-collar sector) started with outplacement. About 30 000 private businesses are associated to the Council, and at most almost 50 000 redundant white-collar employees were registered at the Council (in 1993). There is a similar Council for state employees and there are ongoing discussions between the
social partners about a similar construction for private sector blue-collar employees. Sometimes an employer associated to one of these councils also engages a temporary work agency, and the council and the agency works together with the redundancy situation.

3.2. Rules Governing Temporary Work Agencies

There is a prohibition in the 1993 Act against payment for job applicants or employees in exchange for offering or referring work to them. This includes all kinds of registrations- and deposition fees as well as compulsory services charged. It was considered important to explicit mention this in the Act. The agencies will have to charge the their customer so they can finance their business. They can charge any fees they choose, with one exception: fee-charging labour exchange for seafarers is forbidden. There is no objection to use seafarers as temporary employees, though.

According to the State Committee for Evaluation of the 1993 Act the temporary employment agencies charge for the costs of the employee (wages, taxes, social security fees etc.) plus 30-40 per cent for a.o. the temporary employment agencies administrative costs etc. The last figure seems to vary a lot, but it is a fact that due to the costs most commissions are of a relatively short duration: generally 2-3 weeks for secretaries and other relatively speaking low-qualified personnel, 2-3 months up to 6 months or more for high-level personnel, but it could differ from a couple of days up to a year. When a temporary employment agency undertakes contract work the employees can be hired out for years.

Temporary work agencies must not in any way prevent employees from accepting employment by a user for which the employee presently is or previously has been working. An employee who has terminated an employment relationship and then accepts a job with a temporary work agency must not be hired out to his/her previous employer sooner than six months after the employment relationship ended. An employer breaking these rules could be fined. The first rule aims at protecting the employee from unwanted restrictions to work for any employer he wishes. A clause in a contract between the temporary work agency and the user where the user promises not to employ a temporary worker is not binding upon the employee. The second prohibition aims at preventing circumvention of labour law and socially unwanted recruiting techniques by temporary employment agencies. The intentions behind the termination of the employment relationship are of no matter. The temporary employment agency may in both situations be liable to a fine. In this latter case there is also a possibility that a court would find that there legally speaking is no employment relationship between the user firm and the worker. The employment relationship between them is fictitious and the worker legally considered an employee at the users’, i.e. the former employer.

It has already been mentioned that nowadays no prior permission is required to start a temporary work agency. There is no obligation to notify the authorities about the type of business that is going to be conducted. As all other businesses these firms are of course subject to general obligations pursuant to the law of association. In the discussions leading up

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31 The State tries to stimulate the development of agreements in this area in order to cover in principle the whole labor market by voluntary agreements. SOU 2002:59 Omställningsavtal – ett aktivare stöd till uppsagda (Redundancy Programme Agreements – Support in Redundancy Situations).
32 The employer engages the private employment agency. The council works on behalf of both parties.
33 This is in accordance with the 1920 ILO-Convention No. 9.
34 The user may be liable to damages according to contract law towards the temporary work firm, though.
35 It has been discussed that the second prohibition prevents new jobs, and maybe this rule will be abolished.
to the 1993 Act some consideration was given to whether personal qualifications or personal suitability of the person(s) in charge of the exchange was required for registration. Both the LO and the TCO wanted registration, but this idea was rejected, *inter alia* with reference to the voluntary branch organisation (see further infra. Sec. 6.2.). The State Committee for Evaluation of the Deregulation of the Monopoly on Employment Exchange proposed in 1997 that registration of temporary employment agencies should be required. But this proposal has not yet lead to any changes. The present Government Working Group for Temporary Work is, among other things, discussing possible licensing, which is a demand from the trade union side.

Both the changing economic environment as well as an increasing demand for qualified and flexible workers in some parts of the labour market has lead to an enlargement of private employment and temporary work agencies in the last few years. The State Committee for Evaluation of the Deregulation reported in 1997 that the temporary work branch had expanded quickly since the 1993 Act came into force, but on the whole still represented a very small part of the Swedish labour market. By the turn of the year 1996/97 there were just above 9,400 persons, i.e. 0,2% of the workforce, working in temporary employment agencies. But this figure included about 2,100 one-man firms (self-employed); persons that hire out themselves, often to perform office-work, bookkeeping and such. Many of these one-man firms were of very short duration and not a full-time activity for the owner. The figures are rising quite fast. In December 1997 there were about 14,000 persons, i.e. 0,33 per cent of the Swedish workforce, working in the temporary employment business according to the branch organisation for private employment and temporary work agencies SPUR, which members covers about 85 per cent of the sector. (This included self-employed.) 42,000 persons, or 0,96 per cent of the Swedish workforce, were employed by private employment agencies in 2000; 89 per cent of this was temporary work, 6 per cent contract work and 5 per cent recruitment. In 2001 38,000 persons, or 0,87 per cent of the Swedish workforce, were employed by private employment agencies according to SPUR’s statistics. 86 per cent of this was temporary work, 8 per cent contract work and 6 per cent recruitment. The agencies that belong to SPUR estimated in 1997 their activities at 75 per cent office and economy work, 6–8 per cent stockroom works, 2 per cent retail trade and 1–2 per cent nursing. In 1999 the turnovers in the branch increased by 71 per cent. 88 per cent of the turnovers came from hiring-out of labour. For the hiring-out firms office work had about 40 per cent and economy work had 25 per cent of the turnovers. The most expanding trades, however, during 1999 were stockroom works and industry that increased 158 per cent, and nursing, which increased over 170 per cent. New areas of employees, e.g. lawyers have emerged. In 2000 the turnovers increased by 68 per cent. Around 5 per cent of the turnovers in the branch came from contract-work and recruitment respectively. Almost 90 per cent came from temporary work. Recent figures seem to indicate that the rapid growth of the temporary work business has stopped, but this is probably due to the general economic recession in Swedish society at the moment. For 2002 the turnovers according to SPUR seem to stay on the same figures than the previous year, except for nursing which still increases.

CHAPTER 4
THE USER OF TEMPORARY EMPLOYEES

4.1. The User and the Temporary Work Agency

36 About SPUR, see further infra Sec. 6.2.
The main reason for using temporary employees is the need for extra manpower in cases of sickness or peak-periods. There are also businesses that use temporary workers for work, which is concentrated to a particular period of the year. A Swedish employer with a temporary shortage of labour has several possibilities: He often tries in the first instance to meet the temporary shortage by overtime work from the ordinary work force. He can hire employees under fixed-term contracts under the conditions laid down in the Employment Protection Act. He can use contractors or sub-contractors. He can also hire in temporary workers. Then he enters into an agreement with a temporary employment agency. The relationship between the temporary employment agency and the user is a contract under standard contract and commercial law. The 1993 Act does not set up any stipulations regarding this contract. There are not any demands for a written contract or any particulars.

The users of temporary employees are in all kinds of businesses. Private and public sector, big and small companies, the service and the manufacturing sector. There are even examples of temporary workers performing tasks, which has to do with the exercise of public authority!

The 1993 Act contains no rules aimed at regulate the user companies. But before the 1991 Act the user of temporary employees was committing a crime. When temporary employment was legalised by the 1991 Act there still remained a few restrictions for the users. They had to have a temporary need for extra manpower, they were not allowed to use temporary employees for more than four months at a time, and the possibility to use fixed term contracts was limited. A user was also forbidden to hire in an employee who has had an employment contract with the user within six months from the termination of the employment relationship. Further, the user was forbidden to contribute to prevent temporary employees from accepting employment in his/her undertaking. The latter prohibition still remains for the temporary work agency, but not for the user. (See Sec. 3.2. supra). Voices were raised to keep these restrictions, but it was considered ineffective and according to the legislator it was unlikely that hiring in of the same person would go on for a very long time, because of the high costs.

4.2. The User and the Temporary Employee

There is no contractual relationship between the user and the temporary worker and the 1993 Act does not deal with this relationship at all. The temporary worker is part of the user’s business organisation during the posted period. It is the user who supplies working material and a working environment. The worker is subject to the managerial authority of the user, e.g. to follow orders, safety regulations etc., and the user has to follow good labour market practice regarding the treatment of temporary workers. The user’s authority is however restricted to the employee’s professional qualifications and he cannot for instance order a person that has been hired in to do secretarial work to work in the staff restaurant instead.

The special task the employee has to perform is designated by the employment relationship with the temporary employment agency and the contract between the temporary employment agency and the user.

The employment-leasing firm is always considered to be the employer, also during periods

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37 Even trade unions are among the customers of temporary employment agencies.
38 In the years between 1972 and 1992.
when the employee works at a user company. There is one situation though where both the hiring-out firm and the user’s firm are responsible and that is for the working environment. The 1977 Work Environment Act was amended in 1994 to adapt to the new situation created by the legislation of hiring-out of employees and to transpose the Directive 91/383/EEC\textsuperscript{39} into Swedish law. The temporary work agency has the responsibility of an employer, but in this situation the employer cannot easily influence or control the working conditions at the users. Therefore the user has a far-reaching obligation to provide safe working conditions for hired in workers. The user’s responsibility for the working environment for temporary workers is, in principle, the same as for his/her own employees. The user is obliged to take the same safety precaution for temporary employees as he/she would have taken for his/her own employees. This responsibility for the user is limited to the specific work conducted on his/her premises and does not include long-term measures such as rehabilitation\textsuperscript{40}, which is the sole responsibility of the temporary work agency. As a general rule safety representatives for the employees must be appointed from among the personnel in a workplace where at least 5 employees work. The employee safety representative of the temporary employment agency is allowed to enter the premises of the user if it is necessary in order to fulfil his/her task. If the user tries to hamper the safety representative from the temporary employment agency in any way he may be liable to damages. A study about work environment in the staffing industry 2002 has shown that the activities of the safety representatives did not work very well for the hired out employees.\textsuperscript{41}

In the autumn 2000 the Labour Inspectorates\textsuperscript{42} did a survey covering the 37 largest temporary work agencies, totally 193 work places. The results were predominantly positive, but criticism was raised about contact with the employer during hired out periods and routines in managing work environment for hired in personnel.

There is no legal prohibition for the user to hire out the employee to a sub-user. There is no limit to the number of subsequent hiring-out of labour contracts.

\section*{CHAPTER 5}
\textbf{THE TEMPORARY WORKER}

\subsection*{5.1. Legal Status of the Temporary Worker}

The temporary worker is always considered to be an employee with an employment contract with the temporary work agency. As mentioned above, Sec. 4.2., there is only one situation, concerning work environment, when the temporary employee has rights according to labour legislation towards the user undertaking.

Swedish labour legislation applies to temporary employees in the same way as to other employees. But three parties are involved in a temporary work arrangement: the temporary work agency, the worker and the user. This makes it sometimes difficult in practice to use

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{39} See supra, Sec. 1.4.
\item \textsuperscript{40} Rehabilitation aimed at getting an employee back into working life in terms of return to work after illness is a responsibility for the employer according to Swedish legislation.
\item \textsuperscript{41} See infra Sec. 5.1. about the situation where a user refuses to hire in a special group of employees, e.g. women or handicapped.
\item \textsuperscript{42} Local authorities responsible for the supervision of work environment of individual places of work. In 2001 amalgamated with the Board of Inspectorates to the Work Environment Agency (\textit{Arbetsmiljöverket}).
\end{itemize}
\end{footnotesize}
ordinary labour legislation, which is aimed to regulate the relationship between the to parties to the employment contract; an employer and an employee.

One example where problems could be noticed is regarding employees’ rights to business information and possibility to influence working conditions. The employers’ obligations according to the Co-determination Act rest with the temporary employment agency. The employees in question and their trade unions have no opportunities to influence the user firms. Even if a temporary employee sometimes has the opportunity to refuse a special commission and thereby in a way can influence his/her own working-conditions, it is in practice impossible to give any point of view on the conditions in the user’s business. It is clear from Sec. 1.3.2. infra that the 1976 Co-determination Act, however, gives the trade unions in the users’ firm special rights, i.e. information and negotiations before the employer makes a decision to use non-employed personnel and the right to block the employers’ decision under certain circumstances.

It is also very difficult for the trade unions to work when the members are spread out on many different workplaces and far away from their employer. The Union of Salaried Employees and the Swedish Service Employers’ Association (see infra sec. 6.3.)e.g. have agreed that, considering the special character of the line of business, it is important to facilitate local trade union activity.

There have been discussions about potential discrimination and/or potential circumvention of employment security when a user refuses to hire in a special category or a special employee, which eventually could lead to dismissal from the temporary work agency, because they cannot use this employee or this category of employees. Here, the legal situation is quite unclear, and it is difficult to say when a situation like this constitutes a breaking of law. It is clear however that it is not acceptable for an employer to discriminate with reference to his clients/customers wishes.

5.2. Who is the Temporary Worker?

Less than 40,000 employees - some have estimated it to be less than 30,000 employees - are employed in temporary work in Sweden. That is less than one per cent of the workforce, which is less than the average for the EU.

There are more immigrants employed by temporary work firms than on the Swedish labour market as a whole. Almost half of all agency workers have some kind of university education – which also is more than the average on the labour market - and women dominate the group, they are about two thirds of the temporary employees. We have however to bear in mind that the trades and professions in question are typical ‘women’s jobs’. During the last years when stock-room work and industry have expanded the male share of temporary employees has increased. The Swedish Equal Opportunities Ombudsman has recently intensified its supervisory activities in the sector.

Those who start working as temporary employees more often comes from other jobs, than from unemployment. The hired-out staffs are of relatively low average age, just below 30 years. Most of them stay in the branch for a rather short period. There are two main categories of hired out employees, those staying for a very short period and those working in the business for many years because they like this kind of work. The average employment time in
a temporary employment agency is just over a year, but about one fourth of the employees’ stay for many years. When a temporary workers leaves his/her job it is often to become employed by a user’s firm instead. From the temporary employment agencies point of view this is satisfying, although a problem. It shows that they have succeeded in recruiting and training competent employees. On the other hand, the temporary employment agencies always face problems with recruiting new competent employees.

5.3. Social Security, Unemployment Benefits

A temporary worker has the same right to social security as other employees. Sweden has a state social insurance system that guarantees sickness benefit, parental allowance, pension etc. Employees engaged by employers with collective agreements are also entitled to supplementary pensions and other labour market insurance. Labour market insurance are collective insurance schemes, which supplement state social insurance and are based on collective agreements. Employers bound by such agreements are under obligation to keep their employees insured. Social security and the insurance schemes are financed from employer contribution, *inter alia* the temporary work agency.

The only kind of benefit that has caused noticeable problems for temporary employees is unemployment benefits. The Swedish unemployment insurance associations are closely linked with the union movement. The system is financed to around 95 per cent from state sources, *inter alia* from social security contributions employers are required to pay in respect of their employees. There is a compulsory basic insurance and a voluntary loss-of-earnings insurance. The latter applies to those who have belonged to an unemployment insurance association for at least 12 months and fulfils a qualifying period of employment.

It has been mentioned above, Sec. 1.3.1., that the Employment Protection Act is fully applicable on temporary work. From this follows that the employment relationship normally is for an indefinite period. Here, it must be underlined that although a permanent employment relationship exists, the employer is not obliged to provide paid work all the time. In the larger temporary work agencies employment for an indefinite period is the main rule, but here as well as in many small temporary work agencies employment commission-by-commission can be found. Both employers and trade unions estimate that about 80 per cent of the temporary employees are hired for an indefinite period. The Swedish Labour Court has interpreted the Employment Protection Act very restrictively when it comes to repeated fixed-term employment. Yet, the legal situation is somewhat unclear, because a few collective agreements permit commission-by-commission employment. Other Courts have in the interpretation of the rules regarding unemployment benefits and other social security benefits stated that those regularly occupied by a temporary employment agency should be considered as employed for an indefinite period (irrespective of whether the employment contract says otherwise). The temporary worker is considered to be at the disposition of the temporary work agency on an indefinite employment contract and not to be unemployed.

In 1996 the Labour Market Board noticed that different unemployment assurance associations interpreted the rules about part-time unemployment in various ways. The Board emphasised therefore that according to well-established court practice temporary employees did not have the right to unemployment benefits during periods when they not were posted at a user’s firm. Social security is not supposed to subsidise the temporary agencies staff expenses. In 2001 the Labour Market Board had to precise this earlier statement and thereby avoided conflicts with
statutes regarding discrimination and competition. The said principle should only be applied to employees that are employed with the aim to be hired out, *inter alia* temporary workers. Other employees in private employment agencies, e.g. persons employed in order to do contract work, should not be affected.

The problem about unemployment benefits affects continuously less employees, because a growing number are guaranteed full pay regardless if they are hired out or not, see further infra Sec. 6.3.

It is estimated that 90 per cent of the employees working for temporary work agencies today have some kind of wage guarantee. Employees without wage guarantee are, besides not paid during not hired out time, also not entitled to sickness benefits for illness that does not occur during hired out time.

### 5.4. Strikes

There are no statutory rules in Sweden regarding temporary work and strikes. The Government does not interfere in collective bargaining and disputes between the labour market parties. In other words, there is strict impartiality from the State. This has always been an important principle for public employment exchange. The Public Employment Service is in the interest of impartiality to continue providing its services in a lawful labour dispute. Workers involved in a dispute keep their employment contract and cannot be replaced permanently. According to well-established traditions in the Swedish labour market it would in practice be almost impossible for an employer to use temporary employees in case of a strike or a lockout in his/her enterprise. The issue is not regulated and no legal obstacle could be raised if an employer should decide to replace the striking workforce. The replicas would however be condemned by the trade unions. (SPUR’s rules of ethics deals with this problem see infra Sec. 6.2. and the collective agreement for blue-collar temporary workers contains a rule about neutrality, see Sec. 6.3.) There have been no instances of employers seeking to hire other available labour to do strikers’ work over the past few decades in Sweden.

### 5.5. To Work as a Temporary Employee

Several surveys have been conducted regarding the working conditions for temporary employees.\(^{43}\) Beside scientific research, both the dominating trade union in the hiring-out of labour business, the Union of Salaried Employees (HTF), and the business organisation, SPUR, have sent out questionnaires to temporary workers asking them about their opinions about their working conditions.\(^{44}\) Different studies are not comparable, but they show a number of similar results: Most hired out employees work for more than half of full-time, most of them at least 75 per cent of full-time, the majority is satisfied with their working time although one third would prefer more working hours. The last desire comes from those with


shortest working time. Most of the employees are satisfied with their work, but a lot of them also say that they would take an offer of a permanent job. Most satisfied seem nurses and teaching personnel.

Advantages with temporary work are, according to the employees, the variety and the possibility to improve one’s own competence, the flexibility with regard to working hours and amount of work which is a help in the reconciliation of work and family life. The greatest disadvantage is the economic insecurity, but also lack of responsibility and discontinuity of social relations at the workplace are negative aspects. Collective agreements have lately tried to give temporary workers economic security and employment security on a level with other employees, see further infra Sec. 6.3. According to trade unions and SPUR about 80 per cent of the temporary workers were permanently employed and 90 per cent enjoyed some kind of guarantee wages when not hired out. This seems to be reflected in the latest questionnaire when a smaller group of temporary employees say that one of the disadvantages with the work is economic security.

Studies indicate that the average pay for temporary employees is comparatively a bit low, but some categories of employees, especially in the public sector, e.g. physicians, nurses, dentists and teachers, often can increase their salaries if the quit public employment and start work as temporary employees. In nursing salaries can be increased by almost 30 per cent for an employee who quit public employment to be a temporary employee. It has been discussed if this could be a strategy to raise low-paid women’s jobs because of competition between employers. Many public employers have decided though not to use temporary workers because of the high costs. In spite of this, the number of temporary workers in nursing and education is increasing.

A survey about nurses leaving public employment for temporary work agencies has shown that the nurses are displeased with the public employer and find it easier to limit their engagement in the hard work situation if they are hired out to different employers. Satisfaction with the work as a temporary employee was mainly due to the fact that the nurses could concentrate on the patients. It is a.o. an advantage not to be involved in administration at the work-place. On the other hand they find it easier to develop their skills when employed by the public employer.45

A right for an initial work period at the user’s firm can be established in the contract between the temporary employment agency and the user. Especially the larger firms are interested in developing competence among their employees in order to forestall the need of initial periods. Hence it happens that a second temporary worker is assigned to the user’s firm at the temporary employment agency’s expense only to study and learn the work there. So-called “back-up agreements” means that the temporary employment agency and a user agree upon an obligation for the hiring out firm to supply the user with temporary employees who are acquainted with the user’s firm. In many situations the user’s firm expects no initial work period for a temporary worker.

Training arranged by the employer to develop the skills of employees has become important for all kinds of employees. There is no legislation in the area in Sweden, although it has been discussed. There are collective agreements including schemes for skills development in some areas of the labour market, but it is not very common.46 The employer can of course voluntary

45 Michael Allvin et al, National Institute for Working Life 2003 (soon to be published).
46 The main agreements concerning hiring out of blue-collar and white-collar employees have special rules about
on his/her own initiative train his/her employees. The largest temporary work firms have quite extensive training opportunities for the employees. The training takes mostly place during off-duty hours, and are therefore unpaid.

CHAPTER 6
THE ROLE OF THE SOCIAL PARTNERS

6.1. Trade Unions and Employers’ Organisations

One reason for the smooth deregulation of private employment agencies and temporary work in Sweden is the existence of strong labour unions covering virtually the whole labour market. The Swedish labour market is highly organised. The overall rate of unionisation is above 80 per cent of the working population. Although figures from the very last few years seem to indicate that at decreasing number of employees join the trade unions. Unionism is fairly distributed among the three main sectors of the labour market: private, local government and state (central government). Unionism is divided into three main federations; one for blue-collar employees, one for white-collar employees and one for professionals. The Swedish Federation of Trade Unions (LO) is a confederation of national trade unions in the blue-collar sector. White-collar employees are unionised in national trade unions belonging to the Federation of White-Collar Workers (TCO). Professionals belong to national unions amalgamated into the Swedish Federation of Professional Associations (SACO).

The trade unions try to organise temporary and other atypical employees as well as typical workers. One of the largest unions within the TCO, the Swedish Union of Salaried Employees (HTF) organises the majority of the temporary workers.

It has sometimes been estimated that less than 40 per cent of the temporary employees are unionised. This has increased during the last years when hiring-out of labour has widened to more groups of employees. The Swedish Union of Salaried Employees estimates that in their area they organise over 70 per cent of the temporary employees. Many employees work as temporary employees only for a short period of their working life, and if they already have joined a trade union and are established on the labour market before they start to work as temporary employees the remain union members. Still it is difficult for the trade unions to attract young people who enter the labour market as temporary employees.

To a large extent it is the trade unions that are responsible on behalf of their members for supervising the application of both collective agreements and labour legislation in Sweden. Some of the rights given to the employees are to be exercised through the unions and are only given to trade unions with a collective agreement. One could say that they are the “established trade unions”. For instance most of the rules in the Co-determination Act aimed at industrial democracy require a collective agreement and so do the rights of trade unions representation pursuant to the 1974 Workplace Union Representatives Act, inter alia conducting trade union activities during paid working time.

Employers trade organisations in the private sector have since 1902 been federated in the Swedish Employers’ Confederation (SAF). SAF amalgamated in 2001 with the leading trade organisation The Federation of Swedish Industries, forming the Confederation of Swedish training, see infra. Sec. 6.3.
Enterprise (SN). In the public sector there is one agency representing the state as employer and one central agency for local government to which the local municipalities are members. One of the largest trade associations within SN is the Swedish Federation of Trades and Services. One of their member organisations is the Swedish Service Employers’ Association, which has concluded collective agreements with the Swedish Union of Salaried Employees for hired out employees since the 1980s. Most of the larger temporary employment agencies are members of the Swedish Service Employers’ Association.

The labour market parties play an important role on rule making in the Swedish labour market. Terms and conditions of employment are usually set by standards laid down in collective agreements. Collective bargaining in Sweden is very centralised, although a process of decentralisation begun already in the 1980s and still continues. Collective bargaining can take place at several levels, but today the focus of bargaining is the industry-wide level. Industry-wide collective agreements cover every sector of the Swedish labour market. Legally binding agreements can be concluded at all levels of bargaining. Most work places with the exception of very small ones are covered by collective agreements and the overwhelming majority of Swedish employees is covered by collective agreements. These figures are lower in the temporary work sector.

Regulation in collective agreements covers most areas of the individual employment relationship, although labour legislation has been extensive since the 1970s. Most labour legislation is constructed in a way that it is possible to agree upon other terms in a collective (but not individual) agreement. There exists no legislation regarding pay in Sweden not even minimum wages. Here, collective agreement regulation is more or less exclusive - during the last years to some extent supplemented with individual agreements between the employer and the employee.

Collective agreements also have an impact on working conditions of non-unionised employees according to labour market practice and case law. Although they are not directly covered by the agreement, it is a general principle that the employer is considered to be obliged to apply the collective agreement provisions also to non-unionised employees and employees belonging to a different union from the signatory union to the collective agreement, unless anything contrary has been agreed with the signatory union. But it is not possible under Swedish law to give collective agreements an *erga omnes* effect. The working conditions for employees working for employers not bound by any collective agreement are regulated in labour legislation and individual employment contracts.

LO and TCO have traditionally opposed temporary work as well as private employment exchange. The employers in SAF, which for a long time supported the ban on profit making employment agencies, were in favour of less strict limits on private employment exchange in general and of legal authorisation of the typewriting-firm activities. The 1980s’ saw a change in these opinions. SAF supported deregulation and so did SACO. The LO and the TCO had apprehensions that deregulation would lead to a segregated market. Both the LO and the TCO opposed the changes in the 1993 Act and wanted to keep the system with authorisation of temporary employment agencies from the 1991 Act. The veto rules in the Co-determination Act were not considered sufficient; State control was in their opinion also needed. The trade unions have nevertheless gradually accepted private employment agencies and their different

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47 In many countries, e.g. the majority of the European Union Member States, there is a mechanism for the extension of collective agreements whereby they automatically are rendered applicable to all employers and employees falling within their ambit, an *erga omnes* effect.
activities. Today trade unions generally recognise that there is a need for temporary employees and have directed their work to try and secure working conditions at the same level as “typical” employees. It could be seen as an outflow of the “the Swedish model” that instead of fighting the employment agencies and employment leasing companies they have more and more been integrated in the normal system of labour relations and collective agreements. It started with an appendix regulating some aspects of the working conditions for temporary employees to the regular collective agreement for white-collar workers in the service area. Today there are special industry-wide collective agreements for both white-collar and blue-collar temporary employees. About collective agreements, see further Sec. 6.3. infra.

6.2. Trade Association, Rules of Ethics

There is an important trade institution working with the aim of supporting seriousness in this line of business which already has been mentioned a couple of times; The Swedish Association of Temporary Employment Business and Staffing Service (SPUR).\(^{48}\) SPUR organises employment exchange and temporary employment agencies, and covers about 85 per cent of the branch. SPUR is entirely a trade and not an employers’ organisation, and does not for instance conclude collective agreements. The main aim of SPUR is to work for high quality, ethics and sound personnel policy in the business. There are a variety of activities represented among its members. For instance, temporary works, employment exchange, recruitment, search headhunting, selection, contract work, education etc.

There are certain conditions to be fulfilled for an agency, which wants to be a member of SPUR, e.g. regarding activity, turnovers, insurance and qualifications.

SPUR has worked intensively trying to build up a self-regulating system in the business and has adopted a number of rules of ethics in order to combat not serious and earnest employers in this quickly expanding sector. The ethical rules should be guiding principles and implies in short: When a member employ someone a written employment contract is necessary, and terms and conditions on a level with collective agreements should be followed. A member is obliged to see to that his administrative staff has relevant knowledge of labour law and collective agreements, and that bookkeeping and accounting follows law and good practice. In relation to other businesses a member should follow business ethics, and when an industrial dispute occurs be considerate to both parties. In relation to customers a member should be discreet and has to inform his/her employees about the need for secrecy and let them sign a secrecy-clause.

SPUR has appointed a council of ethics, consisting of three persons without connections with the temporary work or employment exchange businesses, for supervising the members’ observance of the rules of ethics. If SPUR is notified that a member or a non-member does not comply with the rules they will conduct an investigation. A member could be cautioned and in grave cases be expelled from membership. Hitherto about ten matters have been dealt with, but no member has been expelled. A non-member is affected by SPUR’s decision in the way that the decision is published and the firm can be denied membership.

Serious employers in the sector are troubled by the fact that there sometimes emerge employers who evade payment of taxes or social security contributions or hire out employees that officially are unemployed or sick and therefore enjoy sickness-pay or unemployment

\(^{48}\) The predecessor to SPUR was organised in 1967.
benefits. These illegitimately operating employers dump the prices and this constitutes unfair competition in relation to serious employers. Trade unions and the authorities of course also pay attention to this (see also infra Sec. 6.3.).

Another important issue for SPUR is to inform about the sector and its importance on the labour market. SPUR also gives qualified services to its members, formulates standard-contracts to be used in relation to the user firms, formulates quality rules for different kinds of work, e.g. a policy about quality and direction towards users for SPUR’s members hiring out employees to schools, and works as a policy-maker. In policy questions SPUR often cooperate with SN and in international relations with CIETT (Confédération International des Entreprises de Travail Temporaire). Sometimes SPUR also co-operates with the Labour Market Board and other public authorities on the labour market, in order to find new ways to help workers who due to unemployment or sickness have been absent from the labour market for a long time.

According to SPUR the proposed EC Directive about temporary work is not necessary, and could from a Swedish perspective be counteractive and impede further developments in collective agreements and other means to improve standards for both employees and users. SPUR also consider the proposed Directive discriminatory for the temporary work agencies, because this will be the only sector on the labour market where the employers not will be able to decide the working conditions for their employees, not even in collective bargaining with the trade unions. The attention the proposed Directive has paid to sector is positive though.

6.3. Developments of Collective Agreements

Collective agreements for temporary employment agencies adapted to the temporary work situation emerged before the deregulation process began. The Union of Salaried Employees (HTF)\textsuperscript{49} has concluded collective agreement with the Swedish Service Employers’ Association\textsuperscript{50} since the mid-1980s. This so-called “ambulatory agreement” was for a long time the dominating as well as the pattern agreement in the temporary work business. The general collective agreement for white-collar employees in the trade and service sector with general rules about hiring arrangements, remuneration, holidays, other forms of time off and leave of absence, sick-pay, termination of the employment relationship, occupational social security etc. was applied as far as possible. But a special supplementary collective agreement concerning hiring-out of labour - the “ambulatory agreement” - applied in questions where the general agreement not was applicable.

In the strength of earlier agreements the workers had a guarantee of 20 working hours weekly as an average per month. This paragraph in the collective agreement could however be deviated from. In 1998 a new agreement entered into force with an important novelty: a guarantee of 75 per cent of ordinary full-time work (which normally means 30 hours wage guarantee) a week. It was possible to deviate from this guarantee, but only on the employee’s initiative and the local trade union could ask to be informed.

Lately temporary work have increased and extended to more trades. Consequently, other trade unions started to conclude collective agreements at national level. In May 1997 a collective agreement with the Transport Workers’ Union (federated to the LO) covering the whole

\textsuperscript{49} Tjänstemannaförbundet HTF. (Sometimes translated: The Swedish Union for Commercial Employees.)

\textsuperscript{50} Tjänsteföretagens arbetsgivarförbund (within the Swedish Federation of Trade and Services, federated to SN).
country was concluded. This was the first nation-wide agreement outside the office-sector. There emerged also agreements a.o. in metal industry, nursing, hotels and restaurants, transports.

In 2000 the first collective agreement totally adapted to hiring-out of labour was negotiated between LO and the Swedish Service Employers’ Association. It regulates the working conditions for all employees belonging to a trade union that is federated to LO. It was signed by all the nation-wide blue-collar federations federated to the LO.\footnote{The LO has negotiated, but has no competence to conclude a collective agreement on behalf of its member unions. It is the nation-wide blue-collar federations federated to the LO that have to sign the agreement before it enters into force.} The agreement is only applicable in temporary work situations, not for outsourcing (contract work). The agreement stipulates a wage guarantee of 85 per cent, and the guarantee level is 90 per cent from October 2002 for employees with at least six months employment. When hired out, the same working-conditions that are applicable to comparable employees in the users’ firm should apply to the hired in employee. This means that e.g. wages for the hired out employee should be the same as for comparable employees at the users. The employee has a right to refuse a special commission without reduction in pay if there are urgent reasons in the specific situation. According to the agreement permanent employment is the main rule, but there are certain stipulations regarding employment for a limited period. A limited employment contract should only last for six months, but - if the local trade union agrees - it is however possible to conclude a fixed-term contract for 12 months. Fixed-term contracts are furthermore allowed for replacement and for practical work experience, but the possibilities to conclude fixed-term employment contracts are on the whole more limited than according to the Employment Protection Act. It is possible for the employee to refuse a special assignment e.g. due to extremely long travelling distance or harassment at the user, and still keep his/her wages. There is a stipulation about neutrality regarding work at the users’ that is subject to a labour dispute. The hired out employee is explicitly not prevented to take a job at the users’ firm after termination of the employment contract and the applicable notice period.

A new agreement between the LO and the Swedish Service Employers’ Association was concluded in December 2002. It means a couple of changes to the earlier agreement, mainly in order to clarify. The wage guarantee has increased to 90 per cent after three months uninterrupted employments from January 2004. For the first three months the wage guarantee still is 85 per cent, until May 2004 when the wage guarantee rises to 90 per cent from the first day of employment. The way of calculating wages when hired out has caused problems so the new agreement tries to precise the reference group at the users. To fix the geographical area within the temporary worker could be sent to different users has also caused problems. In the new agreement it is stipulated that reasonable travelling distance should be agreed when the temporary worker is hired at the temporary work agency. The trade union has also a possibility to negotiate about this, and if the parties cannot reach a conclusion, the local municipality is normally the geographical area in which the employee is obliged to work for different users.

The parties to the LO-agreement have set up a joint working-group where they will follow the application of the agreement and try to simplify it. The group will also work for fair competition and try to fight not serious and dishonest employers which operate in the sector. It is also noted that the LO has raised the question about some kind of licensing for temporary work agencies from the social partners.
In the autumn 2001 the Swedish Union of Salaried Employees, eight unions belonging to SACO and the Swedish Service Employers’ Association after assistance from a conciliation board concluded a new agreement, which is applicable from April 2002. This new white-collar agreement is – like the LO agreement – complete in the regard that it regulates all aspects of hiring-out of labour and not relies on any other agreement. In other words; it is not a complement to the general agreement any more. As a main rule the employment relationship is permanent, but the agreement allows a number of fixed-term agreement situations.

According to the agreement all temporary employees with more than 18 months of employment get 100 per cent of full-time remuneration irrespective of they are hired out or not. Those who have been employed less than 18 months get first 75 per cent of full-time wages guaranteed and then a 85 per cent guarantee. The agreement contains also rules about discretion regarding the employers and the users’ affairs, notice period in case of termination of the employment agreement, overtime pay, holiday pay, sickness pay, parental leave pay etc. A special working-time agreement and an agreement on training of employees are supplemented.

The above-mentioned agreements between the Swedish Service Employers’ Association and the Union of Salaried Employees/eight SACO-federations and the LO-federations respectively are the most commonly applicable. It is noteworthy that these two dominating agreements have an entirely different approach to wages. According to the LO-agreement wages for temporary workers should be the same as for comparable workers at the user. (The same principle as in the proposed EC-Directive.) The white-collar agreement stipulates that the temporary worker’s monthly salary should be the same irrespectively of which user or workplace he/she is posted to.

There is also a large collective agreement for the health care area concluded in 1999. The temporary work agreement is constructed as a special supplementary collective agreement to the main collective agreement in the private health care sector covering all employees except physicians and dentists. The guarantee wages is 75 per cent of full time pay. The temporary employee can refuse to be sent to a special user under particular circumstances, e.g. he/she has been harassed at the users before, and still keep his/her wages. The temporary employee has a right to an initial work period at the user. Fixed-term contracts are allowed in situations where there is a need for extra employees for a short period or there is need for special competence, but not at permanent need for extra labour. It is underlined that skills development is a common responsibility for the temporary work agency and the temporary worker. The agreement also contains rules about pay, working time, insurance.

In 2001, for the first time, a collective agreement for the call-service sector was concluded between the Union of Salaried Employees and the Swedish Service Employers’ Association. This is only a special supplementary agreement to the general collective agreement for the white-collar service sector. A new supplementary collective agreement, which is applicable from April 2003, has recently been signed. As a main rule the employment relationship should be permanent. But beyond the possible fixed-term agreement situations that the Employment Security Act and the general collective agreement in the white-collar service sector allows, work for a fixed-term period is possible in situations where there is a need for extra employees for a short period or there is a need for special competence or the employee asks for a fixed-term contract, but not when the need for extra labour is permanent. If this or these fixed-term agreements should exceed 832 hours during a 12-month period the employee should be offered a permanent contract. The agreement also contains rules about working time, holiday pay and wages.
The construction in several collective agreements that temporary employees are employed for an indefinite period and have 100 per cent guarantee pay, irrespectively if they are hired out or not, has caused discussions. It is alleged that this gives inducement for the temporary work agency to hire out its employees to any job, irrespective of the employees’ qualifications, or to use them in unqualified job at the hiring out agency.

7. THE ROLE OF GOVERNMENT

It has been mentioned above that Sweden denounced the 1949 ILO Convention No. 96 in order to enact the 1993 Act. There was a general feeling that Convention No. 96 was outdated and failed to recognise the increasing role of new types of private employment agencies in the labour market, and in 1997 Convention No. 96 was replaced by ILO Convention No. 181 on Private Employment Agencies and Recommendation No. 188. Sweden decided in 2001 not to ratify the 1997 ILO Convention No. 181 at the time being. Main reasons for this were the establishment of the above mentioned Government Working Group (Sec. 1.2.) and the ongoing discussion about EC regulation. There seems not to be any particular legal problems for Sweden to ratify the Convention No. 181. Still, some minor questions could be discussed.

Sweden is a member of the European Union since 1995 but the European Court of Justice’s judgement already in 1991 in Höfner and Elser v. Macrotom GmbH concerning the monopoly of public employment agencies was one of the reasons for Sweden to abolish the public monopoly. The case Job Centre coop. Arl followed in 1997. In both cases the Court held that a public placement office could be classed as an undertaking for the purpose of Community competition rules. An undertaking vested with a legal monopoly might be regarded as occupying a dominant position within the meaning of Article 86 in the EC Treaty.

Supplying labour and arranging employment is in Sweden traditionally regarded as a job best undertaken by the public authorities, and when the 1993 Act was issued it was not expected that private employment exchange would be very extensive. Private job placement was supposed to be a complement to the public employment service in certain parts of the labour market especially regarding headhunting for executives, but also for specialists and certain professions and trades. Public job placement was introduces in Sweden in the early 1900s. There are local Public Employment Service Agencies throughout the country. The labour market parties are represented on the Board of the Employment Service. Public job placement is non-fee charging. It is supposed to counteract segregation in the labour market and is also an important instrument for labour market policy. Employers are under obligation to report vacancies to the Employment Service. Although an employer looking for workforce is not compelled to appoint a person suggested by the Employment Service. However a considerable amounts, in fact most of the employment arrangements are concluded without the help from the Employment Service, i.e. presumably most of them by personal contacts.

52 Government Bill 2000/01:93.
53 See Nyström 1999 s. 356.
56 See also case C-163/96 Silvano Raso and others [1998] ECR I-533 (dock work monopoly).
It is clear that private employment exchange is proportionally very small, but it has nevertheless influenced the public employment exchange. Quite a few public employment agencies nowadays have arranged special exchange services for fixed-term and casual work and there are examples of special services for certain groups of employees. There are also examples of employment policy programs where unemployed, who have been without job for a long time, are trained and employed by some organisation in which the public employment agency is involved together with e.g. trade unions, adult educational associations, municipalities, local enterprises. The organisation hires out the employees with the aim that they shall get indefinite employment contracts in the future. Together with the local municipalities public employment agencies have started so-called job centres. In a job centre unemployed can mix education and temporary work. The unemployed enjoys unemployment-benefits or other public benefits when they are not hired out. Different kinds of state subsidiaries are also sometimes involved regarding call-centres, which can be placed in areas of Sweden with high unemployment rates.

Some of the above mentioned activities from public authorities have risen attention from a competition perspective. Different kinds of subsidiaries in order to try and help groups, which have difficulties in getting access to the labour market, could be seen as a way of distorting competition. In 2000-2001 the Parliamentary Auditors conducted studies concerning temporary work and labour market policy from a competition perspective. The Auditors establish that there have been forms of labour market policy, especially the so-called job centres, where competition has been distorted. Owing to current labour market policy measures and a new policy from the Labour Market Board this does not lead to any further activities from the Auditors at the time being. The authorities working in this area are now instead urged to co-operate with private employment exchange firms. The Labour Market Board has e.g. initiated co-operation activities especially regarding immigrants and elderly. In 2000 the Labour Market Board was commissioned by the Government to initiate a project where private employment agencies are supposed to be a complement to public employment agencies. A report from the Department of Industry indicates among other things that it is easier for immigrants to be employed by temporary work firms than to get other forms of employment.

8. CONCLUSIONS

The proposal (see above Sec. 1.2.) from the State Committee for Evaluation of the Deregulation of the Monopoly on Employment Exchange in 1997 has not lead to legislation. There are several reasons for this: Negotiations and collective agreements in the area are flourishing. A Government Working-Group has been established in 2002, which together with representatives of the labour market parties shall survey working terms and conditions for hired-out employees and make an inventory of problems in the sector. There are also developments in the area on European Community level. The building up of a self-regulating system that has emerged through the business organisation SPUR is also an explanation. There is no tradition in the Swedish labour market to legislate if the labour market parties themselves could solve a problem. From the trade union’s point of view it is nevertheless

57 The Parliament Auditors investigate and examine all kinds of state activities, mainly in the form of performance auditing and endeavor to promote sound management of state funds and rational use of state assets.
58 In fact, in the middle of April 1998 the Swedish Government stated that - due to the self-regulation and the extended use of collective agreements – it did not intend to legislate in this area.
unsatisfactory with a self-regulating system without a possibility for the employees to gain insight. Therefore some of them continue pleading for a public authorisation system.

Generally a change in attitude towards temporary work has emerged during the last years; using temporary employees have been regarded more serious. Nowadays even serious and public employers may use temporary workers without much discussion. Although some public employers, a.o. hospitals, has a policy not to hire in labour because they regard it too expensive and are afraid that their own employees will be tempted to quit and start work with a hiring out firm because they are better paid there. A non-socialist Government introduced the 1993 legislation, but the social democrats did not make any changes when they returned to power. Instead, they have acceded to the trade unions demands by appointing the above-mentioned Government group. By and large the trade unions are reluctant to temporary work, but they seem to adapt to the new situation and tries to take some control over it by concluding collective agreements. The institution seems gradually to be more accepted and at the same time also more incorporated in the traditional Swedish model for labour relations. Swedish trade unions describe this as they have accepted temporary work, and now are bent on as good working conditions as possible for the employees. The growth of collective agreements clearly shows the tactics of the Swedish trade unions: If you cannot beat them – then join them. The Swedish labour market parties and labour law have to adapt to current changes on the labour market, and they have successfully managed to do this in a traditional way: by securing labour standards for “atypical employees” to the same level as for “typical employees”.

This quickly expanding area of Swedish working life has during the last years attracted interest from social science research. Several research projects have looked upon private employment agencies and temporary work from different perspectives. Research results give a somewhat contradicting picture. Most of the temporary employees say that they like their job, yet the average time of employment with an employment leasing company is only a year. One of the reasons for this extreme mobility is economic insecurity. When it comes to economy there have been considerable advantages during the last years. From the beginning there was no wage guarantee for a temporary employee not hired out. In 1996 about 35 per cent of the temporary employees had some kind of wage guarantee, often 50 per cent of normal pay. In 1998 the majority got 75 per cent of normal pay when not hired out, and today the majority have almost full or full pay regardless if they are hired out or not. There are also groups of temporary employees who get much better paid when the work as temporary employees than in an ordinary employment relationship performing the same job.

Conclusions drawn from surveys about temporary work has recently also inspired discussions regarding stress and too demanding working conditions in the Swedish labour market, which seem to be one of the reasons for the extremely high absence from work due to illness. Rationalisations during the last decade, especially in the public sector, has led to a situation where a lot of (mostly rather low qualified) service- and other supporting jobs have been taken away from the organisations. The remaining employees are supposed to perform administrative and service tasks beside their ordinary assignments. Maybe here is something to learn from satisfied temporary employees, which states that it is an advantage to perform the tasks that they have educated themselves for and to be able to set up demarcation lines regarding their engagement in the work situation as a whole.

To summarise: Temporary work plays a minor role on the Swedish labour market. Despite a considerable rise in the number of employees during the last years – temporary work affects a
rather insignificant part of the Swedish labour market. So far there has been no extensive use of temporary workers. Its advantages and disadvantages are still under discussion. There is a prevalent view that there is a need for temporary work and other forms of more flexible work agreements, but that there also is a risk that this can lead to a dualistic labour market with a core of employees that enjoy security of employment and other benefits by virtue of labour and social security legislation as well as collective agreements, and groups on the margin with a much more insecure employment and social situation. It is nevertheless likely that the temporary work sector will continue its growth in Sweden. There is still demand from users companies, the temporary work agencies are very competent in specialised areas and they can offer competence and specialised employees within short notice. On the whole temporary workers are well protected by the legal framework, most of them working on open-ended contracts and being on average well educated. The “typical employment relationship” is the model after which Swedish labour legislation is shaped. This relationship is in practice more and more replaced by other “atypical” ways of performing work. In other words, the “atypical” is on its way to become the “typical”. Hence today there is a need for reconsidering labour and social security legislation bearing this in mind.

**BIBLIOGRAPHY** (only literature in English)


Fahlbeck, R., *Nothing Succeeds Like Success. Trade Unionism in Sweden*. Juristförlaget i
Lund 1999.


