



## **Briefing on Personnel Leasing in the European Union**

### **1. Economic significance**

- In the EU (15 Member States; there are not yet any figures of the 10 new Member States) there are about 1,4 million people working in personnel leasing labour relationships.
- This is a relative small part of all employees (1,4%).
- All observers (the sector, labour market experts, economic think tanks) forecast an increase of personnel leasing labour contracts in the years to come.
- There are significant differences between the Member States: in the Netherlands leased labour is at 4%, in Germany the quota is 0,7%.
- The personnel leasing sector has to stand a difficult image:
  - Positive: some rigid regulations can be overcome, and jobs are effectively created
  - Negative: It is said to be often an instrument to circumnavigate protection provisions and to decrease salary standards.
- Originally, many EU countries have only few rules and not a clear definition of personnel leasing (UK, Ireland, Denmark, Finland)
- Some countries (Germany) have very detailed provisions.
- Due to controversies in the public discussion on personnel leasing, the EU Commission decided to elaborate a draft of a framework law which should guarantee a minimum standards in labour protection.
- This should contain non-discrimination in
  - working time
  - salaries
  - holidays

but does not regulate social security payments.



- These proposals have not been accepted by some countries (like UK, the Netherlands) which fear interventions into their flexible and partly deregulated labour market. On the other hand, these countries are among those with the smallest unemployment quota.
- In other countries the freedom for personnel leasing companies has been reduced since the 1970s, but these reductions have been returned in the course of time – since many years already (example: Denmark).
- In UK and the Netherlands there works much leased workforce even in the public service; in the other EU countries this is not or almost not the case.
- There is – in all EU countries – a global trend to skilled personnel which companies try to obtain via a personnel leasing company.
- *Example: a controller (a skilled economist) or accountant for the preparation of the annual balance sheet is relatively expensive for a company. The company – often led for the balance sheet by a controller! – needs such personnel only for some months. The controller is leased from a specialised company which “rents” only leading and highly qualified personnel (In some countries there are even associations for this sort of companies). This brings also for the controller the possibility to learn about several or many companies, and this again makes up to his “value” on the labour market.*



- Some additional data from the personnel leasing companies' associations:

<i>Country</i>	<i>Turnover (1999) (millions EUR)</i>	<i>% of total workforce (1999)</i>	<i>Personnel leas. workforce (in 1.000) (1998) [daily average]</i>	<i>% in public administration (1998)</i>
<i>Belgium</i>	<i>2.236</i>	<i>1,6</i>	<i>59</i>	<i>0,0</i>
<i>Denmark</i>	<i>115</i>	<i>0,2</i>	<i>4</i>	<i>0,3</i>
<i>Germany</i>	<i>6.188</i>	<i>0,7</i>	<i>203</i>	<i>0,2</i>
<i>Finland</i>	<i>126</i>	<i>0,4</i>	<i>9</i>	<i>0,0</i>
<i>France</i>	<i>15.073</i>	<i>2,7</i>	<i>567</i>	<i>0,1</i>
<i>Ireland</i>	<i>247</i>	<i>0,6</i>	<i>8</i>	<i>0,2</i>
<i>Italy</i>	<i>571</i>	<i>0,2</i>	<i>8</i>	<i>0,0</i>
<i>Luxemburg</i>	<i>86</i>	<i>2,0</i>	<i>3</i>	<i>0,1</i>
<i>Netherlands</i>	<i>6.398</i>	<i>4,5</i>	<i>294</i>	<i>4,4</i>
<i>Austria</i>	<i>441</i>	<i>0,7</i>	<i>21</i>	<i>0,1</i>
<i>Portugal</i>	<i>390</i>	<i>1,0</i>	<i>38</i>	<i>0,0</i>
<i>Sweden</i>	<i>559</i>	<i>0,8</i>	<i>18</i>	<i>0,2</i>
<i>Spain</i>	<i>1.750</i>	<i>0,8</i>	<i>90</i>	<i>0,1</i>
<i>United Kingd.</i>	<i>24.708</i>	<i>3,2</i>	<i>878</i>	<i>5,3</i>

- It must be estimated that today – in 2004 – these figures have developed in a linear way, although the objective of CIETT (International Association of Personnel Leasing Companies) will not be reached, namely to create 4 million new jobs in the EU until 2010.
- In some countries, newer figures are available, indicating – e.g. in the case of Germany – that
  - personnel leasing companies recruit since 1998 on an average, year after year, around 320.000 new employees,
  - out of this group, 60% did not have a job before. The personnel leasing companies claim therefore that they transfer every year hundreds of thousands of people from unemployment to a job with compulsory social security coverage.
  - around 30% of all workers are taken over by the user enterprise. Personnel leasing companies thus integrate, on a yearly basis, more than 150.000 employees permanently into the mainstream labour market.
  - according to – undisputed – assessments, temporary workforce qualifies under real working life conditions rather than in various “schemes”, thus also qualifying for the mainstream labour market.



- people from so-called problem groups get a chance to convince the customer by their performance and to obtain a permanent job with these companies. This decreases the stigma of previous long-term unemployment for these workers.
  - Persons who were unemployed before document by their activity in a personnel leasing business that they are willing to work, thus increasing the possibility to “feed” them into a job, e.g. also by the Federal Employment Agency branch offices, or on private initiative.
- The sector became in the last years a veritable business in Germany, with 6.454 personnel leasing agencies in this country only (1.1.2002). These enterprises did not need any public funds. This indicates that also in former transition economies, a likewise sector will develop.

## 2. Conclusions from the economic significance in the EU for Russia

- The personnel leasing sector is a recognised business in the EU, though in the first years of its existence often contested. It follows a regulation by the EU Member States, however differently intensive.
- Due to the Single Market freedoms it will for sure also be represented – and is already – in the new Member States of Central and Eastern Europe. It will be a matter of some few years until in these countries will appear the first statistics similar to the above ones.
- As Russia follows equally the market economy principles and there are also a number of personnel leasing companies in Russia, it for sure will be necessary that Russia adopt some regulation applicable for these businesses.
  - Otherwise there would be a situation where there are personnel leasing businesses, acting partly in a legal grey zone which is always the worst solution, as grey zones or shadow economy elements should be gradually driven into legality, which again requires a legal framework. This is expressed here in view of some legal voices in Russia who tend to say that personnel leasing should not be permitted in Russia. If other legal changes would have to be accomplished, then the conditions would have to be met – which is a typical problem for all transition economies.
  - On the other hand, this sector can't be left in illegality, and other sectors not. This would be a selective measure, which can hardly be maintained – for general rule of law reasons – and it would seriously affect the role of the state as supreme framework of the freedom of economy.



- The first personnel leasing company in Germany, which has been founded in 1962 had been immediately prohibited, as the sending of employees has been reserved to the state Employment Agency. In 1967, the German Constitutional Court has ruled that such a prohibition is against the freedom of profession and of business. In the first years workers could be sent into companies only for three months, and a permit of the German Employment Agency was introduced for personnel leasing companies. All this has been changed in the meantime in the sense of deregulation, although there still remains a – justifiable - great deal of regulation. In the meantime, the German government bets on personnel leasing to create jobs (Hartz model).
- To allow this sector, which is clearly desirable from the EU point of view, does of course not mean that there is no regulation in order to meet the social specificities, for in a system of social market economy the state has also to maintain a high level of social security. This is a permanent imperative and has to be adapted to the general level of social rules. Therefore **only the density of regulation** in Russia may be the question, which is up to the legislative bodies.

### 3. Selected regulation questions

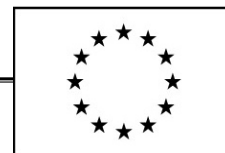
- The EU has regulated only the information of the leased personnel on dangers of the work (EU Directive 91/383/EEC, art. 7). All other regulations are left for the Member States and their legislation, also due to the EU principle of subsidiarity (what can be regulated on Member States' level should be regulated there, what is written in the EU Treaty or, according to urgent EU reasons, should be regulated on EU level, has to be regulated on EU level). It is therefore for the EU not very easy to harmonize standards in personnel leasing for the EU level.
- As mentioned before, in addition to the few EU rules, the Member States have more concrete rules on personnel leasing, going from very few (Great Britain, Netherlands) to very dense regulations (e.g. Germany).
  - The German Personnel Leasing Act can be downloaded from the website of the Russian EU project on Labour Legislation and Arbitration [www.labourproject.org](http://www.labourproject.org) (under EU legislation).
- In favour of a general loose framework of EU legislation for personnel leasing works a trend in favour of “new forms of work”, i.e. in the sense of a certain flexibilisation of employment,
  - for instance also sharing of employees by several (two or three) employers,
  - flexible working time according to working time accounts (on a yearly level, for example),



- in the sense that “normal” employees can become more and more at the same time employers (by a part of their salary paid on a participation account), etc.

But at the same time, it can be said that some governments do not see the necessity to regulate more, just for the reason of flexibility.

- There is a new attempt of the European Commission to regulate in a more harmonised way the working conditions in personnel leasing (Amended proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers from 28.11.2002, Doc. COM(2002) 701 final).
  - The general direction of this directive (EU framework law) goes in the tendency of guaranteeing equality between temporary and non-temporary workers, especially in the framework of a higher level of mobility of workers within the EU, e.g. in border areas.
  - This principle of non-discrimination (as to protection of pregnant women, nursing mothers, young people, in equal treatment) will be, once this directive will be in power, fixed on EU level, valid for all (now) 25 Member States.
  - There are also rules for the whole EU, which for example exclude fees paid by temporary employees to personnel leasing agencies, or for a non-discrimination as to the access of temporary staff to amenities or collective services like canteens, child care, transport services etc.
  - However, these regulations can be derogated if a temporary employment shall last up to six weeks.
  - Also equal pay between temporary and permanent personnel can be derogated by the Member States. The tendency is there, that this should be made more and more possible, in the sense of a flexibilisation of work, but – of course – this is sometimes heavily contested e.g. by trade unions.
  - The EU proposal just stipulates that there is derogation from equal payment for comparable work, if the temporary workers have an unlimited working contract with the personnel leasing company and remain therefore also employees even if they would have a break between several missions to different companies.
  - Some companies – including big carmakers – try to circumnavigate this problem by recruiting staff by sub-contractors (which constitutes a kind of outsourcing, i.e. by having a certain task done by personnel which comes from outside of the company. More or less even trade



unions accept this principle, as usually it is not exaggerated by the contractors and practised only in a restricted volume.

- This problem, in general, is not solved and will be very difficult to be solved definitely, as many companies try to save financial means where they can, especially in difficult times. But more and more trade unions seem to accustom themselves to this kind of work, unless it is kept within a certain framework. This of course is depending to
  - The general economic situation,
  - The difference in pay between permanent and temporary personnel,
  - The situation in the region concerned,
  - The situation in the sector concerned,
  - The presence of trade unions and their organisation depth (% of workforce),
  - The quantity of use of personnel leasing, by user companies.

#### 4. Conclusion

- The EU project Labour Legislation and Arbitration offers its help to every precise question raised by any Russian stakeholder.
- The Amended Proposal for a Directive on working conditions for temporary workers from 28.11.2002, COM(2002) 701 final, is, for detailed information, attached in the annex (in English).

Hans-Juergen Zahorka  
EU Labour Legislation Expert