



WHAT IS 'TEMPORARY AGENCY POSTING' AND HOW FAR CAN WE COUNT IT?

LINKING LEGAL DEFINITIONS TO EMPIRICAL EVIDENCE

SONILA DANAJ, DIRK GILLIS, LEONARD GEYER, FREDERIC DE WISPELAERE, & NIKKO BILITZA

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General contact: frederic.dewispelaere@kuleuven.be

p.a. POSTING.STAT 2.0

HIVA - Research Institute for Work and Society
Parkstraat 47 box 5300, 3000 LEUVEN, Belgium

For more information frederic.dewispelaere@kuleuven.be

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Executive summary

This thematic paper aims to shed light on the extent and nature of ‘temporary agency posting’ through a legal and empirical analysis of the manner and conditions under which TWAs are involved in posting, their characteristics, the risk of non-compliance, and enforcement challenges. The paper is based on a review of existing academic literature and technical reports that provide administrative data on the posting of workers in the EU, empirical data collected by the research teams of the POSTING.STAT 2.0 consortium in the participating countries and the evidence collected by the partners in each country (Austria, Belgium, France, Germany, Italy, the Netherlands, Lithuania, Poland, Slovakia, Slovenia, and Spain), as well as a webinar with thematic experts and social partners.

The concept of ‘temporary agency posting’, as referenced in the Practical Guide on Posting published by the European Commission (EC, 2019), immediately prompts several questions. Does it refer exclusively to (recognised) temporary work agencies (TWAs), or should it be interpreted more broadly? The issue is further complicated by the fact that ‘posting’ under the Posting of Workers Directive (Directive 96/71/EC as amended by Directive (EU) 2018/957, in short PWD) differs in meaning - and consequently in scope - from ‘posting’ as defined in the Regulations on the coordination of social security systems (Basic Regulation (EC) No 883/2004 and Implementing Regulation (EC) No 987/2009).

Given the growing political and academic attention to so-called ‘labour market intermediaries’ (LMIs) operating within a cross-border context, we begin our analysis with this umbrella concept and show how TWAs are only a part of the broader range of LMIs. Both in the literature and the statistical classification of economic activities based on the so-called ‘NACE code’, a distinction is often made between ‘temporary work agencies’ (NACE 78.2), which have an employment relationship with the worker, and ‘private placement agencies’ (NACE 78.1), which do not, but rather act as ‘go-between’. Given the focus of this paper on the posting of workers, particularly cross-border hiring out of workers, LMIs that do not have an employment relationship fall outside the scope of our analysis. However, we argue that this distinction is not always straightforward, both theoretically and in practice. And focusing solely on (recognised) TWAs might be too narrow an approach when examining the extent and nature of ‘temporary agency posting’ under the PWD.

Indeed, according to Article 1(3)(c) of the PWD, said directive applies to undertakings which *“being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting”*. Particularly, the inclusion of the concept “placement agency” is puzzling, not least because the concept is commonly used in literature to define LMIs who do not have an employment relationship with the worker. According to legal experts consulted on the matter, this could be due to the less-than-accurate translation into English of the final text. Furthermore, the context in Germany, where the hiring-out of workers is an activity not restricted to TWAs, may also have influenced the inclusion of the term. The choice of using the ambiguous term ‘a temporary employment undertaking or placement agency’ in Article 1(3)(c) of the PWD to capture ‘temporary agency posting’ may, therefore, have been a strategic one. Indeed, the addition of ‘placement agencies’ to the wording of Article 1(3)(c) of the PWD seems intended to capture both ‘formal’ TWAs (i.e., ‘temporary employment undertaking’) and ‘less formal’ forms of the hiring-out of workers - i.e., those which, under the national law of their Member State of establishment, are not classified as TWAs - thereby broadening the provision’s scope. Previous research supports this interpretation as it reports cases of posting undertakings specializing in the supply of labour or the hiring-out of workers without declaring this as their main activity. By retaining this wording rather than adapting the definition of a TWA as defined in Directive on Temporary Agency Work (i.e., Directive 2008/104/EC), the provision may better ensure that Art. 1(3)(c) of the PWD

addresses the concrete phenomenon of cross-border hiring-out of workers, regardless of the legal form of the posting undertaking or how it is defined under national law. Nonetheless, making a distinction between services comprising the ‘labour-only’ posting of workers under the supervision of a user undertaking versus other services performed with the help of posted workers can be difficult to implement in practice, and equally so in quantifying its importance.

From a legal perspective, it is clearly challenging to determine which postings fall within the scope of Article 1(3)(c) of the PWD. This makes data collection difficult, with the central question being whether the reported figures accurately reflect the postings that theoretically fall under the application of Article 1(3)(c) of the PWD. Apart from the EU regulatory framework and interpretations, we also find distinct differences between Member States in the regulatory and thus administrative frameworks of (posting) TWAs, which adds to the legal complexity of TWA posting in the EU.

Despite the variation in national and EU legislation on what constitutes LMIs, TWAs, and TWA posting, national authorities and EU institutions have been collecting data on them. Data on TWAs are drawn from three different data sources. The Structural Business Statistics (SBS) for 2022, published by Eurostat, reports the existence of approximately 29,200 temporary employment agencies (NACE 78.2) in the EU, employing approximately 3.7 million persons, most based in the Netherlands, Germany, and Sweden. Based on EU-LFS data, 2.4% of employed persons between 20 and 64 years were ‘temporary employment agency workers’ in the EU-27 in 2023. According to data from Orbis, 128,020 active EU-27 companies have as their primary or secondary NACE code 78.2.

The counting of temporary agency postings is done using three different methods: counting the number of PDs A1 classified under NACE code 78.2 based on data collected at the EU level, counting the number of postings under Art 1(3) of the PWD and recorded in the prior declaration tools based on data collected at the EU level, and using other data provided by national authorities. The main findings drawn from these sources are that in 2023, the highest number of PDs A1 granted under Article 12 of Regulation 883/2004 to posting undertakings and posted workers classified under NACE code 78.2 were issued in Poland (26 112), Belgium (17 707), and Germany (12 942). As a share of all postings under Article 12, postings under NACE code 78.2 were the most important by far in the Netherlands (64%) and Belgium (20%). On the other hand, among the receiving Member States for which data on postings under Article 1(3)(c) of the PWD are available based on prior notification tools, France reports by far the highest number of incoming workers posted by ‘temporary employment undertakings or placement agencies’, both in absolute terms (42 488 posted workers) and relative terms (accounting for 18% of the total posted workers declared in France’s prior declaration tool).

Nevertheless, from a statistical perspective, there can be a significant difference between what one assumes or intends to measure and what is actually measured. Caution is warranted in assuming that all posting undertakings and their posted workers falling under Article 1(3)(c) of the PWD have been issued a PD A1 under Article 12, classified under NACE code 78.2. Indeed, given the broad application of Article 1(3)(c), these may not be limited to (recognised) TWAs with a Portable Document A1 (PD A1) granted under Article 12 and classified under NACE 78.2. Caution is therefore also in order when using data sources that depict ‘temporary agency posting’ through the lens of either the PWD or the Coordination Regulations, particularly when making comparisons between them.

Significant differences in the number of posted temporary agency workers can be identified among sending and receiving Member States. These may be due to differences in regulations on (the posting by) TWAs in both the sending and receiving Member States. For instance, in most Member States covered by the POSTING.STAT 2.0 project, TWAs need to be formally recognised, mainly by applying for a licence/recognition/accreditation (e.g., in Belgium, Germany, Spain, Slovakia, and the Netherlands (as of 2026)) or by registering (e.g., in Italy, Lithuania, Poland and Slovenia). Such obligations then apply not only to domestic TWAs but also to foreign TWAs if they want to post their workers to these Member States. Moreover, in Germany, there is a (partial) ban on the employment of temporary workers in the construction sector and in some activities in the meat sector, although significant exceptions exist.

Finally, regarding the risks of non-compliance and enforcement challenges, we find that although existing literature indicates violations in the posting of temporary agency workers, data about infringements is not readily available. The challenges linked to the collection of data on the enforcement of compliance with legislation applicable to (the posting of workers by) TWAs and other LMIs across the various Member States of the POSTING.STAT 2.0 project are multifaceted and make it difficult to gather accurate and comprehensive statistics on TWA activities across the EU. These challenges include the lack of harmonised legal definitions across EU countries, the limited availability of data, the under- and non-reporting of TWA posting, and the lack of transparency and cooperation across countries.

Based on our findings, further steps could - and should - be taken to enhance our understanding of the ‘temporary agency posting’, for example by defining a targeted research agenda from both legal and empirical perspectives. A key step here is to get a better idea of the data quality provided. This implies examining how Member States currently report data on the number of PDs A1 issued under Article 12 of Regulation 883/2004 and classified under NACE code 78.2, as well as data on the number of postings falling under Article 1(3)(c) of the PWD. Moreover, for the latter, the key question is how many postings theoretically fall within the scope of this provision compared to the numbers reported in prior declaration tools. However, quantifying the theoretical group of postings covered by the application of Article 1(3)(c) of the PWD presents a statistical challenge and, even more so, an enormous challenge for the enforcement bodies. In that respect, additional efforts could certainly be made to improve the collection and reporting of inspection statistics concerning ‘temporary agency posting’. From an academic perspective, it appears to be an understudied topic, and this seems equally true from the standpoint of the competent enforcement agencies, likely due, at least in part, to the ‘legal imbroglio’ one is confronted with. Finally, we believe it would be highly beneficial to gain deeper insight into how TWAs apply the ‘posting conditions,’ as stipulated in the Coordination Regulations. Once again, something in which the enforcement bodies are certainly also interested.

Future research should also focus on building an updated and more robust typology of LMIs hiring out workers or otherwise directly or indirectly supplying workforce domestically or cross-border. A more robust typology would provide more insights into the different nature, characteristics and the various degrees of relationships between the LMIs, the workers and the user undertakings. Building such a typology should allow for better identification of legal discrepancies, opacity and loopholes. Contrasting existing models of LMIs and confronting said models with existing legal concepts and categories would also help map the legal and practical challenges that responsible administrations face and the monitoring and enforcement challenges that arise at the different levels of competence.

1. Introduction

Temporary agency work¹ is a triangular employment arrangement whereby the worker is employed by a temporary work agency (TWA) and subsequently hired out to perform work at, and under the supervision of, a user company.² TWAs operate not only within their country of establishment, but also, increasingly within a cross-border context.

Directive 96/71/EC, amended by Directive (EU) 2018/957 concerning the posting of workers in the framework of the provision of services (in short, the Posting of Workers Directive or PWD)³ covers three different types of postings described in its Article 1(3): apart from (a) postings to perform service contracts in the context of transnational subcontracting, and (b) transnational intra-company transfers (i.e., ‘intra-group posting’), it also covers (c) postings through hiring out a worker via a ‘temporary employment undertaking or placement agency’ established in another Member State.⁴ This paper focuses on the form of posting under (c) of Article 1(3).

It is commonly argued that posted workers do not enter the labour market of the host Member State.⁵ However, the CJEU has consistently ruled that workers posted by a TWA to a user undertaking in another Member State do enter the labour market of that Member State.⁶ As a result, the posting TWA must apply the same terms and conditions of employment that would apply if these posted temporary agency workers had been recruited directly by the user undertaking for the same job. This means that posted agency workers are entitled to more favourable terms and working conditions than other categories of posted workers.

Despite the broad consensus in the literature and policy documents on how ‘challenging’⁷ the issue of posting by TWAs is, there remains a gap in the existing publications regarding an in-depth legal and empirical understanding of the manner and conditions under which TWAs are involved in posting. This gap is even more pronounced when it comes to the extent and share of TWA posting in the EU and individual Member States, as well as its characteristics, including instances of infringements. In this thematic paper, we touch upon some of these legal⁸ and empirical gaps by trying to answer the following questions: How are TWAs involved in the posting of workers? What kind of empirical evidence is available, and what does it tell us

1 In this paper, we will use the terms temporary agency work, temporary agency worker and temporary work agency as consistently as possible. Nevertheless, due to the fact that different concepts exist throughout various legislative instruments, other concepts will be used in various parts of the text, e.g. when describing the NACE-codes or when referring to specific legal or other sources.

2 See our remarks in this paper regarding the difficulty in distinguishing between ‘supervision and direction’ and ‘authority’. Indeed, the distinction between the ‘supervision and direction’, which can be carried out by a user undertaking, with the ‘authority’ of an employer (which is the employer’s side of the worker’s subordination) is often also difficult to make at a national level, for instance in temporary agency work and other forms of outsourcing.

3 Available here: <https://eur-lex.europa.eu/eli/dir/2018/957/oj/eng>

4 Jorens (2023: 175) states that: “A hiring out of workers within the meaning of Article 1(3)(c) of Directive 96/71 is deemed to occur if three conditions are met: Firstly, the hiring out of workers must concern a supply of services for remuneration, where the posted worker remains in the employ of the undertaking providing the service and no employment contract has been concluded with the user undertaking. Secondly, hiring out in the sense of paragraph (c) must be characterised by the fact that the transfer of the worker to the host Member State is the aim in itself of the provision of services by the undertaking providing the service. In this regard, factors to be taken into account are the extent to which the consequences of the non-conformity of the service provision laid down in the contract are borne by the service provider - the less the service provider is responsible for the non-compliant performance of the service provision, the more there is hiring out of workers - and the extent to which the service provider is free to determine the number of workers whose posting he considers necessary in the host Member State - if this is the case, it indicates that the movement is rather subordinate to the service provision. Thirdly, the hired-out worker must perform his duties under the supervision and direction of the user undertaking.”

5 Although this could be considered a ‘legal fiction’ (see Rocca and De Wispelaere, 2023).

6 As argued by the Court in *Rush Portuguesa* (Case C-113/89 - paragraph 16): “it must be acknowledge (...) that an undertaking engaged in the making available of labour, although a supplier of services within the meaning of the Treaty, carries on activities which are specifically intended to enable workers to gain access to the labour market of the host Member State.” Furthermore, the Court argues in *Webb* (C-279/80 - paragraph 10) and repeated in *Vicoplus* (C-307/09 - paragraph 28): “that employees of agencies for the **supply of manpower** may in certain circumstances be covered by the provisions of Articles 45 TFEU to 48 TFEU and the European Union regulations adopted in implementation thereof.”

7 In terms of understanding, complying with and enforcing the rules. For instance, the participation of TWAs in cross-border supply chains is often highlighted in the literature as problematic (see, e.g., Novitz and Andrijasevic, 2020), particularly due to challenges in ensuring compliance with and enforcement of employment terms and conditions (European Commission, 2024a; Houwerzijl, 2024).

8 A full and detailed legal analysis is, of course, beyond the scope of both the ambitions and the expertise of the POSTING.STAT project.

about TWA posting in the EU? The paper's primary objective is to demonstrate the extent to which the legal framework at the EU level and in the Member States involved determines statistical reporting of TWA posting.

The paper focuses on the Member States included in the POSTING.STAT 2.0 project, namely Austria, Belgium, France, Germany, Italy, the Netherlands, Lithuania, Poland, Slovakia, Slovenia, and Spain and the evidence collected by the partners in each country (*see Annexe IV for the list of contributors*).⁹ We explain the methodology used to review the conditions under which TWAs are involved in posting and the empirical evidence on the extent of TWA posting and any available data on TWA posting violations and related enforcement challenges in *Chapter 2*.

The findings are structured in three main chapters. We start with a brief review of the legal framework regulating the posting of workers by TWAs in the EU (*Chapter 3*). Special attention is given to the definition of TWAs in the aforementioned EU Member States, a comparison of national rules regarding sectoral access and administrative requirements, and a discussion of the challenges in monitoring TWA posting based on legislative definitions and categories. One of the main questions this chapter addresses is what types of labour market intermediaries (LMIs) are covered by the concept of 'temporary employment undertakings and placement agencies' as defined in the PWD. We find that, in addition to traditional TWAs, other forms of LMI have emerged within a cross-border context, complicating the identification of 'temporary employment undertakings and placement agencies' under Article 1(3)(c) of the PWD. Furthermore, there are also cases of posting undertakings specializing in the supply of labour or the hiring-out of workers without declaring this as their main activity (ELA, 2025, 54).¹⁰ Against this backdrop, it is difficult to determine which entities should be classified as (posting) TWAs, creating a potential gap between the actual number of posted temporary agency workers and those reported in official declarations (cf. Houwerzijl 2024).

At the same time, this reality makes monitoring the correct application - and thus the enforcement - of Article 1(3)(c) of the PWD challenging. One of the main ambitions of this paper is to examine the extent to which we can understand the importance and characteristics of postings covered by Article 1(3)(c) of the PWD. While this may be considered 'a statistical imbroglio', not least because of the legal complexities surrounding Article 1(3)(c) itself, national authorities and EU institutions have been collecting data on TWA posting. Therefore, *Chapter 4* offers empirical evidence on TWA posting based on available administrative data, highlighting the limitations of these data sources. Likewise, *Chapter 5* focuses on documented violations in temporary agency posting and discusses the enforcement challenges associated with such cases.

⁹ The authors would like to thank the national experts involved in the POSTING.STAT 2.0 project for all their efforts in collecting and reporting information.

¹⁰ "According to the fieldwork, some companies specialise in the supply of labour in cross-border contexts without being registered as TWAs. Additionally, there is a second group of entities that, while legally registered as companies with economic activity, primarily specialise in the supply of labour, that is, in practice, they operate as TWAs and provide workers based on business cooperation agreements or service contracts. One of the stakeholders interviewed in Slovenia indicated that registering a company and recording several activities in the business registry in Slovenia is straightforward. As a result, some of these companies list diverse activities such as construction and human resources, although the latter is not declared as their main activity." (ELA, 2025: 49).

2. Methodology

This thematic paper is based on a review of existing academic literature and technical reports that provide administrative data on the posting of workers in the EU, empirical data collected by the research teams of the POSTING.STAT 2.0 consortium in the participating countries, and a webinar with thematic experts and social partners. Furthermore, it was also necessary to (briefly) review the available legal literature on the subject.

The research questions and sub-questions addressed in this paper are as follows:

- *How are TWAs involved in the posting of workers? What kind of empirical evidence is available, and what does that tell us about TWA posting in the EU?*
 - *What is the definition of a TWA in the national legislation of the Member State concerned?*
 - *Under what conditions do TWAs post workers based on EU and national legislation?*
 - *What are the conditions of establishment and other administrative requirements in sending and receiving Member States?*
 - *In which sectors are TWAs allowed to operate in the sending and receiving Member States?*
 - *What is the scale of TWA posting in the EU, and are there distinguishable characteristics to TWA posting?*
 - *How are TWAs different from other types of LMIs?*
 - *How are TWAs monitored and what type of violations have been identified in the posting of workers by TWAs?*
 - *What are the challenges in monitoring TWA posting?*

2.1 Literature review

The review of the existing publications focused on the broader legal, sociological, and economic literature on ‘temporary agency employment’ and the specific publications on the posting of workers by LMIs. Both strands of literature helped frame the puzzle and formulate the questions for a survey we circulated among the national research teams participating in the POSTING.STAT 2.0 project.

2.2 Survey among project researchers

The survey aimed to collect information and empirical data on the posting of workers via TWAs or other types of LMIs. The questionnaire comprised five parts and followed the research questions and sub-questions outlined above. In the first part, questions were asked regarding the definition and economic activity of TWAs in the national context. The second part consisted of more focused questions regarding the regulations on the posting of workers via TWAs or other LMIs, while the third part focused on questions regarding data on the number and characteristics of TWA postings from and to the specific Member States included in the POSTING.STAT 2.0 project. The fourth and fifth parts posed questions about enforcement statistics regarding TWA posting and challenges identified in collecting statistics on TWA posting, respectively (*for the complete survey, see Annexe I*). The researchers were asked to collect this information through desk research and/or by requesting data from the national authorities responsible for monitoring and enforcement of posting.

The survey was distributed in October 2024. A first draft of the responses was received by 18 November. After the first results were presented at the thematic webinar (see below), the consortium members had the opportunity to revise their input and add missing information. The final responses were delivered by 31 January 2025. As it will be observed in the analysis chapters of the thematic paper, there is variation in the amount of information and types of data authorities collect and report on TWA posting.

2.3 Thematic webinar

A webinar titled ‘The participation of TWAs and other LMIs in the posting of workers: rules, empirical data, and challenges’ was organised by the European Centre for Social Welfare Policy and Research and HIVA KU-Leuven on 5 December 2024.¹¹ The webinar served a dual purpose. Firstly, it aimed to understand better posting by TWAs and other LMIs. In that regard, Mijke Houwerzijl (*Tilburg University*) provided a legal perspective on the distinctions between TWAs and other LMIs in the context of posting.¹² Next, Sophie Buckingham (*Ecorys*) discussed the role of TWAs and other LMIs in cross-border mobility and the key challenges in TWA posting.¹³ These presentations were followed by the input from Maciej Kopaczyński (*President of SAZ - Association of Employment Agencies, Poland*) and Dominika Latawiec-Chara (*Legal Expert of SAZ - Association of Employment Agencies, Poland*), who provided the perspective of LMIs on agency posting.¹⁴ Secondly, the webinar aimed to present and discuss some preliminary results of the collection of regulations and statistics on temporary agency posting in the Member States covered by the POSTING.STAT 2.0 project, which were presented by Frederic De Wispelaere (*HIVA-KU Leuven*) and Leonard Geyer (*European Centre for Social Welfare Policy and Research*).¹⁵

11 For more on this webinar see <https://hiva.kuleuven.be/en/calendar/calendaritems/posting-stat-webinar-the-participation-of-temporary-work-agencies-and-other-labour-intermediaries-in-the-posting-of-workers>

12 Presentation available here: <https://hiva.kuleuven.be/en/calendar/docs/mijke-houwerzijl.pptx>

13 Presentation available here: <https://hiva.kuleuven.be/en/calendar/docs/sophie-buckingham.pptx>

14 Presentation available here: <https://hiva.kuleuven.be/en/calendar/docs/dominika-latawiec-chara.pdf>

15 Presentation available here: <https://hiva.kuleuven.be/en/calendar/docs/leonard-geyer.pptx>

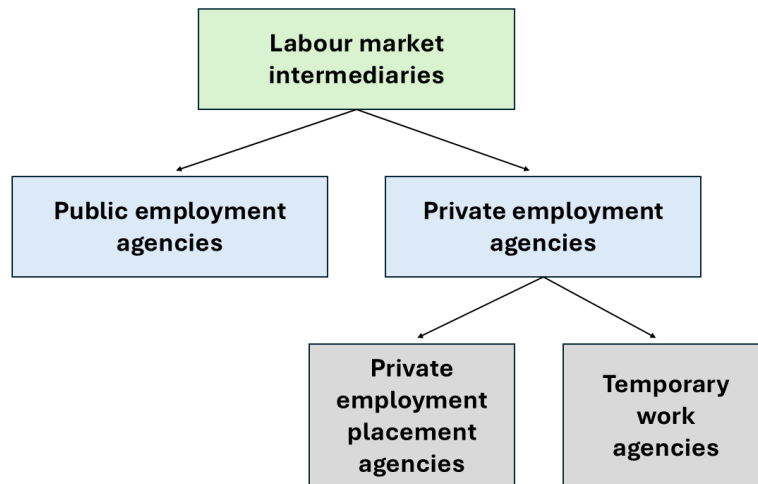
3. Regulating EU temporary agency posting

This chapter discusses the legal definitions of a TWA used at the European and national levels and refers to relevant recent case law of the CJEU on the subject. We first discuss the concept of TWA relative to the broader concept of LMIs. This distinction is relevant for two main reasons. First, field observations show that various forms of LMIs actively provide cross-border services, which may or may not be classified as hiring out workers and/or posting. Second, Article 1(3)(c) of the PWD refers to a ‘temporary employment undertaking or placement agency’, which raises the question of whether (recognised) TWAs fully or only partially cover this concept. The chapter proceeds to discuss administrative requirements and restrictions that TWAs providing services abroad can face in both the sending and receiving Member States.

3.1 The different faces of (cross-border) labour market intermediaries

The concept of a ‘TWA’ and its definition fall within the broader concept of a ‘labour market intermediary’ (see also *Figure 1*).¹⁶¹⁷ However, unlike the concept of ‘TWA’ (see *section 3.3*), an ‘LMI’ is not a legal concept,¹⁸ while it is used very frequently and in different (cross-border) contexts. Autor (2009) defines ‘LMIs’ as “entities or institutions that interpose themselves between workers and firms to facilitate, inform, or regulate how workers are matched to firms, how work is accomplished, and how conflicts are resolved”. According to Eichhorst et al. (2013: 15) “Labour market intermediation can be provided by either public or private employment agencies, with the latter including both private employment placement agencies and temporary work agencies.”

Figure 1. The different faces of the concept of ‘labour market intermediaries’



Source: Eichhorst et al., 2013: 17

¹⁶ A similar scheme is defined in Eurofound (2016: 13), though with some minor differences. To quantify all types of LMIs, one can look at the NACE code (see box I - Chapter 4). For this paper, it is especially relevant to look at NACE code 78 ‘employment activities’.

¹⁷ And even within the broader concept of a ‘private employment agency’ (see also *Figure 1* based in Eichhorst et al., 2013). However, there is also no autonomous EU definition for the concept of ‘private employment agencies.’ ILO Convention No. 181 refers to private employment agencies as “Any enterprise or person, independent of the public authorities, which provides one or more of the following labour market functions: (a) services for matching offers of and applications for employment; (b) services for employing workers with a view to making them available to a third party (“user enterprise”); and/or (c) other services relating to job-seeking, such as the provision of information, that do not aim to match specific employment offers and applications. Agencies cannot charge workers for finding work.” (ILO 2009:1).

¹⁸ There is also no EU definition for the concept of ‘private employment agencies.’ ILO Convention No. 181 refers to private employment agencies as “Any enterprise or person, independent of the public authorities, which provides one or more of the following labour market functions: (a) services for matching offers of and applications for employment; (b) services for employing workers with a view to making them available to a third party (“user enterprise”); and/or (c) other services relating to job-seeking, such as the provision of information, that do not aim to match specific employment offers and applications. Agencies cannot charge workers for finding work.” (ILO 2009:1).

In the context of this paper, it is useful to distinguish between LMIs who have an employment contract or relationship with a worker and those who do not, and to exclude the group of LMIs (i.e., ‘employment placement agencies’)¹⁹ that do not have a direct employment relationship with workers but instead act as ‘go-between’ between workers and user undertakings. In that respect, only TWAs seem to meet this condition. For instance, Article 3(1)(b) of Directive 2008/104/EC on temporary agency work (i.e., TAWD) defines a ‘TWA’ as “*any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction.*”²⁰ However, it cannot be ruled out that some of these ‘employment placement agencies’ have an employment relationship in practice. Furthermore, the Posting of Workers Directive refers to the concept of ‘placement agencies’, albeit in a manner that diverges from the definition commonly found in the literature (see section 3.2).

Among the group of LMIs that do have a direct employment relationship, a distinction can then be made between those that are or are not recognised as TWAs by the national legislation of either the Member State of establishment or of the receiving Member State. Although within the context of the provision of cross-border services, not only recognised TWAs can and should be considered. First, from the practical reality on the ground. For instance, in a recent report by ELA (2025: 49), it is stated that although certain posting undertakings are not registered as TWAs, their main economic activity is labour supply, and the formalisation of their status is reportedly circumvented. Second, from a legal perspective. Indeed, the CJEU recently ruled that the lack of the relevant administrative authorisation does not preclude “*any natural or legal person who enters into a contract of employment or an employment relationship with a worker in order to assign him or her to a user undertaking to work there temporarily under that undertaking’s supervision and direction, and who assigns that worker to that undertaking*” to be considered a TWA.²¹ Moreover, the PWD uses the concept of ‘temporary employment undertaking or placement agency’ but does not use the concept of ‘TWA’, which calls for further analysis and interpretation.

3.2 Unravelling the concept of ‘temporary employment undertaking or placement agency’ as defined in the Posting of Workers Directive

According to Article 1(3)(c) of the PWD, said directive applies to undertakings which “*being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting*”. If the concept of a ‘temporary employment undertaking’ can be interpreted as being more or less equal to that of a TWA as defined by the TAWD, the question arises as to what is understood by ‘a placement agency’. In the European Commission’s initial Proposals for a Council Directive on the posting of workers in the framework of the provision of services, issued in 1991 and 1993²², neither the terms ‘temporary employment undertaking’ nor ‘placement agency’ were present. Instead, said proposals referred to ‘temporary employment business’. This term was also used in Directive 91/383/EEC, where it was construed as involving “*temporary employment relationships between a*

¹⁹ See for instance, Eichhorst et al., 11: “Private employment placement agencies have no employment relation with the workers concerned (contrary to temporary work agencies), and thus there is some similarity with public employment services, which do not recruit workers.”

²⁰ See also ILO (2009: 1f): Temporary work agencies “provide temporary employees to user enterprises to cover employee absences, skill shortage and varying seasonal workloads. Workers are employed and paid by the agency but are contracted out to a client for either a prearranged fee or an agreed hourly wage. Some companies choose to use temporary workers on a long-term basis rather than permanent staff. (...) The resulting employment is often called “temporary work”, “temping” or “agency work”. The hiring firm pays fees to the agency, and the agency pays the wages (even if the hiring company has not yet paid the agency). Flexibility for both worker and employer is a key feature (...)”

²¹ As the Court duly notes “Such a limitation would allow any undertaking that, without being in possession of such authorisation, assigns to other undertakings workers who have concluded a contract of employment with it to escape the application of Directive 2008/104 and, therefore, would impede workers from receiving the protection afforded by that directive, even though the employment relationship between those persons and the undertaking assigning them is not substantially different from the relationship they would have with an undertaking that had obtained prior administrative authorisation as required under national law”. CJEU, Judgment of 24 October 2024, Case C-441/23, Omnitel Comunicaciones and Others, ECLI:EU:C:2024:916, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=291563&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6178659>

²² COM(91)230 and COM(93)225. See also https://eur-lex.europa.eu/procedure/EN/1991_346

*temporary employment business, which is the employer, and the worker, where the latter is assigned to work for and under the control of an undertaking and/ or establishment making use of his services.”*²³

The shift from the term ‘temporary employment business’ to ‘temporary employment undertaking or placement agency’ in the final text of the PWD marks a significant terminological evolution. It is certainly intriguing to consider the possible reasons behind this change, particularly with respect to the inclusion of the term ‘placement agency’. One plausible explanation for the introduction of the term ‘temporary employment undertaking’ lies in the jurisprudence of the Court of Justice of the European Union.²⁴ Since the 1970s, the Court has used this terminology, particularly in the English translation of the French expression ‘*entreprise de travail temporaire*’, as seen notably in Case 76/77²⁵ and Case 237/83²⁶. The adoption of this term in the PWD may thus reflect a deliberate alignment with established case law.

The inclusion of the concept ‘placement agency’ is more puzzling,²⁷ not least because the concept is commonly used for LMIs that do not have an employment relationship with the worker (see above). According to legal experts consulted on the matter,²⁸ this could be due to the less-than-accurate translation into English of the final text.²⁹ The French version refers to an ‘*entreprise qui met un travailleur à disposition*’³⁰, which implies the hiring out of a worker while retaining the employment relationship - an arrangement nowadays typically associated with TWAs. Moreover, the context in Germany, where the hiring-out of workers is an activity which is not restricted to TWAs,³¹ appeared to have influenced the inclusion of the term.³²

This raises the question of why the legislature did not take the opportunity during the revision of the PWD to clarify the meaning of ‘placement agency’, or even to (partly) replace the concept of ‘temporary employment undertaking or placement agency’ with that of a ‘TWA’. In fact, the accompanying documents to the reform do not address this issue at all. Ultimately, the choice of this somewhat ambiguous term, paired with the more precise and more restrictive conditions of ‘hiring out a worker’ and the requirement that ‘an employment relationship must exist between the undertaking or agency and the worker’, may have been a strategic one.

Indeed, the addition of ‘placement agencies’ to the wording of Article 1(3)(c) seems intended to capture both ‘formal’ TWAs (i.e. ‘temporary employment undertaking’) and ‘less formal’ forms of the hiring-out of workers - i.e., those which, under the national law of their Member State of establishment, are not classified as TWAs - thereby broadening the provision’s scope. By retaining this wording rather than adapting the definition from the TAWD, the provision may better ensure that the PWD addresses the concrete phenomenon of cross-border hiring-out of workers, regardless of the legal form of the posting undertaking or how it is defined under national law. For instance, Grygutis (2023: 148) argues that “*this concept was introduced to eliminate the situation where any entity would hire out workers without being a temporary employment agency*”.^{33,34} Indeed, relying solely on the definition in the TAWD, for example, would exclude cases in which

23 Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship: <https://eur-lex.europa.eu/eli/dir/1991/383/oi/eng>

24 Information provided by Marco Rocca.

25 <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:61977CJ0076> (FR); <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61977CJ0076> (ENG)

26 <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:61983CJ0237> (FR); <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61983CJ0237> (ENG)

27 Interestingly, the European Commission’s 2024 report on the application and implementation of Directive (EU) 2018/957 (amending Directive 96/71/EC) (EC, 2024a) does not shed a final light on this terminological ambiguity. It states: “The Directive addresses the situation where a worker is recruited by a temporary employment undertaking or placement agency (temporary employment agency) and hired out to perform work for a user undertaking.” Adding the term ‘temporary employment agency’ creates even more ambiguity.

28 With particular thanks to Marco Rocca, Jan Cremers, Herwig Verschueren and Marcin Kietbasa for their valuable input.

29 Essential parts of the final-stage negotiations took place in French, including those under the Italian Presidency which secured a majority for the directive’s adoption (information provided by Jan Cremers).

30 Or in German: „oder als einen Arbeitnehmer überlassendes Unternehmen“; Or in Dutch: „of als onderneming van herkomst.”

31 See also the answer for Germany in Annexe II – Table A1.3: “According to German legislation, employers in general may hire out workers, even if they are not considered a TWA as this is not their main activity. If an employer (lender) wishes to assign employees to a third party (borrower) for work, it generally needs a permit.”

32 Information provided by Jan Cremers.

33 Information provided by Marcin Kietbasa.

34 At the time, Houwerzijl (2005: 123-124) called it ‘*detachering via een uitzendbureau en/of uitzendconstructie*’ which would roughly translate into ‘posting via a TWA and/or a temporary agency work-construction’.

the posting undertaking is not a TWA under national legislation of the sending and receiving Member State.³⁵ For instance, according to Jorens (2023: 174), “*not only temporary employment agencies fall under paragraph c. After all, it is not excluded that the service companies of origin which carry out an assignment abroad with their staff may also post staff to the user undertaking. In this case, paragraph c and not paragraph a shall apply.*” An example of a situation in which paragraph (c) of Article 1(3) of the PDW may apply, rather than paragraph (a), involves cases where, during a posting mission, a posting undertaking attempts to circumvent certain requirements or restrictions related to the posting of temporary agency workers. To do so, the undertaking frames the arrangement as a provision of services under paragraph (a), but in reality, no genuine service is performed for the client. Instead, the workers are effectively hired out to the client, who acts as the user undertaking - this is where paragraph (c) becomes relevant. In such cases, ‘bogus temporary agency work’ may arise.^{36,37}

From a legal perspective, it is clearly challenging to determine which postings fall within the scope of Article 1(3)(c) of the PWD. This makes data collection difficult, with the central question being whether the reported figures accurately reflect the postings that theoretically fall under the application of Article 1(3)(c) of the PWD (see *Chapters 4 and 5*).

3.3 The definition of TWAs and other LMIs in national legislation

As the definition of a TWA in Article 3(1)(b) of the TAWD indicates (i.e., ‘in compliance with national law’), Member States also have important competences and thus discretion in defining and delineating TWAs,³⁸ mainly but not solely regarding the registration, licensing, certification or financial guarantees of TWAs.³⁹ Therefore, the questionnaire addressed to the national experts in the POSTING.STAT 2.0 project asked for the definition of a TWA in their country’s national legislation. From the answers received (see *Annexe II - Table A1.1*), it appears that there is no specific definition of a TWA in Poland and Slovenia.

Moreover, as stated above, it cannot be ruled out that there exist LMIs that are not considered a TWA in national legislation but in fact are.^{40,41,42} Hence, national researchers were asked to consider whether other entities also hire out workers but are not considered TWAs under national law (see *Annexe II – A1.3*). The answers indicate that in most Member States covered by the POSTING.STAT 2.0 project, other LMIs are also active, but few of them are also the actual employer of the workers concerned, and thus hire them out.⁴³ For example, according to German legislation, employers in general may hire out workers, even if they are not considered a TWA, as this is not their main activity. In the Netherlands, in addition to TWAs, there are

35 Moreover, the recent judgement of the Court in the case *Omnitel Comunicaciones and Others* (C-441/23) of 24 October 2024 should be considered. This judgement states that Directive 2008/104/EC is applicable to an undertaking which assigns a worker to another undertaking, even if the first undertaking is not recognised by domestic legislation as a TWA on account of the fact that it does not have the relevant administrative authorisation.

36 Taking the Polish market as an example (provided by Marcin Kietbasa), the following restrictions on temporary work may e.g. come into play:

- a maximum 18-month period of work performed by a temporary worker hired out by a given temporary employment agency ('temporary employment undertaking' under Art. 1(3)(c) Directive 96/71/EC) to a given user undertaking;
- situations in which temporary work cannot be performed at all;
- situations in which the prohibition of the use of temporary work in the performance of the so-called particularly hazardous work within the meaning of the provisions issued pursuant to Article 237(15) of the Polish Labour Code comes into play.

37 Information provided by Marcin Kietbasa.

38 See also the remark made in the report of the EC on the application of Directive 2008/104/EC on temporary agency work (EC, 2014: 4): “Articles 3(1)(a) to (e) provide definitions of a number of the main notions used in the Directive: ‘worker’, ‘temporary-work agency’, ‘temporary agency worker’, ‘user undertaking’ and ‘assignment’. Several Member States (Cyprus, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Sweden and United Kingdom) have provided definitions of at least some of these notions in their transposing legislation, by using wording that in most cases is very similar to that used in the Directive. This usefully clarifies the scope of the national implementing measures. Other Member States have not adopted such definitions.”

39 See also Art. 4.4 of Directive 2008/104/EC: “Paragraphs 1, 2 and 3 shall be without prejudice to national requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies.” See also ILO Convention 181: “[a] Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice”.

40 See also CJEU, Judgment of 24 October 2024, Case C-441/23, *Omnitel Comunicaciones and Others*.

41 According to Houwerzijl the “CJEU interpretation of Temporary-work agency covers potentially all LMIs matching the definition in *LM v Omnitel*.” In her presentation during the POSTING.STAT webinar on ‘the participation of temporary work agencies and other labour intermediaries in the posting of workers: rules, empirical data, and challenges’.

42 According to Borelli (2024): “De facto, this decision risks facilitating the circumvention of national licensing systems and, consequently, breaching the prohibition of separation between formal and real employer.”

43 Moreover, in **Belgium**, **France** and **Spain** it is forbidden (with sometimes some exceptions) to hire out workers except for TWAs.

also posting agencies (*detacheringsbureaus*) that have an employment relationship with the worker concerned.⁴⁴ Finally, in Poland, the broader concept of ‘employment agencies’, which includes TWAs, is more prevalent. Plus, according to Article 7(2) of the Act on the Employment of Temporary Workers, a temporary work agency in Poland may direct persons who are not employees of such agency (and are therefore employed based on the so-called civil law contracts) to perform temporary work. The above examples underscore the importance of adopting a broad interpretation of Article 1(3)(c) of the PWD. Moreover, it is known that some of these other LMIs present themselves as ‘service providers’ rather than as entities hiring out workers (Jorens & Van Overmeiren, 2007). This allows them to avoid applying for official recognition as a TWA in both the sending and receiving Member State, and to circumvent the obligation to provide the better terms and conditions of employment to which posted agency workers are entitled.

3.4 Administrative requirements for posting TWAs in the sending and receiving MS

The regulatory and administrative framework of TWAs differs between Member States.⁴⁵ In this section, we discuss the administrative requirements TWAs must abide by to be eligible to post workers.

3.4.1 Sending perspective

In most Member States covered by the POSTING.STAT 2.0 project,⁴⁶ TWAs need to be formally recognised, sometimes even authorised, by applying for a licence or even an authorisation (e.g., in Belgium, Germany, Spain, Slovakia, and the Netherlands (as of 2026) or by obtaining a mandatory registration (e.g., in Italy, Lithuania, Poland and Slovenia) (see *Annexe II – Table A1.2*).⁴⁷ These conditions are also mostly applicable to foreign TWAs coming to provide services in these Member States. TWAs established in the Member States covered by the POSTING.STAT 2.0 project are all allowed to post workers to other Member States (*Annexe II – Table A1.4*).

However, in some Member States, additional formal requirements are defined compared to other types of posting. For instance, in Austria, the hiring-out of workers by TWAs from Austria to countries outside the EU/EEA requires individual authorization, which is granted only if there are no domestic labour market or economic concerns and worker protection is ensured. In Slovenia, employers involved in the activity of providing workers to another user in accordance with the Act regulating the labour market may, within the scope of this activity, only conclude employment contracts with foreigners residing in Slovenia based on the EU Blue Card, with foreigners for whom consent for employment, self-employment or work was granted in the procedure for issuing or extending a single permit or a written authorisation, or with foreigners with free access to the labour market in accordance with this Act.

3.4.2 Receiving perspective

Most Member States covered by the POSTING.STAT 2.0 project impose additional requirements for incoming posting TWAs compared to other posting undertakings. Many involve requirements that already apply to domestic TWAs, such as obtaining accreditation (i.e., through licensing or registration systems)⁴⁸ (see *Annexe II – Table A1.6*). To be able to post agency workers to Belgium, a foreign TWA must have accreditation from the Belgian region in which the work is performed. This falls within the competence of the different Regions and Communities concerned (Flemish Region, Walloon Region, Brussels Capital Region and German-speaking Community). In Germany, foreign TWAs need to be registered and licensed (*AÜG-license*) by the federal employment agency, like German temporary work agencies. In Italy, TWAs

⁴⁴ See, also the reply for the Netherlands in *Annexe II – Table A1.3*: “Temporary assignments/secondments differ from TWAs since this involves a work relationship for a longer period of time. It also often involves more specialized workers.”

⁴⁵ See also Table 5 ‘Main characteristics of the regulation framework in the diverse market types’ in Eichhorst et al. (2013: 54).

⁴⁶ See Andriescu et al., 2024 for information about some other Member States.

⁴⁷ Several (financial) criteria must often be met (see also *Annexe II – Table A1.2*).

⁴⁸ **Registration systems** require businesses to register with a public authority before starting to operate their business. They often serve as a registry of the amount and kind of businesses which are providing goods and services. **Licensing system** refers to a mandatory (sometimes voluntary) certificate or authorisation from a public or private authority. Licences to operate a business such as a LMI are often monitored. Licensing standards, which can cover health and safety, accommodation, pay, transport and training, as well as complying with national tax regimes, are checked through inspections. Licences might need renewal on a regular basis or become indefinite after a business operates for a number of years.

established in another Member State must have already received TWA authorization in their country and must apply for registration in the Italian National Register (*Albo informatico nazionale delle Agenzie per il lavoro*). In Poland, it is kept by the Voivodeship Marshal (*marszałek województwa*). In Spain, the foreign TWAs must, in accordance with the legislation of their country of establishment, be validly established and meet the requirements to supply workers to user companies. Finally, as of 2026, foreign TWAs need to have a license that allows them to operate on the Dutch labour market. To obtain a license, TWAs need to require a certificate of good conduct and pay a financial deposit (€ 100,000).

In France, TWAs established in another EU Member State must provide evidence (in the same way as TWAs established in France) of a financial guarantee to ensure payment to posted workers on their remuneration, benefits and allowances due in respect of the period of posting in France, in the event of bankruptcy (*Annexe II – Table A1.6*). The TWA that posts workers to France must be in possession of a guarantee certificate issued by the guarantor. The temporary employment agency must also indicate in its prior declaration the identity of the guarantor.

In all receiving Member States, foreign service providers, including TWAs, are required to file a notification in the prior declaration tools about providing services in these Member States. It appears that sometimes additional information is requested from TWAs. For instance, since the end of 2017, the ‘accreditation number’ of the foreign temporary employment agency has been requested in the prior declaration tool of Belgium (LIMOSA).

3.5 Sectoral limitations to (posting) TWAs

In almost all Member States covered by the POSTING.STAT 2.0 project, (posting) TWAs are allowed in all sectors of activity (*Annexe I – Table A1.2*). However, this general conclusion must be nuanced. For instance, (posting) TWAs are sometimes restricted/prohibited in Member States in case of strikes or lockouts, dangerous work (for specific jobs) or by sectoral or company-level agreements (see, for instance, Austria, Belgium, France, Italy and Spain).

Especially in Germany, there are restrictions regarding the use of (posted) temporary agency workers. In the construction sector in particular, the hiring out of workers is, in principle, not permitted (Section 1b AÜG). However, important exceptions exist.⁴⁹

In the areas of ‘slaughtering and cutting’ and meat processing, there has been a principal prohibition for temporary employment since April 2021, introduced (together with a ban on civil law service contracts) as a main measure to improve working conditions under the so-called GSA Meat Act.⁵⁰ While exemptions for agency work under certain conditions were still allowed in meat processing, this too is no longer permitted since 1 April 2024. It should be noted that under the GSA Meat Act, the ban on temporary agency work and service contracts does not apply to the butcher's trade, i.e. craft-based companies that generally employ fewer than 50 workers. These sectoral limitations imply that statistics on inbound posting in Germany will normally report almost no posted agency workers active in the construction sector and slaughtering.⁵¹

3.6 Applicable labour and social security law

Contrary to other types of posted workers, the guaranteed terms and conditions of employment for posted agency workers are not limited to those applicable to other posted workers. Indeed, the posting TWA should respect the same terms and conditions of employment than those that would apply if these posted temporary agency workers had been recruited directly by the user undertaking to occupy the same job, at least in

49 E.g., between companies in the construction sector if they are covered by the same collective agreements, or between companies in the construction sector and other companies if generally binding collective agreements stipulate this. Furthermore, it should be noted that TWA is permitted in the so-called ancillary construction works, covering occupations such as electricians, painters and varnishers, tilers, carpenters or joiners.

50 “The law provides for a complete ban on the use of temporary agency work in the areas of “slaughtering and cutting”. Companies in the meat processing sector are still allowed to use temporary agency work within narrow limits – max. 8% of the annual workload – under the conditions of equal pay and equal treatment from the first day and only for companies covered by collective agreements. This exception to the ban on temporary agency work is limited to three years, and in 2024 the use of temporary agency work in processing will also be prohibited.” (See <https://effat.org/in-the-spotlight/the-reorganisation-of-the-german-meat-industry-since-the-labour-protection-control-law/>).

51 As always, creating legislation is one thing, enforcing compliance therewith, however, another.

principle^{52,53,54} Thus, if there is a collective agreement at the level of the user undertaking, it must, in principle, be applied to temporary agency workers hired out to that user undertaking. Importantly, regarding compliance with this provision, the user undertaking is obliged to inform the TWA of the terms and conditions of employment that it applies.⁵⁵

Which national social security system is applicable to posted workers and thus also to posted agency workers is regulated by the Regulations on the coordination of social security systems.⁵⁶ In principle, a posted worker remains subject to the social security system of the sending Member State during a period of 24 months (see Article 12 of Regulation 883/2004). This exception to the *'lex loci laboris'* principle mainly aims to encourage the freedom to provide services (Article 56 TFEU)⁵⁷ and to avoid unnecessary and costly administrative and other complications, which would not be in the interest of workers, companies, or administrations. However, there are several conditions to be met cumulatively to ensure the proper use of posting under Article 12 of Regulation 883/2004:⁵⁸

- 1) the employer must normally carry out its activities in the Member State of establishment;⁵⁹
- 2) there is a direct relationship between the posting employer and the posted worker;

52 See "Point 2.8. Are there specific terms and conditions of employment for posted temporary agency workers?" in the Practical Guide on Posting published by the European Commission (2019: 14): "Directive 2018/957/EU lays down specific rules for posted temporary agency workers. The employer (the temporary agency) must guarantee to posted temporary agency workers the terms and conditions of employment which apply pursuant to article 5 of Directive 2008/104/EC on temporary agency work, i.e. in principle at least those that would apply if they had been recruited directly by the user undertaking to occupy the same job. Member States may also require that, in addition to the provisions of Article 5 of Directive 2008/104/EC, posted temporary agency workers benefit from any more favourable terms and conditions that apply to temporary agency workers at national level." However, also note Recital 12 to said Directive which states: "Directive 2008/104/EC of the European Parliament and of the Council gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. That principle should also apply to temporary agency workers posted to the territory of another Member State. Where that principle applies, the user undertaking should inform the temporary-work agency about the working conditions and remuneration it applies to its workers. Member States are able, under certain conditions to derogate from the principles of equal treatment and equal pay pursuant to Article 5(2) and (3) of Directive 2008/104/EC. Where such a derogation applies, the temporary-work agency has no need for the information about the user undertaking's working conditions and the information requirement should therefore not apply", i.e. for temporary agency workers who 'who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments' (Article 5(2) TAWD) or in cases of 'collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of temporary agency workers' (Article 5(3) TAWD).

53 In the Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU (Andriescu et al., 2024: 60) it is stated that "Generally, no differences in the protection between posted workers employed by temporary work agencies and local workers employed by temporary work agencies, were found in the law. ... The majority of the Member States do not apply additional terms and conditions to these workers (as per Article 3(9) of the PWD, as amended). However, 4 Member States (ES, FI, FR, PT) do. Among these, Portugal prescribes that a temporary work agency that enters into contracts for the posting of workers must (i) provide, in favour of the public employment service, a specific deposit amounting to 10% of the wages for the duration of the contract; (ii) guarantee medical, medication and hospital services whenever they do not receive the same services in the host country; and (iii) ensure the repatriation of the workers. In Finland, a foreign employer posting workers to Finland is required to provide the posted workers with statutory occupational health care for the duration of their work in Finland."

54 Verschueren (2021: 671 - translation) concludes that "... practically the entire labour law, including company collective labour agreements, of the host Member State applies or can be made applicable to them. One might therefore ask why this category of workers should still be covered by the Directive."

55 Directive (EU) 2018/957 also defines some provisions in case of 'chain posting' (i.e., when a worker posted by a temporary work agency to a user undertaking is sent by the user undertaking to another Member State). In that case, the worker is considered as being posted by the temporary agency with which the worker has the employment relationship. The temporary work agency must therefore comply with all the provisions of the Posting of Workers Directive, including all the relevant administrative requirements and control measures. In order for the temporary agency to be able to comply with the above-mentioned obligations, the user undertaking must inform the temporary work agency in due time before the posted temporary agency worker starts carrying out tasks in another Member State.

56 See Basic Regulation 883/2004: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R0883-20140101> and Implementing Regulation 987/2009 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:3A02009R0987-20180101>

57 The CJEU recently noted that Article 12 is a benefit to service providers seemingly going beyond what the Treaty requires (CJEU, 3 June 2021, C-784/19, Team Power Europe, paragraph 60): "In providing for such a derogation, the EU legislature offers undertakings which exercise the freedom to provide services guaranteed by the Treaty on the Functioning of the European Union an advantage as regards social security which does not follow from the mere exercise of that freedom."

58 For more information, see for instance, Carrascosa & Molina Millán (2023); van der Mei & van Ooij (2022).

59 The EU legislature has specified that this condition must be understood as referring to an employer who "ordinarily performs substantial activities, other than purely internal management activities, in the territory of that Member State" (Article 14(2) of Regulation 987/2009). Hence, letterbox companies do not satisfy this requirement.

- 3) the posted worker is already affiliated to the legislation of the Member State in which his/her employer is established;⁶⁰
- 4) the posting is of a temporary nature (not exceeding 24 months); and
- 5) the posted worker is not being sent to replace another posted worker.

Consequently, it is not written in stone that a temporary agency worker who is working in a Member State other than the Member State in which the TWA is established *will* be covered by the social security system of the sending Member State. For instance, in the Team Power Europe decision,⁶¹ the CJEU concluded that the conditions set out by Article 12 BR i. Article 14(2) where not fulfilled: *“a temporary-work agency which carries out its activities of assigning temporary agency workers exclusively or mainly to user undertakings established in a Member State other than that in which it is established ... cannot benefit from the advantage offered, in the matter of social security, by Article 12(1) of Regulation No 883/2004, which consists in keeping those workers affiliated to the legislation of the Member State in which it is established... Consequently, the fact that a temporary-work agency carries out activities of selecting and recruiting temporary agency workers in the Member State in which it is established, even if those activities are significant, is insufficient in itself for it to be considered that such an undertaking ‘normally carries out its activities’ in that Member State, within the meaning of Article 12(1) of Regulation No 883/2004, as defined in Article 14(2) of Regulation No 987/2009.”*⁶²

3.7 Direct versus indirect agency posting

As stated by Article 1(3)(c) of the PWD, this Directive applies to a temporary employment undertaking or placement agency, that hires out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting. The same provision (implemented by Directive 2018/957) addresses the issue of ‘chain posting’⁶⁴. In the Practical guide on posting published by the Commission (EC, 2019: 11), the following example is given of ‘chain posting’: *“A temporary work agency established in Member State A hired out a worker to a user undertaking in Member State B. One month later, the user undertaking posts the same worker to Member State C in the context of a contract of services.”*

However, a situation not described under Art. 1(3)(c) is that of ‘indirect’ agency posting, where an agency worker is posted to another Member State not by a foreign TWA but by a foreign service provider (Figure 2). In this case, both the TWA and the foreign service provider are located in the same Member State.⁶⁵

⁶⁰ In 2022, Munoz reported in the country report for France that 25% of the postings to France by foreign TWAs were performed by workers that just started working for the TWA (less than one day before the beginning of the posting mission), meaning that the use of “hired to be posted” contracts is substantial for incoming temporary agency postings to France.

⁶¹ Team Power was a Bulgarian temporary-work agency that solely assigned workers to Germany. All its turnover was generated by its activities in Germany. In Bulgaria itself Team Power only employed administrative and managerial staff.

⁶² CJEU, 3 June 2021, C-784/19, Team Power Europe, paragraphs 66 and 67.

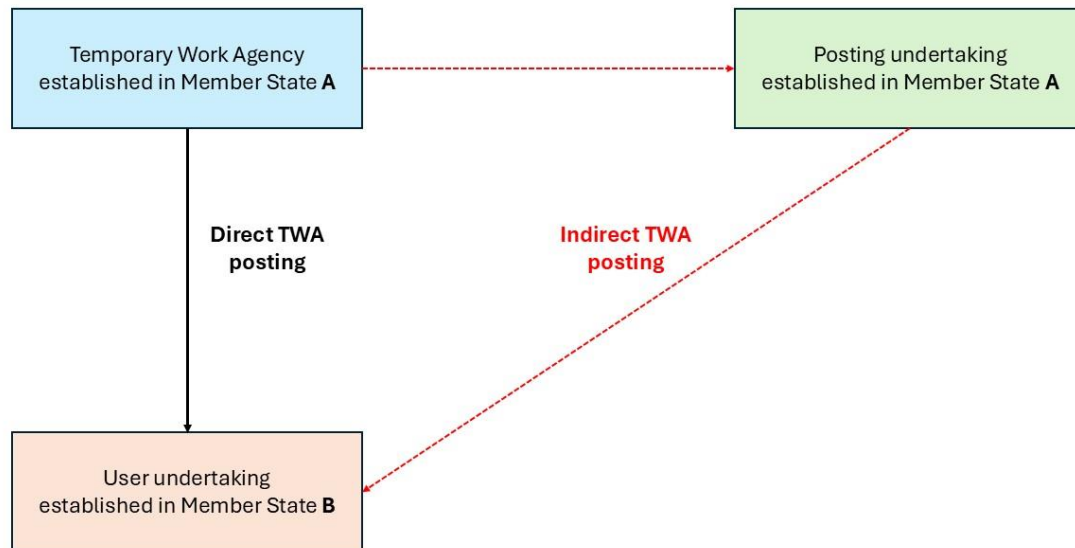
⁶³ See also Robin-Olivier (2022: 683) “Yet this is the core element of the offer of companies like Team Power Europe: to provide workers at lower cost, because a less costly social legislation applies. In this regard, although almost all the rules of labour law of the State where work is performed are applicable, since Directive 2018/957 was adopted, workers remain nonetheless covered by the social security system of the State of their employer. This is what makes the offer particularly attractive. The activity of companies specialised in posting within the Union, such as Team Power Europe or other companies involved in cases recently decided by the Court of Justice, is largely dependent on this applicability of a social security system other than that of the State, in which work is conducted.”

⁶⁴ “Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking as referred to in point (c) is to carry out work in the framework of the transnational provision of services within the meaning of point (a), (b) or (c) by the user undertaking in the territory of a Member State other than where the worker normally works for the temporary employment undertaking or placement agency, or for the user undertaking, the worker shall be considered to be posted to the territory of that Member State by the temporary employment undertaking or placement agency with which the worker is in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be an undertaking as referred to in paragraph 1 and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU of the European Parliament and of the Council.”

⁶⁵ However, see Recital 13 of Directive (EU) 2018/957: “Experience shows that workers who have been hired out by a temporary employment undertaking or placement agency to a user undertaking are sometimes sent to the territory of another Member State in the framework of the transnational provision of services. The protection of those workers should be ensured. Member States should ensure that the user undertaking informs the temporary employment undertaking or placement agency about the posted workers who are temporarily working in the territory of a Member State other than the Member State in which they normally work for the temporary employment undertaking or placement agency or for the user undertaking, in order to allow the employer to apply, as appropriate, the terms and conditions of employment that are more favourable to the posted worker.”

This raises the question of whether ‘indirect’ agency posting, i.e. the posting by a service provider of a worker that is hired out to them by a TWA, also falls under Art. 1(3)(c), and if these are reflected in the available statistics. Indeed, it can be assumed that indirect TWA postings are not (always) recorded in the data from the PD A1 or the prior declaration tools. Unfortunately, no data is available on indirect agency posting, and therefore, this topic will not be discussed in *Chapter 4*.

Figure 2. Direct versus indirect agency posting



Source: Own visualization

It is clear from this chapter that the legal analysis and delineation of temporary agency posting is far from straightforward and raises numerous (legal) questions. This complexity largely stems from the fact that the concept of a TWA falls within the broader category of LMIs, and that the distinction between the different types of LMIs is often difficult to make. Moreover, Article 1(3)(c) of the PWD refers to the concept of ‘a temporary employment undertaking or placement agency’, which cannot be narrowly interpreted as referring only to postings by (recognised) TWAs. In the next chapter, we attempt to explore the scope and characteristics of temporary agency posting - a search for quantitative clarity that is determined by such elusive legal clarity.

4. Quantifying temporary agency postings: available data and limitations/challenges

Despite variations in national and EU legislation regarding what constitutes LMIs, TWAs, and TWA posting, national authorities and EU institutions have been collecting data on them. In this chapter, we provide an overview of the data on TWAs, discuss the methods and challenges associated with counting TWA postings, and then present the data on TWA postings and posted workers from the sending and receiving country perspectives. The analysis is based on the responses received by the national teams to the relevant questions included in the questionnaire, as well as EU-level data.

4.1 Data on the overall number and characteristics of TWAs in the EU

Before looking at the number and characteristics of postings by TWAs, it is interesting to first look at the total number of TWAs in the EU. We use three datasets, namely the Structural Business Statistics (SBS) published by Eurostat, the EU Labour Force Survey (EU-LFS) collected and reported by Eurostat, and finally, the Orbis dataset.

Box I: TWAs in the statistical classification of economic activities (NACE) in the EU

The ‘statistical classification of economic activities’ in the European Union, abbreviated as NACE, is the classification of economic activities in the EU.¹ For this paper, it is especially relevant to look at NACE code 78 ‘employment activities’ (Eurostat, 2008). It is under this NACE code that the broad group of ‘LMIs’ can be found. NACE code 78 is further divided into NACE codes 78.1 ‘Activities of employment placement agencies’, NACE code 78.2 ‘Temporary employment agency activities’ and NACE code 78.3 ‘Other human resources provision’. NACE code 78.10 ‘Activities of employment placement agencies’ “includes listing employment vacancies and referring or placing applicants for employment, where the individuals referred or placed are not employees of the employment agencies. This class includes personnel search, selection referral and placement activities, including executive placement and search activities- activities of casting agencies and bureaus, such as theatrical casting agencies- activities of on-line employment placement agencies”. NACE code 78.20 ‘Temporary employment agency activities’ “includes the activities of supplying workers to clients’ businesses for limited periods of time to temporarily replace or supplement the working force of the client, where the individuals provided are employees of the temporary help service unit. However, units classified here do not provide direct supervision of their employees at the clients’ work sites.” Finally, NACE code 78.30 ‘Other human resource provision’ “includes the activities of providing human resources for client businesses. The units classified here represent the employer of record for the employees on matters relating to payroll, taxes, and other fiscal and human resource issues, but they are not responsible for direction and supervision of employees. The provision of human resources is typically done on a long-term or permanent basis and the units classified here perform a wide range of human resource and personnel management duties associated with this provision.” This paper will only look at the number and characteristics of companies in the EU that fall under NACE code 78.2. Indeed, companies under NACE code 78.2 may best match the definitions of TWAs under national law.

The Structural Business Statistics (SBS) published by Eurostat provides data on the number of companies active in NACE sector N78.2 “Temporary employment agency activities” and the number of persons employed by them (see Box I). *Table 1* shows that, according to SBS, there are approximately 29,200 temporary employment agencies in the EU, employing approximately 3.7 million persons (2022 figures).

Most of these temporary employment agencies are based in the Netherlands (7 617), Germany (5 052), and Sweden (4 094).

Table 1. Number of enterprises and employed persons that fall under NACE code 78.2 (i.e. 'temporary employment agency activities'), 2022

	Number of enterprises	Number of persons employed
EU-27	29 194	3 696 776
Belgium	328	164 262
Bulgaria	58	3 804
Czechia	786	72 562
Denmark	752	49 895
Germany	5 052	723 514
Estonia	721	8 982
Ireland	143	6 901
Greece	58	8 024
Spain	478	242 046
France	1 799	820 901
Croatia	232	9 138
Italy	107	464 846
Cyprus	23	369
Latvia	153	2 423
Lithuania	203	10 626
Luxembourg	68	13 803
Hungary	503	61 916
Malta	24	264
Netherlands	7 617	537 500
Austria	770	77 992
Poland	2 010	84 024
Portugal	430	98 027
Romania	576	31 749
Slovenia	179	12 530
Slovakia	144	7 409
Finland	1 886	74 034
Sweden	4 094	109 235

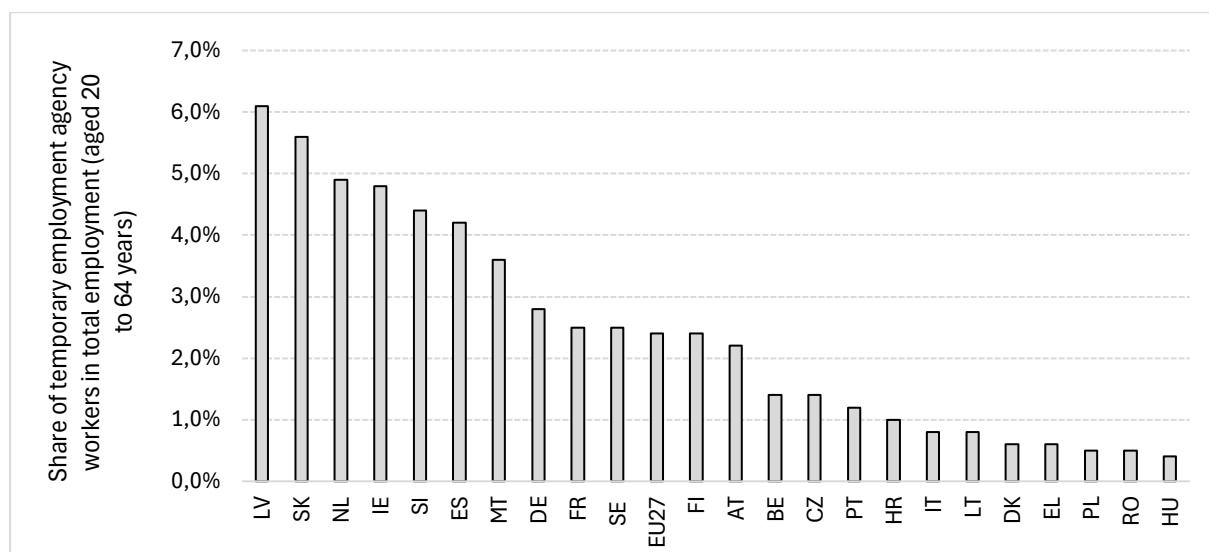
Source: Eurostat – Business Statistics

Based on EU-LFS data,^{66,67} figures by Member State and by group of sectors are available on the share of temporary employment agency workers in total employment. In 2023, 2.4% of employed persons between 20 and 64 years were 'temporary employment agency workers' in the EU-27. In Latvia (6.1%), Slovakia (5.6%), the Netherlands (4.9%), and Ireland (4.8%), this number is around twice the EU average. There are also sectoral differences. For instance, in 2023, 3.3% of total employment in 'industry and construction' involved 'temporary employment agency workers.' In these sectors, the percentage of 'temporary employment agency workers' in total employment is especially high in Spain (9.1%) and the Netherlands (7.6%).

⁶⁶ The EU-LFS is a large household sample survey providing quarterly results on labour participation of people aged 15 and over and on people outside the labour force. The survey covers persons aged 15 years and over who live in private households.

⁶⁷ Mainly based by a self-assessment of the respondent, which makes that there is a risk of underreporting. Consequently, temporary agency workers might rather tend to quote the economic activity of the user firm to which they are actually assigned rather than the TWA that employs them.

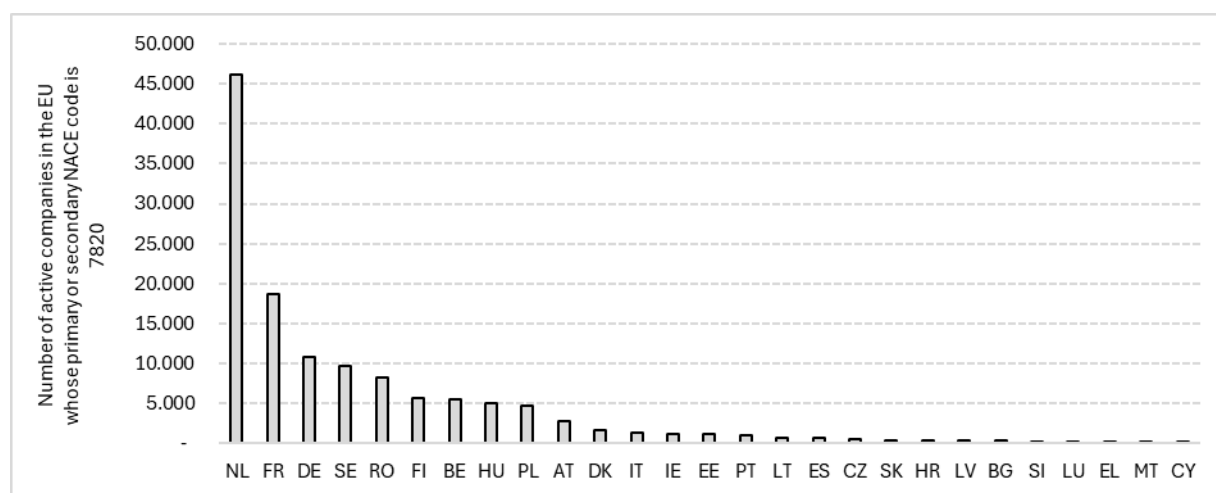
Figure 3. Share of temporary employment agency workers in total employment, 20-64 years, 2023



Source: Eurostat - LFS

According to the data from Orbis⁶⁸, 128 020 active EU-27 companies have as their primary or secondary NACE code 78.2,⁶⁹ most of which are mainly located in the Netherlands (46 117 companies or 36% of EU-total) and to a lesser extent in France (18 612 or 14.5%), Germany (10 761 or 8.4%), Sweden (9 774 or 7.6%) and Romania (8 294 or 6.5%). Some 73 724 active EU-27 companies have NACE code 78.2 as their primary NACE category.⁷⁰

Figure 4. Number of active companies in the EU whose primary or secondary NACE code is 7820



Source: Orbis database

Finally, in the discussion about whether there is a group of companies that, while legally registered as companies with an economic activity other than hiring out workers (e.g., in construction), primarily specialise in the supply of labour and thus in practice operate as TWAs and provide workers based on business cooperation agreements or service contracts, it is interesting to note that 6 037 enterprises in Orbis have the core code 'construction' (= NACE 41, 42, or 43) but also have as primary or secondary code

⁶⁸ Orbis is a database from Bureau van Dijk which contains (non-)financial information from private companies across the world, currently more than 462 million companies. Data are collected from over 170 providers and own sources which are then treated, appended, and standardized to ensure comparability.

⁶⁹ Definition 'primary code': x / Definition 'secondary code': y.

⁷⁰ Definition 'core code': z.

NACE 78.2. Possibly some of these companies specialise in the supply of labour in the construction sector without being registered as TWAs.⁷¹

4.2 Methods and challenges related to the counting of ‘temporary agency postings’

Differences exist between the definition of a ‘posted worker’ under the Regulations on the coordination of social security systems and that under the PWD (see also Bottero, 2021). As a result, temporary agency workers may be considered ‘posted’ under the Coordination Regulations but not within the meaning of the PWD, or *vice versa*. For instance, it cannot be ruled out that temporary agency workers who pursue activities in two or more Member States (as covered by Article 13 of Regulation 883/2004) may also fall within the scope of Article 1(3)(c) of the PWD. In any case, caution is warranted in assuming that all posting undertakings and their posted workers falling under Article 1(3)(c) have been issued a PD A1 under Article 12 and were classified under NACE code 78.2. Indeed, given the broad application of Article 1(3)(c), these may not be limited to recognised TWAs with a PD A1 granted under Article 12 and classified under NACE 78.2. Caution is therefore in order when using data sources that depict ‘temporary agency posting’ through the lens of either the PWD (i.e., by data from the prior declaration tools) or the Coordination Regulations (i.e., by data from the PDs A1 issued), particularly when making comparisons between them.⁷²

We have used three different methods for counting temporary agency postings and in the following describe their main features and relation to the different perspectives.

1. Counting the number of PDs A1 classified under NACE code 78.2, based on data collected at the EU level

In principle, all workers who are professionally mobile within the EU (i.e. to which Articles 12 or 13 BR are applicable) require a portable document A1 (PD A1) issued by the social security authority of the Member State competent for their social security. The form is standardised and certifies that the holder is covered by the social security legislation of the competent Member State (sending country) and, hence, does not have to pay social insurance contributions in any other Member State where said worker is also professionally active (receiving country). One way to estimate the number of temporary agency postings is therefore to count the number of forms issued for NACE code 78.2 – temporary employment agency activities. However, a limitation of this approach is that the sectors in which the posted workers concerned provide their services are unknown because only the economic activity of the sending company, the TWA, is recorded.

Counting the number of PDs A1 issued is one of the primary ways of estimating the number of workers posted. The data on the number and characteristics of PDs A1 issued by Member States are collected annually at the EU level through a questionnaire sent to the competent public authorities in the EU/EFTA (+UK) (De Wispelaere et al., 2025). To estimate the number of temporary agency postings from a *sending* perspective, we can count the number of PDs A1 issued for postings (Art. 12) and for activities in several Member States (Art. 13)⁷³, classified under NACE code 78.2. For temporary agency postings from a *receiving*

71 See ELA, 2025: 49: "According to the fieldwork, some companies specialise in the supply of labour in cross-border contexts without being registered as TWAs. Additionally, there is a second group of entities that, while legally registered as companies with economic activity, primarily specialise in the supply of labour, that is, in practice, they operate as TWAs and provide workers based on business cooperation agreements or service contracts. One of the stakeholders interviewed in Slovenia indicated that registering a company and recording several activities in the business registry in Slovenia is straightforward. As a result, some of these companies list diverse activities such as construction and human resources, although the latter is not declared as their main activity. Concerning practices encountered in Slovenia: The main observation of the state in this field is that some Slovenian employers recruit foreign workers for the sole purpose of illegal provision of workers in other Member States. They are not regular agencies for recruitment, but they are regular employers, but they provide the work of their workers in other countries, not truly providing services, but through provision of workers. This is illegal provision of workers because their employers are not registered as employment agencies. (Representative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, Slovenia)."

72 Moreover, as workers may be posted to the same Member State more than once per year, it can be the case that the person applies for a PD A1 which is then used on more than one occasion during its validity period. Therefore, while there will be only one PD A1 issued, prior notification tools might count two or three postings, depending on the number of declarations made prior to the posting.

73 A group of workers with a PD A1 issued under Art. 13 of Regulation 883/2004 will be considered ‘posted worker’ as defined by the PWD (see above remark).

perspective, we can only count the number of PDs A1 received under Art. 12 and classified under NACE 78.2, as such data are not collected for Art. 13 at the EU level. Moreover, not all competent authorities are able to provide a breakdown by sector of activity for the number of PDs A1 issued under Art. 12 (see De Wispelaere et al., 2025).

We expect data from PDs A1 by NACE category to be comparable across Member States and to have few misclassifications because this classification system is widely used and, to our knowledge, the selection of the NACE code in PDs A1 is done in most Member States based on administrative data.

2. Counting the number of postings under Art. 1(3) of the PWD and recorded in the prior declaration tools, based on data collected at the EU level

Article 9(1)(a) of Directive 2014/67/EU (i.e. the ‘Enforcement Directive’) states that Member States may impose an obligation on a service provider established in another Member State to make a simple declaration to the responsible national competent authorities containing the relevant information necessary to allow factual checks at the workplace. All 27 Member States used the possibility to implement a prior declaration tool for service providers. Data from the prior declaration tools are collected annually at the EU level from the competent public authorities with a standardised questionnaire which explicitly asks about postings under Art. 1(3)(c) PWD, namely *‘Hiring out by a temporary employment firm or placement agency to a user business established in another Member State’*. However, in the latest report, only seven countries provided data on this question (De Wispelaere et al., 2024).

The way the national prior declaration tools identify postings under Article 1(3)(c) of the PWD may vary between Member States. For example, in Belgium, the type of posting undertaking is the decisive factor. The country’s LIMOSA system records as temporary agency postings only postings by accredited TWAs (since April 2017). This data is most likely a severe underestimation of the true extent of incoming posting undertakings that fall under the application of Article 1(3)(c) of the PWD. Indeed, the share of posted workers sent through an accredited TWA was only 1% of the total group of incoming posted workers in 2023, while it amounted to 12% in 2015. The fact that the number of reported posted agency workers was much higher before 2018 seems to indicate that many of these ‘agency workers’ were posted by foreign ‘temporary employment undertakings or placement agencies’ without accreditation. In Austria, the nature of the posting is decisive, namely whether a worker is ‘posted’ to perform work under the supervision of the posting company or ‘hired out’ to a user undertaking in Austria for the purpose of performing work for that company. This raises questions about the cross-country comparability of the data.

3. Using other data provided by national authorities

Finally, some national public authorities are able to provide data on temporary agency postings that go beyond what is included in the EU level PDs A1 and Prior Declaration Tool reports (De Wispelaere et al., 2024; 2025). This data can provide further insights, for example, regarding the citizenship of the posted workers. Their downside is that without a careful comparison of the concepts used by each country, the cross-country comparability of this data cannot be guaranteed.

4.3 Data on the number and characteristics of TWAs engaged in the posting of workers from a sending perspective

Our survey gathered very little information on the number and characteristics of TWAs posting workers from a sending perspective. While some of the Member States covered by the POSTING.STAT project have data on the number of active TWAs registered on their territory,⁷⁴ few of them have (publicly available) data on the number of TWAs engaged in the posting of workers. For example, Italy reports 367 enterprises

⁷⁴ For example, in Austria there were 1 351 active temporary work agencies in 2023, and the number of TWAs carrying out temporary work services in Poland in 2023 was 3 686.

involved in the posting of workers in the temporary agency work sector between January and June 2021. In Lithuania, in September 2024, according to data reported by TWAs, there were 475 instances of service provision by TWAs, out of which 195 were to users in Lithuania and 79 to users outside of the EU, whereas the remaining 201 were to users in other EU Member States. Since the same agency can send workers to provide services within and outside of Lithuania, further information from the PD A1 data is needed to determine how many agencies sent posted workers to provide these services. In the case of Slovenia, the Ministry of Labour, Family, Social Affairs and Equal Opportunities provides and regularly updates the list of all domestic and foreign companies registered as the providers of labour to user undertakings. There were 134 registered Slovenian TWAs in November 2024, whereas the latest update (March 2025) indicates 125 registered Slovenian TWAs.⁷⁵ Although data on the activities of these TWAs, including their potential posting of workers (based on PD A1 data), are not provided.

4.4 Data on the number of workers posted by TWAs from a sending perspective

The most systematically collected data on temporary agency posting from a sending perspective comes from the PDs A1 issued by the competent authorities in the individual Member States in accordance with Articles 12 and 13 of Regulation 883/2004.⁷⁶ Several, but not all, Member States report the sector of economic activity of the company.⁷⁷

Figures 5 and 6 below show the most recent data available for PDs A1 issued for companies active in the field of ‘temporary employment agency activities’ (NACE 78.2) under articles 12 and 13 respectively (see, also *Annexe III*).⁷⁸ The bars show the total number of certificates issued in 2023, and the dots show the number of PD A1 certificates for TWAs (NACE 78.2) as a percentage of all PD A1 certificates issued under the respective article during the same year. Among the countries for which data are available, the largest number of PDs A1 under Article 12 for TWAs in 2023 were issued in Poland (26 112), Belgium (17 707), and Germany (12 942). As a share of all postings under Article 12, postings by TWAs were most important by far in the Netherlands (64%),⁷⁹ followed by Lichtenstein (41%), and Belgium (20%). Further national data on Germany indicate that the main receiving countries for TWA postings from this country are Austria (2 660), the Netherlands (1 336), France (826) and Spain (784).

⁷⁵ See official reporting here: <https://podatki.gov.si/dataset/register-domacnih-pravnih-in-fizicnih-oseb-za-zagotavljanje-dela-delavcev-uporabniku#>

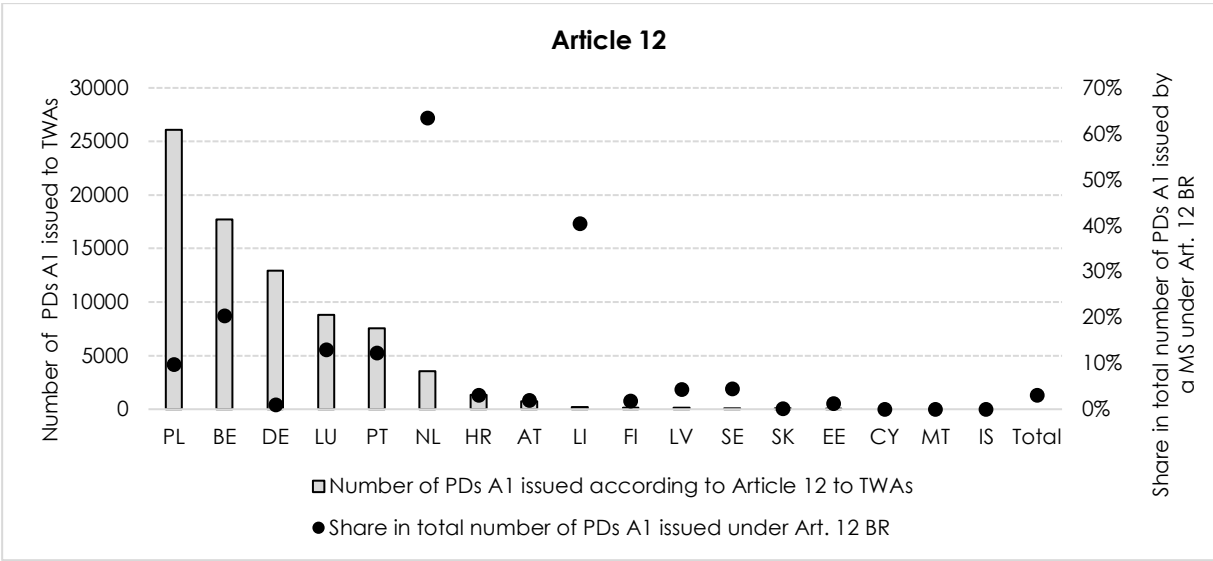
⁷⁶ Article 12 refers to workers who are employed by an employer which normally carries out its activities in a Member State and who are posted by that employer to another Member State to perform work on its behalf (Article 12(1)) and to persons who normally pursue an activity as a self-employed person in a Member State who go to pursue a similar activity in another Member State (Article 12(2)). Article 13 refers to persons who pursue an activity as an employed/self-employed person in two or more Member States

⁷⁷ See De Wispelaere et al., 2024; *Ibid.*, 2024.

⁷⁸ No information on the number of PD A1s issued by sector of economic activity was reported by Bulgaria, Denmark, Ireland, Spain, Italy, Hungary, and the EEA countries, Norway, Switzerland and the UK (see also *Annexe II*).

⁷⁹ This high percentage is likely due to the large number of posted workers employed through various types of LMLs active in the Netherlands.

Figure 5. Data on PDs A1 issued according to Art. 12 for TWAs from a sending Member State's perspective for 2023

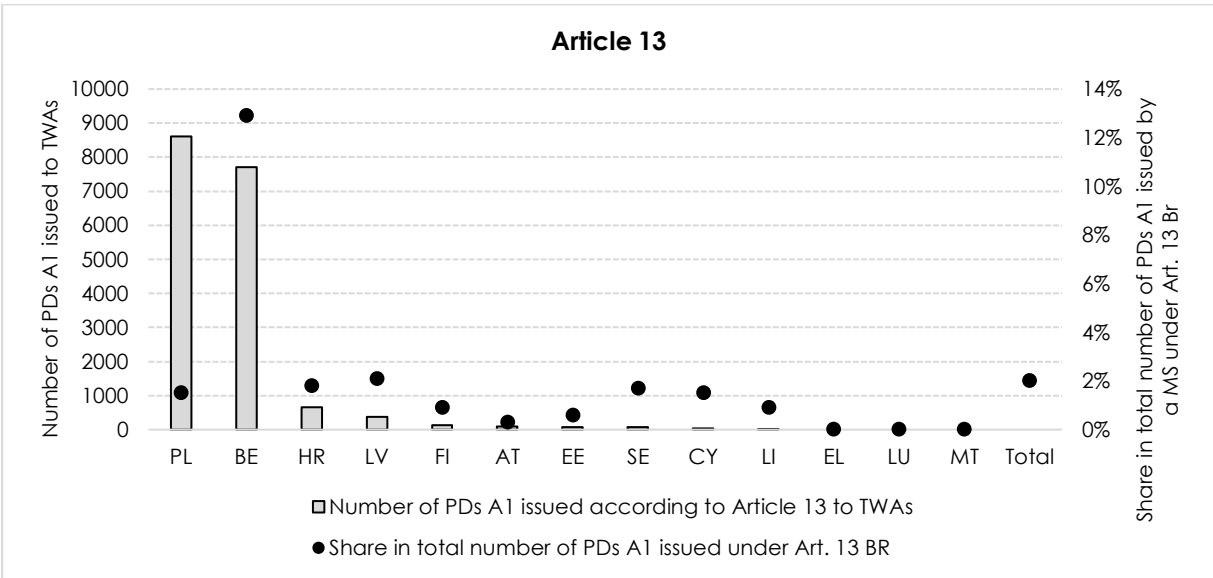


* See also Annexe III – Table B1. This table also includes additional data received for ES.

Source: De Wispelaere et al., 2025.

Figure 6 shows that Poland and Belgium also had the highest number of PDs A1 issued under Article 13 for TWAs with 8 608 and 7 706 certificates, respectively. Belgium is also the country where activities by TWAs under Article 13 account for the highest share of total postings by far (13%). Overall, the number of PDs A1 issued under Article 13 to TWAs was modest, with no other country for which data are available issuing more than 1 000 certificates. Overall, for the countries for which data are available, only 2% of the PDs A1 under Article 12 and 3% of forms under Article 13 were issued for companies in NACE category 78.2.

Figure 6. Data on PDs A1 issued according to Art. 13 for TWAs from a sending Member State's perspective for 2023



* CY: data 2021.

** See also Annexe III – Table B1. This table also includes data received for ES.

Source: De Wispelaere et al., 2025.

Although the latest PD A1 report for reference year 2023 does not have any data from Spain, earlier studies indicate that PDs A1 issued by Spain under Article 12 in the temporary agency work sector accounted for

3% in 2019 and 4% in 2020 of the total number of PDs A1.⁸⁰ Furthermore, according to the provisional analysis of the data provided by Spain in October 2024, in the year 2023, 6 374 PD A1s for the posting of workers were issued by the Spanish competent authority to TWAs established in Spain. This figure represents 5.6% of the total number of PDs A1 issued by Spain. Although most of the employed posted workers by a temporary work agency from Spain (Art. 12.1 BR) are Spanish nationals, a significant number of all those posted are third-country nationals (TCNs), mostly from Senegal, Morocco, Ecuador, Mali, Algeria and Bolivia. The country where most of the workers of a Spanish TWA are posted to is France. While there is no data about the sector where Spanish TWAs are posting workers, it is assumed that it could be in agriculture.⁸¹

Apart from PD A1 data, some countries also provide information on the number of workers posted by TWAs from other sources. For example, between January and June 2021, there were 37 482 postings from Italy in the sector of temporary agency work, with a total of 13 633 workers involved.⁸² In Lithuania, according to data declared by TWAs, in October 2024, there were 8 167 TWA workers posted from Lithuania.⁸³ Additional data for Belgium provided by the National Social Security Office (NSSO) show that the economic sector with the highest number of PDs A1 issued under both articles was NACE 78.2, accounting for 16% of all forms issued. Moreover, most of the PDs A1 issued under Article 12 for posted workers employed by a Belgian TWA relate to services provided in the Netherlands (53%) and to a lesser extent in France (26%). Apparently, a large number were issued for students⁸⁴ who are posted to the Netherlands to work in catering.

In sum, the latest available data show that only relatively few PDs A1 were issued for companies in NACE sector 78.2 and that those forms were issued by a small number of countries, namely Poland, Belgium and, to a lesser extent, Germany, Luxembourg and Portugal. However, it is important to remember that sectoral PD A1 is missing for several important sending countries.

4.5 Data on the number and characteristics of TWAs engaged in the posting of workers from a receiving Member State's perspective

Among the 11 countries covered by the POSTING.STAT 2.0 project, only Belgium, Italy, the Netherlands, and Slovenia reported data on the number of TWAs engaged in posting workers from the receiving country's perspective.

In Belgium, LIMOSA data for 2023 indicate that only 2% of the companies that post workers to Belgium are TWAs, of which a majority declared to be active in the sector category 'Other' (35%), while 24% declared activities in the construction sector, and 12% in metalworks and pipefitting.

Partial data from Italy indicate that between January and June 2021, 98 TWAs were involved, and, in most cases (85), these TWAs were based in another EU Member State.⁸⁵

In Slovenia, the Labour Relations and Labour Rights Directorate that operates within the Ministry of Labour, Family, Social Affairs and Equal Opportunities reported nine foreign companies registered as providers of labour active in Slovenia, of which four were Croatian, three Romanian, one Slovakian, and another one Portuguese (last update December 2024).⁸⁶

⁸⁰ Carrascosa, M.D. & Contreras, Ó. (2022) (Figure 5). For more recent data, see *Annexe III – Table B1*.

⁸¹ Mainly based on data for France on the number and characteristics of incoming posted workers.

⁸² Ministry of Labour and Social Policies (2022). <https://distaccoue.lavoro.gov.it/AnteprimaPDF.aspx?id=242&lang=it-it>

⁸³ Our calculations are based on information on the recruitment of temporary agency workers (Informacija apie laikinųjų darbuotojų įdarbinimą), link: <https://vdi.lrv.lt/lt/darbo-santykiai/laikinas-isdarbinimas/>

⁸⁴ Belgium has a very favourable tax and social security regulations for student jobs, making job students cheap labour in comparison to regular employees.

⁸⁵ Ministry of Labour and Social Policies (2022). Osservatorio distacchi. I dati. <https://distaccoue.lavoro.gov.it/AnteprimaPDF.aspx?id=242&lang=it-it>

⁸⁶ <https://podatki.gov.si/dataset/evidenca-tujih-pravnih-in-fizicnih-oseb-za-opravljanje-dejavnosti-zagotavljanja-dela-delavcev-uporab>

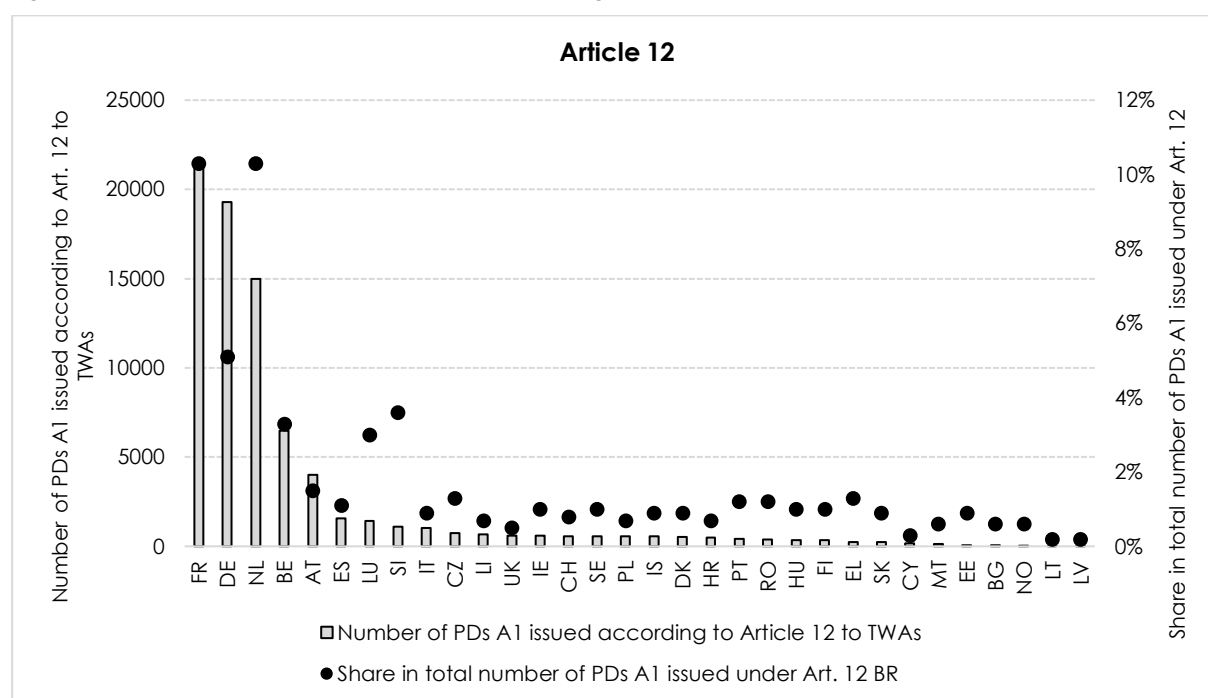
4.6 Data on the number of workers posted by TWAs from a receiving perspective

4.6.1 Based on data from the Portable Document A1

Similar to the TWA posting data from the sending perspective, the data available for postings from a receiving Member State's perspective are also drawn from the PDs A1 administrative data. However, such data are only available for the PDs A1 issued under Art. 12. PDs A1 under Art. 13 are issued for activities in more than one country and do not indicate the destination of the activity. Therefore, it is not possible to know by which countries individuals falling under this article were received.

The latest available data from PDs A1 for TWA postings from a receiving perspective are presented in *Figure 7*. The bars show that the highest number of PDs A1 issued for the provision of services in the TWA sector (NACE code 78.2) under Article 12 in 2023 have been in France (21 304), Germany (19 298), and the Netherlands (14 967). In relative terms, the TWA sector was most important in France and the Netherlands, where TWA postings accounted for 10.3% of all incoming postings recorded through PDs A1 issued under Art. 12. The only other countries where the TWA sector accounted for more than 2% of all incoming postings were Germany (5.1%), Slovenia (3.6%), Belgium (3.3%) and Luxembourg (3.0%).

Figure 7. Number of PDs A1 issued for TWAs by receiving perspective, Art. 12, 2023



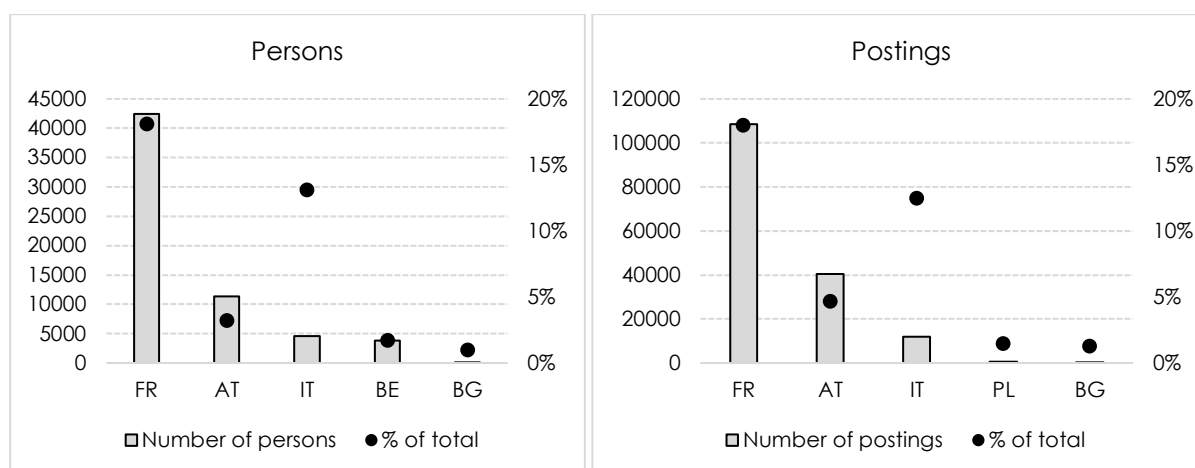
Source: De Wispelaere et al., 2025.

4.6.2. Based on data from the prior declaration tools

Partial data is also available from the prior notification tools. *Figure 8* shows information on the number of persons hired out to another country by 'temporary employment undertakings or placement agencies' (Art. 1(3)(c) of the PWD) in 2022 for the limited number of countries for which data are available. Among the six countries for which we have data, France had the largest number of incoming workers and persons posted by 'temporary employment undertakings or placement agencies', both in absolute and relative terms.⁸⁷ Austria was the second biggest recipient in terms of total numbers, followed by Italy and Belgium. Poland and Bulgaria report data on incoming postings but have received only very few.

⁸⁷ Moreover, the posting of workers through TWAs is mostly performed by TWAs located in Southern Europe or new Member States (Eastern Europe). For these countries, up to 30% of workers posted to France are posted through temporary employment agencies (Munoz, 2022).

Figure 8. Posting of workers under Art. 1(3)(c) of the PWD, 2022



* '% of total': share in total number of postings/persons reported in the prior declaration tool of the receiving MS.

Source: De Wispelaere et al., 2024.

To the extent data are available on incoming temporary agency postings from both PDs A1 and prior declaration tools collected at the EU level, the number of postings recorded by the latter is five to 10 times higher than by the former. In 2022, PDs A1 data for France indicate 19 042 incoming postings by TWAs, while data from the prior declaration tool indicate 108 572, more than five times that much. In Austria and Italy, the gap is even larger, with the PDs A1 data indicating 4 021 and 1 046 incoming TWA postings and the countries' prior declaration tools recording 40 479 and 11 983 postings by foreign TWAs.

Several factors likely contribute to the difference in the numbers. First, as mentioned before, differences exist between the definition of a 'posted worker' under the Regulations on the coordination of social security systems and that under the PWD. Caution is therefore needed when using data sources that depict 'temporary agency posting' through the lens of either the PWD or the Coordination Regulations, particularly when making comparisons between them. Second, the number of PDs A1 under Art. 12 received for NACE code 78.2 is based on a limited number of Member States that were able to provide such data. Third, as workers may be posted to the same Member State more than once per year, it can be the case that the person applies for a PD A1 which is then used on more than one occasion during its validity period. Therefore, while there will be only one PD A1 issued, prior notification tools might count two or three postings, depending on the number of declarations made prior to the posting. Fourth, the PDs A1 data only cover postings under Art. 12 BR. However, the exclusion of activities under Art. 13 BR can only explain a minor part of the difference because, as presented in section 4.4, only a few PDs A1 are issued for postings by TWAs under this article. The fifth factor alluded to before is that only companies whose main economic activity consists of hiring out workers are recorded under NACE code 78.2., whereas other companies that occasionally hire out workers are not (cf. supra: the scope of Article 1(3)(c) PWD differs from that of NACE 78.2). This can also be different in prior declaration tools. For instance, in Austria, TWA postings are not recorded based on the economic activity of the posting company but based on the nature of the posting: if a person remains under the direction and control of the posting company, the posting is recorded as 'posting' (*Entsendung*). If, on the other hand, the person works under the direction and control of the receiving company, the posting is recorded as the hiring-out of a worker (*Überlassung*). In this way, data from the Austrian prior declaration tool also reflect TWA postings by companies that do not have the hiring-out of workers as their primary activity.

Belgium, Italy, Lithuania, Poland and Austria reported some data in addition to the data from the PDs A1 and prior declaration tools collected and reported at the EU level. For Belgium, some additional data from LIMOSA were reported. According to this national system, the share of posted workers sent through a private temporary work agency to Belgium was only 1% of the total group of incoming posted workers in

2023. However, these data most likely severely underestimate the true extent of temporary work agencies posting workers to Belgium. For Italy, national data from January to June 2021 indicate 3 880 postings to Italy concerned temporary agency work, with a total of 2 545 workers involved,⁸⁸ whereas in Lithuania, in 2023, there were 249 workers posted from five countries: Poland, Latvia, the Netherlands, Germany and Denmark. The largest number of TWA workers was posted from Poland (197 workers), followed by Latvia (35 workers).⁸⁹ When it comes to temporary agency workers posted to Poland, in 2023 a total of 194 declarations on posting of workers hired out by TWAs were filed with the State Labour Inspection, most of which from Italy (154 declarations concerning 160 workers), Germany (23 declarations concerning 37 workers) and Portugal (5 declarations concerning 5 workers). When it comes to the nationality of workers posted by TWAs from other EU countries to Poland, according to the data available/provided, the majority were Italian (129 persons), followed by third-country nationals (28 persons) and German (15 persons).⁹⁰

As mentioned above, Austrian law distinguishes between the posting (*Entsendungen*) and the cross-border hiring-out of workers (*grenzüberschreitende Überlassungen*), which is equivalent to TWA posting. The distinction made under Austrian law is based not on the type of company but on the ‘true economic substance’ of the relationship. Specifically, posted workers work under the authority of the posting company while hired-out workers work under the direction of the receiving company (see §3 and 4 AÜG).⁹¹ The Austrian Ministry of Labour is legally obliged to publish statistics on the activities of TWAs in Austria annually, including on TWA posting to the country provided below.⁹²

Table 2. Annual number of postings and workers posted by TWAs to Austria 2020-2023

Period	Number of workers	Number of postings
July 1 st , 2020 – June 30 th , 2021	5 907	9 033
July 1 st , 2021 – June 30 th , 2022	7 829	16 621
July 1 st , 2022 – June 30 th , 2023	9 288	24 482

Source: Statistik Austria – Arbeitskräfteüberlassung aus dem EWR-Ausland nach Österreich.

<https://www.statistik.at/statistiken/arbeitsmarkt/arbeitskraeftenachfrage/arbeitskraefteueberlassung>

The data indicate that Slovenia is the main country hiring out workers to Austria (*Table 3*), whereas in terms of nationality, the largest group of workers leased to Austria are from Bosnia and Herzegovina, followed by Hungarian, Polish and Slovakian workers (*Table 4*).

⁸⁸ Ministry of Labour and Social Policies (2022). Osservatorio distacchi. I dati. <https://distacoue.lavoro.gov.it/AnteprimaPDF.aspx?id=242&lang=it-it>

⁸⁹ Information provided by the State Labour Inspectorate of Lithuania.

⁹⁰ Cf. Answer from the Director of the Legality of Employment Department at the Chief Labour Inspectorate in Warsaw, Mr. Dariusz Górski to our request for public information (provided via e-mail), p. 3.

⁹¹ For more details, please see <https://www.entsendeplattform.at/en/quicklinks/specific-topics-and-definitions>.

⁹² <https://www.statistik.at/statistiken/arbeitsmarkt/arbeitskraeftenachfrage/arbeitskraefteueberlassung>

Table 3. Average annual stock of workers posted by TWAs from other EEA countries to Austria, broken down by major countries of origin, for the period from 1 July 2022 to 30 June 2023

Location of the TWA	Average stock of hired-out workers		
	Total	Man	Women
Total	3 374	3 160	214
Slovenia	1 062		
Germany	482	421	61
Hungary	419	407	11
Poland	373	372	1
Slovakia	290	273	18
The Netherlands	118	63	56
Croatia	112	107	5
Romania	95	73	22
Portugal	85	85	-
Liechtenstein	67		
Italy	62	51	10
Other	210	181	29

Source: Statistik Austria – Arbeitskräfteüberlassung aus dem EWR-Ausland nach Österreich.

<https://www.statistik.at/statistiken/arbeitsmarkt/arbeitskraeftenachfrage/arbeitskraefteueberlassung>

Table 4. Average annual stock of workers posted by TWAs from other EEA countries to Austria, broken down by citizenship, for the period July 1, 2022, to June 30, 2023

Citizenship	Average stock of hired-out workers		
	Total	Total	Total
Total	3 374	3 160	215
Bosnia and Herzegovina	767	764	3
Hungary	502	489	14
Poland	423	417	6
Slovakia	328	316	12
Germany	267	223	44
Croatia	201		
Slovenia	142	137	4
Romania	130	104	26
Netherlands	120	G ²	G ²
Other	494	444	49

Source: Statistik Austria – Arbeitskräfteüberlassung aus dem EWR-Ausland nach Österreich.

<https://www.statistik.at/statistiken/arbeitsmarkt/arbeitskraeftenachfrage/arbeitskraefteueberlassung>

5. Risks of non-compliance and enforcement challenges

Various authors in multiple publications have presented examples and anecdotal evidence of non-compliance with applicable labour and social security legislation in the posting of temporary agency workers (e.g., Andriescu et al., 2024; Borelli, 2024; Robin-Olivier, 2022). A notable illustration of the challenges of posting temporary agency workers is undoubtedly the *Terra Fecundis* case (Carrascosa & Contreras Hernández, 2022; Deverson & Rocca, 2025; Omarjee, 2024). Terra Fecundis, now called Work for All, was a Spanish TWA that posted workers to France, particularly in the agriculture sector. Their posting activities increased over the years, and the posted workers were mostly TCNs from Ecuador and Morocco, working for hundreds of French agricultural user undertakings. The Terra Fecundis company was found to be violating the posting rules for several reasons: the cross-border services provided were not temporary in nature, there were no substantial activities in Spain, and the workers concerned faced extremely precarious working conditions.^{93,94}

Moreover, it is known that sometimes LMIs present themselves as ‘service providers’ rather than as entities hiring out workers (Jorens & Van Overmeiren, 2007). This allows them to avoid applying for official recognition as a TWA in both the sending and receiving Member State, and to circumvent the obligation to ensure better terms and conditions of employment to which posted agency workers are entitled under Art. 1(3)(c) of the PWD.

Although existing literature signals violations in the posting of temporary agency workers⁹⁵, data about infringements are not readily available.⁹⁶ The questionnaire sent to national teams included questions on enforcement and non-compliance data in the EU countries included in the POSTING.STAT project. The results and the challenges related to data on rule enforcement when TWA posting is involved are discussed below.

5.1 Data on enforcement and non-compliance with regard to posting by TWAs

Out of the 11 case countries included in the POSTING.STAT 2.0 project, only Poland reported data on inspections carried out on temporary work agencies posting workers *from a sending perspective*, whereas the other countries reported that no data were available publicly or did not receive any response from the enforcement authorities.

The data on Polish authorities carrying out inspections on TWAs based in Poland were received from the Social Insurance Institution (ZUS), the National Register of Employment Agencies (KRAZ), the Ministry of Family, Labour and Social Policy, and the State Labour Inspection of Poland. While the number of overall inspections at the national and regional level is higher and covers various aspects of the TWA activity, from the lack of activity to irregularities in paying contributions and taxes to undeclared work or other regulatory violations, the inspections of posting TWAs were fewer. Specifically, in 2023, the Polish State Labour

⁹³ The main conclusion reached was that the company had been performing a stable and continuous economic activity in the French territory by repeatedly posting workers to France during the period 2012-2015. Therefore, it was argued that the TWA was supplying ‘posted’ workers on a permanent basis in France and thus not respecting one of the posting conditions in order to apply Article 12 of Regulation 883/2004.

⁹⁴ “Investigations carried out revealed that, depending on the year, 70 to 96% of Terra Fecundis customers were located in France, with turnover in the region of 50 million euros, representing 99% or 100% of turnover, depending on the year. In 2015 alone, nearly 6 800 Terra Fecundis employees worked in France. In addition, Terra Fecundis had its own office space, equipped with all the resources required for operational management.” (Omarjee, 2024: 226 – translation).

⁹⁵ See for instance: Anna Paraskevopoulou, A., Fromm, A. & Clark, N. (2016), Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour, Eurofound, Publications Office of the European Union, Luxembourg, <https://www.eurofound.europa.eu/en/publications/2016/regulation-labour-market-intermediaries-and-role-social-partners-preventing>.

⁹⁶ Cf. the Study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU (see Andriescu et al., 2024: 130)

Inspection carried out 28 inspections in 26 Polish TWAs posting workers abroad (two agencies were inspected twice). The inspectors issued 30 motions in their reports to remedy the identified irregularities.⁹⁷

In the other Member States, data *from the receiving country perspective* on inspections and/or violations of the TWAs posting workers are either missing or fragmented. In the case of Austria, in 2022, the Financial Police inspected 85 foreign TWAs that hire out workers from abroad to Austria and 35 user undertakings companies that made use of temporary agency workers within Austria, involving 151 inspected employees at host employers and 345 at TWAs.⁹⁸

In Belgium, TWA accreditation is a competence of the Regions. As a result, inspections of TWAs' compliance with the legislation on accreditation are also carried out by the regions.⁹⁹ At the time of writing this thematic paper, only data from the competent inspectorate in Flanders could be reported. Thus, in 2019, 94 inspections of foreign TWAs posting workers to Flanders were conducted. They involved mainly Dutch TWAs (two out of three) and, to a lesser extent, Polish TWAs. Due to the COVID-19 pandemic, the Flemish Social Inspection increased its efforts in 2020 to conduct more administrative audits of foreign temporary work agencies that might be operating in Flanders without a valid license. These agencies were informed about the applicable regulations and were asked to provide information so that an 'on desk' inspection could be carried out. Of the 100 planned 'on desk' inspections, only 66 could be completed in 2020, reportedly largely due to the long processing times of these files.¹⁰⁰

Furthermore, since the end of 2017, foreign temporary employment agencies have been required to record their 'accreditation number' in the LIMOSA system. As a result, only workers posted by a foreign temporary work agency with an authorisation are reported under this category. It has been noted that after the requirement of accreditation was introduced, the share of reported posted workers sent through private temporary work agencies dropped from 12% in 2015 to only 1% of the total group of incoming posted workers in 2023. The fact that the number of reported posted temporary agency workers was much higher before 2018 seems to indicate that many of these temporary agency workers were posted by foreign temporary work agencies without authorisation. The difference of around 70% of temporary work agencies since 2018¹⁰¹ could indicate either a very steep decline in the number of TWA postings or non-reporting and thus rule evasion.¹⁰²

In the German case, inspection data are more comprehensive. Data from the German customs published by the federal government indicate the number of initiated administrative offence proceedings and settled administrative offence proceedings in different sectors, which also include 'temporary employment' (see *Table 5*).

⁹⁷ Cf. Answer from the Director of the Legality of Employment Department at the Chief Labour Inspectorate in Warsaw, Mr. Dariusz Górski to our request for public information (provided via e-mail), p. 3.

⁹⁸ Bericht über die Durchführung des Kontrollplanes 2023, pg. 3-4 available at: https://www.parlament.gv.at/dokument/XXVII/III/1191/imfname_1638941.pdf

⁹⁹ Whereas inspection of compliance with legislation concerning temporary agency workers is still a federal competence.

¹⁰⁰ https://hiva.kuleuven.be/en/news/docs/ZKD9978_POSTING_STAT_Belgium_Posted_workers_from_and_to_Belgium_facts_and_figures (page 55)

¹⁰¹ Source: NSSO, personal communication, 25 June 2024.

¹⁰² <https://fondsinterim.be/fr/>

Table 5. Initiated and settled offense proceedings in different sectors including 'temporary employment' in Germany (2019-2022)

	2019	2020	2021	2022
Total initiated administrative offense proceedings (not only related to posting)	31 537	26 880	33,458	47,928
Initiated administrative offense proceedings in temporary employment (related to posting/AEntG)	23	10	5	15
Initiated administrative offense proceedings according to § 23 (1) Nr. 1 AEntG ¹⁰³ . Minimum wage for temporary workers in other industries (mainly in facility cleaning services and main or ancillary building industry)	26	27	32	40
(Warning) fines, recovery and forfeiture amounts stated as "temporary employment" (related to posting/AEntG)	€ 6 955	€ 44 515	€ 90 420	€ 40 995
(Warning) fines, recovery and forfeiture amounts according to § 23 (1) Nr. 1 AEntG: Minimum wage for temporary workers in other industries (mainly main or ancillary building industry, facility cleaning services Electrical trades and Care sector)	€ 269 437	€ 55 835	€ 4 148 862	€ 237 785
Settled administrative offense proceedings in temporary employment (related to posting/AEntG)	21	20	7	10

Source: BT 20/6361 based on data from German customs¹⁰⁴

The reported infringements mainly concerned the non-payment of mandatory minimum wages. *Administrative* investigations have mainly been settled with a fine notice.

No *criminal* investigations were reported in relation to the Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (Arbeitnehmer-Entsendegesetz – AEntG).

Finally, there are several posting conditions to be fulfilled cumulatively for the proper use of posting under Article 12 of Regulation 883/2004. One of the conditions is that the employer must normally carry out its activities in the Member State of establishment or to be understood as performing 'substantial activities, other than mere management activities, in that Member State'.¹⁰⁵ The existence of substantial activities in the Member State of establishment can be checked via a series of objective factors (see EC, 2013)¹⁰⁶. One of these objective factors is the turnover achieved by the posting company in the receiving and sending Member State during an appropriate typical period. For instance, a turnover of approximately 25% of total

¹⁰³ **Section 23 Regulatory fines** provisions states that "(1) Whoever intentionally or negligently, 1. contrary to section 8 (1) sentence 1 or (3), does not guarantee a working condition whose compliance is checked by the customs authorities pursuant to section 16, or does not do so in good time, or does not pay a contribution or does not do so in good time, is deemed to have committed a regulatory offence.

Section 8 Employer's obligation to guarantee working conditions state that (3) Where a temporary agency worker is employed by a user enterprise to carry out tasks which are covered by a collective agreement as referred to in section 3 sentence 1 no. 1, to the extent that it sets out working conditions as referred to in section 5 sentence 1 no. 2 to no. 4, or by a statutory instrument as referred to in section 7 or section 7a, the temporary work agency is required to at least guarantee those working conditions which are prescribed under that collective agreement or statutory instrument and to pay the contributions due to the joint facility under that collective agreement; the same applies if the user enterprise's enterprise does not carry out the sector-specific activities to which that collective agreement or statutory instrument applies.

See: https://www.gesetze-im-internet.de/englisch_aentg/englisch_aentg.html#p0254

¹⁰⁴ Drucksache 20/6361, <https://dserver.bundestag.de/btd/20/063/2006361.pdf>

¹⁰⁵ "Article 14(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems must be interpreted as meaning that a temporary-work agency established in a Member State must, in order for it to be considered that it 'normally carries out its activities', within the meaning of Article 12(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, in that Member State, carry out a significant part of its activities of assigning temporary agency workers for the benefit of user undertakings established and carrying out their activities in the territory of that Member State." <https://curia.europa.eu/juris/liste.jsf?num=C-784/19>

¹⁰⁶ E.g., the place where the posting undertaking has its registered office and its administration; the number of administrative staff of the posting undertaking present in the posting State and in the State of employment – the presence of only administrative staff in the posting State rules out per se the applicability to the undertaking of the provisions governing posting; the place of recruitment of the posted worker, etc.

turnover in the sending Member State could be a sufficient indicator, but cases where the turnover is under 25% would warrant greater scrutiny (as defined by the Practical guide on the applicable legislation in the EU (EC, 2013:9)).¹⁰⁷

Orbis allows us (to a limited extent) to ascertain whether TWAs falling under NACE code 78.2 perform substantial activities in their country of residence. Indeed, this database includes the variable ‘export revenue’¹⁰⁸ which can thus be compared to the operating revenue (i.e., total turnover). However, the variable ‘export revenue/operating revenue’ is known for only 0.6% of the companies under NACE code 78.2. For these TWAs, this variable is between 90% and 99% (28.4%) and even equal to 100% (22.1%) for a large group of TWAs. Nonetheless, the variable ‘export revenue/operating revenue’ is available for too few TWAs to make a statement on the extent to which TWAs do not carry out substantial activities in their country of establishment.

5.2 Data challenges related to the enforcement of legislation applicable to (the posting of workers by) TWAs and other LMIs

The challenges regarding the collection of data on legislation enforcement and compliance applicable to (the posting of workers by) TWAs and other LMIs across the various Member States of the POSTING.STAT 2.0 project are multifaceted, making it difficult to gather accurate and comprehensive statistics on TWA activities across EU Member States.

One of the main issues is the lack of harmonised legal definitions across EU Member States. Since there is no consistent definition of what constitutes a TWA across the various Member States, data collection and comparison are complicated. Furthermore, instead of convergence, we notice that in Poland, recent legislative proposals conflict with EU law, particularly regarding the employment of foreign workers and the posting of workers abroad. The NACE 78.2 categorization of TWAs as a separate sector also presents a challenge, since it remains unclear whether in PD A1 applications service providers report the sector of economic activity in which *they themselves* are registered, or whether they report the sector of economic activity *in which they provide services*, or whether some report one and others the other. These legal and practical challenges not only make it more difficult to enforce compliance with applicable regulations but also complicate the accurate monitoring of and reporting on TWA activities.

Another important issue is the limited availability of data. The fragmented and inconsistent nature of the available data adds another layer of complexity. Data collection systems in many countries are not sufficiently detailed, with some systems not designed to capture specific information related to TWAs. For example, in Lithuania, while applying for a PD A1 certificate, there is no direct requirement to specify whether a posting involves a TWA, therefore such statistics are not collected, and even if other data are collected, such as the names of companies and the number of posted workers, detailed sector-specific information is often missing. Meanwhile, in Germany, only aggregated data on enforcement are publicly available, which makes it difficult to assess compliance with posting rules. Furthermore, in Lithuania and Italy, the data collection is not adapted to capture details about whether a posting involves a TWA, making it difficult to analyse the specific role of TWAs in the posting of workers. Some countries also fail to collect data on the sectors in which TWAs operate, which limits the ability to understand their impact across industries. Moreover, these data can be skewed by external factors, such as the COVID-19 pandemic, which impacted enforcement activities.

Under- and non-reporting of posted temporary agency workers is a significant challenge even with systems like LIMOSA, since the authorities in Belgium face issues in accurate reporting and struggle to enforce compliance with self-reporting obligations effectively. The lack of inspection statistics is particularly

¹⁰⁷ However, there are doubts about the legal value of the 25% criterion. See, for instance, Jorens (2023: 307): “It is clear that this quantification in absolute numbers does not stem from Decision No A2 of the Administrative Commission but, moreover, it is certainly not referred to in any more detail in the recitals of the Court of Justice. Therefore, the legal value of these numbers is non-existing.”

¹⁰⁸ This variable may also include the export of goods and is therefore not limited to the export of services only. However, TWAs are unlikely to export goods.

observed regarding the compliance with legislation applicable to posted temporary workers' wages and working conditions, further hindering enforcement efforts.

A final significant challenge is the lack of transparency and cooperation across countries. In some instances, Member States may be unable or unwilling to share the necessary data with others, especially regarding the cases of 'bogus outsourcing' or non-compliant TWA activity. Cooperation from labour inspections and other competent enforcement agencies may also be limited: because of the lack of resources, their representatives are often too busy to provide in-depth analysis or detailed data on TWA posting. Additionally, privacy concerns regarding personal data, such as the names of employees, further complicate the sharing of information. These drawbacks in cross-border cooperation complicate efforts to compile comprehensive statistics on TWA posting.

6. Conclusions and recommendations

This paper scrutinises data on ‘temporary agency posting’ in 11 EU Member States. The data presented here were collected by the national teams of the countries included in the project and from the available EU datasets.

As discussed in *Chapter 3*, a plethora of legal concepts is used at the European and national levels (i.e., LMIs, private employment undertaking, (employment) placement agencies and temporary work agencies) which are often defined or interpreted differently at the various levels of competence and by the different stakeholders (public authorities or undertakings) concerned. The disparity within both the legislative and administrative powers is reflected in the data, resulting in statistical complexity, i.e. different countries in different institutions might be counting slightly or substantially different labour market actors. Said complexity explains to some degree the gap in data at the national and EU levels and the challenge of comparability, which obliges one to interpret the available data with caution.

Chapter 4 showed that quantifying the posting of temporary agency workers is equally complex. We used two data sources for counting temporary agency postings, notably data from the PDs A1 and data from the prior declaration tools. Both data sources have their limitations and are hardly comparable with each other. Austria stands out as an example of good practice regarding the wealth of data published by national authorities on TWA postings. Furthermore, by focusing on the nature of postings rather than the nature of the posting undertaking – i.e. whether it is a registered TWA or not – the Austrian prior declaration tool applies a more comprehensive understanding of what constitutes a TWA posting, which is in line with CJEU jurisprudence stating that companies hiring out workers can be considered TWAs under the TWAD even if they are not registered as such under national law.

Finally, *Chapter 5* shows that despite the flagging of TWA posting in previous research (Andriescu et al., 2024; ELA, 2025) as a challenging form of posting where the risk of non-compliance is higher, the administrative data on the extent to which TWA posting violations are monitored and reported remain limited. The data clearly reveal the disparities of the legislative and conceptual frameworks which oftentimes have an adverse effect on the capacity of Member States’ administrations to effectively monitor and enforce the compliance of all rules and regulations applicable to temporary agency workers - for instance rules and regulations with regard to OSH - and TWAs providing cross-border services. Moreover, although existing literature signals violations in the posting of workers by TWAs, there is a lack of inspection statistics on the enforcement of the posting rules in the case of TWA posting. Urgent progress needs to be made in this area.

Clarity in terms of definitions across Member States would make what is actually being counted more transparent. However, this would be a first step, as there is also a need for clarification of what is actually being counted by the various administrations. For example, further clarification is necessary in terms of what is being reported in the PD A1 certificates regarding the economic activities of TWAs posting workers, as well as those of user undertakings. Potentially, this could be done by asking more detailed and distinguishing questions about the profiles of sending and user undertakings and about the sector in which the posted temporary agency workers are providing services.

The practices of Member States regarding the statistical reporting of posting TWAs remain unclear. Both in the context of issuing a PD A1 and the reporting of the prior declaration tools, it is often not transparent how Member States classify and report TWAs in their data. Consequently, this may lead to significant discrepancies: for instance, between the number of TWAs reported through self-declared information in the prior declaration tools and those actually falling under Article 1(3)(c) of the PWD. In addition, it would be helpful to elaborate on the possible reasons for the significant discrepancy between the two data sources.

Based on our findings, further steps could - and should - be taken to enhance our understanding of ‘temporary agency posting’, for example by defining a targeted research agenda from both legal and

empirical perspectives. A key step here is to get a better idea of the quality of the data provided. This requires examining how Member States currently report data on the number of PDs A1 issued under Article 12 of Regulation 883/2004 and classified under NACE code 78.2, as well as data on the number of postings falling under Article 1(3)(c) of the PWD. Moreover, for the latter, the key question is how many postings theoretically fall within the scope of this provision compared to the numbers reported in prior declaration tools. However, quantifying the theoretical group of postings covered by the application of Article 1(3)(c) of the PWD presents not only a statistical challenge but, even more so, an enormous challenge for the enforcement bodies. In that respect, additional efforts could certainly be made to improve the collection and reporting of inspection statistics concerning ‘temporary agency posting’. From an academic perspective, it appears to be an understudied topic, and this seems equally true from the standpoint of the competent enforcement agencies, likely due, at least in part, to the ‘legal imbroglio’ one is confronted with. Finally, we believe it would be highly beneficial to gain deeper insight into how TWAs apply the ‘posting conditions’ as stipulated in the Coordination Regulations. Once again, something in which the enforcement bodies also certainly are - or at least should be - interested.

Future research should focus on building an updated and more robust typology of LMIs that hire out workers or otherwise directly or indirectly supply manpower domestically or across borders. A more robust typology would provide deeper insights into the differing nature, characteristics and varying degrees of relationships between the LMIs, the workers and the user undertakings. Building such a typology should facilitate the better identification of legal discrepancies, transparency issues and loopholes. Contrasting existing models of LMIs and analysing them against existing legal concepts and categories would also assist in mapping the legal and practical challenges that competent administrations face, as well as the monitoring and enforcement challenges that arise at the different levels of competence.

Last but not least, it is important to recognize that the dubious history of triangular employment relationships is a *ratio legis* for the regulation and monitoring thereof, as LMIs often contribute to unfair market practices, which can negatively impact workers' rights to decent work and fair working conditions.

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Annexe I – POSTING.STAT Questionnaire: Empirical evidence on temporary agency posting

Definitions and economic activity of TWAs

1. What is the definition of a temporary work agency (TWA) in the national legislation of your country? (please add references where relevant)
2. Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
3. Are there other types of entities hiring out workers but are not considered TWAs according to national legislation in your country? How are they different from TWAs?

TWAs and posting

1. Are TWAs in your country allowed to post workers to other countries? What administrative requirements do they need to comply with to post workers?
2. Are there any restrictions to TWA activity related to posting in your country (e.g. the recruitment in the country of origin and posting of TCN workers)?
3. Under which conditions can foreign temporary work agencies operate in your country? Do they need to be registered in your country?
4. Are other entities that hire out workers allowed to post workers to other countries?

Monitoring of TWAs posting workers to another Member State

1. If available, please provide data on the number and characteristics of TWAs posting workers *from* your country.
2. If available, please provide the most recent data on the number of workers posted by TWAs *from* your country.
3. If available, please provide data on the number and characteristics of TWAs posting workers *to* your country, by sending country.
4. If available, please provide the most recent data on the number of workers posted by TWAs *to* your country, by sending country.
5. If available, please provide the most recent data on other non-TWA entities mentioned above posting workers from your country.

Enforcement of TWAs posting workers to another Member State

1. If available, please provide enforcement data (number of inspections, number of infringements, etc.) on TWAs posting workers *from* your country.
2. If available, please provide enforcement data (number of inspections, number of infringements, types of infringements, etc.) on TWAs posting workers *to* your country.

Collecting statistics on TWA posting

1. What are the challenges identified in collecting statistics on TWA posting?

Annexe II – Replies to the questionnaire

Table A1.1	What is the definition of a temporary work agency (TWA) in the national legislation of your country?
Austria	Temporary agency work in Austria is regulated by the Temporary Work Agency Act (<i>Arbeitskräfteüberlassungsgesetz – AÜG</i>) which defines a temporary work agency as “the entity that contracts workers to provide labour to third parties” (§ 3 (2) AÜG). The AÜG uses the term transferor (<i>Überlasser</i>) instead of temporary work agency.
Belgium	The concept of ‘Temporary work agency’ is defined in the Act of 24 July 1987 on temporary work, temporary agency work, and the hiring-out of workers for the benefit of users. ‘A temporary employment agency’ is a “the enterprise whose activity is to employ temporary agency workers in order to make them available to users for the purpose of carrying out temporary agency work authorised by or under Chapter I of this Act” (Art. 7.1 of the Act of 24 July 1987).
Germany	According to Section 1 (1) of the German Temporary Employment Act (<i>Arbeitnehmerüberlassungsgesetz, AÜG</i>), a TWA is an employer, who as a lending company, has a temporary employment permit to lend temporary workers as part of their business activities to third parties as hirers.
Spain	In accordance with Article 1 of Law 14/1994 a Temporary Work Agency (TWA) is defined in Spain as a company whose activity consists of providing another user company, on a temporary basis, with workers it has hired. The hiring of workers for temporary assignment to another company may only be carried out through this type of company, provided that they have administrative authorisation.
France	A temporary work company is any natural or legal person whose sole activity is to make employees available on a temporary basis to user companies, whom it recruits and remunerates (Article L1251-2 Labour Code). Limited exceptions to the exclusivity of activity for temporary work companies are possible, for instance when it comes to activities of private placement (Article L1251-4 Labour Code). Temporary work companies may only operate after submitting a declaration to the administrative authority and obtaining a specific financial guarantee (Article L1251-45 Labour Code).
Lithuania	The Labour Code of the Republic of Lithuania (LC) defines indirectly the legal concept of TWA stating that only a temporary employment undertaking (TEU or TWA) that meets the criteria set out in Article 72 ¹ and which is included in the list drawn up by the State Labour Inspectorate (SLI) may be a party to a temporary employment contract (TEC) as an employer (Article 72, par. 2 of the LC). A TWA is therefore defined as a legal person included in the list of the SLI and fulfilling the relevant criteria. In a TEC, the worker and the employer (the TWA) agree that a temporary worker undertakes to carry out work activities for a specified period of time for the benefit and under the subordination of the user of the temporary work, however the worker is remunerated by the TWA (Article 72, par 1 of the LC).
Netherlands	The term temporary work agency is described as any natural or legal entity which, in accordance with national law, enters into an employment contract or employment relationship with temporary workers to make them available to other companies, where they work temporarily under the supervision of those companies.

Table A1.1	What is the definition of a temporary work agency (TWA) in the national legislation of your country?
Slovenia	<p>Slovenian legislation does not provide the definition of/or use the term ‘temporary work agency’. The term used is ‘the activity of providing the work of workers to user undertakings’. This activity can be registered and carried out by any legally established company that meets certain conditions. The applicable legislation is the Labour Market Regulation Act (Articles 163 – 179a), which states that (Article 163):</p> <p>(1) Carrying out the activity of providing the work of workers to user undertakings referred to in paragraph four of this Article (hereinafter: activity) shall mean any provision of the work of a worker by a legal or natural person with whom the worker has concluded an employment contract to a user undertaking where the worker works under the supervision and in accordance with the instructions of the user undertaking or predominately uses means for carrying out work that are part of the user undertaking's work process.</p> <p>(2) An employer providing the work of workers to user undertakings referred to in the preceding paragraph (hereinafter: an employer providing work) shall mean any legal or natural person who concludes employment contracts with workers for the purpose of providing their work to user undertakings in the manner determined in the preceding paragraph and who obtains a licence to carry out the activity referred to in Article 167 of this Act and is entered in the register of domestic legal and natural persons for carrying out the activity of providing the work of workers to a user undertaking (hereinafter: register) at the ministry responsible for labour, or in the records of foreign legal and natural persons for carrying out the activity of providing the work of workers to a user undertaking (hereinafter: records). When determining the conditions for performing work, the employer providing work may refer to the conditions determined by the user undertaking.</p>
Slovakia	<p>In Slovak legislation, a temporary employment agency (TWA) is defined in Act No. 5/2004 Coll. on employment services, specifically in § 29 Temporary employment agency (1) For the purposes of this Act, a temporary employment agency is a legal entity or a natural person that employs a citizen in an employment relationship (hereinafter referred to as “temporary employee”) for the purpose of temporarily assigning him to a user employer. According to Slovak law, TWAs are required to obtain a license from the Office of Labour, Social Affairs and Family (“ÚPSVaR”) and must meet certain legal, administrative and financial requirements.</p>
Italy	<p>The use of temporary work agencies was first introduced into the Italian legislation in 2003 by Legislative Decree 276/2003 (known as Biagi Reform). The temporary work agency (agenzia di somministrazione) acts as an intermediary between the worker(s) it hires and the company that requires a labour supply service (user undertaking – impresa utilizzatrice). At contractual level, the relationship between the three parties is governed by:</p> <ul style="list-style-type: none"> - the staff leasing contract (contratto di somministrazione): this is a commercial contract concluded between the temporary work agency and the user undertaking; - the employment contract: this is an employment contract concluded between the worker and the temporary work agency that hires him/her and then sends him/her to the user undertaking. The worker can be hired by the TWA with either a fixed-term contract or a permanent contract. <p>The employment through TWAs is regulated by:</p> <ul style="list-style-type: none"> - Legislative Decree 81/2015 (known as Jobs Act) (Articles 30-40) and Legislative Decree 276/2003; - The National Collective Labour Agreement (CCNL) of temporary work agencies, signed between the employers association Assolavoro and the trade unions CGIL, CISL and UIL; - The sectoral collective labour agreements signed at national level applied by user undertakings.

Table A1.1	What is the definition of a temporary work agency (TWA) in the national legislation of your country?
Poland	<p>Principles of functioning of temporary work agencies (TWAs) in Poland had been regulated by the Act of 9 July 2003 on the Employment of Temporary Workers as well as by the Act of 20 April 2004 on Promotion of Employment and Labour Market Institutions. In the current Polish legal provisions, a temporary work agency is one of the forms of activity of an employment agency. Pursuant to Art. 6 (4) of the Act on the promotion of employment, employment agencies are entities entered in the register of entities running employment agencies, providing services in the field of job placement, intermediation for work abroad at foreign employers, career guidance, personal consulting or temporary work. There is no separate definition of a temporary employment agency. An employment agency is one of the forms of labour market institutions, as provided by Art. 6(1)(3) of the Act on Promotion of Employment.</p> <p>Temporary work services consist in employing temporary workers and directing these workers and non-employees to perform temporary work for and under the supervision of the user undertaking, in accordance with the principles set out in the provisions on employment of temporary workers.</p> <p>The concept of temporary work itself was in turn defined in Art. 2(3) of the Act on the Employment of Temporary Workers, according to which temporary work denotes the performance of tasks for a given user undertaking, for a period not longer than specified in the Act:</p> <ul style="list-style-type: none"> a) of a seasonal, periodic or ad hoc nature, or b) whose timely performance by workers employed by the user undertaking would not be possible, or c) whose performance is the responsibility of the absent worker employed by the user undertaking. <p>The catalogue of tasks is limited to only three cases, and the temporary agency worker is not allowed to perform any kind of work, but only the type of work specified in the Act .</p> <p>The Act therefore assumes that temporary work within the framework of a temporary work agency is a form of subsidiary employment in relation to permanent employment.</p> <p>Temporary work assumes the existence of a three-party employment relationship, in which one is dealing with a formal (proper) employer - a temporary work agency (TWA), a user undertaking (an entity that is the recipient of the employee's work) and a temporary worker.</p>

Table A1.2	Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
Austria	The assignment of workers to companies affected by strikes or lockouts is prohibited (§9 AÜG). Furthermore, the use of temporary agency workers can also be further restricted by company-level agreements concluded between works council and management. Restrictions may apply in parts of the public sector.
Belgium	Yes. See Art. 23 of the Act of 24 July 1987: “Prohibited are those provisions in collective agreements that establish a general prohibition on the employment of temporary agency workers for certain industries.” However, civil servants cannot be replaced by temporary agency workers. Moreover, restrictions are sometimes imposed at sector or company level. Furthermore, temporary agency work is only possible for the execution of types of temporary work permitted by law. The main cases of temporary agency work permitted by law are the following: for the replacement of a permanent employee; to meet the demands of a temporary increase in work; to ensure the execution of exceptional work.
Germany	<p>Temporary employment is not permitted in all areas. In the construction industry in particular, the hiring out of employees for work that is usually carried out by regular workers is generally not permitted (Section 1b AÜG). Exceptions only exist under certain conditions, e.g. between companies in the construction industry if they are covered by the same collective agreements, or between companies in the construction industry and other companies if generally binding collective agreements stipulate this. Temporary employment also is not prohibited in the so-called in relation to construction finishing trade.</p> <p>In the meat industry there has been a prohibition for temporary employment in the slaughtering/ butchering sector since April 1, 2021 and since April 1, 2024 in meat processing. However, temporary employment is still permitted in craft-type butchery and meat processing work of craft-type companies with less than 50 employees.</p> <p>A permit is required for temporary employment (Section 1 AÜG). Employers who undertake temporary employment must apply for this permit in writing (§ 2 AÜG). Permission can be granted subject to certain conditions and requirements and is initially limited to one year but can be granted indefinitely after three years (Section 2 (4) and (5) AÜG). The maximum assignment period for the same temporary worker to the same hirer is 18 consecutive months, taking into account previous assignments if there are no more than three months between each assignment (Section 1 (1b) AÜG). Any deviation from this maximum duration is subject to collective agreements.</p>

<p>Spain</p>	<p>In Spain, TWAs may assign workers to other companies regardless of the economic activity in which the assigned workers will be engaged. However, there are express prohibitions, as well as restrictions and limitations, for companies operating in the construction sector in Spain. As stated in Article 8 of Law 14/1994, the provision of workers is prohibited:</p> <ul style="list-style-type: none"> - To replace workers on strike. - To assign them to another TWA. - To assign them to a user company when in the previous 12 months they have been unfairly dismissed or due to collective or objective dismissals associated with economic, technical, organisational or production causes. Also, when, during this period, the contracts have been judicially ended in a compensated manner at the worker's request due to serious breaches by the employer. - To work in cases involving special health hazards. The provision of work involving exposure to ionising radiation in controlled areas is expressly prohibited (Directive 2013/59, transposed in Spain in accordance with Royal Decree (RD) RD 601/2019; RD 586/2020; RD 451/2020; RD 732/2019; RDL 6/2022; RD 1029/2022); Work involving exposure to carcinogenic, mutagenic or toxic agents for reproduction, first and second category (RD 363/1995 and RD 255/2003); Work involving exposure to biological agents of groups 3 and 4 (RD 664/1997). <p>All this in accordance with the 2nd Additional Provision of Law 14/1999, which also establishes that, in construction activities, open-cast and inland mining, extractive industries using boreholes on land surface, work on offshore platforms, the manufacture, handling and use of explosives and work involving electrical hazards with high voltage, the limitations which, where appropriate, are established by collective bargaining must be respected.</p> <p>According to Article 24.2 and Annex VII of the VII General Collective Bargaining Agreement for the construction sector in Spain, TWAs and construction companies will be able to sign contracts for the provision of services, but there are prohibitions and limitations. The agreement establishes absolute limitations for occupations that are considered to be particularly dangerous for the health and safety of the workers who perform them.</p> <p>Specifically, temporary agency workers cannot be hired for the following jobs (among others): Manager, site supervisor; gunner, operator of drilling, blasting, cutting and sawing of blocks; stonemason; marble worker; lifting equipment fitter; assembler of tubular structures (scaffolding...); welder of metallic structures; welding and oxy-fuel cutting; planner, mill operator, diver (maritime works).</p> <p>For the rest of the jobs, relative limitations are established, i.e. they can be occupied by temporary agency workers as long as there are no special risks for the integrity of the workers, such as, for example: jobs with particularly serious risks of burial, collapse or fall from height; work in the proximity of high-voltage power lines; work in which exposure to chemical or biological agents poses a particularly serious risk, or for which specific health surveillance is legally required (e.g. work with exposure to asbestos); work with risk of drowning by immersion; work with explosives; work involving the assembly of heavy prefabricated elements.</p> <p>According to Article 2 of Law 14/1994, TWAs must obtain prior administrative authorisation. This authorisation will be valid throughout the national territory, in principle, for an indefinite period. To obtain the authorisation, the company must justify prior compliance with the following requirements:</p> <ol style="list-style-type: none"> a) Have an organisational structure that enables it to fulfil the obligations it assumes as an employer in relation to the corporate purpose. b) Dedicate itself exclusively to the activity constituting a temporary employment agency. c) Be up to date with its tax and Social Security obligations. d) Guarantee compliance with salary, compensation and Social Security obligations. e) Not have been sanctioned with suspension of activity on two or more occasions.
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Table A1.2	Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
	f) Include in its name the terms ‘temporary employment agency’ or its abbreviation ‘ETT’ (TWA).
France	<p>With limited exceptions, TWAs are allowed to provide manpower in all sectors of the economy. Limitations are in place as to the situations in which a user undertaking can have recourse to workers provided by a TWAs (Article L1251-6 Labour Code). The main scenarios are: a) replacement of an employee in the event of absence, temporary move to part-time work, suspension of an employee's contract of employment; b) Temporary increase in the company's activity; c) Seasonal jobs defined by law, decree, or collective agreements.</p> <p>Provision of manpower by TWAs is forbidden in certain situations, and notably when to perform particularly dangerous work included on a list drawn up by regulation. The administrative authority may exceptionally authorise a derogation from this prohibition. The list has been updated in 2022 and includes activities exposing workers to certain dangerous agents.</p>
Lithuania	<p>TWAs are allowed in all sectors of activity in Lithuania. No exceptions or special requirements are provided for TWAs operating in any specific sector. TWAs operating in any sector must meet certain requirements for the TWA and its managers (Article 72¹ of the LC).</p> <p>An employer who intends to engage in TWA activities must submit a written application to the SLI for its inclusion in the list of TWAs.</p> <p>The criteria to be met by a TWA (Article 72¹, par.1, points 1-3 and points 6-8 correspondingly) are the following: 1) its activities are not suspended or restricted; 2) it is not the subject of insolvency proceedings, etc.; 3) it has not (if it has) more than one fine imposed for illegal work, undeclared work and established infringements of the procedure for the employment of foreigners; 4) it has no outstanding debts to the State budget or to the budget of the State Social Insurance Fund; 5) it has submitted to the SLI the information regarding employment and employees/workers number; 6) it has temporary workers for at least three consecutive calendar months.</p> <p>There are requirements that TWA heads or persons authorized by them (TWA managers) must also meet (Article 72¹, par.1 points 4 and 5): i.e. has not been imposed an administrative penalty (AP) for illegal employment; has been imposed (if any) no more than one AP for breaches of labour laws, occupational safety and health legislation, breaches of the working conditions of temporary workers, breaches of the procedure for commercial or economic activity, etc. The TWA managers cannot be convicted of offences such as violation of occupational health and safety requirements, trafficking in human beings, exploitation for forced labour or services, etc.</p>
Netherlands	TWAs are allowed in all sectors of activity in the Netherlands.

Table A1.2	Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
Slovenia	<p>Companies registered across all sectors can also register to carry out the activity of providing labour to user undertakings. The conditions they have to meet are stated in the Labour Market Regulation Act (Article 164):</p> <p>(1) An employer providing work may start carrying out the activity if:</p> <ul style="list-style-type: none"> - during the last two years it has not incurred an enforceable fine for violating the regulations governing the employment relationships, employment and work of foreigners, health and safety at work, undeclared work and the labour market; - during the last two years it has had no outstanding liabilities arising from remuneration for work; - during the last two years it has not appeared on the list of persons liable to tax with outstanding tax liabilities and on the list of persons not filing tax returns published by the Tax Administration of the Republic of Slovenia and the Customs Administration of the Republic of Slovenia, and has no outstanding tax liabilities on the day of filing the application; - it meets the staff, organisational, spatial and other conditions prescribed in detail by the minister responsible for labour; - the provision of temporary work is registered as its principal activity; - it provides a bank guarantee in the amount of not less than EUR 30,000.

Table A1.2	Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
Slovakia	<p>The employee concludes an employment contract with the temporary employment agency, in which the temporary employment agency undertakes to provide the employee with temporary work at the user employer and the terms of employment are agreed upon. Both contracting parties conclude a written agreement on temporary assignment, which must include, in particular, the name and registered office of the user's employer, the date when the temporary assignment is created and the period for which the temporary assignment was agreed, the type of work and the place of work performance, wage conditions and conditions for unilateral termination performance of work before the expiration of the temporary assignment period.</p> <p>Temporary assignment can be agreed for a maximum of 24 months. The temporary assignment of an employee to the same user employer can be extended or renegotiated a maximum of four times within 24 months.</p> <p>Temporary assignment cannot be agreed upon for the performance of work that the relevant public health authority has classified in the 4th category.</p> <p>Administrative requirements:</p> <p>According to § 29(3) Act No. 5/2004 Coll. on employment services:</p> <p>A legal or natural person may perform the activities of a temporary employment agency if they obtain a permit for such activity. The conditions for issuing a permit to a legal or natural person to operate as a temporary employment agency are as follows:</p> <ul style="list-style-type: none"> a) is of good character; in the case of a legal entity, the person acting on behalf of the temporary employment agency must also meet this condition, b) has no recorded arrears with the tax office or customs office in accordance with specific regulations (§ 35b), c) has no recorded arrears on social insurance contributions under specific regulations (§ 35ba), and the health insurance company has no overdue claims against them under specific regulations (§ 35c) d) has not been fined for violating the prohibition on illegal employment within three years prior to submitting the application for the permit to operate as a temporary employment agency, e) owns or leases premises, f) possesses equity of at least €30,000 in the case of a legal entity, g) has a second-level university education; for a legal entity, this condition must be met by the person acting on behalf of the temporary employment agency, h) has prepared a project for performing the activities of a temporary employment agency, including a calculation of anticipated income and expenses, i) has the necessary material resources to perform the activities of a temporary employment agency, j) has personnel resources secured for performing the activities of a temporary employment agency, k) provides a bank guarantee of at least €15,000 in the case of a natural person, l) has no recorded unresolved claims of their employees arising from employment relationships.

Table A1.2	Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
Italy	<p>TWAs can operate in all sectors of activity. According to Legislative Decree 81/2015, user undertakings are prohibited from using labour supply provided by the TWAs:</p> <ul style="list-style-type: none"> (a) for the replacement of workers exercising the right to strike; b) at production units in which collective redundancies have occurred within the preceding six months and have involved workers assigned to the same tasks to which the contract of supply of labour relates; (c) at production units where there is a suspension of work or a reduction in working hours under the wages guarantee fund (Cassa integrazione guadagni), involving workers assigned to the same tasks to which the labour supply contract relates (d) by employers who have not carried out a risk assessment pursuant to legislation on the protection of the health and safety of workers. <p>If the TWA and the user undertaking sign a supply contract of indefinite duration, the workers sent by the TWA must have a permanent employment contract and their number may not exceed 20 per cent of the number of permanent workers employed by the user undertaking.</p> <p>If the TWA and the user undertaking sign a fixed-term supply contract, the total number of temporary workers (hired by the user undertaking or sent by the TWA) may not exceed 30 per cent of the number of permanent workers employed by the user undertaking.</p> <p>In addition, there are specific restrictions for the public sector, as public administrations may conclude labour supply contracts with TWAs for proven needs of an exclusively temporary or exceptional nature (Legislative Decree 165/2001). In addition, the national collective agreement for the public administration at local level states that “the total number of fixed-term contracts and fixed-term staff-leasing contracts concluded by each entity may not exceed the annual ceiling of 20 % of the permanent staff in service on 1 January of the year of recruitment”.</p> <p>According to Legislative Decree 276/2003, TWAs may carry out the following activities:</p> <ul style="list-style-type: none"> a) the activity of labour supply carried out by generalist TWAs (attività di somministrazione di tipo generalista); b) the activity of labour supply carried out by specialised TWAs, which concerns only the supply on a permanent basis of workers employed under a contract of employment of permanent duration (attività di somministrazione di tipo specialista); c) the activity of intermediation, aimed at providing mediation between labour demand and supply (attività di intermediazione); d) the activity of personnel research and selection to identify suitable candidates to carry out the work the client needs (attività di ricerca e selezione del personale); e) the outplacement activity, when - on behalf of the user undertaking - it is necessary to outplace workers on the labour market (attività di ricollocazione professionale). <p>To operate in the field of employment services, TWAs must be registered in the National Register of Employment Agencies (Albo informatico nazionale delle Agenzie per il lavoro), which is managed by the Ministry of Labour and Social Policy. TWAs that register obtain a provisional authorisation for a period of two years. Authorisation for a permanent period is granted upon application by TWA and after verification of the legal and financial requirements and the proper performance of service provision activities. TWAs with a permanent authorisation are audited every two years by the Ministry of Labour and Social Policy to check that at least 50.1% of the activities carried out coincide with the type of authorisation obtained.</p> <p>For the first two years, generalist TWAs must have a deposit of €350,000 to guarantee employees' claims and the corresponding social security contributions. If they obtain a permanent licence, TWAs must have a bank or insurance guarantee. In the case of specialised TWAs, both the deposit and the subsequent guarantee are €200,000.</p>

Table A1.2	Are TWAs allowed in all sectors of activity in your country? What type of services and under what administrative requirements can they provide activities according to national legislation?
Poland	<p>The provisions of Polish do not provide for any formal sectoral restrictions on running temporary work agencies. At most, we can talk about practical (natural) limitations resulting from the definition of temporary work and its specificity. In some professions or jobs, temporary work as part of work will not be preferred. This applies, for example, to jobs that require stability and continuity of staff employment for the smooth operation of the workplace. Running a business in the field of providing employment agency services, personal consulting, career guidance or temporary work is a regulated activity within the meaning of the Act of 6 March 2018 - Entrepreneurs' Law , and requires entry in the register of entities running employment agencies.</p> <p>Entry in the register covers the provision of temporary work services by foreign entrepreneurs from European Union Member States, European Economic Area countries not belonging to the European Union and countries that are not parties to the Agreement on the European Economic Area, who may exercise the freedom to provide services based on agreements concluded by these countries with the European Union and its Member States, having the rights and lawfully conducting activities in the field of temporary work on the territory of this country and intending to provide this service on the territory of the Republic of Poland (Article 18(3) of the Act on Promotion of Employment).</p> <p>The register is kept by the Voivodeship Marshal [marszałek województwa] competent for the registered office of the entity applying for entry. In the case of a foreign entrepreneur providing temporary work services in Poland, the authority competent to keep the register is the Voivodeship Marshal selected by the foreign entrepreneur from among the Voivodeship Marshals competent for the seat of their premises where the services are provided. The register is public and it may be kept in the form of an electronic document.</p> <p>Temporary work agencies may provide temporary work services using temporary workers (employed based on the employment contract) or people employed under civil law contracts (see also other points hereof). The period of work performed by a temporary worker for one user undertaking cannot, as a rule, exceed a total of 18 months in a period of 36 consecutive months.</p>

Table A1.3	Are there other types of entities hiring out workers but are not considered TWAs according to national legislation in your country? How are they different from TWAs?
Austria	<p>There are other types of private labour market intermediaries in Austria like employment agencies (<i>Arbeitsvermittlung</i>) and recruitment agencies (<i>Personalvermittlung</i>). The main difference to TWAs is that TWAs are the legal employer of workers who are leased to other companies. Employment (recruitment) companies, in contrast help workers (employers) find a suitable employment position (employee) without entering an employment relationship with the worker in question.</p>
Belgium	<p>By 'hiring out of workers' is meant a situation where a worker is lent out by his employer to a user who makes that worker work within his undertaking and exercises over that worker a part of the employer's authority that is normally exercised by the actual employer. This situation may give rise to abuse: the worker may not earn the wage/salary to which he would normally have been entitled if he had been engaged by the user as a permanent worker. For this reason, it is in principle prohibited in Belgium to hire out. This prohibition is laid down by the Act of 24 July 1987 on temporary work, temporary agency work and hiring out of workers for the benefit of users (NL / FR).</p> <p>There are several legal exceptions to the prohibition on hiring out workers, including for TWAs, but not for other entities/labour market intermediaries.</p>
Germany	<p>According to German legislation, employers in general may hire out workers, even if they are not considered a TWA as this is not their main activity. If an employer (lender) wishes to assign employees to a third party (borrower) for work, it generally needs a permit. In certain cases, notifying the authorities of the assignment is sufficient.</p> <p>No permit is required for:</p> <ul style="list-style-type: none"> • Assignments within the same economic sector to avoid short-time work or layoffs, if stipulated by a collective agreement. • Transfers to a joint working group for the production of a project. • Internal transfers within a corporate group, provided the employee was not hired or employed specifically for the purpose of assignment. • Occasional assignments between employers, provided the employee was not hired or employed specifically for the purpose of assignment. • Personnel assignments in the public sector carried out under a collective agreement. • Assignments between public law entities, where public law collective agreements or rules of public religious communities apply. • Transfers abroad to a German-foreign joint venture established under an international agreement. <p>Other types of labour market intermediaries that apparently play an increasingly important role are agencies and online platforms in Central and Eastern Europe that offer support for Germany employers to recruit workers as temporary agency workers as well as under civil law contracts (so-called "Werkvertrag") or in the context of subcontracting.</p> <p>Such agencies do not conclude any direct employment relationship with workers but simply act as intermediaries or brokers. Such activities seem to increase in particular in those sector that face a strong competition on costs and/or face labour shortages.</p> <p>A specific type of labour intermediaries exists in agriculture, orchards and horticulture where seasonal workers from foreign countries are engaged via specialised agencies or recruiters under the umbrella of bi-lateral agreements between the Germany Government and other EU as well as non-EU countries.</p>

Table A1.3	Are there other types of entities hiring out workers but are not considered TWAs according to national legislation in your country? How are they different from TWAs?
Spain	<p>In Spain, the assignment of workers is illegal except for the TWAs, which are the only entities authorized to make previously employed workers available to other companies, provided that the transfer is carried out correctly, i.e. in compliance with the provisions of Law 14/1994. Other intermediaries in the Spanish labour market, such as recruitment agencies and the Public Employment Services (SEPE) are primarily responsible for connecting labour supply and demand. However, only TWAs can legally assign workers to user companies in Spain.</p> <p>A recent ECJ ruling (ECJ 24 October 2024, C-441/23 ECLI:EU:C:2024:916) should be considered. That judgement states that it is possible for a company that supplies workers to another company to be considered a TWA within the meaning of Directive 2008/104/EC, even if it is not authorised by the Spanish administration as a TWA. The relevant question is whether it assigns workers to a user company. According to Paragraph 34 of that judgment: <i>“Nothing in the definition of ‘temporary work agency’ in Article 3(1)(b) of Directive 2008/104/EC requires an undertaking, in order to be regarded as a temporary work agency within the meaning of that directive, to have obtained prior administrative authorisation to carry on that activity in the Member State in which it operates”</i>.</p> <p>Under Spanish labour legislation, if an unauthorised company is illegally acting as a temporary work agency (TWA) by ‘de facto’ supplying or assigning its employees to a user company, serious legal consequences are already envisaged. These include the labour liability of the user company, which could be considered the employee’s actual employer. After the mentioned ECJ judgement it could be considered a TWA and the Directive about this type of companies could be applied if it is more protective. In any case, this is a very recent judgment, which still leads us to hypothetical cases, since, according to the answer to the preliminary question in paragraphs 67 to 77, in this specific case it appears to be ruled out that the worker’s employer is a temporary employment agency and that the user company (Microsoft) had any employment relationship with the worker at the time of her dismissal.</p>
France	<p>Not in the strict sense, as in, provision of manpower. Notably, any temporary employment activity carried out outside such a company is prohibited (Article L1251-3 Labour Code).</p> <p>The law established a limited number of exceptions from this rule:</p> <ul style="list-style-type: none"> • not-for-profit provision of manpower (“labour lending”) (regulated by Article L. 8241-2 Labour Code); • Provision of models by a properly licensed modelling agency; • Secondment under the provisions of article L. 222-3 of the French Sports Code relating to sports associations or companies (secondment to a French national team or temporary secondment to another sports team specifically allowed by collective agreement or by the rules of the given sports federation or league); • Secondment of employees to trade unions or employers’ associations mentioned (Article L. 2231-1 of the French Labour Code); • Provision of manpower of certain categories of workers (long-term unemployed and other categories facing difficulties on the labour market) to companies or individuals through “intermediary associations”, temporary work integration companies, personal services associations, employers’ groups and timeshare companies (all specifically licenced by state authorities); • Not-for-profit secondment of an employee, by a company with at least 5,000 employees or belonging to a group with at least 5,000 employees, to a young (<8 years of existence), small or medium-sized enterprise or a legal entity of general interest (so-called “skills patronage”).
Lithuania	<p>There are no other entities hiring out workers but are not considered TWAs under Lithuanian national legislation.</p> <p>According to the Lithuanian legislation, hiring out workers services are only provided by TWAs.</p>

Table A1.3	Are there other types of entities hiring out workers but are not considered TWAs according to national legislation in your country? How are they different from TWAs?
Netherlands	<p>In addition to TWAs there are several other types of entities. Those types are:</p> <ul style="list-style-type: none"> - Temporary assignment/secondment (“detachering”). Temporary assignments/secondments differ from TWAs since this involves a work relationship for a longer period of time. It also often involves more specialized workers. This can be done by either secondment agencies or regular employers. - Recruitment (“Werving en selectie”). Recruitment concerns business where an external recruitment agency helps an employer to find good candidates for a long-term contract. The candidates are directly employed by the employer, not by the external agency. - Payrolling (“payroll”). This branch is closest to TWA’s. Payroll companies employ workers, who are hired by another company. Those companies do not have to deal with administrative red tape as the payroll company takes care of this. - Freelance and self-employed mediation (“Freelance en ZZP-bemiddeling”). This form of mediation concerns agencies that match freelancers and self-employed professionals to potential clients or project.
Slovenia	Public and private employment placement agencies, placing workers in jobs.
Slovakia	<p>Yes, there are other types of labour market intermediaries operating in Slovakia, each serving specific roles and differing significantly from Temporary Work Agencies (TWAs). Here are the main types and their distinctions:</p> <ol style="list-style-type: none"> 1. Labour Recruitment Agencies Role: These agencies specialize in matching job seekers with employers for permanent positions. They focus on recruitment and selection processes but do not employ workers themselves. Difference from TWAs: Recruitment agencies act as mediators, helping employers find candidates who will be directly employed by the employer. Unlike TWAs, they do not hire the worker on their own payroll or assign them to other employers. 2. Job Placement Agencies Role: These agencies provide job placement services, including helping individuals find employment, often focusing on hard-to-employ groups (e.g., long-term unemployed, youth, or those with disabilities). Difference from TWAs: These agencies typically operate under government or NGO initiatives, focusing on social employment objectives rather than profit. They don’t temporarily assign workers but facilitate long-term or permanent employment directly with employers. 3. Career Advisory Services Role: They provide guidance to individuals on career development, skill enhancement, and job market navigation, often including support with CV preparation, interview techniques, and identifying training opportunities. Difference from TWAs: These services do not facilitate employment directly but focus on improving the employability of job seekers.
Italy	The Italian legislation on labour supply (somministrazione di lavoro) regulates the activities of various types of enterprises. Limited companies, cooperatives or consortia of cooperatives may carry out all the different activities of labour supply (generalist, specialised, intermediation, personnel research and selection, outplacement), while partnership companies (società di persone) may carry out only personnel research and selection and outplacement activities.

<p>Poland</p>	<p>In Poland, apart from temporary work agencies, there are also other types of intermediaries on the labour market. Temporary work agencies are categories of labour market institutions. Pursuant to Art. 6 (1) of the Act on Promotion of Employment, labour market institutions carrying out the tasks specified in the Act, in addition to employment agencies (including temporary work agencies), also include:</p> <ol style="list-style-type: none"> 1) public employment services; 2) Volunteer Labour Corps; 3) training institutions; 4) institutions of social dialogue; 5) local partnership institutions. <p>Providing temporary work services is one of the possible forms of activity of an employment agency. The register of employment agencies is public and can be found at the publicly accessible website: https://stor.praca.gov.pl/portal/kraz . Employment agencies (including temporary work agencies) may engage in one or more activities from the labour market category, i.e.:</p> <ul style="list-style-type: none"> • through work, • personnel consulting, • career counselling, • temporary work. <p>Apart from temporary work agencies, other employment agencies that do not provide temporary work services at the same time, may provide services in the field of job placement, intermediation for work abroad to foreign employers, career guidance, and personnel consulting. They are also subject to entry in the register kept by the Voivodeship Marshals. Their activities are regulated.</p> <p>Job placement involves in particular:</p> <ol style="list-style-type: none"> a) providing assistance to people in obtaining appropriate employment or other gainful work and to employers in recruiting workers having the sought-after professional qualifications, b) acquiring and disseminating job offers, c) providing employers with information about job candidates in connection with the submitted job offer, d) informing job candidates and employers about the current situation and expected changes on the local labour market, e) initiating and organizing contacts between people looking for suitable employment or other paid work with employers, f) sending people to work abroad for foreign employers, g) directing foreigners for employment or other gainful work to entities operating in the territory of the Republic of Poland. <p>Personnel consulting consists in particular of:</p> <ol style="list-style-type: none"> a) conducting employment analysis at employers, determining workers' qualifications and predispositions and other features necessary to perform a specific job, b) indicating sources and methods of obtaining candidates for specific job positions, c) verification of candidates in terms of expected qualifications and predispositions. <p>Career guidance consists in particular of:</p> <ol style="list-style-type: none"> a) providing assistance in choosing the right profession and place of employment, b) providing information necessary to make professional decisions, in particular about professions, the labour market and training and education opportunities,
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Table A1.3	Are there other types of entities hiring out workers but are not considered TWAs according to national legislation in your country? How are they different from TWAs?
	c) initiating, organizing and conducting group career counselling and activation classes to help in active job search, d) providing employers with assistance in selecting candidates for work, in particular by providing information and advice in this area (Art. 18 of the Act on Promotion of Employment).

Table A1.4	Are TWAs in your country allowed to post workers to other countries? What administrative requirements do they need to comply with to post workers?
Austria	<p>Yes, TWAs can post workers to other EEA countries and to Switzerland (§ 16a AÜG). However, under Austrian law this process is termed “personnel leasing” (<i>Arbeitskräfteüberlassung</i>) rather than “posting” (<i>Arbeitskräfteentsendung</i>).</p> <p>Any kind of personnel leasing requires a prior agreement between the worker and the transferor which must fulfil certain minimum requirements such as information on where the worker will be placed and the type of work expected to be carried out (§ 11 (6) AÜG). For employees assigned to work abroad, the employment contract or service notice agreed upon before departure must include additional information on various factors, such as the place and duration of the placement and the conditions for the return to Austria (§ 11 (6) AÜG).</p> <p>Personnel leasing by TWAs from Austria to other countries require an individual authorization and are granted only if there are no domestic labour market or economic concerns and worker protection is ensured (§ 16 (1,2)).</p>
Belgium	Yes. Request for a Portable Document A1 issued by the competent institution in Belgium (i.e. the National Social Security Office – NSSO).
Germany	<p>TWAs are allowed to post workers to other countries. In the case of a temporary posting that does not exceed a certain duration, the employee remains subject to social security contributions in Germany (so-called “Ausstrahlung”, § 4 SGB IV). This includes health insurance, nursing care, pension, unemployment and accident insurance. This only applies if the requirements for posting are met. According to these requirements, 1. the employment abroad must be temporary, 2. it must be a posting within the framework of a German employment relationship and, 3. the duration of the employment must be limited in advance.</p> <p>For employers who temporarily post an employee from Germany (the country of posting) to another country (the country of employment), it is necessary to comply with special social security regulations. For postings to EU states, the United Kingdom, Iceland, Norway, Liechtenstein or Switzerland, one must apply electronically for an A1 certificate for a posted worker.</p>
Spain	Spanish TWAs do not have any additional requirements to send posted workers to other Member States, beyond the obligations and requirements established in Law 11/1994 to be considered a TWA and those that may be required in the destination countries. This possibility is expressly provided for in Law 14/1994 art. 26 with respect to Spanish administratively authorised TWAs, which may provide user companies established or operating in other EU Member States, the EEA and Switzerland under the terms provided for in the legislation of those States and in this Law.
France	Yes. Requirements are the same for posting of workers, such as asking and obtaining the A1 certificate from the competent social security institution (URSSAF or MSA for the agriculture sector) (Article R761-1 Social Security Code). Some specific conditions modify the rules around temporary workers when they are posted abroad. For instance, in the absence of a specific provision in the contract or in the applicable sectoral collective agreement, the maximum duration of an assignment by TWA is 18 months, but this is raised to 24 months for assignments abroad (Article L1251-12-1 Labour Code). Additional obligations to provide information to the posted temporary worker apply in case of posting to a country outside the EU/EEA. A clause covering the repatriation of the employee at the expense of the TWA must also be included in the assignment contract when the assignment takes place outside mainland France (Article L1251-16 Labour Code).

Table A1.4	Are TWAs in your country allowed to post workers to other countries? What administrative requirements do they need to comply with to post workers?
Lithuania	Yes, TWAs in Lithuania are allowed to post workers to other countries. TWAs posting employees to other countries as per Lithuanian legislation need to operate legally and meet general criteria applied for TWAs. TWAs also must meet requirements, if any, established in the legislation of the host country. TWAs, as other employers, need to refer to Sodra's Vilnius division and receive its issued A1 form for its employees being posted to another state. Moreover, TWAs have obligation to inform monthly the SLI on a number of employees they send to a user of the temporary work in the territory of Lithuania and other countries.
Netherlands	Yes, they are allowed to do so. They need to file an A1-statement (within the EU) and register themselves in the host member state (if required).
Slovenia	All registered companies (incl. those whose registered activity is to carry out the activity of providing labour to user undertakings) are allowed to post workers abroad under the conditions stated in the Transnational Provision of Services Act.

Table A1.4	Are TWAs in your country allowed to post workers to other countries? What administrative requirements do they need to comply with to post workers?
Slovakia	<p>Yes, they are. They have to comply with the following requirements:</p> <p>§ 31 Obligations of the temporary employment agency</p> <p>(1) A temporary employment agency must:</p> <ul style="list-style-type: none"> a) ensure the protection of personal data of a temporary agency employee according to a special regulation, 22) b) enable the temporary agency employee to exercise the right to freedom of association and the right to collective bargaining, c) enable temporary agency employee access to vocational training or the acquisition of professional skills, including before his assignment or in the period between his assignments to the user employer, with the aim of increasing his employability, d) enable access to childcare facilities for temporary agency employees, e) create conditions for the performance of control of compliance with generally binding legal regulations in the field of employment services, provide information and documents to control authorities, f) keep records of temporary agency employees, which contains data to the extent established in Annexe no. 1 letter j, for the purpose of letter g), g) provide the head office with a report on its activities for the past calendar year together with the data from the records according to letter f) by 31 March of the following calendar year by means of an electronic form sent to the information system for the purposes of employment services, h) have equity worth at least €30,000; the headquarters ascertains the fulfilment of this condition in the public part of the register of financial statements. 35d) <p>(2) The head office may suspend the activity of the temporary employment agency on the basis of a proposal according to paragraph 3 until the deficiencies are eliminated or cancel the permission to carry out the activities of the temporary employment agency. The headquarters will cancel the permission to carry out the activities of the temporary employment agency, if:</p> <ul style="list-style-type: none"> a) the temporary employment agency did not assign temporary agency employees within a period of one year, b) the temporary employment agency has not fulfilled the obligation according to paragraph 1 letter f) to h) or provided false information in the activity report, c) the temporary employment agency was fined for violating the ban on illegal employment. <p>(3) A proposal to suspend the activity or cancel the activity permit of the TWA may be submitted by:</p> <ul style="list-style-type: none"> a) the relevant tax office that found a violation of legal regulations in the area of taxes, 33) b) the competent authority that found a violation of legal regulations in the field of employment services, c) the relevant labour inspectorate, which found a violation of labour law regulations, regulations regulating the prohibition of illegal work and illegal employment, and regulations in the field of safety and health protection at work, 22ki) d) the Social Insurance Company, if it has found non-fulfilment of the obligations to pay premiums for social insurance and mandatory contributions for old-age pension savings, e) a representative of employees, if a violation of labour law regulations was detected during the inspection according to special regulation 33a, f) a natural person who was harmed by the activities of the temporary employment agency.
Italy	<p>TWAs regularly registered in the National Computerised Register of Employment Agencies are allowed to post their employees to other countries and must comply with the EU and national legislation on posting and the requirements of the receiving country.</p>

Table A1.4	Are TWAs in your country allowed to post workers to other countries? What administrative requirements do they need to comply with to post workers?
Poland	<p>Yes. Temporary employment agencies and placement agencies that hire out workers to user undertaking in Poland shall provide to such workers (during the period when they work for the user undertakings) working conditions and other conditions of employment no less favourable than those applicable to temporary agency workers under the Polish laws on the employment of temporary agency workers.</p> <p>The same rule applies to temporary employment agencies or placement agencies with the registered office in Poland that hire out temporary agency workers to user undertakings established or operating in the territory of another Member State.</p> <p>The rules for the posting of workers in the provisions of Polish law are set out in the Act of 10 June 2016 on the Posting of Workers within the Framework of the Provision of Services. The provision of Art. 3(5)(a) of the very Act provides a definition of an employer posting a worker from the territory of the Republic of Poland, that is deemed to be an employer having its registered office (and in the case of a natural person conducting business activity - a permanent place of performance of such activity), in the territory of the Republic of Poland, that temporarily directs a worker, within the meaning of the provisions of the Member State to which they are posted, to work in the territory of that State e.g. as a temporary work agency.</p> <p>Art. 3(5)(b) adds also a temporary work agency where such an agency directs a worker to a user undertaking in the territory of the Republic of Poland or another Member State, that then temporarily directs that worker to work in the territory of another Member State.</p> <p>Art. 3(7) of the cited Act indicates that a worker posted from the territory of the Republic of Poland is a worker, within the meaning of the legislation of the Member State to which they are posted, performing work in the territory of the Republic of Poland, temporarily directed to work in the territory of that State by the employer posting the worker from the territory of the Republic of Poland .</p> <p>Pursuant to Art. 7(2) of the Act on the Employment of Temporary Workers, a temporary work agency may direct persons who are not employees of such agency (therefore – are persons employed based on the so-called civil-law contracts) to perform temporary work .</p> <p>In addition, it should be emphasised that when directing persons to work abroad as posted workers, the definition of ‘worker’ that applies in the law of the given host (receiving) Member State should be taken into account (Art. 2(2) of the Directive 96/71). It seems, however, that, in all likelihood, such a type of employment will be considered as ‘a classic’ posting of workers with the obligation to fulfil the conditions set out in Directive 96/71 as amended by the Directive 2018/957.</p> <p>This means that a temporary agency worker posted abroad must be provided with employment term and conditions in the host Member State at the level set out in Article 3 of the Directive 96/71 as amended by the Directive 2018/957.</p> <p>When it comes the conditions to be met by a temporary work agency posting a temporary worker abroad from Poland, these are general provisions related to the registration of a given TWA. First of all, pursuant to Art. 18 of the Act on Promotion of Employment, a TWA needs to obtain a certificate (so-called regulated [economic] activity). According to Art. 18(1)(f), the certificate of an employment agency is required, inter alia, to conduct business activity in the scope of providing job placement services, consisting, in particular, in directing people to work abroad for foreign employers; the same applies, under Art. 18(1)(4) thereof – to temporary work, consisting in employing temporary workers and directing these workers and persons who are not employees to perform temporary work for and under the supervision of a user undertaking, under the principles set out in the provisions on employment of temporary workers.</p> <p>One should additionally bear in mind the provisions related to the legality of employment of foreigners (non-Polish citizens). The above is regulated by the Act of 12 December 2013 on Foreigners and the above-mentioned Act on Promotion of Employment.</p>

Table A1.5	Are there any restrictions to TWA activity related to posting in your country (e.g. the recruitment in the country of origin and posting of TCN workers)?
Austria	<p>Personnel leasing (posting) by TWA from EEA countries and Switzerland are permitted, but must be notified to the financial police (see below).</p> <p>Specific rules apply to the leasing of third-country nationals (TCN) by TWAs to Austria. In this case, the prior notification is forwarded by the Financial Police to the public employment service (AMS) which issues an EU hiring out confirmation (Überlassungsbestätigung) to authorise the leasing if</p> <ul style="list-style-type: none"> - there is in fact a cross-border labour leasing situation, i.e. in particular, that a substantial business activity of the sending company must be in the sending country and that the employee in question is only leased out temporarily. - the leased worker has a work permit for the sending country and is duly employed by the leasing company for a period exceeding the placement in Austria, and - their employment arrangement meets Austrian wage, working, and social security standards. <p>In listed trades (§ 94 GewO 1994), temporary work placements to Austria require the leased worker to have engaged in this activity in the home country for at least one year during the previous ten years or has obtained an equivalence of the professional qualification with the certificate of competence for the trade (§ 373c and § 373d Gewerbeordnung – GewO 1994).</p> <p>TWA postings from non-EEA countries is generally not permitted. However, employers can apply for an individual authorization (Überlassungsbewilligung) from the relevant Austrian trade authority, which is granted only if the employer demonstrates an essential need for highly qualified specialists not available domestically, ensures no impact on local wages and working conditions, and complies with labour laws. These permits are issued for specific numbers of workers, limited time periods, and may be revoked if conditions change (§ 16 (4-5) AÜG).</p>
Belgium	In Belgium, temporary work agencies are subject to prior authorisation without which a temp agency cannot lawfully engage in temporary agency work activities.
Germany	<p>While third-country nationals (TCNs) are legally tied to their work and residence permits in the country that issued them, the Court of Justice of the European Union ruled in 1994 (Vander Elst case) that TCNs holding a valid work and residence permit in one Member State can be posted to any other EU Member State without needing an additional work permit.</p> <p>If temporary workers from abroad are to be sent to Germany, employees from EU countries can be deployed without major hurdles. They enjoy full freedom of movement for workers. For this reason, EU citizens can also work as temporary workers in Germany. Cooperation with employees from non-EU countries is more difficult. The individual residence permit, which may include a work permit, is decisive here. The residence permit can only be issued with the approval of the Federal Employment Agency. Apart from a few exceptions, the employment of foreigners as temporary workers will generally not be authorised. This results from § 40 Para. 1 No. 2 AufenthG, according to which approval of the work permit must be refused if the foreigner wishes to work as a temporary worker.</p>
Spain	TWAs established in other Member States of the EU/EEA may temporarily assign their workers to user companies established or operating in Spain. This is without prejudice to compliance with the regulations governing the entry, stay, work, and establishment of foreign nationals in Spain, as well as tax obligations. See next question.
France	No additional restrictions. However, see above for specific obligations for TWAs.

Table A1.5	Are there any restrictions to TWA activity related to posting in your country (e.g. the recruitment in the country of origin and posting of TCN workers)?
Lithuania	Lithuanian legislation does not provide for any restrictions any restrictions on TWA activities related to posting. If posted workers are from non-EU countries, they must have appropriate work and residence permits to work legitimately in Lithuania. Of course, the general understanding is that workers need to be employed/recruited in the country of origin by the TWA, which is established and operates legally. Only recruited employees can be posted. If TCN worker is posted from EU MS where he or she is being legally employed already, no permit to work is needed. Law of the Republic of Lithuania on the Legal Status of Aliens clearly provided that a foreigner posted to the territory of Lithuania is not exempted from the obligation to obtain a work permit if he/she is an employee of an enterprise established in a non-EU or EEA MS. Foreign nationals who are employees of an enterprise established in an EU or EEA MS and are temporarily posted to Lithuania are exempted from the obligation to obtain a work permit.
Netherlands	This is based on what will be implemented in the Netherlands as of 2026. The main restriction is that TWA need to have a license that allows them to operate on the Dutch labour market. Without a license, TWAs cannot operate on the Dutch labour market. To obtain a license, TWAs need to require a certificate of good conduct and pay a financial deposit (100,000 euros). Lastly, they need to work in line with Dutch labour law.
Slovenia	<p>According to the Employment, Self-employment and Work of Foreigners Act, TCN workers cannot be directly recruited and employed by companies that provide labour to user undertakings (Article 7, Paragraph 5):</p> <p>(5) Employers involved in the activity of providing workers to another user in accordance with the act regulating the labour market may, within the scope of this activity, only conclude employment contracts with foreigners residing in the Republic of Slovenia based on an EU Blue Card, with foreigners for whom consent for employment, self-employment or work was granted in the procedure for issuing or extending a single permit or a written authorisation, or with foreigners with free access to the labour market in accordance with this Act.</p> <p>Recruitment and employment of TCNs by companies whose registered activity is the provision of labour to user undertakings is therefore not possible. Free access to the labour market is enabled for TCNs that hold permanent residence permit (obtained after 5 years of lawful residency in Slovenia). Important exception are TCNs working in Slovenia under the bilateral agreement concluded with BiH and Serbia, who gain free access to the labour market after one year of employment in Slovenia.</p>

Table A1.5	Are there any restrictions to TWA activity related to posting in your country (e.g. the recruitment in the country of origin and posting of TCN workers)?
Slovakia	<p>Yes, they are. They have to comply with the following requirements:</p> <p>§ 31 Obligations of the temporary employment agency</p> <p>(1) A temporary employment agency is mandatory</p> <ul style="list-style-type: none"> a) ensure the protection of personal data of a temporary agency employee according to a special regulation,22) b) enable the temporary agency employee to exercise the right to freedom of association and the right to collective bargaining, c) enable temporary agency employee access to vocational training or the acquisition of professional skills, including before his assignment or in the period between his assignments to the user employer, with the aim of increasing his employability, d) enable access to childcare facilities for temporary agency employees, e) create conditions for the performance of control of compliance with generally binding legal regulations in the field of employment services, provide information and documents to control authorities, f) keep records of temporary agency employees, which contains data to the extent established in Annex no. 1 letter J, for the purpose of letter g), g) provide the head office with a report on its activities for the past calendar year together with the data from the records according to letter f) by March 31 of the following calendar year by means of an electronic form sent to the information system for the purposes of employment services, h) have equity worth at least 30,000 euros; The headquarters ascertains the fulfilment of this condition in the public part of the register of financial statements. 35d) <p>(2) The head office may suspend the activity of the temporary employment agency on the basis of a proposal according to paragraph 3 until the deficiencies are eliminated or cancel the permission to carry out the activities of the temporary employment agency. The headquarters will cancel the permission to carry out the activities of the temporary employment agency, if</p> <ul style="list-style-type: none"> a) the temporary employment agency did not assign temporary agency employees within a period of one year, b) the temporary employment agency has not fulfilled the obligation according to paragraph 1 letter f) to h) or provided false information in the activity report, c) the temporary employment agency was fined for violating the ban on illegal employment. <p>(3) A proposal to suspend the activity or cancel the activity permit of the TWA may be submitted by</p> <ul style="list-style-type: none"> a) the relevant tax office that found a violation of legal regulations in the area of taxes,33) b) the competent authority that found a violation of legal regulations in the field of employment services, c) the relevant labour inspectorate, which found a violation of labour law regulations, regulations regulating the prohibition of illegal work and illegal employment, and regulations in the field of safety and health protection at work, 22ki) d) The Social Insurance Company, if it has found non-fulfilment of the obligations to pay premiums for social insurance and mandatory contributions for old-age pension savings, e) a representative of employees, if a violation of labour law regulations was detected during the inspection according to special regulation 33a, f) a natural person who was harmed by the activities of the temporary employment agency.
Italy	<p>TWAs based in other European Union states posting to Italy must be registered as TWA or must have already received TWA authorisation from public authorities of the sending country. The restrictions concern the type of activity carried out by TWAs in the sending country and its economic relevance, as, according to the National Labour Inspectorate (Note 936, 15 June 2021), it is necessary for TWAs posting to Italy to carry out the provision of TWA activities in the Member State in which they are established in a significant manner.</p>

Table A1.5	Are there any restrictions to TWA activity related to posting in your country (e.g. the recruitment in the country of origin and posting of TCN workers)?
Poland	<p>They are no direct restrictions to such TWA activity. Indirect restrictions concern in particular the employment and posting of third-country nationals, duly residing and employed in Poland.</p> <p>It goes without saying that a third-country national may be posted from Poland as a temporary worker to a foreign user undertaking. According to the information contained in the Practical Guide on Posting published by the European Commission, a third-country national can be posted to the territory of a Member State if he/she is legally residing and working in the territory of a Member State. This has been confirmed in the case law of the Court of Justice of the European Union, most notably in C-477/17 Balandin.</p> <p>A Polish employer – TWA - may post such a worker to another Member State under the same conditions as a Union citizen. Prohibiting the posting of a foreign national, a third-country national, would be in breach of the Treaty on the Functioning of the European Union (TFEU), where Article 57 indicates that a service provider may temporarily perform an activity in another Member State to provide a service under the same conditions as that State imposes on its own nationals. As regards the terms and conditions of employment, the Posting of Workers Directives apply in full to these workers. The legality of the posting should take into account the legality of the foreigner's residence and employment in the posting state. In this context, a due regard needs to be put to the provision of Art. 4(4) of Directive 2014/67, which reads 'The failure to satisfy one or more of the factual elements set out in paragraphs 2 and 3 shall not automatically preclude a situation from being characterised as one of posting. The assessment of those elements shall be adapted to each specific case and take account of the specificities of the situation.'</p>

Table A1.6	Under which conditions can foreign temporary work agencies operate in your country? Do they need to be registered in your country?
Austria	TWAs located outside Austria must make a prior notification of any placement to the Central Co-ordinating Agency of the Federal Ministry of Finance (Zentrale Koordinationsstelle - ZKO) about the placement using a so-called ZKO-4 form (§ 19 (4) LSD-BG). They do not have to be registered in Austria.
Belgium	<p>To be able to post agency workers to Belgium, a foreign temporary employment agency should have accreditation from the Belgian region in which the work is performed. This falls within the competence of the different Regions and Communities concerned (Flemish Region, Walloon Region, Brussels Capital Region and German-speaking Community).</p> <p>Temporary employment agencies must go through an official accreditation process by the authority of the region in which they wish to operate. Each region has regulations on temporary employment agencies which detail the conditions under which they are allowed to operate. More specifically:</p> <ul style="list-style-type: none"> • In the Walloon Region: temporary employment agencies must register with the regional administration and receive an accreditation that is valid 2 years. After this period, the agreement can be renewed for an indefinite period. Temporary employment agencies must submit an annual activity report. • In the Flemish Region: temporary employment agencies must register with the regional administration and receive an accreditation that is unlimited in time. The temporary employment agency must pay a surety of €75,000 to the Social Fund for Temporary Workers. One third of this sum (€25,000) must be paid when the application for recognition is submitted. • In the Brussels-Capital Region: temporary employment agencies must register with the regional administration and receive an accreditation that is valid 2 years. • In the German-speaking Community: temporary employment agencies must register with the regional administration and receive an accreditation that is unlimited in time. <p>Finally, foreign temporary employment agencies that post employees to Belgium must report their presence and that of their employees via Limosa.</p>
Germany	<p>Foreign temporary work agencies need to be registered and licenced by the federal employment agency like German temporary work agencies. There are no special conditions or obligations for foreign temporary work agencies.</p> <p>According to § 1 MiLoMeldV, employers should submit the registrations of their employees posted to Germany online using the minimum wage registration portal. The same applies to temporary employment agencies based abroad that post workers to Germany to perform work or services.</p> <p>Foreign TWAs have to respect the same legal obligations as incumbent TWAs, i.e. as according to the legal regulation of agency work and as stipulated by the national collective agreements covering all temporary agency workers as well as agency work in certain economic sectors (e.g. metal and electronics sector).</p> <p>The Posting of Workers Act (Arbeitnehmer-Entsendegesetz) provides a legal framework for setting higher binding sector-specific minimum wages for all employees in a sector, regardless of whether the employer or temporary work agency is based in Germany or in another country.</p>

Table A1.6	Under which conditions can foreign temporary work agencies operate in your country? Do they need to be registered in your country?
Spain	<p>Pursuant to Article 22 of Law 14/1994, a TWA established in other EU/EEA Member States may temporarily send their posted workers to user companies established or operating in Spain when the following requirements are met:</p> <p>a) The foreign TWA must, in accordance with the legislation of its state of establishment, be validly established and meet the requirements to supply workers to user companies.</p> <p>b) The assignment contract between the foreign TWA and the user company established or operating in Spain, without prejudice to the applicable legislation which may not be Spanish law, must be formalized in writing and comply with the provisions set out in Chapter II of Law 14/1994. For example, it must address a temporary need of the user company. The only exception is that the contract does not need to be formalized using the official Spanish model.</p> <p>c) The TWA is subject to Spanish regulations on the posting of workers within the framework of a transnational service provision (Law 45/1999) and must guarantee its posted workers the working conditions provided therein—the core rights—and those specified for long-term posting.</p> <p>In addition, the TWA must notify the competent Spanish authorities (Autonomous Communities) of the posting in accordance with the terms set out in Article 5 of Spanish Posting Law.</p> <p>Pursuant to Article 3.2 of Law 45/1999 (Posting Law) , in the posting of workers by a TEA to a user company established or operating in Spain, in addition to guaranteeing its posted workers, whatever the law applicable to the employment contract, it must also guarantee the conditions provided for by Spanish labour law, in accordance with the provisions of Law 14/1999: workers employed to be assigned to user companies shall be entitled during the periods of service with the user companies to the application of the essential working conditions to which they would be entitled if they had been employed directly by the user company to occupy the same post (remuneration, length of working day, overtime, rest periods, night work and holidays). All of these essential conditions are established according to the collective agreement applicable in the user company that can be a sectorial or a company collective agreement. The Spanish Posting law imposes the application of the TWA which provides for equal treatment of posted workers taking into account the rights of the workers of the user company (art. 11 and 22 of Law 14/1994), in accordance with the Spanish transposition of the Directive on temporary agency work (Directive 2008/104/EC).</p> <p>On the other hand, in the postings referred to in Article 2.2 of Posting Law (chain postings of workers posted by TWA), user undertakings established in other EU or EEA States which temporarily send workers posted by TWA to Spain to carry out work in the framework of a transnational provision of services must inform the TWA of the start of the posting in sufficient time for the company to notify the Spanish authorities of the posting. These user companies will also be liable to the Spanish authorities for failure to comply with this obligation once the posting has taken place.</p> <p>They must also comply with the provisions of Article 3.7 of Posting Law, i.e., the TWA and user companies must guarantee the working conditions of the posted workers and, in particular, compliance with the Law on the Prevention of Occupational Risks (Law 31/1995), without prejudice to the application of more favourable working conditions provided for in the labour legislation of the State of establishment or in which the user company sending the worker temporarily to Spain carries out its activity. In addition, and in accordance with Article 4 of Posting Law, workers employed to be posted to user companies shall be entitled, during the periods of service provision, to receive at least the total remuneration established for the job to be performed in the collective bargaining agreement applicable to the user company.</p> <p>In any case, if the person posted by the user company to Spain, despite the formal appearance of the posting, becomes subject to the direction and control of the Spanish company or companies—meaning they lose their connection with the foreign user company—the posting regulations specific to the case will continue to apply. This is without prejudice to the imposition of appropriate liabilities in cases of unlawful assignment of workers (Posting Law, art. 2.1.1º.c).</p>

Table A1.6	Under which conditions can foreign temporary work agencies operate in your country? Do they need to be registered in your country?
France	<p>TWAs established in other EU/EEA Member States don't need to be registered in France to post their workers to France. On top of the normal rules applicable to posting of workers (such as the posting notification, which must be submitted by the TWA and not by the user undertaking, even in cases of "chain posting"), some additional conditions apply to posting by TWAs:</p> <p>a) TWAs established in another EU Member State must provide evidence (in the same way as TWAs established in France) a financial guarantee to ensure payment to posted employees of their remuneration, benefits and allowances due in respect of the period of posting in France, in the event of bankruptcy (Article L. 1251-49 Labour Code). The TWA posts temporary employees to France must be in possession of a guarantee certificate issued by the guarantor. All documents relating to the provision of manpower by the TWA (in particular the contracts for the provision of services and assignment contracts) must include the details of the guarantor and the compulsory guarantees covered (payment of wages and related benefits etc.). The temporary employment agency must also indicate in its prior declaration the identity guarantor. A TWA that already complies with an equivalent obligation in a Member State of the EU/EEA, or Switzerland, does not have to take out a new guarantee for the provision of services in France. Its usual guarantee will be considered equivalent if it offers the same degree of protection to posted temporary workers as the financial guarantee that must be taken out by a TWA established in France (Article R1262-18 Labour Code).</p> <p>b) The provision of manpower by TWA (in the same way as TWAs established in France) cannot have the purpose or effect of permanently filling a job linked to the normal and permanent activity of the user company (Article L. 1251-5 Labour Code). The restrictions concerning the situations in which a provision of manpower is allowed are the same applicable to TWAs established in France (Article L1251-6 Labour Code, see answer n° 2 in the previous Section).</p> <p>c) In the same way as TWAs established in France, the user undertaking is jointly liable with the TWA for the payment of unpaid sums due to posted temporary employees for the duration of the assignment carried out in the user undertaking (Article L. 1251-52 Labour Code).</p>
Lithuania	<p>The answer to this question depends on a way in which the foreign TWA operates in Lithuania:</p> <ol style="list-style-type: none"> 1. In case of posting of worker(s) to the territory of Lithuania they have to follow requirements established in the LC Article 109 (1): an employer, including TWA, subject to the jurisdiction of a foreign state that sends an employee/worker to work temporarily on the territory of Lithuania for a period of more than 30 days or to work on construction works specified in the Law on Construction shall inform the SLI of this fact at the latest prior to the commencement of the work of that employee on the territory of Lithuania. 2. In case of posting of worker (s) from the territory of Lithuania they have to obtain an A1 form from Sodra's Vilnius division for their employees being posted. 3. In case of establishing its own branches in Lithuania, these branches (subsidiaries) have to comply with the same requirements as other TWAs established in Lithuania (registering and providing information to the SLI monthly, the criteria to comply with, etc.).
Netherlands	Yes, as of 2026 they need to be. Otherwise, they will not get a license.
Slovenia	The conditions for posting to Slovenia are the same as for other posting undertakings. Foreign temporary work agencies need to be registered in SI. If workers posted to SI are TCNs, they need to obtain the so-called single permit that allows them to enter, stay and work in SI.
Slovakia	
Italy	TWAs based in other European Union states must have already received TWA authorization in their country and must apply for registration in the Italian National Register (Albo informatico nazionale delle Agenzie per il lavoro).

Table A1.6	Under which conditions can foreign temporary work agencies operate in your country? Do they need to be registered in your country?
Poland	<p>The business of providing temporary work services, consisting of the employment of temporary workers and directing those workers and persons who are not workers to perform temporary work for and under the direction of a user undertaking, under the terms and conditions specified in the provisions on the employment of temporary workers - is a so-called regulated (economic) activity and, as mentioned above, shall require an entry in the register (in the register of entities conducting employment agencies).</p> <p>Foreign entrepreneurs from Member States of the European Union, countries of the European Economic Area that are not members of the European Union and countries that are not parties to the Agreement on the European Economic Area, which may benefit from the freedom to provide services based on agreements concluded by those countries with the European Union and its Member States, who are authorised and lawfully conduct temporary work activity on the territory of that country and who intend to provide this service on the territory of Poland, are subject to entry into the very register.</p> <p>To carry out the registration, one should:</p> <p>(1) Submit a notification of intention to provide temporary work agency services.</p> <p>The notification shall be submitted before the commencement of the activity on the territory of Poland. The notification shall be submitted to:</p> <ul style="list-style-type: none"> - the Voivodeship Marshal (Marshal of a Province - marszałek województwa) competent for the place of service provision - the Voivodeship Marshal, selected by the entrepreneur - if the planned place of providing the service is located on the territory of at least two voivodships - the Voivodeship Marshal of the Mazowieckie Province- if it is impossible to determine the planned place of rendering the service on the territory of Poland. <p>The notification should include: the name of the entrepreneur's country of origin, the entrepreneur's designation and their registered office, the approximate place and date of performance of the services, the type of services provided on the territory of the Republic of Poland.</p> <p>Along with the notice, a translation into Polish of the document which entitles the foreign entrepreneur to conduct business activity in the territory of the country of origin should be submitted. The translation must be prepared by a sworn translator.</p> <p>(2) The entrepreneur may start the activity after submitting the notification.</p> <p>One must inform the Voivodeship Marshal that:</p> <ul style="list-style-type: none"> - the foreign entrepreneur ceases to operate; - any of the notified information has changed <p>The entrepreneur has 14 days to submit the information, counting from the date of cessation of activity or a change of some of the data. There is no data on the number of temporary work agencies run by foreign entrepreneurs in Poland.</p>

Table A1.7	Are other entities that hire out workers allowed to post workers to other countries?
Austria	There are no other entities that hire out workers.
Belgium	Not relevant as there are no other entities/labour market intermediaries that are allowed to hire out workers.
Germany	As mentioned above, employers/companies in general may hire out workers and as such are also allowed to post workers to other countries.
Spain	There are no other organizations envisaged under Spanish labour legislation, however, if “de facto” any company did, it could be considered a TWA.
France	In general, hiring out by companies other than TWAs is not allowed. In the limited situations explicitly allowed by the law, these other entities are able to post workers to other countries under the same conditions as TWAs.
Lithuania	There are no other entities that hire out workers.
Netherlands	Yes, while Dutch law does not restrict them from doing so, the regulations of the host country may prohibit it.
Slovenia	
Slovakia	
Italy	
Poland	

Annexe III – Additional data

Table B1 Data on PDs A1 issued for TWAs by sending perspective, 2023

Country	Total number of PD A1 2023 issued according to Article 12	Share of PD A1 2023 issued according to Article 12 (%) for services (NACE G to T)	Of which PD A1 2023 issued for TWAs (NACE N - Group 78.2) according to Article 12 (%)	Total number of PD A1 2023 issued according to Article 13	Share of PD A1 2023 issued according to Article 13 (%)	Of which PD A1 2023 issued for TWAs (NACE N - Group 78.2) according to Article 13 (%)
BE	17707	68.9	20.4	7706	66.7	12.9
BG						
CZ		36.6				
DK						
DE	12942	51.4	0.9			
EE	47	18.4	1.3	69	18.8	0.6
IE						
EL	0	100.0	0.0	0		
ES	6374	49.7	11.1	5972	89.3	11.9
FR		54.8	0.0			
HR	1338	10.5	3.1	655	55.1	1.8
IT						
CY*	0	78.5	0.0	35	53.9	1.5
LV	130	51.7	4.3	374	57.1	2.1
LT		61.5			80.0	0.0
LU	8838	55.1	13.0	0	80.8	0.0
HU						
MT	0	98.3	0.0	0	76.2	0.0
NL	3548	0.0	63.5			
AT	723	30.0	1.9	91	37.8	0.3
PL	26112	38.5	9.8	8608	65.0	1.5
PT	7576	20.0	12.3			
RO		0.0				
SI		0.5				
SK	86	16.7	0.1	<5	61.1	0.0
FI	151	61.8	1.8	135	46.6	0.9
SE	100	47.9	4.5	69	53.8	1.7
IS	0	80.4				
LI	224	64.9	40.5	<5	72.0	0.9
NO						
CH						
UK						
Total	79522	45.8	3.1	17746	64.1	2.0

* CY: data 2021.

** For many Member States, the breakdown is not available for all the PDs A1 issued according to Art. 13. The shares are only calculated for the PDs A1 for which a sector of activity was available. Hence, the 'unknown' PDs A1 are not included.

Source: De Wispelaere, F., Simon O., De Smedt, L. & Pacolet, J., (2025). Posting of workers: report on A1 portable documents issued in 2023, Publications Office of the European Union.

Table B2 Data on PDs A1 issued for TWAs by receiving perspective, 2023

Country	Total number of PD A1 2023 issued according to Article 12	Share of PD A1 2023 issued according to Article 12 (%) for services (NACE G to T)	Of which PD A1 2023 issued for TWAs (NACE N - Group 78.2) according to Article 12 (%)
BE	6468	37.1	3.3
BG	72	55.2	0.6
CZ	728	36.8	1.3
DK	511	49.8	0.9
DE	19298	30.5	5.1
EE	77	63.7	0.9
IE	610	61.0	1.0
EL	243	76.1	1.3
ES	1557	52.3	1.1
FR	21304	48.9	10.3
HR	480	57.0	0.7
IT	1046	49.4	0.9
CY	171	59.4	0.3
LV	10	53.4	0.2
LT	15	45.8	0.2
LU	1432	44.1	3.0
HU	363	33.8	1.0
MT	127	45.1	0.6
NL	14967	54.0	10.3
AT	4021	48.8	1.5
PL	558	47.4	0.7
PT	418	60.3	1.2
RO	384	44.2	1.2
SI	1106	46.6	3.6
SK	238	40.7	0.9
FI	336	47.2	1.0
SE	559	34.2	1.0
IS	558	54.3	0.9
LI	658	40.8	0.7
NO	20	52.6	0.6
CH	575	55.5	0.8
UK	612	48.0	0.5
Total	78799		

* CY: data 2021.

** For many Member States, the breakdown is not available for all the PDs A1 issued according to Art. 13. The shares are only calculated for the PDs A1 for which a sector of activity was available. Hence, the 'unknown' PDs A1 are not included.

Source: De Wispelaere, F., Simon O., De Smedt, L. &Pacolet, J., (2025). Posting of workers: report on A1 portable documents issued in 2023, Publications Office of the European Union.

Table B3 Hiring out by a temporary employment firm or placement agency to a user business established in another Member State, 2022

	Persons		Postings	
	N	% of total	N	% of total
BE	3822	1,7%		
BG	14	1,0%	22	1,3%
FR	42488	18,1%	108572	18,0%
IT	4588	13,1%	11984	12,5%
AT	11315	3,2%	40479	4,7%
PL			664	1,5%

Source: De Wispelaere, F., Pacolet, J., & De Smedt, L. (2024). Posting of workers: collection of data from the prior declaration tools: reference year 2022, Publications Office of the European Union. <https://data.europa.eu/doi/10.2767/946945>

Annexe IV - Country experts

Member State	National Experts
Austria	Leonard Geyer, Nikko Bilitza & Sonila Danaj (European Centre)
Belgium	Frederic De Wispelaere, Lynn De Smedt & Dirk Gillis (HIVA-KU Leuven)
France	Marco Rocca (CNRS – Université de Strasbourg), Pierre Lesuisse (Université de Strasbourg) & Francesco De Palma (Université de Strasbourg)
Germany	Eckhard Voss, Katharina Schöneberg & Marzie Ghiasi (wmp consult)
Italy	Rossana Cillo & Fabio Perocco (UNIVE - Ca' Foscari University of Venice)
Lithuania	Ramunė Guobaitė & Inga Blažienė (LCSS)
Poland	Marcin Kiełbasa, Monika Szaraniec & Małgorzata Mędrala (KUE)
Slovakia	Nina Holíčková, Martin Kahanec & Martin Guzi (CELSI)
Slovenia	Mojca Vah Jevšnik & Kristina Toplak (ZRC SAZU)
Spain	Dolores Carrascosa Bermejo (Universidad Pontificia Comillas) & Óscar Contreras Hernández (Universidad de Castilla-La Mancha)
The Netherlands	Henri Bussink, Arjan Heyma & Albert Rutten (SEO Amsterdam Economics)

POSTING.STAT



COORDINATOR

HIVA - Research Institute for Work and Society, KU Leuven (BE)

PARTNERS

CELSI - Central European Labour Studies Institute (SK)
COMILLAS - Comillas Pontifical University (ES)
CUE - Cracow University of Economics (PL)
ELMI - European Labour Mobility Institute (PL)
European Centre for Social Welfare Policy and Research (AT)
SEO – SEO Amsterdam Economics (NL)
LCSS - Lithuanian Centre for Social Sciences (LT)
UCLM - University of Castilla-La Mancha (ES)
UNISTRA - University of Strasbourg (FR)
UNIVE - Ca' Foscari University of Venice (IT)
wmp consult - Wilke Maack GmbH (DE)
ZRC SAZU - Research Centre of the Slovenian Academy of Sciences and Arts (SI)

ASSOCIATED PARTNERS

ACV/CSC Transcom - Confederation of Christian Trade Unions - Transport and communication (BE)
CEEMET - Council of European Employers of the Metal, Engineering and Technology-based industries
EFBWW - European Federation of Building and Woodworkers
SIOD/SIRS - The Social Intelligence and Investigation Service (BE)