Overcoming the missing link of sectoral bargaining: Social partners’ responses to temporary agency work in Slovakia

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Abstract

Recent changes in the Slovak labour market facilitated important changes in the interests, strategies and actions of social partners regarding temporary agency work (TAWs). The temporary agency workers have become an inclusive part of the labour market as a result of their remarkably increased presence over the last few years particularly in the industry sector.

The increased presence of TAWs, coupled with the lack of governance and regulation in the TAW sector, contributed to an important shift in the strategies of employers and trade unions; and facilitated an emergence of sectoral bargaining institutions. Building on actor-centred institutionalism, resource dependence theories and social interaction, this paper studies the reasons behind the emergence of sector-level representation structures and bargaining institutions in a previously unorganized sector and in generally hostile conditions of bargaining decentralization and declining bargaining coverage.

We argue that the changing labour market dynamics and the lagged or fully lacking legislative responses of the state facilitated action on the side of sector-level social partners. The foundation of the employers’ structures and the change of trade union strategy from exclusion to inclusion of TAWs in union interests is driven by the social partners’ effort to balance the lack of regulation in the sector. We argue that the fact that sector-level bargaining initiatives came through voluntary commitment of social partners in the TAW sector, requires a complex understanding of actors’ interests, social interaction processes, and the characteristics of the market in the TAW sector.

Key words: temporary agency work, labour market, collective bargaining, Slovakia

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Introduction

The EU accession and the economic crisis facilitated important changes in the dynamics of labour markets across the new Member States in Central and Eastern Europe (CEE). While the EU accession produced labour shortages in some countries and sectors (Kaminska and Kahancova 2011, Trif 2008), the economic crisis has accelerated the rise of non-standard, or precarious, employment forms that has since existed parallel to standard employment forms with decent levels of pay and employment security (Sala and Silva 2009). Non-standard, or precarious, work has gained in importance and has even became the norm in certain sectors and in certain occupations that tend to attract vulnerable groups, such as youth, women and migrants (Mrozowicki et al. 2013). Besides market pressures, the growth of precarious work has been further intensified by austerity measures in order to avert and contain the development of a sovereign debt crisis in a number of EU member states.

The implications of the rise of precarious employment are a dualized, or fragmented, labour market, where fixed-term contracts, part-time contracts, dependent self-employment, temporary agency work and casual work are becoming increasingly prevalent. In 2013, temporary employees represented approximately 10 percent of the total number of employees on average, in the CEE, varying from 27 percent in Poland to 1.7 percent in Romania (Eurostat 2014).

What is the role of established industrial relations institutions in addressing the changing labour market and, in particular, the growth of precarious work in the EU? In the late 20th century, Webb and Webb (1987) argued that collective bargaining had superseded the individual contract in regulating the employment conditions. However, the growth of a precarious workforce implies a return to individual contractual arrangements at present (Gallagher and Sverke 2005). On the one hand, employers face a double-pressure for market competitiveness and flexibilization of employment. On the other hand, trade unions face the challenge of strategy adaptation to account for the specific needs and interests of a new group of workers who are likely to differ from the traditionally represented groups so far. Furthermore, collective bargaining coverage has declined in most EU Member States since the recent crisis (European Commission 2012), which indicates a decrease of the influence of trade unions. While trade unions struggle to improve the working conditions and social rights of the precarious employees, they simultaneously try to reduce precarious employment forms in the labour market in general and defend the standard employment relationship with decent working conditions, pay and job security.

Despite the importance of the phenomenon of precarious employment, little evidence is available on the strategies of social partners to address the trend of labour market segmentation in which the importance of precarious employment increases. To fill this gap, this paper provides evidence on the strategies of employers and trade unions in Slovakia in addressing the interests of precarious employees and initiatives taken to regulate their working conditions. The empirical focus of this paper is on the temporary agency work (TAW) sector, which belongs to highly precarious because of decreased job security, access to training and other benefits available to regular employees, low pay and other precariousness dimensions. In particular, the paper raises the following research questions:
how are temporary agency workers represented in multi-employer collective bargaining
how are their needs addressed in the process of collective bargaining and other initiatives by the social partners
what factors explain the recent change in strategy of social partners to engage in founding sector-level bargaining institutions in a previously unorganized sector

The paper builds on various sources of evidence collected in 2011-2014, including the United Automatized System of Legal Information (JASPI), relevant governmental employment policy documents, statistical evidence on temporary agency workers collected by the Slovak Statistical Office, the Slovak Social Security Authority and the state Centre for Work, Social Affairs and Family. Evidence on social partners’ responses and attitudes to temporary agency work has been collected in original empirical research conducted by the authors within two research projects on precarious employment and social partner strategies in 2011 – 2014. In total, the authors conducted 10 semi-structured interviews with key representatives of sectoral and national trade unions, sectoral and national employers’ associations, and government representatives. All interviews were conducted in person and recorded. Supplementary evidence originates from the authors’ and other dedicated experts’ earlier research within international research projects for the European Trade Union Institute and the International Labour Organization.

Since data availability for the TAW sector is limited especially for procedural evidence, e.g., bargaining processes and attitudes of the social partners, this paper adopts a qualitative approach to analyzing the recent attempt of the Slovak social partners to set up sector-level bargaining for TAW. The qualitative analysis is supplemented by relevant statistical evidence and estimates of the Slovak Statistical Office and Eurostat, and from the comprehensive Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries (ICTWSS Database).

The paper is structured as follows. In the following section the legislative framework of temporary agency work is described including the recent post-crisis changes. The third part reviews the main characteristics of the Slovak industrial relations system. Further attention is paid to the relevant actions and initiatives undertaken by the social partners. Empirical evidence and analysis is the next section and is the crucial part of the paper. Last part concludes.

**Legislative resources for temporary agency work**

Temporary agency work has been institutionalized in the Slovak labour legislation since 2008. At that time the protection of temporary workers was low and the TAW sector was left unregulated. This gave opportunity for free competition and produced a growing number of registered temporary work agencies, which offered employment with precarious working conditions.

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1 The EC-funded BARSORI project (no. ….) and the EC-funded BARSORIS project (project no……). The authors hereby acknowledge a financial contribution of the European Commission towards these research projects.
The legal regulation on TAW has grown importance in post-crisis years. The two major legal acts, Labour Code and Law on Employment Service (No.5/2004), have been amended several times in order to narrow the principle on equal treatment of regular and temporary workers as well as to regulate the spread practices of law infringement. Furthermore, the rules for temporary agencies were specified in order to increase their credibility.

In 2011 the principle on equal treatment of temporary agency workers was narrowed in the Labour Code by allowing only the positive deviation from the specified equal conditions. Until then law allowed also the downgrading deviation from equal treatment by saying “unless stated otherwise”. Also it was clarified that assigned workers have to be employed on the basis of regular contract, the contracts outside of the regular employment cannot be used for agency work. This was reaction on the spread practice of employing temporary workers on working agreements which bears a lot of features of precariousness, such as short notice period (15 days). Until 2013, working agreements were also not subject of social contribution payments so the precariousness of this contract was even worse.2

Following the EC Directive 2008/104/EC on equal treatment of temporary workers, also the Law on Employment Services was amended. This law specifically regulates the activities of temporary agencies and this amendment explicitly forbade them to charge employees for assignment to user employer or to terminate the temporary assignment after concluding the contract with user employer. Access to training or other perks provided by user employer should be granted to temporary worker as well.

Temporary agencies which are more than thousand registered in Slovakia, underwent further regulation in order to prevent their bankruptcies and illegal actions towards workers. Amendment from May 2013 obliged them to submit among other documents also declaration of the capital at least 30 000 EUR yearly as of 31th of March. Also if new agency apply for registration the approval of the capital at least 30 000 EUR is required as well. This should prevent existence of small agencies with low equity capital which could be easy to bankrupt leaving their assigned employees with no means.

The State authority, Central Office of Labour, Social Affairs and Family (ÚPSVaR) is obliged to withdraw the licence to temporary agency in case the annual report on activity is not submitted, or no worker was assigned within one year, or agency employed workers illegally. In spite of these regulations, recent statistics does not report the decrease of the registered temporary agencies, nor the decrease of the temporary contracts.

The TAW sector in the context of the Slovak industrial relations system

2 The reason for introduction of the social security contributions was two-fold. Firstly, trade unions rose their effort in collective bargaining to protect workers in this type of employment. Secondly, the budget deficit of the Slovak Social Security Authority forced the decision-makers to search for additional sources of income. Since the number of agreement contracts exceeded 600,000 in 2012, this naturally came up as the relevant subject of social payments burden.
Slovakia possesses a fairly well organized structure of industrial relations. Company-level and sector-level bargaining are complementary but often lack coordination. The national tripartite negotiations do not lead to collective agreements, but serve as advisory input for the government discussions and policy making. Commitment to collective bargaining, as well as membership in trade unions and employers’ organizations is voluntary. The law stipulates that once trade unions are established at the workplace or at the sector level, employers are obliged to start collective bargaining. Slovakia is characterized by a reasonably established bargaining coordination and employers relatively well organized at the sectoral level (Cziria, 2007, 2010; European Commission, 2013, ICTWSS Database). Although sector-level bargaining is institutionalized mostly in the traditional segments of the economy such as metal industry or public services, the existing tradition of sector-level collective bargaining distinguishes Slovakia from the most CEE countries where sectoral bargaining has been characterized as the ‘missing link’ between a decentralized company-level bargaining structure and existing tripartite institutions (Ghellab and Vaughan-Whitehead 2003, Mailand and Due 2004).

In spite of these established structures, the organization rate is declining. On the employees’ side, trade unions lost members in recent years also because of the crisis. On the employers’ side, membership decline is observed as well. Density rate of the trade unions declines systematically since 1993, last available figure is 16.7 per cent in 2011. Employer density varies according to sector, with industry having larger coverage compared to retail or services sector. In average, the density is around 30 per cent.3

Temporary agency work is not recognized as a sector, and regulations relevant for TAW were until now implemented through legislation. In addition, the social partners in the TAW sector increasingly see an added value in collective bargaining as another institutional resource for governing the TAW sector’s working conditions. Temporary workers do not have their own representation bodies, but the structures of social partners both on the employer and the employee side are under development. Trade unions claimed difficulties in organizing and representing agency workers because their assignment can be to various employers within very short period. Therefore their recruitment to established work place trade unions is difficult and their motivation to establish their own sector-wide trade union is also limited, since only very few of them are satisfied with their current status of being a temporary agency worker. On the other side of the social partners spectrum, employers organizations are fragmented which also complicates the collective bargaining.

Nevertheless, recent interviews with employers and trade unions in the TAW sector suggest that social partners are interested to establish collective bargaining procedures and institutions that will underpin the regulation of working conditions in the TAW sector next to legislative resources. This initiative also supports the formation and evolution of TAW as a distinct economic sector. The growing importance of the TAW sector is further justified by the increasing number of temporary workers but also by the increasing number of temporary agencies and competition among them.

Since TAW is most significantly concentrated in the automotive sector, OZ KOVO decided to represent the interests of agency workers more intensively. Facing the

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3 Source: ICTWSS Database, version 4.0 (2013).
difficulty to organize workers in the TAW sector, the principal motivation of OZ KOVO is to protect employees in the metal and mechanical engineering industry from undermining their working conditions as a consequence of further expansion of TAW.

On the employers’ side, employers in the TAW sector are well organized in two associations of which only APSZ is fully entitled to participate in collective bargaining (see Table 1).

Table 1: Employers’ organizations in the TAW sector

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of member organizations</th>
<th>Legal status</th>
<th>Affiliation to a peak-level employers’ organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>APSZ Association of employment services providers (Asociácia poskytovateľov služieb zamestnanosti, APSZ)(^4)</td>
<td>12 members (7 are temporary work agencies)</td>
<td>Independent legal entity established according to the Act No. 83/1990 Coll. on Association of Citizens, as amended, with full bargaining rights</td>
<td>Federation of Employers’ associations (Asociácia zamestnávateľských zväzov a združení, AZZZ)</td>
</tr>
<tr>
<td>Association of staffing agencies of Slovakia (Asociácia personalných agentúr Slovenska, APAS)(^5)</td>
<td>10 members</td>
<td>Established as an association of legal entities pursuant to sec. 20f of the Civil Code (Act no. 40/1964 Coll.) According to the Act no. 2/1991 Coll. on Collective Bargaining only organisations constituted pursuant to the act No. 83/1990 Coll. on Association of Citizens are entitled to bargain collectively</td>
<td>National Union of Employers (Republiková únia zamestnávateľov, RÚZ)</td>
</tr>
</tbody>
</table>

Source: Bulla, Cziria and Kahancova (2014)

Analytical framework

How to explain the behaviour of social partners in addressing the working conditions of TAWs, and especially the shift from supporting a fragmented labour market with distinct groups of core and precarious employees (including TAWs) to an integrated labour market where TAWs also become subject to collective bargaining and thus better regulated working conditions? To answer this question, we adopt an analytical framework combining the concepts of actor-centered institutionalism (Scharpf 1997), resource dependence theory (Pfeffer and Salancik 1978, Pfeffer 1992) and social interaction theories in economic sociology (e.g. Granovetter 1985 and 2005). All of these theoretical approaches highlight the mutual relations and interactions between actors (and their rational interests), the legal, economic and social conditions in which these actors operate, and the character of interactions that the actors develop with


other actors shaping their decisions and their coordinated action with other relevant actors.

The key actors whose behaviour we aim at understanding is the employers’ associations and trade unions that became social partners in sector-level negotiations in the TAW sector. The behaviour of these actors is heavily influenced by the legal regulation, which serves as a key resource that imposes normative institutional constraints but also creates a manoeuvring space for each of these organizations (c.f. Scharpf 1997). Besides legislation, the institutional infrastructure of industrial relations in Slovakia can be perceived as a resource that raises barriers but also opens manoeuvring spaces for the behaviour of employers’ associations and trade unions. Therefore, in our empirical analysis, we pay attention to both the enabling and the constraining factors of the relevant institutional structures and norms, notably the legislation, the industrial relations system, and the possibilities to use international resources and experiences especially on the trade union side. In acknowledging the industrial relations system and bargaining institutions in other sectors as a resource, the metal sector and the automotive industry as a sub-sector is considered as the most important benchmark. This is because TAW is heavily concentrated in this sector and the same trade union that represents core workers in the metal sector took up the organization and representation challenge for TAWs.

Besides external factors shaping the behaviour of trade unions and employers’ associations, their own organizational values, interests and strategies are a relevant explanatory factor. These organizational factors are not alone standing but influenced by external resources (mainly legislation). However, while external resources give a broader manoeuvring space for actors’ behaviour, particular strategies and decisions of unions and employers also derive from their embedded interests and rational perceptions. Therefore, the actors’ behaviour cannot be reduced to a function of external resources and pressures. For example, Heery and Abbott (2000) identified distinct strategies of trade unions addressing the interests of particular groups of employees including TAWs. Whether opting for a strategy of separation or inclusion, trade union decisions derive from internal capacities, societal goals of trade unions, long-term vision in membership and representation, which are internal organizational factors. These are equally important in explaining the purposeful action of social partners than external resources.

Each of the social partners interacts with a variety of other actors, and each of these actors has their own interests, goals and strategies. Therefore, the environment in which these actors operate cannot be perceived as given and predictable, but is characterized by uncertainties related to changing preferences of other actors (c.f. Beckert 1996). For example, the strategy of trade unions to exclude TAWs from their interests, which was the case in Slovakia prior to 2013, cannot be taken for granted, as we have observed changing preferences and a shift towards an inclusive strategy after 2013. The change in the trade union strategy likely influenced the strategy of the employers’ associations and could have facilitated voluntary commitment to develop sector-level bargaining institutions through social interaction between the social partners. Social interaction may lead to voluntary commitments and stimulate contextualized and embedded behavior, which gives concrete meanings to perceived rationality by social partners. We argue that this mechanism of understanding actors’ behaviour is distinct from the direct and normative influence of legislation and industrial relations structures in the other sectors.
In sum, our empirical analysis will reflect the complex analytical reality of actors’ interests, interaction, uncertainties and external institutional resources when answering the research questions raised in the introduction. The main challenge is to explain why social partners in the TAW sector committed themselves to develop sector-level bargaining institutions in a previously unorganized sector, and in conditions of a general trend of declining bargaining coverage and bargaining decentralization to the company level.

**Overcoming the missing link: setting up collective bargaining institutions in the TAW sector**

Temporary agency work (TAW) is not a statistically denoted sector of the Slovak economy. However, with rising employment and revenues, the orientation of employers toward greater employment flexibility and alternative forms of employment, the importance of TAW in the Slovak economy is growing. This trend is visible also in the growing employment and revenues in the TAW sector (see Table 2). Another sign of the relevance of the sector is the high number of licensed agencies in Slovakia (see Table 3).

| Table 2: Employment and revenues in the TAW sector⁶ |
|---------------------------------|-------|--------|
|                                | 2007  | 2011   | 2012-2013 |
| Individuals employed as temporary agency workers | 10,828 | 49,700 | 81,400 |
| Revenues in the sector         | 31 millions EUR | n/a    | 500 millions EUR* |

* gross estimate of the interview respondent representing APSZ.

| Table 3: Licensed temporary work agencies in Slovakia |
|---------------------------------|--------|
| Valid Licenses                  | 1221   |
| Suspended - punitive            | 2      |
| Suspended – on the motion of the agency | 18  |
| Cancelled - punitive            | 9      |
| Cancelled - on the motion of the agency | 123 |


Although social dialogue in TAW at the sectoral level is just currently developing, the fact that several recent legislative changes affect the working conditions of agency workers, and that social partners are developing further initiatives to improve the regulation of the TAW sector, make this sector an interesting case for assessing labour legislation and its effects on working conditions.

⁶ Source: ÚPSVaR. There are very few official statistical data available regarding the number of registered agencies and temporary agency workers. Official data are collected by ÚPSVaR from annual reports submitted by agencies, but not all agencies fully complete these reports or fail to submit them at all. Therefore, social partners do not treat the presented data as particularly reliable.
As noted above, social dialogue in the TAW sector does not have a long history and no sectoral collective agreement has been concluded yet. However, empirical evidence suggests an important shift in the attitude of both trade unions and employers regarding previously unexisting social dialogue and collective bargaining in the TAW sector. While in 2011 trade unions actively contributed to labour market segmentation by excluding temporary agency workers from their agenda and protecting the core employees (Kahancova and Martiskova, 2014), this strategy has remarkably changed within the past three years. The sectoral trade union OZ KOVO realized the necessity to represent the interests of the agency workers and also the potential source of membership increase from among TAWs. In result, the trade union moved from a strategy of exclusion to a strategy of inclusion in terms of representing TAWs (Heery and Abbott, 2000). The shift in the trade union strategy is notable in several initiatives pointing at trade union interest in social dialogue and the setting up social dialog in this sector previously without it. In 2013, OZ KOVO signed a Memorandum of cooperation with Trenkwalder, one of the major staffing agencies and APAS member. APAS is not eligible to bargain collectively or to conclude collective agreements because of its status as an association of legal entities according to the Civil code. However, APAS is expected to transform into an association pursuant to the Act No. 83/1990 Coll. on Association of citizens. It also intends to join the informal bipartite social dialogue body in the mechanical engineering industry.

Currently a formation of a new association is expected upon the initiative of the co-founder and former president of APAS, who recently left Trenkwalder and founded McROY Slovakia. In an attempt to bring together TAW agencies across various associations, APSZ came up with an idea to create an informal consultative platform, joining associations affiliated to both AZZZ and RÚZ.

APSZ is the only organization eligible to collective bargaining on behalf of temporary work agencies. APSZ already launched negotiations with OZ KOVO with the aim of concluding a higher-level collective agreement. Even before concluding a collective agreement, the social partners already aim at benefitting from the recently introduced stipulation on flat extensions of collective agreements; and aim at filing an extension request of the future collective agreement to cover the whole TAW sector. The interviewed APSZ representative claimed that “...TAW is a very specific sector, therefore it is not viable to expect from an agreement covering this sector to include obligations for employers similar to collective agreements in other sectors.”. At the same time, APSZ is ready to include some provisions common in other sectors’ collective agreements into the TAW agreement e.g., enhanced security for agency workers over 50 years of age in the form of three months severance pay. The employers also desire the collective agreement to serve as a monitoring mechanism and provide for the creation of bipartite commissions with supervisory and control powers. In addition, OZ KOVO is concerned about the enforceability of obligations enshrined in the collective agreement, since these would have to be reflected in agreements between agencies and user employers. Therefore, the trade union is less optimistic about the outcome of collective bargaining and expects that the planned amendments of the legislative framework for TAW will bring more substantial

7 Source: authors’ interview with APSZ vice-president, recorded, 13. 3. 2014.
8 Source: authors’ interview with ZSP representative, acting also as a chief negotiator for APSZ in the TAW sector, recorded, 14. 2. 2014.
improvements than any collective agreement. Nevertheless, social partners expect a collective agreement to be signed in the course of 2014.

OZ KOVO and APSZ share their perceptions on multiple challenges and critical points in the TAW sector. The most important is that there is an enormous amount of licensed agencies. There is a shared assumption that many of them are either non-active or operating as one-person businesses. The point is that small agencies have developed a widespread and sophisticated practice of circumventing the legislation. They keep engaging workers on the basis of agreements on work performed outside the employment relationship (assignment work instead of an employment contract), which is prohibited by the LC and the Act no. 5/2004 Coll. on employment services. Moreover, agency workers are often being paid only the statutory minimum wage, while the rest of their remuneration is paid in the form of travel reimbursement, daily allowance or other salary supplements, which are not subject to payroll taxes and social and health insurance deductions. Such practices are deforming the TAW market by offering dumped prices to user employers and are therefore criticized not just by trade unions, but by larger temporary work agencies as well. Furthermore, the interviewed representative of OZ KOVO questioned the practice of equal working and employment conditions for agency workers, which is a legal obligation. She also highlighted the fact that many companies that operate in the TAW sector do not possess a valid licence for the provision of staffing services and operate on the basis of work contracts pursuant to the Commercial code instead of the LC.

The post-2011 changes in the labour legislation introduced some limitations to several employment forms, e.g., to the number of subsequent fixed-term contracts, prohibition of temporary work agencies to hire employees on assignment contracts instead of employment contracts, payroll taxes and social security contributions from assignment contracts, etc. Both OZ KOVO and APSZ were satisfied with their involvement in the legislative process, channelled through peak-level social partners and the tripartite Council (HSR). Both OZ KOVO and APSZ were represented in delegations and commissions discussing legislative proposals relevant for their concern.

According to the APSZ representative, several proposals discussed in the course of the legislative process would cause serious damage to the operation of agencies. One of such proposals was setting thresholds for the number of agency workers at particular workplace by means of a fixed number or percentage, or revoking the derogation for agencies from restrictions regarding consecutive fixed-term contracts. Eventually, the representatives of temporary work agencies managed to persuade the government representatives not to proceed with those initiatives. The APSZ expressed as the main priority standardization of the sector, which means eliminating agencies that do not comply with the legislative framework for TAW. In order to attain this, the APSZ proposes to further tighten up the conditions for granting a license to a new agency, by increasing the amount of equity capital, the ownership of which the agency has to demonstrate and adding a new requirement – insurance against insolvency. A shared desire of OZ KOVO and APSZ is to address the issue of remuneration, in order to prevent agencies from abusing payments via travel expenses and daily allowances instead of standard wages with tax and social and health insurance deductions. APSZ favours the German model, which requires that the contract between the agency and the user employer expressly states the gross salary of
the agency worker and a special coefficient for the agency. The Ministry of labour, social affairs and family is keen to establish an entirely new legislative framework for TAW and it appointed a special tripartite expert commission for this purpose. APSZ already drew up their own legislative intent, which they will submit to the commission.

In contrast to employers’ views, the ideas that OZ KOVO wishes to support via legislation include further limitations for TAW, i.e., quantitative restrictions, or limiting TAW to certain sectors or specific types of work tasks. Most importantly, the trade union wishes to establish a joint liability of the temporary work agency and of the user employer for obligations towards agency workers.

From the perspective of TAW, the LC regulates the working conditions of agency workers, while the administrative framework for the operation of agencies is set by the Act no. 5/2004 Coll. on employment services, as amended. Very few provisions of the 2011 and 2012 LC amendments had direct impact on TAW. The Act no. 361/2012 Coll. made it absolutely clear that agencies cannot engage workers on the basis of agreements on work performed outside the scope of the employment relationship (assignment contracts). There was a general consensus that such a practice is illegal even before this amendment. However, the interviewed representatives of social partners agreed that the practice did not reflect on this legislative change and a substantial amount of agency workers are still being hired through assignment contracts. Due to this widespread malpractice, subjecting the assignment contracts to social and health insurance, which was one of the important legal changes in 2012 possibly also affected the TAW sector. While user employers (especially in the mechanical engineering industry including car industry) denounced this initiative fiercely and asserted that it reduced flexibility and fed the black market, OZ KOVO has since long been seeking to achieve complete abolition of the institute of assignment work. Subjecting these agreements to health and social contributions was seen as a political compromise.

Regarding the Act no. 5/2004 Coll. on employment services, the APSZ welcomes the initiative to tighten the conditions for licensing agencies, namely, setting a 30,000 EUR threshold for an equity capital of an agency. APSZ originally promoted even tougher conditions. APSZ also appreciates the widening of the circle of entities entitled to submit a motion to suspend or withdraw a license of an agency in case of non-compliance. Since these important legislative changes have been in practice for several months only, it is not possible to assess their real impact. Finally, both social partners criticized the National Labour Inspection for poor work: “... even if the inspectors find a violation, they often do not impose penalties and if they do, the fines are too low.”

In sum, recent legislative changes, especially the 2011 and the 2012 LC amendments, only had modest influence on individual employment conditions within TAW (micro-level), but did not substantially affect the overall functioning of the TAW sector (macro-level). As TAW is not established as a separate sector in Slovakia, the legislative changes did not have any effect on the social dialogue or collective

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9 Source: interview with APSZ vice-president, recorded, 13. 3. 2014.
10 Source: interview with the chief negotiator of ZSP, recorded, 13. 3. 2014.
11 Source: ibid.
bargaining. In the overall functioning of the TAW sector, both OZ KOVO and APSZ are looking with great expectations towards the planned fundamental revision of the legislative framework for TAW that shall affect both the LC and the Act No. 5/2004 Coll. on employment services. Both social partners are actively engaging in the legislative process and developing specific legislative proposals, which have the potential to alter the legal regulation of the TAW in the future.

**Analysis**

What are the underlying factors behind the shift in actors’ strategies regarding the interest representation of TAWs and the commitment to launch negotiations for sector-level collective bargaining in the TAW sector?

While there is an increase of precariousness in the everyday working life, its reduction has become a policy priority across the Member States, but also the EU. The latter is manifested in various EU policy documents that aim to improve the social rights of vulnerable groups in precarious employment forms, including the EU Charter of Fundamental Rights (e.g. Articles 31 and 32), and a number of EU directives on atypical employment, including part-time and fixed-term work, as well as on working time. In addition, the European Employment Strategy encourages the Member States to complement the increasing labour market flexibility with decent social security and stable employment.

EU-level and national-level legislation and policies addressing temporary agency work from the perspective of decent working conditions, pay and job stability do have the potential to serve as a key resource for the behaviour of social partners, especially when policy implementation goes hand in hand with strict compliance rules and requires specific bargaining structures. However, we argue that in the Slovak case, national and European legal resources fail to account for the changed attitude of social partners to establish sector-level bargaining institutions in the TAW sector. None of the interview respondents referred to these policies as a relevant driving factor behind the social partner strategies. Instead, it was the increased role of market powers that motivated the employers to seek for stricter regulation of the TAW sector through legislation and sector-wide collective bargaining. In particular, the lack of regulation and the rising demand for TAWs in the post-crisis years facilitated the continuous growth of the number of agencies. However, such increased competition did not help stabilizing the working conditions in the TAW sector, but gradually saw the emergence of a segmented labour market even within the TAW sector, with part of the employers/agencies respecting all relevant labour legislation, and others engaging in unfair price competition and social dumping. The harsh price competition left the larger agencies with established compliance standards uncompetitive and forced them to take action against the practice of social dumping. In result, employers established two sector-wide associations to facilitate their action in requesting stricter legislative rules on agency work.

On the side of trade unions, the social dumping issue in agency work as a factor explaining trade union interests and in particular the shift in trade union strategy is less important than in the case of employers. While in 2011 interviews the largest sector-level trade union OZ Kovo representing employees in the automotive industry adopted an exclusion strategy vis-a-vis TAWs and other precarious employees to
protect the interests of core workers, in the 2014 interview rounds the union strategy changed from exclusion to inclusion (c.f. Heery and Abbot 2000). The main reason behind inclusion is the trade unions’ search for new potential members, and reviving trade union powers through recognizing a representativeness niche. The increasing number of temporary workers at the company level plays an important role. Trade unions claim that in some workplaces the share of TAWs is almost 20 per cent and remains stable. Therefore at the company level their actions are twofold. First, they try to limit the share of temporary agency workers through collective bargaining. Second, they seek ways how to enable and motivate temporary workers to become trade unions members. Collective bargaining coverage, and related coordinated initiatives at the multi-employer level, help trade unions to recruit new members from among the agency workers. In addition, at the national level trade unions are eager to lobby for and contribute to new legislation to protect TAWs. The legislative resource is considered to be even an more powerful tool to influence the degree of precariousness in the working conditions of temporary agency workers.

In sum, the changing labour market dynamics facilitates new uncertainties and raises new incentives and actions on the side of the social partners. The foundation of the employers’ structures in TAW sector is driven by employers’ effort to balance the lack of regulation in the sector. This movement also enables trade unions to implement strategies at several levels in order to raise protection of temporary agency workers. In result, we argue that none of the potential explanatory factors outlined in our analytical framework alone can fully explain the emergence of sector-level bargaining institutions. This phenomenon, and especially the fact that sector-level bargaining initiatives came through voluntary commitment of social partners in the TAW sector, requires a complex understanding of actors’ interests, social interaction processes, and the characteristics of the market in the TAW sector.

Conclusions

The changing labour market creates new incentives and forms a new behavior on the side of social partners. This paper studied the emergence of sectoral collective bargaining in the TAW sector in Slovakia, which was formerly unorganized and lacked established structures of trade unions and employers’ associations.

Based on the interviews with social partners’ representatives, the paper argues that the increasing number of non-standard working contracts increases the self-regulation in the concerned sectors. This trend is facilitated by a significant shift in the strategies of the social partners, which were until recently mostly concentrated on influencing the national-level legislative resources as the main regulatory tool for the TAW sector. However, the sectoral level seems to rise in importance as social partners seek to find other way how to regulate the working conditions of TAWs and the labour market governance in the TAW sector, since legislation is often subject to political influences that remain distant from the interests of concerned actors in the TAW sector.

The example of the emergence of social partner structures and bargaining institutions in the TAW sector in Slovakia supports our argument that the changing labour market, its flexibilization and lagged or fully lacking legislative responses of the state
facilitated action of the social partners at the sector level. This argument is relevant for formulating further expectations on the rise of sectoral or multi-employer bargaining institutions in a hostile and uncertain environment, which applies to most of the CEE countries.

References


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