

# **Deregulation and Labour Law**

**38**

*In search of a labour concept for the 21<sup>st</sup> century*

*Editor*

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*Guest-Editors*

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*Contributors*

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# Introduction

## 1. JIL COMPARATIVE LABOUR LAW SEMINAR (JIL TOKYO SEMINAR)

The Japan Institute of Labour (JIL) held the fifth JIL Comparative Labour Law Seminar (JIL Tokyo Seminar) on November 11 and 12, 1998, in Tokyo, Japan. The JIL Tokyo Seminar was originally organised by Professor Kazuo Sugeno (Faculty of Law, The University of Tokyo) and Professor Yasuo Suwa (Faculty of Sociology, Hosei University) who were at that time senior research fellows at JIL. This seminar has two purposes: first, to discuss contemporary issues regarding labour law with distinguished guests from foreign countries; second, to provide young Japanese scholars with opportunities to participate in international academic activities. The topic of the first seminar held in 1991 was 'Management Flexibility in an Era of Change: the Method of Accommodating Working Conditions and Work Organisations.' In 1993 the second seminar focused on the issue of 'The Influence of Foreign Law on Union Rights Policies in Asian Countries.' The third seminar was held in 1994 under the title 'Working Life and Family Life: Policies for Their Harmonisation.' The topic of the fourth seminar in 1996 was 'The Process of Industrialisation and the Role of Labour Law.'

## 2. THE FIFTH JIL TOKYO SEMINAR

The theme of the fifth seminar was 'Deregulation and Labour Law: In Search of a Labour Law Concept for the 21st Century.' Eight national reporters from European countries, the United States, and Japan participated in the four-session seminar. The reporters were:

Professor Ronnie Eklund, Stockholm University (Sweden)  
Professor Chris Engels, Katholieke Universiteit Leuven (Belgium)  
Professor Daniel H. Foote, University of Washington (United States)  
Professor Gustaaf Heerma van Voss, Rijksuniversiteit Leiden (Netherlands)  
Professor Detlev Joost, Universität Hamburg (Germany)  
Professor Marie-Ange Moreau, Université Aix Marseille III (France)  
Professor Hideyuki Morito, Seikei University (Japan)  
Professor Michele Tiraboschi, University of Modena (Italy)

The objective of the fifth JIL Tokyo Seminar was to review the deregulation in labour law in each country and examine what the general trend means. The term 'deregulation' in this seminar was defined broadly, including matters usually discussed under the notion of 'flexibility.' After examining the factors causing deregulation in Labour law and evaluating its ramifications, this seminar purported to ask a fundamental question: Do we need a new concept of labour law for the 21st century? If so, what should it be? In this light, the co-ordinators sent the following outline to each national reporter.

### 3. OUTLINE OF NATIONAL REPORTS

#### **Introduction**

#### **Deregulation of Labour Law in Respective Countries**

1. Labour market regulations  
For example:
  - the abolishment of the state’s monopoly of employment placement services and the legalisation of private fee-charging employment placement businesses
  - the legalisation of temporary work services and worker dispatch services
  - the deregulation of fixed-term contracts
  - the deregulation of dismissal regulations
2. Individual labour relations  
For example:
  - the flexibilisation of working-hour regulations
  - lifting the ban on women’s night work
  - expansion of derogation from the legal norms set by protective Labour legislation through collective bargaining agreements, other agreements at plant or establishment level, or (where it exists) individual consent
3. Collective Labour relations  
For example:
  - the decentralisation of collective bargaining, i.e., moving from centralised bargaining to company- or plant-level bargaining and from trade unions to works councils
  - re-examination of the relation between trade unions (collective bargaining) and individuals (individual bargaining)

#### **Driving Forces of Deregulation**

A national paper should describe what factors cause deregulation mentioned above, such as

- counter measures against unemployment
- pressure of global competition
- international pressure to harmonise regulations (harmonising competition rules in the EC, judgement by the European Court of Justice, ILO convention, etc.)
- structural changes in industries
- structural change in the Labour force (demographic change, ageing work force, diversified work force, individualisation of workers, etc.)

#### **Evaluation of Current Deregulation and Reforms of Labour Law**

- Is deregulation a universal phenomenon in labour law in your country, or are there any areas where regulations are increased or strengthened (e.g., employment discrimination, privacy of workers)?
- What are the general reactions (pros and cons) to deregulation in your country? Is it a temporary phenomenon or a perpetual one? Does deregulation simply

mean abolishing regulations, or can it be regarded as a modernisation of regulations through abolishing outdated regulations and introducing new ones?

### **The Role of Labour Law in the 21st Century: Do We Need a New Concept of Labour Law?**

Considering various changes surrounding labour and employment relations and the current deregulation phenomena, what do you think the role of labour law in the coming century should be? Should we promote a market-oriented approach to labour law? How should we react to the individualisation of the labour force? Do we need a new concept of Labour law? What might it be?

#### **4. OVERVIEW OF DISCUSSION**

The whole seminar was divided into four sessions. The following is a brief summary of the discussions in each session.

##### **A. First Session: Introductory Remarks on ‘Deregulation’ and Labour Law in Respective Countries and the Deregulation of Labour Market Regulations**

The first session began with introductory remarks by each national reporter regarding the general situation of deregulation in labour law. In most countries, the movement toward deregulation in labour law is more or less in progress. An exception is the United States, where the regulation of employment relations has rather been strengthened in the 1990s through such legislation as the Americans with Disabilities Act of 1990 and the Family and Medical Leave Act. However, the basic legal principle underlying employment relations in the United States is the employment-at-will doctrine. In this sense, American labour law from the beginning had less regulation than its European counterparts. Even so, there has been so-called ‘effective’ deregulation in the United States, such as layoffs of white-collar workers and the increase in contingent workers. On the other hand, in Europe and Japan regulation has been strengthened in certain areas. This is especially true in the area of employment discrimination and workers’ privacy.

In this session, participants also discussed the deregulation in labour market law. Many European countries have experienced deregulation in this area. In recent years, for example, Sweden, Germany, and Italy have abolished the state monopoly regarding employment placement services and legalised private fee-charging employment placement businesses. Japan has taken a similar course: the scope of such private employment placement businesses has been broadened, and further expansion is around the corner. In Belgium, where regulation remains relatively strong, such business has become legalised with respect to persons with higher functions.

The regulation of temporary work services and worker dispatch services has also been relaxed. For example, the Netherlands recently abolished licensing systems for such businesses. This is also the case with the restriction on the use of fixed term employment contracts. Although the restriction has basically remained in many

European countries, some countries, such as Germany and Sweden, have allowed a wider range of exceptions for the use of such contracts.

## **B. Second Session: Deregulation of Individual Labour Relations Law**

The second session covered deregulation in the area of individual labour relations – e.g., working time. The flexibilisation of working time regulations has been carried out in many countries. The average working time scheme has been introduced or expanded in a number of European countries, as well as in Japan. The main purpose of such flexibilisation is to enable parties to labour relations to adjust working time arrangements according to business necessity without increasing overtime wages, while maintaining employment in slack seasons.

It must be noted that more often than not such flexibilisation is conditioned upon the conclusion of collective agreements. Furthermore, collective bargaining agreements or other types of agreements at the establishment level can function as a means of derogation from legal norms set by protective labour legislation. This is the case in such countries as France, Germany, Belgium, and Japan. Meanwhile, although the ban on night work by women has been lifted in European countries, this has been carried out in accordance with the EC Directive regarding equal treatment of men and women rather than the deregulation drive.

In Japan a discretionary working time scheme was introduced as another means of deregulation in terms of working time. Under this scheme, working time is determined according to the labour-management agreement at the establishment level or the resolution of the labour-management committee, without regard to actual time worked ('conclusive presumption'). This scheme is applied to certain non-exempt professionals and white-collar employees working at core management sections. In the same vein, the scope of exemption has been expanded in the United States. Outside the context of the working time regulation, such flexibilisation took place in the Netherlands when case law declared that employers might reserve the right to change working conditions unilaterally.

## **C. Third Session: Deregulation and Reforms of Collective Labour Relations Law**

In the third session, the issue of 'deregulation' included the decentralisation of collective bargaining, i.e., from centralised bargaining at the industrial or national level to company- or plant-level bargaining. Since collective bargaining has been carried out at the company or plant level in the United States and Japan, such decentralisation is discussed or carried out mainly in European countries. However, with respect to deregulation, it has been debated in the United States whether the National Labour Relations Act should be amended in order to legalise employee participation programs established by employers in non-union workplaces.

In addition to the change in the practice of collective bargaining, there have been changes in the legal framework regarding collective bargaining. In France, for example, a member of a works council or a worker chosen by a trade union

is allowed to negotiate collective bargaining agreements when there is no trade union representative in the enterprise, although there are certain conditions, such as recognition by an industry-level collective agreement.

#### **D. Fourth Session: Evaluation of Current Deregulation and Future Prospects of the Labour Law Concept**

The previous three sessions clarified that deregulation is a common tendency in most countries of the participants. Even in the United States, where regulatory statutes have been increasing, so-called 'effective' deregulation is in progress. Although there are differences from country to country with respect to the subject and measures of deregulation, flexibilisation in the regulation of the labour market and working time appears to be a major trend.

There are a number of factors that may have influenced this deregulation trend. In many countries, employers are facing global competition as well as structural changes in the economy. As a result, some regulations have become obstacles to the competitive edge; others have become outmoded in the face of new systems of business operations or new styles of working. Also, especially in European countries, deregulation has been regarded as one of the measures to combat unemployment, since flexibilisation of the labour market is expected to produce more employment opportunities.

With regard to the evaluation of 'deregulation', all the national reporters basically agreed that 'deregulation' in some areas must be accompanied by stricter regulation in other areas, such as employment discrimination. It should also be noted that deregulation is more often than not conditioned on certain safety valves, such as the involvement of trade unions. Thus, some reporters stated that as a whole labour law is in the process of 're-regulation' rather than simple deregulation. As a means of such 're-regulation', the flexibilisation of regulation generally received favourable comments. On the other hand, some concerns were expressed about the likelihood of a decrease in the role of trade unions, and others mentioned the necessity to re-examine the representational function of unions in light of the diversified workforce.

Since the basic framework of labour law remains intact in many respects, the discussion in the fourth session did not reach a firm conclusion of what the new concept of labour law should be in the 21st century. However, there was agreement that, while adapting to socio-economic changes, labour law would maintain its role as one of the most important instruments of social ordering.

#### **5. ACKNOWLEDGEMENTS**

Throughout the four-session seminar, all the reporters and other participants enjoyed stimulating and fruitful discussions. We firmly believe that the goal of this seminar was achieved and that all of us were able to gain insights into the future of labour law.

We would like to thank all the participants who actively took part in the discussions. Our sincere gratitude goes to the distinguished guests from abroad who submitted excellent national papers and made splendid contributions to the two-day seminar. We are also grateful to Professor Sugeno and Professor Suwa, who provided

invaluable suggestions for the seminar both in the preparatory stage and during the sessions.

Finally, special thanks go to Prof. Roger Blanpain who gave us excellent international exposure for the JIL Tokyo Seminar. Our deep gratitude also goes to Ms Lisa Engels Salas for her kind assistance in making this publication possible.

*July, 1999*

Ryuichi Yamakawa, Associate Professor of Law,  
Tsukuba University (Senior Research Fellow,  
The Japan Institute of Labour)

Takashi Araki, Associate Professor of Law,  
The University of Tokyo (Senior Research Fellow,  
The Japan Institute of Labour)

# Notes on Contributors

Ronnie Eklund, Professor, School of Law, Stockholm University

Chris Engels, Professor, Institute for Labour Relations, Katholieke Universiteit Leuven

Daniel H. Foote, Professor, School of Law, University of Washington

Detlev Joost, Professor, Seminar für Arbeitsrecht, Universität Hamburg

Marie-Ange Moreau, Professor, Institut de Droit des Affaires, Université Aix-Marseille III

Hideyuki Morito, Associate Professor, Faculty of Law, Seikei University

Michele Tiraboschi, Researcher of Labour Law, Dipartimento di Economia Aziendale Ufficio, University of Modena

Gustaaf Heerma van Voss, Professor, Faculteit der Rechtsgeleerdheid, afdeling Sociaal Recht, Rijksuniversiteit Leiden

# 1. Deregulation and Labour Law: The Belgian Case

*Chris Engels*

## 1. INTRODUCTION

The deregulation of Belgian labour law has been discussed in many seminars since the 1980s. It is still of interest to look at the Belgian experience, in as much as this much discussed phenomenon did not lead to an abolition of Belgian labour law all together. Quite often deregulation and re-regulation have gone hand in hand. This shows that deregulation is not considered an ideal in itself, but is a means to arrive at a more flexible system of labour law that allows employers to remain competitive in an increasingly competitive market.

The Belgian experience is also interesting because the deregulation and the flexibility that were introduced remained at all times 'controlled.' The new rules did not merely replace the old ones, they gave a decisive voice to those in closer contact with the industry and business than Parliament itself, namely the social partners.

While the Belgian experience in deregulation and flexibility goes back to the 1980s, there is still a lot to be done to reach a level of flexibility that will be indispensable in the global competitive market.

## 2. LABOUR MARKET REGULATIONS

### 2.1 Placement of Workers – Private Fee-Charging Agencies

#### a. *European background*

The European Court of Justice has addressed the issue of Placement of Employees and the state monopolies that often exist on two occasions.<sup>1</sup>

In the *Macroton* decision the Court challenged the monopoly of public employment offices in the activity of finding work for persons seeking employment.<sup>2</sup> The case concerned the exclusive right in Germany of the *Bundesanstalt für Arbeit* (Federal Employment Office – 'the BA'), on the basis of the *Arbeitsförderungsgezetz* (Law on the Promotion of Employment – 'the AGF'), to put people seeking work in contact with employers. Notwithstanding that exclusive right, a specialized

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1. R. Blanpain and C. Engels, *European Labor Law*, 5th ed., 1998, Kluwer Law International, The Hague, London, Boston, 240 e. s.

2. COJ, 23 April 1991, *K. Höfner and F. Elser v. Macroton GmbH*, no. C-41/9 ECR, 1991, 1979.

recruitment and placement business has developed for business executives. It is carried on by recruitment consultants to some extent tolerated by the BA. The fact remained that measures that contravened a legal prohibition were void under Article 134 of the German Civil Code and that, according to decisions of the German courts, that prohibition applied to recruitment activities carried on in breach of the AGF. In the case under review the recruitment consultants had presented a candidate to a client whom the client decided not to recruit, refusing as well to pay the consultants' fees since the contract with them was void. In the case which was ultimately submitted to the Court in Luxembourg, the Court was asked whether the provisions of the Treaty on the freedom to provide services precluded a legal provision prohibiting private recruitment consultants from finding placements for business executives, and whether the monopoly on the placement of executives tested in a public employment office constituted an abuse of a dominant position. The Court ruled as follows:

*'A public employment office engaged in the activity of finding work for persons seeking employment is subject to the prohibition in Article 86 of the Treaty, provided the application of that provision does not defeat the specific task entrusted to it. A Member State which has conferred an exclusive right to carry on that activity upon that public employment office is in breach of Article 90(1) of the Treaty where it creates a situation in which that office is obliged to infringe the terms of Article 86 of the Treaty. That is the case, in particular, where the following conditions are met:*

- *the exclusive right extends to finding employment for business executives;*
- *the public employment office is manifestly incapable of satisfying demand on the market for such activity;*
- *the actual pursuit of that activity by private personnel consultants is rendered impossible by the maintenance in force of a statutory provision prohibiting it, with the annulment of the corresponding contracts as a penalty for contravention;*
- *the activity in question may extend to nationals or to the territory of other Member States.'*

A second case<sup>3</sup> concerns the Italian Law of 23 October 1960, which prohibits acting as an intermediary in employment relationships, whether as an employment agency, or as an employment business. Failure to comply with the statute gives rise to penal sanctions.

The question that was asked is essentially whether the provisions of the Treaty preclude national legislation under which any activity as an intermediary between supply and demand in employment relationships is prohibited unless carried on by public employment agencies.

The Court decided in a landmark decision that:

1. Placement of employees is an economic activity, even if entrusted to public offices;
2. a body such as a public placement office may therefore be considered a business for the purposes of the Community competition rules;

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3. COJ, *Non-contentious proceedings brought by Job Center Coop. arb.*, Case no. 55/96, ECR, 1997, 7119.

3. public placement offices remain subject to competition rules unless, and to the extent to which it is shown that their application is incompatible with the discharge of their duties;
4. before the application of Article 86 of the Treaty can obstruct the performance of a particular task assigned to placement offices, it must be determined that they are manifestly unable to satisfy demand in that area of the market;
5. pursuant to Article 86(b) of the Treaty, such abuse may in particular consist in limiting the provision of a service, to the prejudice of those seeking to avail themselves of it;
6. as the Commission has rightly pointed out, the provision of services relating to the placement of employees is both a very extensive and extremely diverse market. Supply and demand within that market cover all sectors of production and relate to a range of jobs requiring anything from unskilled labour to the scarcest and most specialised professional qualifications;
7. in such an extensive and varied market, subject moreover to enormous changes as a result of economic and social developments, public placement offices may well be unable to satisfy a significant portion of requests for services;
8. by prohibiting, on pain of penal and administrative sanctions, any activity as an intermediary between supply and demand on the employment market unless carried on by public placement offices, a Member State creates a situation in which the provision of a service is limited, contrary to Article 86(b) of the Treaty, if those offices are manifestly unable to satisfy demand on the employment market for all types of activity;
9. a potential effect of abusive conduct on trade between Member States is sufficient and arises in particular where the placement of employees by private companies may extend to the nationals or to the territory of other Member States.<sup>4</sup>

In many countries placement of workers was still by and large a monopoly of the Public Employment Offices who, as practice showed, were manifestly unable to satisfy demand. It is clear that this situation is both illegal and obsolete.

First of all, the monopoly of the Public Employment Office is contrary to the letter and the spirit of Convention No. 181 of the ILO (1997) and to European competition law. It is evident that the Official Employment Offices can no longer *de facto* satisfy the demand in the market for all types of activity. The national Public Employment Offices cannot cope with the diversity of the modern labour markets at European level.

In conclusion one can say that:

1. the monopoly of the Public Employment Offices has to be abolished;
2. enterprises must be able to propose a total package of services on the labour market, vocational training included;
3. the scope of possibilities to put workers at the disposal of users/enterprises must be widened.<sup>5</sup>

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4. For a discussion on the impact of the last European Court case: E. Traversa, The Role played by the Court of Justice of the European Community in opening up the market for private employment agencies, in *Private Employment Agencies: The impact of ILO convention 181 (1997) and the judgment of the European Court of Justice of 11 December 1997*, *Bulletin of Comparative Labor Relations*, Kluwer Law International, forthcoming.

5. R. Blanpain and C. Engels, *European Labor Law*, 5th ed., 1998, Kluwer Law International, The Hague, London, Boston, 242 e.s.

*b. The Belgian situation*

*1. The Royal Decree of 28 October 1975<sup>6</sup>*

The activity of paid private placement of employees is prohibited.<sup>7</sup> The placement of employees is defined as the activity of any physical or legal person acting as an intermediary in order to provide an individual with a job.<sup>8</sup>

An exception to the prohibition of fee-charging placement is made for the placement of artists.<sup>9</sup> This nationally established principle is further refined for the Flemish region.<sup>10</sup>

*2. Flemish Decree of 19 April 1995<sup>11</sup>*

The constitutional reforms of 1980 transferred the competence to deal with matters such as employment placement from the federal government to the regions. A Flemish Decree of 19 April 1995, presently regulates the matter. The 1975 Royal Decree ceased to be applicable to Flanders as of 1 December 1997.<sup>12</sup>

The placement activity is defined as ‘the activity where a go-between tries to match between supply and demand on the labour market and provide an employee with a job against the payment of a fee or a retribution or with the aim of obtaining a material advantage.’

While the 1995 Decree still contains a blanket prohibition on fee-charging placement, it nevertheless allows the government to permit such private placement in case the Public Employment Office is clearly unable to adequately match supply and demand on the labour market in a satisfactory way.<sup>13</sup>

A special license will need to be obtained from the government. Stringent conditions need to be satisfied before such a license will be granted. Sanctions, including criminal sanctions such as imprisonment, are established for those violating the applicable regulations.

*3. Flemish Decree of 21 October 1997*

A decree of 21 October 1997 makes private placement for a fee possible for ‘persons with a higher function.’ The decree itself defines what it understands to be a higher function, referring to the person’s prospective annual income. At the time

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6. Royal Decree, 28 November 1975, concerning the running of Fee-charging Offices of Placement, *Official Gazette*, 22 January 1976.
  7. Art. 2, Royal Decree, 28 November 1975, concerning the running of Fee-charging Offices of Placement, *Official Gazette*, 22 January 1976.
  8. Art. 1, Royal Decree, 28 November 1975, concerning the running of Fee-charging Offices of Placement, *Official Gazette*, 22 January 1976.
  9. Art. 3, Royal Decree, 28 November 1975, concerning the running of Fee-charging Offices of Placement, *Official Gazette*, 22 January 1976.
  10. Decision of the Flemish government in furtherance of the Decree of 19 April 1995 regarding the Fee-charging Placement within the Flemish region in relation to artists, *Official Gazette*, 26 November 1997.
  11. Flemish Decree, regarding the Fee-charging Placement within the Flemish region, 19 April 1995, *Official Gazette*, 26 July 1995.
  12. Decision of the Flemish government in furtherance of Article 31 of the Decree of 19 April 1995 regarding the Fee-charging Placement within the Flemish region, *Official Gazette*, 26 November 1997.
  13. Art. 4, Flemish Decree, regarding the Fee-charging Placement within the Flemish region, 19 April 1995, *Official Gazette*, 26 July 1995.

the decree was passed the income level that was referred to was 1.2 million BEF. This amount will be adjusted to inflation on an annual basis starting from 1 January 1999.<sup>14</sup>

The definition of the term 'higher function' refers to notions that are used in the legislation dealing with the election of the members of works councils. The definition refers to the concepts of *cadre* and of *leading personnel* that are both developed within the context of works councils. Leading personnel are those white-collar workers who are charged with the daily management of the operation or the persons immediately below them in rank but still involved in the daily management of the operation. Cadre or white-collar workers are employees who perform functions in the enterprise that are normally reserved to a holder of a degree of a given level or to someone with equivalent job experience.<sup>15</sup>

These definitions have been the subject of heated discussion in many companies where elections for employee representative bodies had to be organised. Ample case law also exists on the subject.<sup>16</sup> The actual definition of higher personnel in the Flemish Decree refers to:

'persons who perform a higher function in the enterprise which is usually reserved to the holder of a certificate of a given level or to someone with equivalent job experience or persons who are charged with the daily management of the undertaking and who are empowered to represent the employer and to engage him legally, as well as the employees who are immediately subordinate to them when they equally perform tasks of daily management.'<sup>17</sup>

Blue-collar workers who perform mainly manual work are excluded from the scope of the decree. For them employment placement for a fee remains illegal.

The prospective minimum income of 1.2 million BEF referred to is not very high. Most higher level white-collar workers will earn this kind of money on an annual basis. Taking into account that monthly salaries in most sectors of industry are paid 13.89 times a year, the employee has to earn around 86,000 BEF per month (all benefits included). This corresponds to  $6 \pm 2400$  US dollars (rate of 36 BEF/\$).

Offices that want to engage in fee-charging employment placement have to be recognised by the Flemish region.<sup>18</sup> The Flemish Decree even *regulates the fees* that the placement agency can charge. The level of the fees has to be the subject of a written agreement between the employer that wants to make use of the placement

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14. Decision of the Flemish government in furtherance of the Decree of 19 April 1995 Regarding the Fee-charging Placement within the Flemish region in relation to persons with a higher function, *Official Gazette*, 26 November 1997.
  15. See: R. Blanpain and C. Engels, in 'Belgium', in: *International Encyclopaedia for Labor Law and Industrial Relations*, R. Blanpain (ed.) Kluwer Law International, s.d., no. 25, p. 33.
  16. See: C. Engels, 'Het begrip werknemer' (The Notion of Worker) in *Sociale Verkiezingen 1995* (Social Elections 1995), C. Engels, R. Parijs and M. Stroobant (eds.) Leuven, Peeters, 54 e.s.
  17. Art. 1, 7, Decision of the Flemish government in furtherance of Article 31 of the Decree of 19 April 1995 Regarding the Fee-charging Placement within the Flemish region in relation to persons with a higher function, *Official Gazette*, 26 November 1995.
  18. Art. 3 e.s., Decision of the Flemish government in furtherance of Article 31 of the Decree of 19 April 1995 Regarding the Fee-charging Placement within the Flemish region in relation to persons with a higher function, *Official Gazette*, 26 November 1995.

services and the office providing such services. The decree provides for three possibilities:

- a. a percentage of the annual income of the candidate;
- b. a lump sum amount; or
- c. an hourly rate.

The commission, however defined, needs to be within the following range: not less than 18% and not more than 55% of the gross annual income of the candidate.<sup>19</sup> The reimbursement of costs incurred by the placement agency is not included in this amount.

Records have to be kept about every job placement that the agency performs and an annual report needs to be filed with the Ministry of Employment. An exchange of information with the official employment office needs to be established.

An office that engages in placement activities for fees is neither allowed to engage in the activity of *search and selection*,<sup>20</sup> nor in the activity of *outplacement*.<sup>21</sup>

## 2.2 Temporary Worker Services

Temporary work in Belgium is regulated by the Act of 24 July 1987,<sup>22</sup> adopted by almost unanimous vote in Parliament, indicating that a wide consensus has been reached on a topic which for a long time was a subject of heated debate. Temporary work has thus been consolidated and has acquired a limited but definite place in our labour law system. On the average temporary work firms employed 52,000 workers in 1997 and 44,000 in 1996.<sup>23</sup>

The 1987 Act confirmed options that were already part of the provisional 1976 Act on temporary work and the consecutive collective agreement No. 36 of 1981 concluded in the National Labour Council. One of the compromises that led to the unanimous agreement allowed not only that temporary workers could be employed by private enterprises but that the State Employment Agency could act as an employer of temporary workers as well.

Lines of force are:

### 1. *The social protection of the temporary worker*

The temporary worker is regarded as an employee, enjoying the full protection of labour law and social security law. He/she is categorised as a white-collar or blue-collar worker in accordance with the manual or intellectual nature of his work. His/her employer is the temporary work firm.

19. Art. 8, Decision of the Flemish government in furtherance of Article 31 of the Decree of 19 April 1995 Regarding the Fee-charging Placement within the Flemish region in relation to persons with a higher function, *Official Gazette*, 26 November 1995.

20. Collective Bargaining Agreement no. 38 concerning Search and Selection of Employees, rendered generally binding by Royal Decree of 11 July 1984, *Official Gazette*, in July 1984, thereafter amended by Collective Bargaining Agreement no. 38 bis of 29 October 1991 and Collective Bargaining no. 38 ter of 17 July 1998.

21. Collective Bargaining Agreement no. 51, concerning Outplacement, 10 February 1992, rendered generally binding by Royal Decree of 10 April 1992, *Official Gazette*, 1 May 1992.

22. Act of 24 July 1987 on Temporary Labour, Interim Labour and the Putting at Disposal of Workers to Users, *Official Gazette*, 20 August 1997, hereafter often amended, [hereafter referred to as Act on Temporary Employment].

23. X, Universele Formule, Europa in Deban, *VBO Bulletin*, 1998, 92.