

The Organisation and Regulation of the Public Employment Service and of Private Employment and Temporary Work Agencies

**The Experience of Selected European Countries –
the Netherlands, Denmark, Germany and the United
Kingdom**

Policy Research Report

Prepared for the Korea Labour Institute

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Abbreviations

General

| | |
|---------|--|
| ALMPs | Active Labour Market Programs |
| CV | Curriculum Vitae (résumé) |
| CIETT | International Confederation of Private Employment Agencies |
| EC | European Commission |
| EU | European Union |
| ICT | Information and Communications Technologies |
| ILO | International Labour Office |
| OECD | Organisation for Economic Cooperation and Development |
| PbR | Payment by Results |
| PES | Public Employment Service |
| PE&TWAs | Private Employment and Temporary Work Agencies |
| TWA | Temporary Work Agency |
| UB | Unemployment Benefit |
| UI | Unemployment Insurance |

Germany

| | |
|-----|---|
| BA | German Public Employment Service |
| BAP | Employers' Association of Personnel Service Providers |
| DGB | German Confederation of Trade Unions |
| PSA | Personnel Service Agencies |
| IGZ | German Association of Temporary Employment Agencies |

Denmark

| | |
|----|--------------------------------------|
| LO | Danish Confederation of Trade Unions |
| DA | Confederation of Danish Employers |

United Kingdom

| | |
|------|--|
| CPA | Contract Package Area (Work Program) |
| DBIS | Department for Business, Innovation and Skills |
| DWP | Department of Work and Pensions |
| EASI | Employment Agency Standards Inspectorate |
| ESA | Employment Support Allowance |
| GLA | Gangmasters Licensing Authority |
| JCP | Jobcentre Plus |
| JSA | Jobseekers Allowance |
| REC | Recruitment and Employment Confederation |
| WP | Work Program |

Netherlands

| | |
|-----|---|
| ABU | Federation of Private Employment Agencies |
| CWI | Centre for Work and Income |
| IRO | Individual Reintegration Contract |

| | |
|-------|---|
| NBBU | Association of Temporary Work and Placement Agencies |
| SFU | Social Fund for the TWA Sector |
| SNA | Foundation for Labour Standards |
| SNCU | Compliance with the Collective Labour Agreement for the TWA Foundation |
| SUWI | Implementation Structure for Work and Income Act |
| SZW | Ministry of Social Affairs and Employment |
| UWV | Employee Insurance Implementation Agency |
| WAADI | Labour Market Intermediaries Act |

Introduction – About This Report

This study reviews changes in the organisation and regulation of public and private employment services in four selected European countries. It was commissioned by the Director General of the Korea Labour Institute (KLI) and the findings have been used to inform a major Korean-language report on *'Change in the Employment Service in Korea: Past, Present and the Future'* published in March 2016.¹

The KLI and the Learning and Work Institute recognised that the research could be of value to policy makers and researchers in other countries and have given permission for this revised English-language publication of the full findings from the four selected case study countries.

The Case Study Countries

The countries selected for in-depth review by the KLI were the Netherlands, Denmark, Germany and the United Kingdom (UK). Each of the countries was purposely identified as offering aspects of policy and practice considered to be relevant to policy development in Korea. In particular each country has been at the forefront of activation reforms involving organisational change in the Public Employment Service (PES) including new inter-institutional arrangements between the national PES, employment agencies and lower tiers of regional and local government. They have also each introduced major reforms in labour market flexibility which has coincided with a growing role for Private Employment and Temporary Work Agencies (PE&TWAs).

The report gives an initial overview of developments in activation policies and the role of the PES and of the wider international and European regulatory framework that helps shape national employment service policies. Each of the four case study chapters subsequently addresses three particular aspects of institutional and service delivery arrangements:

- The role of the PES and of different levels of government in designing and delivering publicly funded employment services for the unemployed and other working age welfare claimants.
- Quasi-market arrangements for the contracting out, procurement and performance management of publicly funded employment services.
- Partnership and regulatory arrangements concerning the operation of PE&TWAs in labour market intermediation, including a brief outline of the employment rights of agency workers.

A final concluding chapter synthesises significant policy and design 'lessons' from the case study countries on PES decentralisation, procurement, contract design, and partnerships with contracted providers and on the regulation of PE&TWAs.

¹ The Korean language report can be found at - <https://www.kli.re.kr/kli/rsrchReprtView.do?key=13&pblctListNo=8654&schRsrchRealmNo=1&schPblcDe=&mainPageUnit=10&searchCnd=all&searchKwrd=&mainPageIndex=1>

Research Design and Methods

The research involved a rapid evidence and literature review. The review focused on quantitative and qualitative English-language studies and reports published since 2010. This included the existing literature on activation policies and the design and delivery of employment services already held by the commissioned expert supplemented by findings from a targeted review of published and 'grey' literature. This involved a search of peer-reviewed articles, with a particular focus on journals in labour economics and social and public policy and administration, combined with searches of more specialised databases, including those of the European Commission, the OECD, IZA (Institute for the Study of Labour, Bonn) and the Flex Work Research Centre (University of Amsterdam).

The literature review was supplemented with ten phone interviews with expert subject matter researchers and PES/Ministry officials from the selected European countries. The individual respondents were each questioned about recent policy trends and developments and helped identify reports and research literature that might otherwise have been omitted.

Chapter 1: The Role of the Public Employment Service and Private Employment and Temporary Work Agencies in Europe

In the past two decades labour markets in European Union (EU) countries have experienced rapid change. Developments in employment practices, innovations in technologies and in the composition and distribution of jobs have transformed how people get jobs and how employers recruit and employ their workforces. In particular, the growing diffusion and combination of information and communications technologies (ICT) is reconfiguring the ways in which job seekers learn about, apply for and prepare for careers and employment opportunities as well as transforming the ways in which employment services and welfare benefits are delivered and managed.

In response to these changes, and to the higher costs of their unemployment compensation and 'safety-net' social assistance systems, many Governments in Europe have embarked on more or less radical reforms creating more flexible labour markets and more active work-based welfare systems. Activation policies include a diverse range of interventions and programmes aimed at improving the functioning of the labour market, notably by upgrading job search and skills and by matching the unemployed and other disadvantaged groups to vacancies. The shared aim of these policies has been to improve labour supply and by enhancing the employability of the unemployed and other inactive people assist countries in meeting the challenges posed by globalisation, falling birth rates and ageing populations.

In European countries activation policies have typically been implemented through reconfigured service and benefit delivery systems which have included reforms to the PES and to other agencies with responsibilities for benefit claimants, especially local government. These institutional and organisational reforms have been of considerable importance in shaping the impact of activation policies (OECD, 2013b; 2015).

In each European country responsibility for publicly financed employment services, benefit administration, training programmes and related welfare to work services is often divided between different ministries, institutions and delivery agencies. One objective of reforms has been to reduce institutional fragmentation and draw together delivery agencies so that they co-operate and work to common objectives. In many countries this has included a trend to greater decentralisation which has often created new inter-institutional arrangements between different tiers of government and public agencies. In several countries, such reforms have included the development of 'one stop', 'single counter' or 'single gateways' which have facilitated access to and coordination between related employment, benefit and other social services. These changes often aim to reduce duplication of intake processes, facilitate information-sharing, target interventions to suit individual needs and local circumstances, and co-ordinate service delivery.

The PES continues to play a central role in the delivery of activation policies. There is much variation in how the PES is organised but in each country it typically

provides a free job matching service for job seekers and employers, usually supplemented by a variety of Active Labour Market Programmes (ALMPs), with enhanced advisory services targeted at people who have greater difficulty in making the transition into employment. The PES may directly provide employment assistance services or subcontract them to non-profit and for-profit providers. PES reforms have often included a diminished formal role for the social partners in governance arrangements coupled with the introduction of greater accountability and more rigorous forms of performance management. In many countries there has also been greater partnership working between the PES and PE&TWAs. In some countries this has involved the creation of quasi-markets in the delivery of employment services, where national ministries and other tiers of government have made use of contracting out or outsourcing, to procure publicly financed labour market programmes.

1.1 The Role of Private Employment and Temporary Work Agencies

In most European countries job matching, placement and intermediation services were traditionally public sector monopolies and where PE&TWAs operated they were often strictly regulated. Over the last few decades there has, however, been more or less liberalisation of the rules governing PE&TWAs with some countries, such as the UK, allowing private providers to operate freely with stricter regulation targeted only at particular sectors (such as agriculture). Other countries maintain a comparatively stricter regulatory regime, but allow employers, agencies and trade unions to develop more flexible approaches within collective labour agreements, as in Denmark, the Netherlands and Germany (DGIP, 2013).

Liberalisation of PE&TWAs has been associated with a marked growth in the number of agencies and in the scope of their activities, especially in Europe, where annual growth rates in the three years before the recession exceeded 8% (DGIP, 2013, p.10).² The sector has again experienced growth following the recovery. An important contributory factor to the growth of the agency market concerns EU enlargement where the PES and private labour market intermediaries play a key role in facilitating increased labour migration.

In 2013 for example CIETT, the international federation of PE&TWAs, reported that in Europe the number of private agencies known to be operating had reached 54,297, with some 56,803 branch offices, and they were employing 270,112 internal staff directly delivering recruitment and employment services (2015, p.14). CIETT estimated also that in 2013 over 8.7 million people had gained access to the labour market in Europe in '*one way or another*' through the employment and recruitment industry.

Table 1 shows that about half the agencies in Europe were operating in the selected case study countries, with most being found in the UK, Germany, and the Netherlands. In each country the sector is typically comprised of a number of large,

² A review for the European Commission concluded that while temporary agency work "is quantitatively important and rapidly growing" because of variations in definitions and data collection practices there is "a lack of basic, reliable and comparable data" on agency work, and that "empirical data on the role of private placement agencies is scarce" (DGIP, 2013, p. 15). The data used in this report draws on statistical findings that were gathered as part of this European review.

highly professional multinational or national agencies and a network of many smaller and specialised companies, many of which operate in poorly paid sectors of national labour markets (WMP, 2013). The estimated number of agencies reported by national federations to CIETT includes those delivering a wide range of recruitment, placement and payroll services, albeit temporary agency work still makes up the largest source of agency revenue (CIETT, 2015).

Table 1: Private Employment Agencies in the Case Study Countries

| | Number of agencies (2013)* | Number of agency staff (2013)* | Number of temporary workers in 1,000 (2011)+ | In % of total employment (2011)+ |
|-------------|----------------------------|--------------------------------|--|----------------------------------|
| Germany | 6,500 | 55,000 | 857.9 | 2.2 |
| Denmark | 807 | 1136 | 29.5 | 1.1 |
| Netherlands | 1,500 | 20,000 | 208.7 | 2.5 |
| UK | 18,180 | 96,357 | 114.2 | 0.4 |
| EU 27 | 54,297 | 270,112 | 2,903.1 | 1.4 |

Sources: * CIETT, 2015, p. 15, and + DGIP, 2013, Table 3.

In European countries the PE&TWA sector now often delivers three broad types of services, with larger private agencies often active in all three markets:

- **Private Employment Agencies:** These agencies typically provide more or less specialised privately financed job broking or intermediation services helping employers and workers to find and fill vacancies either within national labour markets but also often across national borders. Some countries have more or less rigorous registration and licensing systems for agencies delivering job matching and related placement services, others have no specific requirements other than requirements that apply to all commercial organisations. There is little comparative data available on private placement agencies but their national prevalence can be gauged by the proportion of workers who contact an agency in their regular job search activities. Findings from the European Labour Force Survey show that in 2011 private agencies were used most frequently in the Netherlands, where 42% of the unemployed used one; 25% in the UK; 15% in Germany; falling to only 2% of Danish job seekers (DGIP, 2013).
- **Temporary Work Agencies (TWAs):** These agencies provide workers for employers on a temporary basis. Typically the ‘user company’ has a contract with and pays fees to the agency and the worker is not their employee. The ‘temp’ worker is often employed by the temporary agency and paid agreed remuneration only for the work undertaken. In other cases TWA workers are employed by the agency on an open-ended contract and often, within this contractual relationship, are paid between fixed term assignments, although sometimes at a low level of remuneration (as happens in some collective labour agreements in Germany and Denmark: OECD, 2013a, p. 89). TWA agencies are typically subject to greater national regulation and licensing

requirements than recruitment agencies and, in Europe, are subject to pan-European EU regulation concerning the terms and conditions of temporary workers (see later).

- **Private Employment Service Providers:** Many European countries have a long tradition of delivering labour market programmes through grants or contracts with non-profit organisations. In a growing number of these countries quasi-market reforms have seen an increase in the range of employment services and programmes put out to the market. This has included also a transition to more transparent and competitive tendering processes and the development of performance based contracts. These developments have led to an increase in the delivery of publicly financed employment services both by large and small for-profit agencies.³ These companies tend to be regulated under the terms and conditions of the contacts they are commissioned to deliver alongside conventional regulations applying to private companies.

National regulatory regimes have been shaped in part by international standards set by the International Labour Office (ILO)⁴ and the EU (ELCJ, 2013). ILO standards are optional and have to be ratified by individual countries whereas for EU member states Directives are legally binding. The case study countries have a varied pattern of ratifying ILO Directives but they must all implement EU Directives, especially concerning the employment rights of TWA workers.

An important complement to legal regulation has concerned the role of self-regulation where PE&TWAs have organised as a sector in voluntary national bodies to both promote their interests and establish and benchmark responsible employment practices. The coverage of each national body varies but each of the four case study countries has a national organisation which is a member of Eurociett, the pan-European federation for the sector. As members of Eurociett all the national bodies are bound by the federation's constitution and each has a national code of conduct for their member organisations, which adheres to the Eurociett code of conduct. This code of conduct elaborates principles of best practice, many of them reinforcing European employment regulations, and also commits member organisations to promote cooperation between the PES and agencies in order to help unemployed people to reintegrate in the labour market (see Annex A).

³ For-profit agencies delivering reintegration services include mainstream private employment agencies, such as Manpower, Randstad, Staffline and Adecco, alongside a range of other companies that specialise in subcontracting to deliver employment and other 'welfare to work' services. This includes companies now operating in several countries, such as Working Links from the UK, Maximus from the USA, and Ingeus from Australia, (but now owned by the US 'Providence Service Corporation').

⁴ The ILO is a United Nations agency which helps set international labour standards. The ILO traditionally discouraged the activities of fee-charging private agencies but in recognition of the increased role they were playing in some member states a new approach was signalled in the 1997 Private Employment Agencies Convention (No. 181). This convention promotes cooperation between the PES and PE&TWAs and outlines principles designed to assist member states to establish policies, legislation and implementing mechanisms for the effective registration and licensing of agencies. A key objective of the principles is to protect agency workers from exploitation.

There are contending views about the value of PE&TWAs, their role in labour market flexibility and the types of licensing requirements and regulation they should be subject to (CIETT, 2015; DGIP, 2013; van Liemt, 2013; WMP, 2012; Arrowsmith, 2008). Much of the debate concerns the association of agencies with labour market deregulation and with what are regarded, by trade unions and others, as exploitative non-standard employment contracts.

1.2 Private Employment and Temporary Work Agencies, Labour Market Deregulation and Non-standard Employment Contracts

PE&TWAs provide essential services for employers and for many job seekers. Agency job matching services enable employers to find suitable staff and fill vacancies and are most frequently found operating in higher skilled employment, skill and labour shortage sectors, and in the recruitment of migrant workers. Contracting with TWAs enables user companies to make relatively easy labour adjustments and meet short term personnel needs (for example, to manage vacations, illnesses, and pregnancy leaves, as well as fluctuations in demand). It also enables employers to save money in transaction costs by outsourcing elements of responsibility for recruitment and administration. In many countries private agencies now also play a significant role in delivering reemployment services offered by larger companies when laying-off workers and there has been increased public sector interest in the role PE&TWAs can play in the reintegration of the unemployed.

Labour market deregulation has been a key factor facilitating the growth of PE&TWAs but it has also made their activities more or less controversial. In each of the case study countries long term trends have been driving the increase in agency work alongside other non-standard employment arrangements. Large employers in particular have increasingly adopted non-traditional employment arrangements such as outsourcing, temporary or contingent work, off-shoring and subcontracting. Across a wide range of industries, including the public sector, employers have been focusing on their 'core competencies' and hiring outside companies to provide services which were once performed by their own employees, such as cleaning, security, logistics, human resources, or IT services (Goldschmidt and Schmieder, 2015). These trends have been particularly strong in sectors such as construction. This sector has been characterised by the emergence of very large international companies, pervasive subcontracting, and the pressure for cost reduction by those bidding for major construction projects has helped drive the use of self employed and agency workers. At the same time labour demand has increased across service sector industries, such as hotels and catering, health care and domestic work, which employers have often met through flexible and agency workers. Many TWAs specialise in meeting the labour needs of these sectors and those of the subcontractors employed through supply chains.

In many countries perceptions of the role of PE&TWAs has been mired in wider controversies about non-standard employment and the emergence of exploitative employment practices on the fringes of the entirely unregulated 'shadow economy'. Many agencies, especially the larger ones, tend to operate in a transparent fashion and take care to operate in a legal and ethical manner (CIETT, 2015). However, according to a review undertaken for the ILO, other PE&TWAs '*operate in grey areas of what is acceptable or even legal behaviour*' and some agencies simply "*cheat*

their employees and break the law' (van Liemt, 2013, p. 9).⁵ Poor perceptions of the sector are driven also by the association of some agencies with what are perceived to be exploitative, employment contracts, such as 'bogus' self-employment (Thörnqvist, 2014)⁶ and the 'zero-hour' contracts that have caused much controversy in the UK (see Figure 1).

At its most extreme some agencies have been associated with 'severe labour exploitation'. A comparative review in Europe found that such illegal practices, amounting to forced labour, especially of migrant workers, were more likely in contexts where workers are not directly employed by the enterprise for which they work. It concluded that law enforcement and employment monitoring authorities needed to pay 'particular attention' to 'the activities of employment agencies' in sectors where such practices were more likely to occur (FRA, 2015, p.18).⁷

These developments have been connected with debates throughout Europe about changed employment rights and rising pay inequality (van Liemt, 2013; WMP, 2012). This has reinforced demands by trade unions and some political parties for the re-regulation of employment practices which may be less costly for employers but give non-standard workers poorer conditions than those of more permanent full time workers. This has helped frame the debate about the regulation of PE&TWAs and to some extent masked the positive economic contribution that many agencies may play in labour market intermediation (CIETT, 2015).

Figure 1: Zero-hours Contracts

Zero-hours working shares characteristics with much casual employment but under these arrangements the worker typically signs an employment contract agreeing to be available for work as and when required but under which the employer has no obligation to provide any work for the employee. The worker is expected to be on call and receives compensation only for hours worked (Pyper and Dar, 2015).

A survey into new forms of employment in Europe found that the use of this kind of contract has increased over the past ten years in Member States such as Ireland, Italy, the Netherlands, Sweden and the UK (Eurofound, 2015). These types of contracts are commonly used in retail, fast food restaurants and cinemas, and other sectors that experience fluctuations in demand, such as care work, agriculture, hotels and catering, education and healthcare sectors. Low-skilled workers in low-paid jobs are the most likely to be offered zero-hours contracts.

⁵ Studies cite cases where individual agencies have been found to 'violate health and safety procedures, falsify wage slips, fail to pay taxes and social security premiums, deduct excessive amounts for payment of housing and transport to work' (van Liemt, 2013).

⁶ 'Bogus' self-employment concerns contractual relationships that disguise employer (and worker) liabilities that would otherwise be implied in a standard contract in order to circumvent collective agreements, labour laws, employment tax and so on. It is an important factor that has driven the rising share of independent contractors in many countries who depend on a single employer for their income but are legally 'self employed' and whose relationship with the employer is solely regulated by commercial law (OECD, 2013a, p. 92).

⁷ The review was undertaken by the European Union Agency for Fundamental Rights and found evidence that illegal 'severe labour exploitation' was taking place in a number of industries across Europe, particularly in agriculture, construction, hotel and catering, and domestic work (FRA, 2015).

There is no regulation of zero-hours contracts at European level, and their implementation varies between Member States. In the UK, for example, a zero-hours contract is not a legal term and has no specific legal status. Thus its conditions vary from employer to employer. Zero-hours contracts are controversial and there have been calls from UK trade unions and employee representative bodies for more regulation. The discussions focus on issues such as:

- the acceptability of exclusivity clauses;
- workers' access to unemployment benefits;
- whether unemployed people should be obliged to accept the offer of a zero-hours contract;
- whether to financially compensate workers for their additional flexibility;
- payment for travel time and expenses for short assignments (or for turning up to work as requested, and the shift then being cancelled).

In 2015 the UK government introduced new regulations that prevent employers from enforcing 'exclusivity clauses' – whereby an employer can stop workers from working for other employers – in a zero-hours contract.

Source: Eurofound, 2015, at <http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/zero-hours-contracts>

1.3 The European Union Context – Labour Market Regulation, Public Procurement and Employment Policy

Each case study country is a long-standing member of the EU. This is of greater significance than their voluntary relationship with the ILO because the regulatory institutions of the EU have powers which help shape individual employment contracts, public procurement and the employment policies of individual member states. These powers derive from binding treaties which set the framework for a single European market in trade and the movement of goods, capital and labour.

1.3.1 EU Labour Market Regulation and Temporary Work Agencies

The EU has powers through which it seeks to both regulate and harmonise minimum employment conditions and labour market practices in member states and support the right of individuals to move freely and take employment in other European countries. National governments, for example, are required to work together to coordinate social security schemes across the EU so that workers continue to receive their social insurance benefits when they change jobs and work in different EU countries.

The aim of common European employment standards has been to prevent 'unfair competition' between member states in the context of a single market. EU Directives are intended to prevent a 'race to the bottom' where each country might deregulate to attract business thereby undermining the living standards of European workers. There are contending views on the effectiveness of such regulation, and of its economic impact, but the EU now has transnational Directives designed to limit working hours, tackle workplace discrimination, make working conditions safer, and so on.

Member states retain significant control of labour market regulation and there is considerable variation in how they interpret and implement European laws. Nevertheless EU employment rights can and, in many cases, have been enforced through judicial action against government interpretations in European courts.

Many of the employment rights established by the EU affect the regulation of more flexible types of working, often referred to as 'atypical' working contracts.⁸ The core principle of many of the Directives is to define a general framework applicable to the working conditions of non-standard workers in the EU. This aims to guarantee a minimum level of effective protection to workers but allow for the development of more flexible contractual arrangements between employers and workers.

Under the 'Directive on Temporary Agency Work' (2008)⁹ the application of this principle means that 'temp' workers have the right not to be treated less favourably in their other terms and conditions of employment than comparable full time permanent staff. Amongst other provisions the Directive mandates that temporary workers:

- should, for the duration of the assignment at the user company, enjoy employment and working conditions equal to those of a worker employed directly by that company in the same position;
- should have equal access to amenities and collective services at work; and
- should not be charged any recruitment fees.

The user company should also keep temporary workers informed of any permanent vacancies and Member States must ensure that any clauses preventing the conclusion of a contract of employment or an employment relationship between the user undertaking and the temporary worker are null and void or may be declared null and void.

The Directive allows much flexibility, however, for variations in interpretation concerning, for example, the exact definition of 'basic working and employment conditions' and individual countries can take advantage of particular exemptions. A significant flexibility is known as the 'Swedish derogation'¹⁰ where it is possible for TWAs to directly employ their temp workers and pay them between assignments. These workers give up their entitlement to equal pay with regular workers at the user company but there is no standard set for the minimum amount of hours for which they should be paid (DGIP, 2013, p.11). Derogations also allow Member States to give agencies the option of concluding agreements with trade unions and employers (as in Denmark, Germany and the Netherlands) that set arrangements which differ from equal treatment, while still respecting the overall protection of agency workers (Voss et al, 2013). The Directive does not apply to self-employed workers and this

⁸ There is no common definition of an atypical worker, but generally the term is used to describe someone who does not work on a permanent basis and covers temporary workers, contract workers, agency workers, seasonal workers, term time workers, casual workers, sessional workers and so on.

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0104&from=EN>

¹⁰ This derogation was introduced at the request of the Swedish government and Article 5(2) of the Directive states: "As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 [principle of equal treatment] where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments".

has given rise to controversy concerning the role of ‘bogus’ self-employment and of new types of agency working arrangements, such as ‘umbrella companies’ (especially in the Netherlands and the UK).¹¹

A further European employment right, given by the ‘Transfers of Undertakings Directive’ (2001), has implications for contracting out, including of public services such as the delivery of employment programmes.¹² The law is complex, and there are national variations, but when the Directive applies it protects the contracts of people working in businesses transferred between owners, so that they carry with them their terms of employment and continuous service from the previous employer. The law is designed to protect incumbent workers and prevent potential bidders from winning contracts on low tenders based on lower rates of pay, longer hours of work or redundancies.

1.3.2 The EU and Public Procurement by Member States

The creation of the European single market has intensified pan-European competition in a wide range of national industries. The legislation underpins more open markets through a framework of rules designed to promote transparency and fairness by removing formal and informal barriers to intra-EU trade and creating equal opportunities for firms to submit offers and win contracts. The objectives of single market reform have included also the creation of a common market in services and the opening up of many sectors previously delivered by public sector monopolies. There are exemptions that allow member states to restrict competition in the provision of some public and social services.

EU treaties and public procurement law are complex and often controversial, with much variation in national interpretation and implementation (Morton, 2012). It is important to note, however, that the EU public procurement framework sets the context in which national governments, especially in the four case study countries, have introduced greater competition in the procurement of publicly funded employment services. In each country national and municipal public authorities are subject to a dual set of European and national regulations in deciding when and how to use procurement and contracting to provide employment services. These requirements are more important in countries, such as the UK, where the national Ministry has contracted out high-value employment services, as in the UK Work Programme.

European law allows public authorities to make use of a number of different procedures when negotiating public contracts (the Open, Restricted, Negotiated and Competitive Dialogue procedures). Each of these procedures sets a framework within which purchasers can develop a contract, negotiate with providers and design and let competitive tenders. The rules state that for projects above a certain financial threshold (which varies according to service and sector) a contract notice inviting tenders must be published in the ‘Official Journal of the European Union’. After the

¹¹ For criticisms of ‘umbrella companies’ in the UK construction industry see Elliott, 2015; and for ‘bogus self-employment see Citizens Advice, 2015.

¹² In the UK the protection of the Directive has applied to public and private sector employees delivering contracted-out employment programmes where, after a new tender, the services they deliver have been transferred to another private contractor (ERSA, 2011).

closing date given in the tender the bids should be opened and assessed, and either the 'lowest cost' or 'most economically advantageous tender' should be chosen. There are rules that allow commissioners to include limited social and/or environmental considerations when deciding to award such contracts.

1.3.3 The EU and Employment and Social Policies – 'Europe 2020'

Responsibility for employment and social policy lies primarily with national governments but the EU has set Europe-wide employment objectives and seeks to coordinate national practices through inter-governmental coordination. The current pan-European objectives for employment and skills have been outlined in the 'Europe 2020' strategy. This sets a target for 2020 of a European employment rate of 75% amongst those aged between 20 and 64 years and a reduction of at least 20 million fewer people 'in or at risk of poverty and social exclusion'.

Each Member State has flexibility to translate the targets, and associated detailed guidelines, of the 'European Employment Strategy' into national policy but they are required to publish 'National Reform Programmes' which outline how the measures and actions they take help achieve EU objectives. The European Commission reviews and reports annually on national progress and may then propose country-specific recommendations which are then reviewed by national Ministers and the European Council and communicated to Member States. This approach to securing aspects of European policy harmonisation is referred to as the 'open method of coordination' and has been characterised as a form of 'soft regulation', as against the 'hard regulation' established by legally enforceable employment Directives and single market procurement rules. The transparent process of setting benchmarks, and undertaking annual monitoring, comparisons and evaluations aims to generate '*peer pressure*' (among Member States) and '*time pressure*' (through agreed milestones) for progress at national level (Ashiagbor, 2005).

The improved performance of European PESs is regarded as a critical factor in delivering the EU's wider employment objectives. In particular, over a long period the European Commission has called for the modernisation of PES service delivery and has increasingly promoted dialogue and evidence-based benchmarking between national PESs and partnership working and cooperation between the PES and other public, non-profit and private providers. The EU also created 'EURES', a long standing network of national PESs which work together to make it easier for individuals to find employment in other countries and for employers to recruit people from other European countries.

In addition to funding partnership working and 'mutual learning' activities a further component of European influence concerns the significant amounts of funding that the EU distributes to Member States for the improvement of employment, skills and social inclusion throughout Europe. These funds are designed to help national governments modernise and improve the adaptability of their labour markets and make jobs more accessible. They are typically targeted or weighted towards areas or industries with the highest unemployment and/or particular disadvantaged target groups, typically young people, older workers, women and minorities. Over the period 2007-2013 the European Social Fund, for example, made more than €75 billion available to national and regional authorities for investment in EU policy

priorities and this supported employment and skills services for an estimated nine million people each year.

Member States have much flexibility in how they distribute European funds but they must meet European objectives and national governments and other public authorities are expected to provide 'match funding' from their own resources, especially in the more developed countries. In each of the case study countries European funding provides additional support for, and complements national employment and skills programmes, but it also adds a further dimension of complexity in the procurement and accountability requirements that have to be observed by national and regional governments, and met by public agencies and contracted employment and training providers.

Chapter 2: Activation Policies and Labour Market Trends in the Case Study Countries

Each case study country has a distinctive combination of income-replacement benefits for people of working age. The main cash benefits include Unemployment Benefit (UB), health-related (sickness and disability) benefits, early retirement, social assistance, and targeted benefits for other groups such as students and lone parents. Each country has social insurance systems covering people in regular employment, funded by employee and employer contributions and/or national taxation. These provide varied levels of population coverage and of income-replacement protection against the risks of unemployment and disability or poor health. These insurance arrangements are complemented by minimum income social assistance systems that provide a means tested 'safety net' of income support for households who do not qualify for or who exhaust, their insurance-based entitlements. These different benefits are delivered by organisations which have varied roles in connecting their clients with employment, training and other welfare to work services.

In the UK the PES – known as Jobcentre Plus (JCP) - combines responsibility for the provision of employment assistance and for taking benefit claims and paying unemployment and related means-tested benefits. In the other three countries unemployment benefits are administered separately by national or sectoral social insurance agencies, with the involvement of trade unions and employers. Minimum income social assistance is assessed and paid separately by local government. In Germany and the Netherlands the PES provides job matching assistance for all claimants and has a varied role in implementing work activity tests and acting as a 'gateway' to employment programmes. In Denmark responsibility for front line PES service delivery has now been wholly devolved to local government.

2.1 Work Requirements and Activation Policies

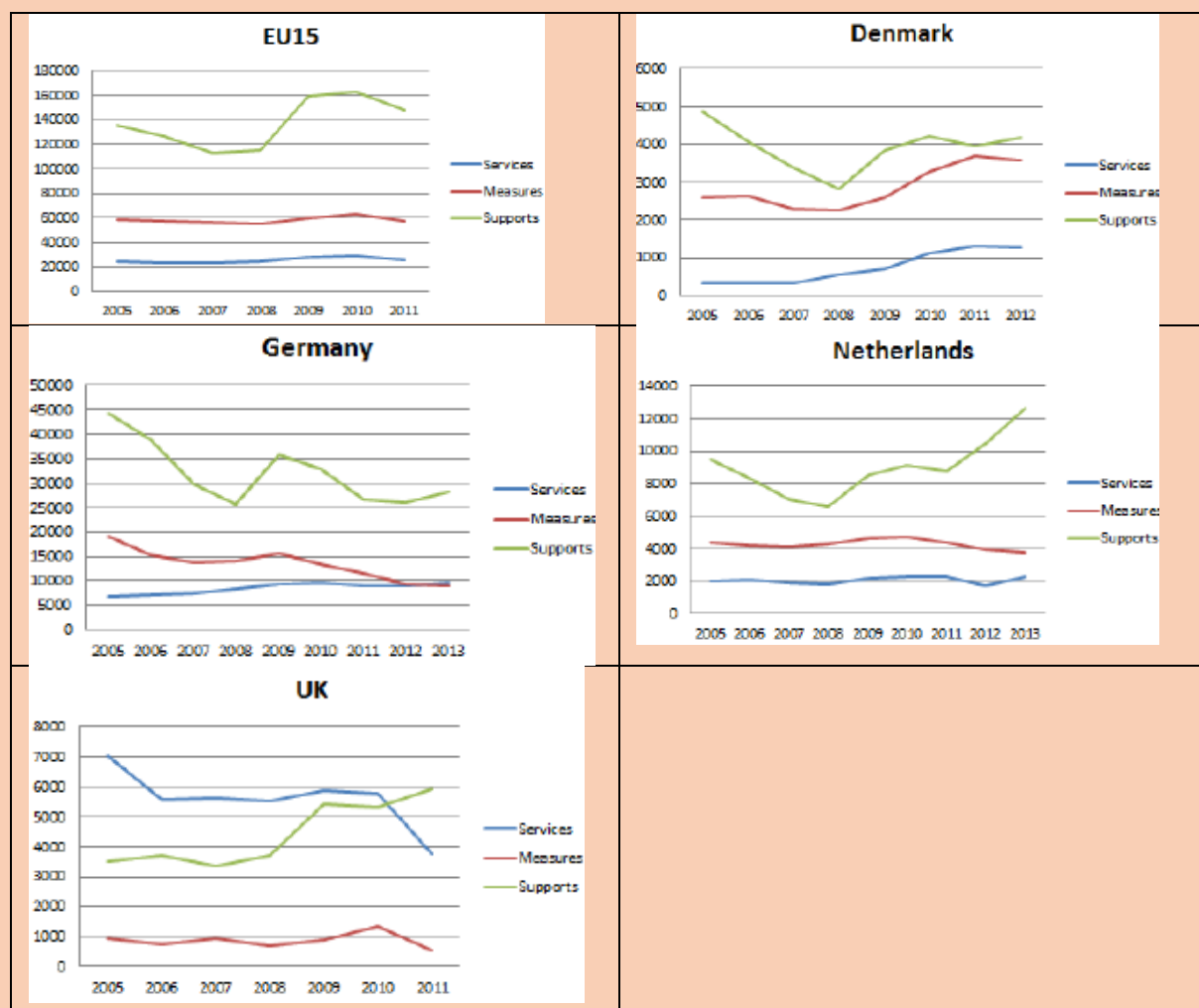
In each country eligibility conditions for UB and increasingly for other out of work income transfers have been redesigned to promote job search and employment preparation. The strength of these 'activation' reforms, such as job search requirements, has depended on how well they are integrated in interventions in the unemployment spell (OECD, 2013b). Reforms have also been introduced to shift target groups from 'inactive' benefits, such as disability or early retirement benefit, onto unemployment benefits, so that job search and availability-for-work requirements apply. This strategy is expected to reduce costs and increase the employment rate, rather than reduce the unemployment rate. In some cases, full availability for work is not required but participation in work-related, or work-preparation, activities is required, resulting in complex configurations of benefit subcategories associated with targeted activation measures.

The configuration of each country's benefit system has an important bearing on its overall activation stance. In particular the countries selected for review each provide unemployment related benefits that are of long duration and, in the case of Denmark, Germany, and the Netherlands of relatively high cash value, at least during the initial period of benefit eligibility. This means that activation measures for the unemployed

need to be comparatively intensive to limit benefit costs and caseloads (OECD, 2013b).

There are variations in the investments made by the different governments in their labour market policies and in the balance between what are often categorised as ‘active’ and ‘passive’ measures. The European Commission (EC) divides such expenditure into three broad categories – ‘services’ (largely funding PES activities); ‘measures’ (to fund ALMPs) and ‘supports’ (financial benefits paid to claimants). Figure 2 outlines trends in these different forms of expenditure in the case study countries (and the EU 15) variously between 2005/06 and 2011/12. The charts show that spending on benefits (‘supports’) represents the largest share of expenditure, with significant rises following the increase in unemployment that followed the ‘global financial crisis’. Spending on programmes, or ‘measures’, is the second highest category, with smaller amounts allocated to PES services delivery.

Figure 2: LMP Expenditure by Type of Intervention (‘Services’, ‘Measures’ and ‘Supports’), for the EU15 and the case study countries, 2005-2011, (constant prices, Euro, millions)



Source: Figure 9 A *descriptive analysis of the EU Labour Market Policy Statistics*, Analytical Web Note 1/2015, European Commission, Brussels.

There is no obvious relationship between the level of spending on labour market programmes and unemployment levels. Patterns of expenditure reflect policy choices in the different countries as well as cyclical unemployment variations. Despite methodological limitations comparable data collected by the OECD (2013b) does find that levels of investment in PES services and in other active programmes are an important indicator of the capacity of national systems to implement activation policies. For example, as self-reported job search and occasional interviews alone do not constitute reliable evidence of availability for work, front-line PES advisers need other options to which they may refer unemployed people, especially when fewer jobs are available, which can help offset the disincentive effects of high earnings-related and long duration UB.

Although expenditure is an essential indicator, the effectiveness of activation measures cannot be equated with expenditure on programmes or 'measures'. It is clear that programmes in the same broad category vary greatly in their effectiveness. Indeed in the UK and the Netherlands, and more recently in Germany, more-effective and less expensive activation regimes have been developed partly due to a perception that earlier large-scale training and employment programmes 'warehoused' the unemployed and then recycled most of them back into unemployment.

Another important variation, driving differential expenditure levels, has been in the extent to which the different governments have followed what have been characterised as 'work first' strategies, that require workless people to enter employment as swiftly as possible, or 'human capital development' strategies that place greater emphasis on the prior importance of improving the skills of benefit recipients so that they may gain access to higher quality employment. The former approach is most closely associated with 'welfare to work' reforms in countries such as the UK and is reflected in the far greater proportion of expenditure it allocates to services, with little apparent investment in programme 'measures'.¹³ The latter approach is associated more with other welfare states in northern Europe, including Denmark and Germany, although in the past decade reforms in these countries have also placed greater emphasis on more rapid labour market attachment (NESC, 2011). These strategies and the institutional arrangements through which they are implemented are explored in more detail in the case study chapters.

2.2 Labour Market Trends in the Case Study Countries

Standardised European Commission labour market data reveal significant employment and unemployment trends in the case study countries in the decade up to 2015 (EC, 2016). All four countries had, prior to the global financial and economic crisis, relatively good labour market performance with higher employment and lower unemployment than the European and OECD average. All also weathered the 'global financial crisis' relatively well, especially Germany and the UK, albeit they

¹³ Although this expenditure data, and the longer standing comparable series produced by the OECD, provide some useful descriptive comparative benchmarks it is important to stress some limitations in cross-country comparability. For example, although the UK PES spends little on skills programmes the national picture is somewhat distorted by the non-inclusion of other training and skills expenditure which is invested in unemployed people by other Government Departments and tiers of government.

each face particular labour market problems. One of the factors associated with their capacity to cope with economic shocks, without experiencing the same levels of unemployment as in earlier recessions, concerns the reconfiguration and effectiveness of their activation systems. In all four countries unemployment rates have fallen from their recession-driven peaks reaching - according to data for mid-2015 – 6% in Denmark; 4.7% in Germany; 6.9% in the Netherlands and 5.6% in the UK.

Improved employment rates in the four countries were driven by a number of longer term factors including the growth in service sector employment and the increased labour market participation of women. These trends have been facilitated both by an increase in part time work and by an increase in the proportion of workers employed on non-standard employment contracts. These trends have been particularly significant in the Netherlands where the proportion of part time workers now exceeds 50% and where the number employed in the 'flexible layer' grew from 23% in 1996 to 34% in 2009 (van Liemt, 2013). In the Netherlands, and in the other case study countries, this 'flexible layer' includes agency workers along with the self-employed and those on fixed term contracts.

Chapter 3: The Organisation and Delivery of Public Employment Services and the Role of Private Agencies in the Netherlands

The Netherlands has undertaken a continuous reform process which has restructured its social protection system and helped create a more flexible labour market. In this transition the Dutch have activated their benefit system for working age people and reformed how employment services are financed and delivered. This has included PES reform; devolution of employment service budgets to local government; the development of a market in the delivery of reintegration services; partnerships with PE&TWAs; and more recently the increased delivery of PES services through online digital channels.

Over this period the Netherlands also pioneered a distinctive approach to 'flexicurity'. This combination of labour market flexibility and worker security has been developed with the social partners and, amongst other things, has involved a 'normalisation' of non-standard employment contracts, especially of part time employment, where such employees have legal rights that approximate those of regular employees. Although the social partners no longer have a direct role in the management of publicly funded employment services the country is still characterised by a high level of tripartite collaboration between the Government, employers and trade unions and working conditions are often regulated through legally enforceable collective labour agreements.

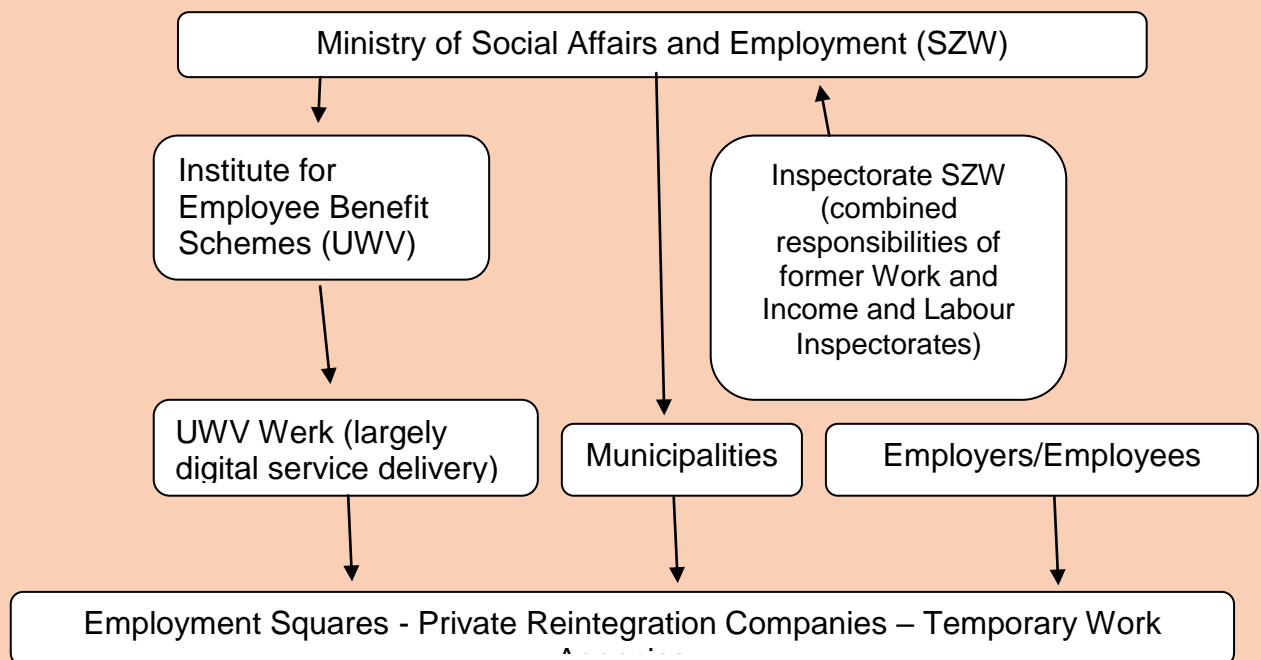
Dutch temporary workers are now legally entitled from day one of employment to equivalent levels of remuneration as comparable regular workers in the workplaces they are employed in. National legal rights, such as equal pay, can however be derogated and may be revised by arrangements negotiated by the social partners through collective agreements. Until 2015 the use of such derogation meant that many TWA workers could be employed on a temporary basis indefinitely. The Work and Security Act (2015) has changed the rules so that temporary and TWA workers now may more easily qualify for permanent employment security, albeit this still applies only after a series of temporary work assignments. It is important to note that in the Netherlands workers with permanent employment contracts enjoy a high level of job security and may only be dismissed with the approval of the PES (for dismissals on grounds of economic conditions or incapacity for work) or with the approval of a court for all other reasons.

3.1 Working Age Benefits and PES organisation in the Netherlands

The Netherlands employment services and benefits system is steered by the Ministry of Social Affairs and Employment (SZW) which is responsible for policy development, funding social security benefits and reintegration services. The Ministry monitors trends and scrutinises the delivery system to ensure it meets political and legislative objectives and it directs the different elements of the system through a national framework of policy objectives, targets, reviews and funding mechanisms (see Figure 3)

There are two distinct systems of income support for working age people. An insurance system covers most people in regular employment, funded mainly by employee and employer contributions. This provides relatively generous wage related benefits to people who cannot work either because they are unemployed or they have a long term health problem or disability. There is a parallel municipal social assistance system which provides a ‘safety net’ of means tested income support for those who do not qualify for, or who exhaust, their insurance-based entitlements.

Figure 3: The Organisation of the Netherlands ‘Work and Income’ System 2015



The Netherlands has been reforming the delivery of employment services and working age benefits since the 1980s. At national level traditionally separate PES placement services and social insurance benefit administration were integrated in 2009 placing the ‘Employee Insurance Implementing Body’ (Uitvoeringsorgaan Werknemers Verzekeringen, or UWV) in control of job broking and national employment services for social insurance claimants. Local government has responsibility for the delivery of employment services for social assistance claimants. Since 2004 municipalities have been financed through a block grant mechanism which gives them a strong incentive to reduce welfare caseloads. The UWV and municipalities either provide employment services in-house or contract out delivery to external providers.

In the Netherlands more intensive forms of employment assistance are typically referred to as reintegration services. These services may include case management, assessment, rehabilitation, vocational and/or job search training, mandatory work experience, extended work trials, and job placement and retention services. In the delivery system, the different services can be organised or purchased as separate

elements or programmes but they may also be organised and purchased as a 'trajectory'. When a municipality or the UWV purchases what is called a full 'reintegration trajectory' this includes contracting out the case management service and often gives the provider greater flexibility over how to get a participant into employment. Until recently the UWV also allowed some claimants to make use of an individual budget which, with the agreement of a front line work coach, could be used to purchase a personally tailored reintegration trajectory.

3.2 PES Reforms in the 1990s and the Development of the Reintegration Market

In the early 1990s management responsibility for PES placement and reintegration services for the unemployed was exercised by tripartite boards at central and regional level, and there were many separate social insurance agencies each with tripartite representation. The Ministry directly funded the PES to deliver employment programmes aimed at different target groups of benefit recipients, such as the long term unemployed, and each programme had separate regulations and reporting requirements. Municipalities were also funded to deliver employment and reintegration services for the young unemployed and for social assistance claimants, with significant resources being invested in job creation programmes and in separately funded sheltered workshops targeted at people with disabilities.

In the mid-1990s the Government began to restructure the delivery system and increased activation requirements on the unemployed and other working age claimants. There was dissatisfaction concerning the role of the tripartite governance system and the low effectiveness of programmes delivered through the PES. In 1996 the Ministry created a split between purchaser and provider by giving insurance funds and municipalities control of budgets for reintegration services. Initially the new purchasers were obliged to procure 80% of their reintegration services from the PES. At the same time the PES was obliged to establish a transparent internal division responsible for delivering and tendering for programmes. New private operators had already started to deliver some programmes and the 20% flexibility led to further growth in this new market. Some municipalities restructured their own delivery agencies, often involving the formation of separate non-profit entities, and continued to award these bodies delivery contracts on a preferential basis (Sol and Hooglanders, 2005).

The emergence of a growing sector of PE&TWAs in the regular market and the relative flexibility and success of private reintegration providers was contrasted with the expense, inflexibility and poorer results of the PES (Vink, 2002). Political pressure increased as purchasers sought more freedom and as private providers complained about unfair competition. Within two years the obligation on insurance funds and municipalities to purchase 80% of services from the PES was removed. This resulted in '*a painful loss of market share*' for the PES division which delivered reintegration programmes (Sol, 2003, p. 208).

There was parallel reform in the main PES delivery division that was responsible for registration, job matching and referral, delivered through a national network of front line offices. The objective was to reduce fragmentation and to create a 'one counter system' comprised of a national network of some 130 'Centres for Work and Income'

(CWI). These employment-focused offices acted as the claimant's first point of contact and front line case workers, who emphasised job search obligations, undertook initial registration, profiling and job matching. In its gatekeeper capacity, CWI advisers profiled claimants and then referred those at risk of long term unemployment to the UWV if they were entitled to unemployment benefit or disability insurance, or to municipalities if entitled to social assistance. Claimants classified at low risk of unemployment received only basic CWI job matching services (Tergeist and Grubb, 2006).

Welfare reform efforts intensified after the late 1990s with successive changes in disability benefit entitlements and assessments, and activation reforms targeted at the unemployed and those claiming social assistance. There was also major institutional change culminating in the 'SUWI' (Implementation Structure for Work and Income) Act (2001). This divides the Dutch labour market into 35 regions and requires that the PES and municipalities work together with other key stakeholders, including PE&TWAs and training and education organisations.

The SUWI legislation marginalised the role of the social partners and created two new 'autonomous administrative bodies' which, with the municipalities, were to comprise the 'chain of work and income'. The 'Central Organisation for Work and Income' was made responsible for CWI's. The UWV was made responsible for the administrative functions of the previously separate social insurance agencies including assessing benefit eligibility, implementing sanctions and managing reintegration budgets. Both organisations were controlled by separate Boards of Directors appointed by the Minister. The Ministry retained a supervisory role, in particular through its 'Work and Income Inspectorate'¹⁴, and through performance agreements and targets that it negotiated with the two new bodies.

The SUWI legislation required the UWV to contract out placement and reintegration measures for most types of clients. Municipalities were required also to introduce open tendering procedures and contract out up to 70% of their reintegration services (but this requirement was dropped in 2006). The central Ministry, the SZW, did not act as a purchaser. Its aim was to give the market '*as much freedom as possible*' and keep government intervention '*to a minimum*' (SZW, 2005, p. 54).

Whilst central Government adopted a 'hands off' approach to market development there were concerns about the absence of information that could inform purchasers and users about the quality and performance of providers. In the absence of a public benchmark an association of reintegration providers, Borea, which was formed in 2000, developed its own 'quality mark' for its affiliated companies. The quality benchmark was launched in 2002. It was comprised of 13 performance indicators related to efficiency and speed in organising services; results; staff competences and development; customer satisfaction; privacy and complaint handling. The results were independently audited for each company twice a year. Any company failing on an indicator had to put an improvement plan in place and a second failure resulted in

¹⁴ In 2012 the three different inspectorates that the Ministry was responsible for were integrated. The 'Inspectorate SZW' now combines the activities of the Work and Income Inspectorate with those of the Labour Inspectorate (which regulated working conditions) and the 'Social Intelligence and Investigation Service' (which was responsible for investigating more serious fraudulent and criminal employment practices).

withdrawal of the quality mark. The quality mark became influential in contract awarding processes but was not officially endorsed.¹⁵

3.3 The UWV Reintegration Market – Tenders and Block Contracts

Over a ten year period the UWV, the largest sole purchaser of employment services, successively adapted its tender system. These changes sought to improve the efficiency of contracted provision, personalise support and target intensive services at harder to help participants. After expansion following the SUWI legislation, however, the tendered reintegration market diminished and the number of newly assigned participants in contracted trajectories fell from about 105,000 in 2002 to about 67,000 in 2003, falling further to 23,000 in 2005 (Koning and Heinrich, 2010, p. 12).

Between 2002 and 2008 the UWV organised some sixteen national ‘tender rounds’ to select providers to deliver block contracts for different groups of claimants. Tender selection was undertaken by regional officials.

The initial tendering system involved relatively small block contracts designed to tackle the barriers of particular groups of unemployed and disabled people with prices and outcome payment terms differentiated according to distance from the labour market. These ‘no cure, less pay’ contracts typically paid between 10% and 20% of the price on completion of an agreed action plan, a fixed payment of about 40% six months after commencement and another 40% or 50% after placement in a job for two months, with a minimum six month employment contract (Sol, 2008, p. 77).

Early tender rounds saw the price of trajectories increase, from an estimated €3,500 in 1998 to €4,700 in 2003 (Struyven and Steurs, 2005, p. 220). The tender process also involved high transaction costs for both the UWV and providers, and problems were experienced in producing and assessing high numbers of submitted tenders in short periods (Sol, 2003). Subsequent changes in UWV purchasing sought to reduce administrative burdens, create more stability and increase the emphasis on Payment-by-Results (PbR). The share of ‘no cure, no pay’ contracts increased from close to zero in 2002 to more than half of the contracts let in 2005 (Koning and Heinrich, 2010, p.13).

A renewed emphasis on price competition ensured a reduction in the average cost per UWV contracted trajectory which fell to between €2,800 and €3,500 by 2007 (Finn, 2008, p.33). Providers and others argued that the fall in prices and increased emphasis on outcome payments had a negative impact on the quality of trajectories as providers removed costly service elements (de Koning, 2007). There was also

¹⁵ In 2007 Borea, had 150 member companies responsible for delivering more than half of the reintegration market. In 2012 the organisation merged with a network of health related providers to form ‘Oval’ (www.oval.nl). The quality assurance work undertaken by Borea is now undertaken by the ‘Blik op Werk’ Foundation. This was initially set up with Government funding but is now self-financing. The Foundation exists to identify and spread best practice in employment and sickness management. It undertakes independent and formal licensing of employers and providers in relation to how their work practices score on an index of employability – see www.ifa-fiv.org/wp.../03/7-Elkerliek-Hospital-Work-Ability-Index.pdf

consolidation and the market was comprised of a smaller number of providers, which enjoyed scale efficiencies and were able to absorb the risks and transaction costs involved in procurement and delivery. By 2006, only 47 organisations had tender-based contracts with the UWV, with ten providers responsible for delivering 75% of the market.

In 2006 the 'Work and Income Employment Capacity' Act also radically reshaped and reduced the reintegration role of the UWV because of the extension of employer responsibility for sick and disabled workers. Since 2006 employers have been obliged to pay the wages of any sick or disabled employees for two years and are responsible for the reintegration of such employees within their company or in other employment. If the UWV finds that the employer has failed to discharge their reintegration responsibility the employer may be required to continue paying the employee's salary for a further year. One consequence of the legislation was to simultaneously reduce the size of the UWV market and stimulate a private market for reintegration services, purchased directly by employers or the private insurance companies with whom they work.

3.4 Individual Reintegration Agreements and the UWV Procurement Framework

A further development involved 'Individual Reintegration Agreements' (IROs). These individual budgets were introduced following criticisms of UWV provision, which highlighted the lack of user involvement in choosing services, inflexible and standardised contracted provision, 'group reintegration' and poor quality of support provided by front line staff. In 2005, the UWV also introduced its own front line work coaches to improve service delivery and to better tailor support to individual client needs.

IROs were modelled on individual social care budgets and piloted between 1998 and 2001. They gave claimants a role in deciding the services they received and the provider who would deliver it. An evaluation found greater customisation and a higher job entry rate than for those using regular services. Eligibility for the IRO was initially restricted to those on disability benefits but was opened up to people receiving UB. IROs proved very popular, both with clients and with work coaches, and by 2007 around two-thirds of the UWV's clients were using IROs.

An IRO trajectory could last for up to two years and the original maximum price was €5,000 (subsequently reduced to €4,000). For users with more significant barriers the price could be up to €7,500 (subsequently reduced to €5,000). The contract had a 'no cure, less pay' funding formula with the provider paid 20% at the start of an agreed plan, 30% after six months participation with 50% of the agreed fee payable for sustained employment. For those considered 'very hard to help', 80% of the funding was paid upfront and 20% on results. The average reported price per IRO trajectory in 2007 was €4,500, but only half this cost was incurred should the participant fail to get employment. In September 2009, a bonus system was added, with payments of €1,000 or €1,500 incentivizing providers to get clients into work within six months, or to keep clients in work for twelve months (Acevo, 2009).

The introduction of the IRO and the flexibility over choice of provider led to an influx of many smaller providers, and the number of contractors that the UWV dealt with increased rapidly from less than 100 in 2003 to 1,960 by late 2007. About 1,700 of these contractors delivered IROs only and some 1,500 were 'one person-providers' who might service only 10 or 15 participants. Provider registration requirements were minimal.

In 2008, the final Government evaluation suggested that, compared with block-contracted reintegration services, IROs were more likely to result in a job, more likely to result in sustainable jobs, and resulted in higher client satisfaction. They were, however, more expensive and entailed a lengthier period of support before job placement. The IROs were most cost effective for people on disability benefits (in crude terms of spending on employment services per job outcome) and least effective for disabled jobseekers (Acevo, 2009).

Concern about the quality, costs and effectiveness of both IROs and contracted out reintegration trajectories led to a major overhaul of the UWV contracting system. A more targeted, nationally determined framework agreement was introduced in 2008 (Sol, 2008). Under the framework agreement providers had to meet specified process and performance requirements to be placed on a UWV 'approved list'. The UWV selected a smaller number of providers in each region whose bids offered to provide either complete trajectories, in the form of IROs, and/or specified framework services. These services comprised varied types of provision most of which were delivered for a fixed price, with only job search and placement being funded on a PbR basis. This enabled UWV work coaches to purchase smaller 'modules' of support personalised according to the needs of their clients. After major budget reductions the IRO was subsequently withdrawn and the most recent UWV framework agreement specifies the delivery of only two types of services (one specifically targeted at getting people fit for work, the other targeted at job search and placement).

3.5 Municipal Delivery of Reintegration Services

The municipalities, of which there are over 400, deliver social assistance and reintegration services through 'work and income' sections in either their own Social Services Departments or through those of neighbouring larger councils. Municipalities work more or less closely with the UWV and typically municipal case workers check eligibility and assess employability and channel eligible participants into employment assistance. This assistance is either provided in-house or outsourced. Municipalities deliver a wide range of other services which complement their local reintegration strategies.

During the 1990s municipalities increased the number of reintegration trajectories they purchased, especially after the transfer of PES funds, but the major part of their employment assistance budgets were absorbed by relatively high cost public and voluntary sector subsidised jobs for the most disadvantaged. Some of the employees in these subsidised jobs enjoyed permanent contracts. There were few incentives either for participants or providers to use subsidised jobs as a transition to regular employment. Municipalities have been responsible also for separately funded sheltered workshops organised for priority groups on different disability benefits. In

2002 it was estimated that there were 80,000 subsidised jobs and 90,000 people with disabilities employed in workshops, costing some €3 billion annually (Vink, 2002, p.5). From the mid-1990s the municipalities also introduced less costly 'social activation' or workfare programmes for the hardest to help aimed at promoting inclusion through various forms of unpaid community work (van Berkel, 2006).¹⁶

Following implementation of the SUWI legislation municipalities enjoyed considerable freedom in designing their procurement strategies and, whilst influenced by UWV developments, followed no common framework for contracting out services. Each developed their own tender process, procedures and contract requirements (Vink, 2003). Some purchased whole trajectories; others simply purchased individual service elements. There was a trend to performance-related contracting. In 2004, it was reported that over 70% of the municipalities had introduced some element of 'no cure, less pay' contracting. Only 7% of municipalities, however, made use of full 'no cure, no pay' contracts (SZW, 2005, p. 47).

The diversity of municipal delivery systems reflected local political preferences, labour market conditions and the characteristics of the resident social assistance recipients (Corra, 2014). Municipalities varied greatly in their administrative capacity to design tenders, assess bids, and monitor delivery. Many took a highly cautious and prescriptive approach and both they and the reintegration companies complained of the high transactions costs involved. An official evaluation of SUWI found that in some circumstances the bureaucratic character of the process and the unrealistic, sometimes unreasonable, expectations of municipalities were 'obstructing' market forces (SZW, 2005, p. 57).

After welfare to work funding was devolved (see below) the municipalities were successful in persuading the Government to remove the requirement that they contract out 70% of reintegration services. Since 2006 they have been able to decide which parts of their local provision they wish 'to make or buy' either through in-house provision or through contracts with external providers. Reports from scrutiny bodies indicate that many municipalities brought case management and initial assessment back in-house and that they have tended to contract out the delivery of specific services, such as job placement, rather than whole reintegration trajectories (Corra, 2014). The municipalities continued also to be responsible for delivering sheltered workshops for the most disabled claimants which were funded by a separate budget authorised by specific legislation. In 2008 it was reported that municipalities spent about a third of their reintegration budgets on employer subsidies; a quarter on job search guidance; a further quarter on subsidised employment; and the remainder on education and other services (Faber and Koning, 2011).

A study of municipal subcontracting practices in 2007 and 2008 reported that in both those years local councils spent about three quarters of their activation budgets with private providers, with an average nominal spend per client of €4,000 - there were significant variations in this nominal amount and there was under-spending in the more generous districts. The data for 2008 indicated that about 22% of the overall

¹⁶ The recent Participation Act (2015) continues to allow municipalities to require claimants to undertake unpaid community work but there remains much variation in who is subject to the requirement and the activity they are required to undertake (Slotboom and Blommesteijn, 2015)

budget was spent with for-profits, whilst 50% was spent with non-profits. It was significant that the non-profit providers had lengthier contracts and that many *'had strong ties to the social assistance desks'* and had often been *'part of the municipality services in the past'* (Koning, 2009, p. 8).

3.6 Welfare to Work Devolution, Municipal Activation Strategies and the Participation Act (2015)

The evolution of the municipal market overlapped with the devolution of central funding for welfare to work programmes and the introduction of a 'block grant'. Until 2001 central government reimbursed 90% of municipal social assistance expenditure and at this point activation programmes were targeted at centrally determined priority groups. In 2001 the proportion of social assistance funding reimbursed by the Ministry was reduced to 75% in order to increase the incentive for municipalities to place people in employment. This incentive was sharpened further in 2004 with the introduction of block grant funding by the 'Work and Income Act'. The legislation required municipalities to provide social assistance to poor people but gave them great freedom in service design and delivery. It also stipulated that employable welfare claimants are under an obligation to register with the UWV, cooperate with reintegration services and to seek 'generally acceptable' rather than the previous 'suitable' employment. The system was designed to put 'work before income'.

The municipal Work and Income Fund has two components. The 'income fund' pays for means tested assistance and is determined on the basis of economic and social indicators (see Figure 4). A separate flexible 'work fund' is designed to pay for reintegration services and can be used only to pay for such services. If there is a surplus in the work fund a proportion may be carried over into the following year but any unspent surplus is returned to the Ministry. In contrast, if the municipality pays less than it is allocated in the income fund it can use the surplus as it sees fit. The risk is that if it overspends on social assistance benefits it has to subsidise these payments from its own resources. The municipality thus has an incentive to reduce the number of people claiming social assistance but must do so in the context of national eligibility rules and welfare benefit levels that are uniform throughout the country. Municipal strategies have since focused more sharply on rigorous testing of eligibility, fraud reduction strategies, and the introduction of 'work first' and 'workfare' activation programmes (Blommesteijn et al, 2012).

In 2009 there was further devolution and the municipal budget for reintegration services was aligned with separate budgets for adult education and civic integration into a 'participation budget'. This move gave municipalities the freedom to decide how the participation budget could be spent, but it appears few made significant changes in how they distributed the respective budgets (Dorenbos and Froy, 2011, p. 16).

Figure 4: The Netherlands 'Block Grant' for Social Assistance

In the Netherlands, the national budget available for welfare block grants is calculated annually on the basis of independent forecasts of eligible individuals. Forecasts are based on the number of existing welfare beneficiaries, unemployment

trends, and legislative changes that might affect caseload volumes. The macro budget is allocated between municipalities according to a regression formula which reflects size of municipality and demographic and labour market characteristics, with some variation for smaller municipalities (for whom reliable data is not available, so previous expenditure level is also used). The formula is updated annually. As the allocation is not legally designed to reimburse actual social assistance expenditure, municipalities are free to retain any surplus, but strict rules ensure they meet over-spending from their own resources and they can return to the Ministry for additional funding only in exceptional circumstances.

Local strategies, performance measures and targets are set by municipal boards which oversee and agree plans for their Social Services Departments. These annual plans have to be approved by the municipal council (Dorenbos and Froy, 2011, p.17). Although there are few national guidelines policy development and best practice is facilitated by the national Ministry (through 'Implementation Days' organised through a 'Programme Council') and promoted through a number of other channels, especially through 'Divosa', the national organisation of the managers responsible for municipal work and income services.¹⁷

By 2008 the number of working age welfare beneficiaries was 40% lower than in 1998 (EJML, 2011). The 2004 block grant and earlier financial devolution was estimated to have directly resulted in an 8% reduction in the number of welfare recipients by 2008 (van Es, 2010). The cause of this specific impact was attributed to tighter eligibility testing and increased off-flows. The cumulative impact of legislative and service delivery reforms had also engendered a significant 'cultural change' in local government with staff now working 'in a more result-oriented manner' and more focused on preventing fraud and on assisting applicants to enter employment (Davidse and Kraan, 2008, p. 9).

In one assessment researchers suggest that despite some problems the Dutch funding formula, when combined with a strong cultural commitment to equal access, ensured that the system has reaped *'the benefits of decentralisation while at the same time ensuring a high degree of similarity in service standards across the country'* (Allers, 2011, p.8). Other analysts warn, however, that while block grant funding systems may yield efficiency gains and promote early intervention they also risk 'under provision', especially as such devolutions are often accompanied by significant cuts in the prior levels of central government expenditure (Vermeulen, 2015). For example, whilst municipalities have increased activation for the flow of new claimants many have little provision for long term claimants or for the large numbers of people who are exempted from job search requirements on 'social grounds' (Slotboom and Blommesteijn, 2015).

Another unintended consequence of devolution was a 'spill over' effect with a marked increase in the number of young people claiming a centrally funded UWV benefit (the 'Wajong') targeted at those whose disability started before they entered the labour market (that is, before the age of 18 years or during their studies until the

¹⁷ A professional association of front line activation staff was also created in 2012 with the aim of stimulating the development and implementation of common professional competences and standards (Slotboom and Blommesteijn, 2015, p.13).

age of 30). The inflow into this benefit more than doubled between 2000 and 2008 and the evidence suggests that over a third of this increase was the result of diversion from municipal social assistance (Roelofs and van Vuuren, 2011). In 2012, a claimant population of 190,000 Wajong recipients was added to by a further 36,900 new claimants, together accounting for about 3% of the working age population (OECD, 2014b, p. 107).

This spillover effect was one factor contributing to a further radical devolution reform that took effect in January 2015. The 'Participation Act' has devolved a combination of youth and social care budgets thereby extending the responsibilities of municipalities to cover a much larger group of people, all of whom face severe barriers to employment. Existing Wajong claimants remain with the UWV but young people with some work capacity (about 60% of those previously claiming the Wajong benefit) are now only eligible for social assistance. Local councils are now allocated a single budget and have greater freedom to determine who gets support and help with reintegration. The assumption is that municipalities will be able to secure efficiencies and are better placed to deliver integrated services to these clients helping them to increase their self sufficiency.

This devolution is linked also with an agreement between the Government and the social partners who have committed to create 125,000 extra jobs for people with disabilities by 2026 (100,000 in the private sector and 25,000 in the public sector). This commitment is reinforced through a 5% employment quota for employers with over 35 employees which the Government will evaluate in 2016, with penalties likely for non-compliant employers (OECD, 2014b, p. 114).¹⁸ There are reports that private sector agencies, such as Randstaad, who already provide placement services for municipalities are using the new opportunities created by the Participation Act to extend their intermediation services (in the municipality of Drechteden, for example, Randstaad has a PbR agreement to place a specific number of claimants in employment that lasts for at least six months).

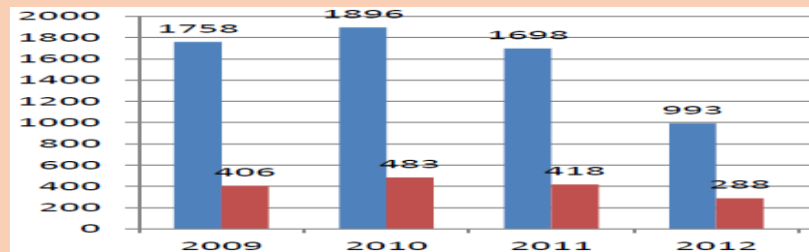
The extension of municipal responsibilities has accentuated a recent increase in welfare caseloads that has coincided with a reduction in the funding available for reintegration services. The number of social assistance recipients increased by 30% between 2008 and 2012 and went on to reach 435,000 at the end of 2014 (Bekker and Wilthagen, 2015). Over the same period the former participation budget more than halved between 2010 and 2013 (see Figure 5) and the new devolution included a major reduction in previous budget levels (Vermeulen, 2015, p.4).

Although there are precise central rules concerning benefit eligibility there are no minimum standards concerning employment assistance (Vermeulen, 2015). The Participation Act obliges municipalities to draw up reintegration plans for all unemployed young people aged 18 to 27 years, and for employable welfare beneficiaries over 27 years, but it does not mandate what, if any support should be in place for them. There is scepticism also concerning the quality of support that many municipal clients will receive. Recent reviews find that municipalities have continued to reduce outsourcing and cut spending on wage subsidies and subsidised

¹⁸ The Government will formally evaluate progress in 2015 and has made clear that if necessary it will introduce mandatory employment quotas on employers.

employment, and further focused support on lower cost interventions, such as job matching, coaching, and short courses (OECD, 2014b; Bekker and Wilthagen, 2015).

Figure 5: Reintegration Budgets of Dutch Municipalities and PES in € millions 2009-2012 (Municipalities, Blue; UWV, Red)



Source: Bekker and Wilthagen, 2013, Figure 1.

3.7 Coordination of the Work and Income Delivery System and the Impact of Public Expenditure Cuts on UWV Employment Services

In 2002 the Central Organisation for Work and Income took over the PES local office network and was responsible for some 130 local CWIs as well as the management and coordination of registration, referrals and job broking services. Further organisational change was announced towards the end of 2007 and in 2009 the independent status of the CWI ended and its services were merged with those of the UWV into the WERKbedrijf division. This division is responsible for the delivery of front line employment services and its performance is assessed in relation to benefit off-flows and satisfaction levels amongst job seekers and employers.

The SUWI legislation requires the UWV and municipalities to cooperate in promoting the reintegration of service users and to use a common IT system (called Suwi-net). After implementation this led to changes designed to facilitate closer front line working arrangements. The most significant reform involved the co-location and the coordination of service delivery for claimants and employers in a national network of one-stop 'Employment Squares' (Werkplein), of which there were 127 in 2010. These shared locations included the UWV and municipality alongside a range of other agencies which could include other municipal services, welfare organisations, reintegration companies, private employment agencies and TWAs (Dorenbos and Froy, 2011).

In practice, a diverse range of local delivery systems emerged, ranging from loosely coordinated services to more integrated offices, each of which had locally negotiated service level agreements. In the most integrated locations the 'Employment Square' was co-managed by the local UWV and Social Services Directors who agreed local joint targets that were cascaded to co-located UWV work coaches and municipal case managers. Coordination of service delivery was, however, hampered by the different work cultures of UWV and municipal staff and by the vertical accountability and funding rules of the agencies involved (Dorenbos and Froy, 2011). Cooperation has since been further hampered by budget cuts and by the withdrawal of UWV from many front line locations (Slotboom and Blommesteijn, 2015).

After a short term expansion in funding for UWV (and municipal) employment services during and in the immediate period after the 2008 recession, the Dutch Government introduced a severe austerity programme. This resulted in reductions in municipal reintegration budgets but had a more severe impact on the UWV (see Figure 5). In the period 2011-15 the UWV budget was halved and the number of staff reduced accordingly.¹⁹ Allocations for reintegration services for the unemployed were virtually eliminated with the remaining resources now largely targeted at those on disability benefits (Oosi, 2014). These changes prompted a radical change in UWV strategy involving a transition to largely online service delivery with in-person services restricted to 35 co-located 'Locations for Work and Income'. There is little information on the types of cooperation that now exist between the UWV and municipalities but one review suggests 'it is safe to say that cooperation is not widespread' (Slotboom and Blommesteijn, 2015, p.12).

3.8 Online Delivery of UWV Employment Services

The imposition of budget cuts shaped and accelerated the implementation of the UWV's core online service delivery strategy. The organisation now aims to ensure that 90% of its interactions with insurance benefit claimants will be through digital channels. There has been a three phase transition during which more services have been changed over to an electronic format culminating in 2015 in nearly all interactions and transactions being online. In-person UWV services are now available only in 35 regional 'Locations for Work and Income' (Slotboom and Blommesteijn, 2015).

Unemployed people must register for work and submit benefit claims online through the UWV's *werk.nl* website where claimants must also submit their CVs and where employers can also advertise vacancies. Claimants must develop and agree an individual action plan (if necessary with the remote support of an adviser, known as an 'e-coach'). The claimant's online account, or e-workbook (*werkm@p*) is the main platform for interaction with the UWV, with an interface to a 'back office' system which enables work coaches to monitor the job search actions taken by the claimant and indicate which claimants they should contact and when. If there is no activity recorded in the e-workbook or required tasks, including job search, have not been undertaken the UWV coach will conduct a personal interview with the claimant. Continued non-compliance may lead to sanctions. Sanctions are not automated and are always reviewed by coaches, who use a client's digital history to gather evidence and to support any sanction decision.

Work coaches can access clients' online accounts to review their job-search activities and CVs. A 'CV quality card' helps coaches to improve the quality of a jobseeker's CV and thus their chance of returning to work. The quality card is an automated report using data-mining and compares a job seekers CV and job search activities with other job seekers with similar characteristics. Coaches use this information during personal counselling interviews to advise jobseekers on job-

¹⁹ In 2014 it was reported that the number of people working for the UWV had fallen by 8,000 over the previous ten years and, at that point, the agency had 19,200 employees, with more than half of them on part time contracts (Oosi, 2014, p.71).

search (e.g. occupations, geographical area) and on how to present their experience in their CV (OECD, 2015, Box 3.14).

A new online profiling instrument, called the 'Work Explorer', assesses factors that are predictive of likelihood of work resumption within twelve months (Loxha and Morgandi, 2014).²⁰ The questionnaire results identify which barriers need to be addressed and helps tailor online or in-person services to be targeted at the individual claimant.

Only online services are available in the first three months of unemployment but claimants can be required to attend job search workshops, job fairs and other events. U B claimants must register with a PE&TWA during their first three months of unemployment and unless they have good cause they can be sanctioned for not accepting PE&TWA job offers. Since 2011 all recently unemployed people have also been invited to UWV centres to participate in 'speed-dating' where they meet with employers and representatives of different PE&TWAs who may seek to place them in vacancies including TWA work. These events can be targeted at particular sectors or client groups and may be open to social assistance claimants. Another specific initiative concerns a range of activation services for the over 50s which includes training vouchers and subsidies. It also includes the payment of fees to agencies that are able to place these older UB claimants (an initial fee is paid after three months employment with further payments for retention at six months and a year). In the Netherlands it is now private agencies that are most likely to give in-person employment support to the newly unemployed (van Liemt, 2013, p.4).

Personal face-to-face or telephone interviews take place with the UWV in the 4th, 7th and 10th month of unemployment, but only the 10% most disadvantaged claimants are given more in-person interventions, such as in-depth work assessments and individual and group coaching (OECD, 2015, Box 3.14). After twelve months the remaining UWV claimants still eligible for UB must accept 'any job' and may have access to extra advice and support, including employer subsidies (Slotboom and Blommesteijn, 2015). Service users who cannot use online services, even with support, can access support at UWV regional centres. Municipal welfare claimants are required to register with the UWV but they can only access more intensive individualised services through the municipality.

There is little information yet available on the impact of these service delivery changes although the reported satisfaction levels of claimants and employers have increased as the functionality of the system has improved (UWV WERKbedrijf, 2011).

3.9 The PES and Private Employment and Temporary Work Agencies

In the Netherlands cooperation between the PES and PE&TWAs commenced in the 1980s and private agencies are now embedded in the service delivery system where

²⁰ The 'hard' factors include age, job tenure and knowledge of the Dutch language. 'Soft' factors include client view of their prospects of a return to work, health perception, active job search behavior and physical and psychological work capacity.

they act both as labour market intermediaries and as contracted providers. TWA employment is also seen as a worthwhile outcome for many of the unemployed, both as a source of paid employment and as a route into more regular jobs. By 2008 some 60% of the unemployed reported searching for work both through and with private agencies, and about a third of unemployed people registered with the PES who entered employment did so via agency jobs (EJML, 2011).

Initially, PES policy makers were sceptical about TWAs but changed their approach as the sector expanded and as unemployed jobseekers started seeking employment through TWAs. The first PES strategy involved using the temporary agency formula to produce better results for unemployed claimants. The PES sponsored its own TWA, called 'START', in the late 1970s. By the 1990s the agency was the second largest TWA in the Netherlands. START was managed as a non-profit enterprise. Its main aim was to place disadvantaged jobseekers into temporary jobs. START was eventually privatised but the experience of working with TWAs gave the PES operational knowledge of their working methods and prepared the ground for a more cooperative relationship between the sectors (EJML, 2011).

After the 2002 SUWI reforms the PES share of vacancies declined and the CWI sought to increase its market share. One element of the strategy involved using European funding to work with private agencies. Under this programme the agencies were paid a subsidy for registering vacancies with the PES system and mediating actively between CWI-registered clients and those vacancies. After 2002 UWV and municipal services for more disadvantaged jobseekers were outsourced, creating the reintegration market described earlier. This market attracted some PE&TWAs, who set up minor divisions to become contracted providers, but most of the for-profit and non-profit contractors involved have been specialist reintegration companies.

The UWV now perceives PE&TWA vacancies as part of the regular labour market and 'speed-dating' and registration with private agencies is a central element of the new PES delivery system. Private agencies routinely publish their vacancies on the UWV internet portal where jobseekers may be automatically matched and agencies can search for suitable candidates. In 2013 it was estimated that around 70% of the vacancies on werk.nl had been placed by agencies. These included TWA employment as well as more regular vacancies being filled by private agencies.

The current relationship between PE&TWAs and the UWV is underpinned by a formal cooperation agreement, the so-called 'Flex service point'. This provides a collective forum which is serviced by a two-person team in the UWV head office (one with a UWV and one with a private agency background). The team facilitates collaboration between the sectors and is tasked with identifying trends, opportunities and problems that need action or discussion and with organising regular meetings between the partners. Co-financing for the service desk is provided by the UWV and by both the national federations and by six of the largest TWAs (van Liemt, 2013).

3.10 Private Employment and Temporary Work Agencies in the Netherlands

PE&TWAs have a combined role both as placement intermediaries and as employers of temporary workers who are placed on assignments with user

companies. The combined sector accounts annually for over a quarter of all job starts and it is estimated that in 2013 since 15,000 TWAs entered employment contracts with about 700,000 people (albeit some of these individuals were recruited to more than one job during the year). Over the course of the economic cycle between 2% and 4% of the labour force is employed in TWA jobs (EJML, 2011).

There is a high degree of self regulation in the Netherlands and primary legislation concerning the rights of TWA workers allows the social partners to vary conditions through collective agreements. The most significant agreements are negotiated by two federations representing private agencies. The 'Dutch Federation of Private Employment Agencies' (*Algemene Bond Uitzendondernemingen*, or ABU) was founded by six agencies in 1961. The 'Dutch Association of Temporary Work and Placement Agencies' (*Nederlandse Bond van Bemiddelings- en Uitzendondernemingen*, or NBBU) was created in 1994, has more members (895) than ABU (500), but a smaller market share (25% against 65% for ABU) (van Liemt, 2013). NBBU members are small and medium sized agencies while ABU is seen to represent the larger national and international agencies. A third 'Continuflex' agreement has been negotiated by a smaller organisation but is little used (IDEA, 2015, p.104).

The two main federations have worked collaboratively with the Ministry over a long period and have helped establish legislative and governance arrangements that seek to promote high standards in recruitment and temporary work activities. There has, however, been concern about how some smaller agencies operate particularly in high risk sectors prone to exploitative and illegal working practices. As in the other case study countries these concerns became more intense following the expansion of the EU and the role that a growing number of legal and illegal agencies have played in exploiting vulnerable workers, many of them from Eastern Europe (Renooy, 2013).

3.10.1 The Regulation of Recruitment and Temporary Work Agencies

The growth of the TWA sector started at a comparatively early stage in the Netherlands. Pre-war legislation from 1930 had prohibited for-profit employment services but was replaced by a licensing system in 1972. In the 1980s and 1990s the reputation of TWAs improved and their role expanded in a context where policy makers sought to develop a less regulated and more flexible labour market. These parallel developments were fostered through two important legislative changes.

The Flexibility and Security Act (1999), or the 'Flexwet', has been the cornerstone of the Dutch approach to flexicurity and was passed only after much negotiation with the social partners. The provisions on temporary employment aimed to provide both the flexibility that most employers and some workers want balanced by longer term employment security for established workers. The law led to a '3x3x3' rule which set the pattern of assignments after which temporary workers would be given full employment security. In effect an open-ended contract existed after three years or three consecutive contracts unless there was an interruption of more than three months. The regulations also contained what was called the 'agency clause' which allowed (in practice) most agency workers to be employed indefinitely on short term

contracts (with only some 5% of TWA workers employed on permanent contracts in 2015).

The 'Labour Market Intermediaries Act' (WAADI) (1998) abolished the 1972 licensing requirement and other restrictions, such as a ban on agency work in the construction sector, but maintained many basic protections derived in part from ILO Conventions. This included the prohibition on charging job seekers fees for placements and the ban on the use of TWA staff to replace other workers involved in strikes. The legislation continued the dual responsibility and liability of agencies and user companies for the payment of taxes and social insurance contributions (Arrowsmith, 2006). This dual responsibility continues to operate and applies also to other aspects of national legislation concerning basic employment rights, such as health and safety at work and being paid correctly, including observance of the minimum wage. The agency and employer also have a dual responsibility to verify immigration status and ensure that TWA workers have a legal right to work in the Netherlands (ELCJ, 2013).

This WAADI legislation was revised in 2012. The latest provisions include the principle that from day one TWA workers should be paid the same wages and allowances as other workers, but allowed for this to be varied where there was a collective agreement (this meets the equal treatment principle in the EU Directive). The legislation also gives the Minister of Social Affairs and Employment the power to declare the provisions established in a collective labour agreement as generally binding throughout the sector (which currently applies to the ABU agreement for 2012-17: Renooy, 2013, p. 15 – see below).

The 2012 legislation reinforced the requirement for Dutch agencies, and other agencies operating in the Netherlands, to register with the national Chamber of Commerce (Renooy, 2013). This requirement was introduced following concern about the role played by unregulated temporary agencies that had facilitated a large influx of migrant workers following EU expansion. Fines for lack of or incomplete registration are high: from €12,000 per employee for the first offence to €36,000 per employee for a third offence. User companies of non-registered agencies also risk a fine. It was reported that 19,000 TWA agencies had registered by September 2012 (Renooy, 2013).

The TWA federations play an important role in self-regulation and, with the support of the social partners, seek to ensure that the provisions of TWA collective agreements are observed. Self-regulation includes certification by the 'Foundation for Labour Standards' (SNA) which indicates that the TWA pays tax and at least the minimum wage. The quality mark is based on the Dutch Standardisation Agency 'NEN 4400-1' standard. It was instituted by the TWA sector and the trade unions and its use can protect user companies and subcontractors against costly claims.²¹ Upon joining, ABU-affiliated companies must be SNA-certified. NBBU-affiliated agencies are given six months to become SNA-certified. The SNA undertakes inspections and in 2012 some 6,000 inspections resulted in the revocation of certificates held by 386 TWAs (Renooy, 2013, p. 36).

²¹ TWA workers can claim their unpaid wages and holiday allowances from the user company if their agency employer is unable or unwilling to pay these. However, user companies contracted with agencies certified with the SNA quality mark avoid liability for the payment of outstanding payroll taxes and VAT of the company that actually supplied the staff.

In 2007 the TWA federations and the trade unions established the ‘Social Fund for the TWA Sector’ (SFU - *Stichting Fonds Uitzendbranche*) which collects 0.2% of all wages paid in the sector and distributes them between three separate co-managed activities. This includes (van Liemt, 2013, Box 5; Renooy, 2013, p. 36):

- The ‘Compliance with the Collective Labour Agreement for the Temporary Agency Workers Sector Foundation’ (SNCU – *Stichting Naleving CAO voor Uitzendkrachten*). This foundation was created in 2004 and is known as ‘the CLA police’. It monitors compliance with TWA collective agreements and provides employers and employees with information on the rules of the agreement in order to improve compliance. The SNCU can impose fines and demand reparatory payments from companies that breach the agreement. In 2011 it undertook 461 investigations which resulted in recovery of €6.45 million in unpaid wages and in fines of €3 million. In 2013, SNCU had a budget of €2.7m, partly financed by the SFU and partly by the fines imposed.
- The ‘Training and Development Fund for the Temporary Work Sector’ (*Stichting Opleiding en Ontwikkeling Flexbranche*) promotes training to improve the skills of TWA workers and agency staff themselves. A principal activity consists of assisting companies with applications for EU subsidised training programmes.
- The ‘Working Conditions in the Temporary Work Sector Fund’ (*Stichting Arbo Flexbranche*) aims to improve working conditions, reduce sickness-related absenteeism and increase reintegration of workers in the TWA industry. The emphasis is on prevention and the agency seeks to highlight best practices, and provide suggestions on how to better manage employee’s health. This activity is of particular importance in a context where TWAs are responsible for the reintegration of their permanent employees during the first two years of sickness absence (OECD, 2014b, p.98)

A more recent development concerns the provision of accommodation for migrant workers. An independent monitoring agency now certifies and ensures that members of the two federations (ABU and NBBU) who employ temporary migrant workers and provide them with accommodation comply with the standards determined in the collective agreement.

Other sector based collective agreements may have an impact on the position of TWA workers, including restrictions on the proportion of TWA workers. Other agreements, as in the construction sector, recommend that user companies only deal with agencies that have been SNA certified (ELCJ, 2013).

The Ministry also has a specialist inspection team for the TWA sector which is part of the combined Inspectie-SZW. The Inspectorate concentrates primarily on sectors where there is a high risk of illegal employment, tax evasion and/or exploitative labour practices, such as fee-charging, underpayment of workers, bogus self-employment and poor record keeping. These are generally labour intensive companies in sectors with peak seasonal demands such as retail, cleaning, construction, agriculture and horticulture (Renooy, 2013). The Inspectorate has

varied instruments it can use when it uncovers violations including verbal and/or written warnings; prohibition notices; administrative fines; and criminal prosecution. It also collaborates and exchanges information on findings with the SNCU, tax authorities, municipalities, and law enforcement agencies; and liaises also with authorities in Central and Eastern Europe countries where many exploited labour migrants originate. The Ministry also sponsors awareness raising and campaigns to make the public, workers and employers more aware of legal and regulatory rules and how to make complaints about violations (including a hotline that can be used to make reports on fraudulent TWA agencies).

In addition to concerns about rogue agencies and exploitative working practices there is continuing debate in the Netherlands about new forms of employment relationships which seek to avoid regulatory oversight. There are particular concerns about what are called payroll or umbrella companies and contrived self-employment where legitimate TWAs face unfair competition and temporary workers may be excluded from their employment rights.

3.10.2 The Terms and Conditions of Employment of TWA workers

National legislation sets a framework of employment rights and obligations for TWA workers. Many of these regulations, such as those concerning health and safety at work, or the payment of tax and social insurance liabilities, apply to all Dutch workers. Equal treatment regulations apply to many of the working conditions of TWA workers who from day one, for example, should be paid the equivalent hourly wage, shift premiums, overtime rates, work related expenses and period-linked salary increases of comparable workers. This requirement does not apply if the temp worker has a permanent contract with the agency determined through a collective labour agreement. There are also some specific groups of temp workers who may be exempted from equal pay for up to 52 weeks. The exempted groups include school leavers; labour market returners; job seekers who were previously receiving social assistance; the long term unemployed; holiday workers; and so on. The conditions of both the permanent TWA workers and the exempted groups are covered by the agency-related collective labour agreement (see below).

The Work and Security Act (2015) made a significant change in the '3x3x3' and a temporary contract can now only be extended twice in two years before the employer must offer a permanent contract, providing no break between assignments is greater than six months.²² The legislation seeks to reduce the differences between flexible and permanent contracts and also includes changes to Dutch dismissal laws and entitlement rules to UI (for example, reducing the maximum UB payment period from 38 to 24 months).

TWA collective agreements tend to cover five year periods and the ABU agreement for 2012-2017, as amended by the 2015 legislation, is generally binding and covers most workers in the sector (except those covered by NBBU or other collective agreements). The agreement specifies payment rates which cover ten job grades

²² In 2015 it was reported that there has been controversy over implementation of the new rules with some Dutch employers dismissing temporary and TWA workers before they qualify for permanent employment status – see <http://www.eurofound.europa.eu/observatories/eurwork/articles/labour-market-law-and-regulation/netherlands-unexpected-problems-with-work-and-security-act>

varied according to the nature of the work, the level of knowledge required and the extent of the independence exercised in the job role (special rules apply in the construction sector).

The ABU agreement outlines three types of contracts under which the TWA worker may be employed by their agency. These include contracts under the 'agency clause'; an assignment or secondment agreement for a definite period; or an assignment or secondment agreement for an indefinite period. These contracts, and some working conditions, are in turn shaped by a phasing system which determines the status of the worker after particular durations of employment. The further the worker advances through the phases the more rights they obtain and the more 'permanent' their relationship with the agency becomes (ABU, 2015).

Workers generally start in the first 'agency clause' phase and are usually only paid wages for the hours worked, unless the TWA has agreed other arrangements. The employment is terminated when the user company no longer wants the worker, subject to a short notice period, or terminated immediately if the worker is not fit for work. The worker can terminate the assignment by giving 24 hours' notice. The great majority of TWA workers are covered by these arrangements but the period of this employment cannot last longer than 78 weeks worked for and with the agency before a permanent contract must be offered.

In the following phase agency workers are employed on time-definite assignments and are entitled to longer notice periods. The agency is obliged to find alternative work if a user company decides to end the arrangement early or to pay the worker 90% of the wage for the duration of the assignment or until they terminate the workers contract.

In the final phase TWA workers on an indefinite assignment enjoy job security and can only be dismissed after the agency has sought to find equivalent alternative assignments (for which the worker has to be available). In cases of contract termination the agency needs the agreement of the UWV if the grounds for dismissal concern economic conditions or worker disability, or the agreement of a court if it concerns other reasons (such as worker attendance or competence).

The ABU agreement also sets holiday entitlements which are linked to previous weeks worked. The agreement also allows for TWA worker wages to be subject to 'reserve deductions', which contribute to cover holiday and sickness pay and pension and other entitlements that are organised through the co-managed funds described previously.

The ABU agreement makes clear that although the user company is responsible for the workplace management and supervision of the temp worker the TWA is the employer (ABU, 2015). The agency must inform the worker about their hours of work and timekeeping. If the user company does not automatically notify the agency of the hours the worker has undertaken, the worker has to get the time sheet they submit to the agency agreed and authorised by the user company.

All TWA workers must be given a written or digital wage slip that specifies the wage total; gross hourly wage; number of hours worked; deductions from wages; bonuses;

and how much has been accrued in 'reserve deductions'. Before starting employment the TWA worker must be told whether they are employed on ABU remuneration or on the user company's pay scales.

Some special rules apply to TWA workers recruited outside the Netherlands concerning accommodation standards; safety; work instructions and, where needed, access to social counselling (ABU, 2015).

If the temp worker has any dispute about their working conditions the ABU agreement indicates that they should first seek to resolve this with their agency. If the matter cannot be resolved the worker can submit a complaint to the 'Dispute Committee' for the TWA sector. This includes representatives from the agencies and the four trade unions involved in the sector agreements. The committee will seek to resolve the issue and their decision is legally binding. The party which makes the request to the committee must pay an upfront fee of €49.

Chapter 4: The Organisation and Delivery of Public Employment Services and the Role of Private Agencies in Denmark

Over the past two decades there have been multiple reforms to the Danish benefit and employment services system (EC-CR, 2015; Raisanen et al, 2012). This has included a reorganisation of the role of local government and after a period of co-location with the PES culminated in 2009 in the devolution of responsibility for front line Jobcentres municipalities. During this reform process there was also a phase where Ministers placed a high emphasis on contracting out employment services to 'other actors' but these decisions are now left to the discretion of municipalities.

The wider Danish labour market system comprises a 'flexicurity model' with three mutually supportive elements (Arndt and Hörisch, 2015). One factor concerns flexible rules for 'hiring and firing', which make it easier for employers to dismiss employees during downturns and hire new staff when circumstances improve (about 25% of Danish private sector workers change jobs each year). The second factor concerns income security in the form of a guarantee of UB at a capped but relatively high level wage replacement level paid for up to two years. The third element concerns guaranteed participation in employment services aimed to support an early return to work. The flexicurity model is broadly supported by the social partners headed by the two main organisations - The Danish Confederation of Trade Unions (LO) and The Confederation of Danish Employers (DA).

Denmark spends about 1.5% of GDP on employment services and ALMPs, the highest percentage amongst OECD countries, providing considerable capacity and resources for active measures.²³ It is estimated that on average about 400,000 people of working age receiving unemployment related benefits can participate in short or longer term employment measures each year (Mploy, 2011).

The Danish employment services delivery system is now comprised of three tiers, which includes the national Ministry, an intermediate regional tier, and a network of 94 integrated Jobcentres. The system is designed to support strong national direction and accountability whilst allowing local flexibility. Each tier of the system is supported by consultative Councils that include employer and trade union representatives alongside other relevant actors, including organisations representing people with disabilities. The Danish reform process continues and in 2015, following recommendations from an expert committee, there was further change in the activation system and in the role of the regional tier of administration.

4.1 Unemployment Benefit and Social Assistance in Denmark

Legislation determines national rules on benefit eligibility criteria, activation requirements and sanctions. Although reforms have created a devolved and more

²³ The comparatively high Danish spending levels are inflated in the OECD data by the inclusion of educational allowances paid to participants in training programmes. In other countries equivalent income transfers are classified as 'passive' benefit payments.

integrated employment services system UB and means-tested social assistance continue to be administered separately, requiring more or less complex delivery and partnership arrangements. In particular, there have been difficulties in aligning municipal Jobcentres with the 29 separate social insurance funds (known as A-Kasse), most of which are connected to one or more trade unions (each fund must have a minimum membership of at least 10,000). Some of the funds are sector and employee specific; others are sector specific but also recruit self employed people working in the sector. The other funds are multi-sector and most also recruit self employed people.

Each UI fund is formally an independent association, where the members elect a board, which is responsible for the day-to-day operations of the fund. The election of each board is shaped by the respective trade unions and professional associations but they have only limited influence on their schemes because of strict national regulation of the system (including benefit and contribution levels). Collectively, the UI funds are represented by a national organisation, which seeks to influence policy and protect the interests of the funds and their sponsoring trade unions.

Membership of UI funds is voluntary although most workers are members of a scheme. The funds are financed through a combination of member contributions and government subsidy. An unemployed person must have been a member of a fund for a year and meet specified contribution requirements in order to qualify for UB and they must meet activation requirements. Benefits levels are generous compared to other OECD countries and are paid for two years at 90% of the previous wage up to a ceiling (so that it is close to a flat rate payment for most full time workers).

Unemployed people who do not qualify for UI, or who exhaust their entitlement, may be entitled to means-tested social assistance payment which is administered and partly funded by local government. The duration of social assistance is not time-limited, but a claimant has to be available for and seeking employment and participate in activation programmes they are referred to. If not, social assistance payments may be reduced or terminated.

4.2 The Development of the Danish Activation System

In the 1990s Denmark had a system characterised by generous and long duration wage related UB (which could last for up to nine years) complemented by expensive ALMPS. These programmes largely delivered income maintenance because participation helped claimants re-qualify for UI benefits (Raisanen et al, 2012). Unemployed social assistance claimants faced few activation requirements and few participated in employment programmes. Criticisms of the system grew when unemployment increased in the 1990s. Successive governments have since undertaken reforms designed to secure a more effective balance between income support entitlements and obligations to seek and take employment. Modified activation requirements have also been extended to people on disability benefits.

Radical system reforms were introduced in 2002 by a Liberal-led government. Benefit generosity was reduced and activation requirements increased. A key element of reform concerned 'municipalisation' of employment assistance where the Government proposed to progressively transfer control of the PES (including

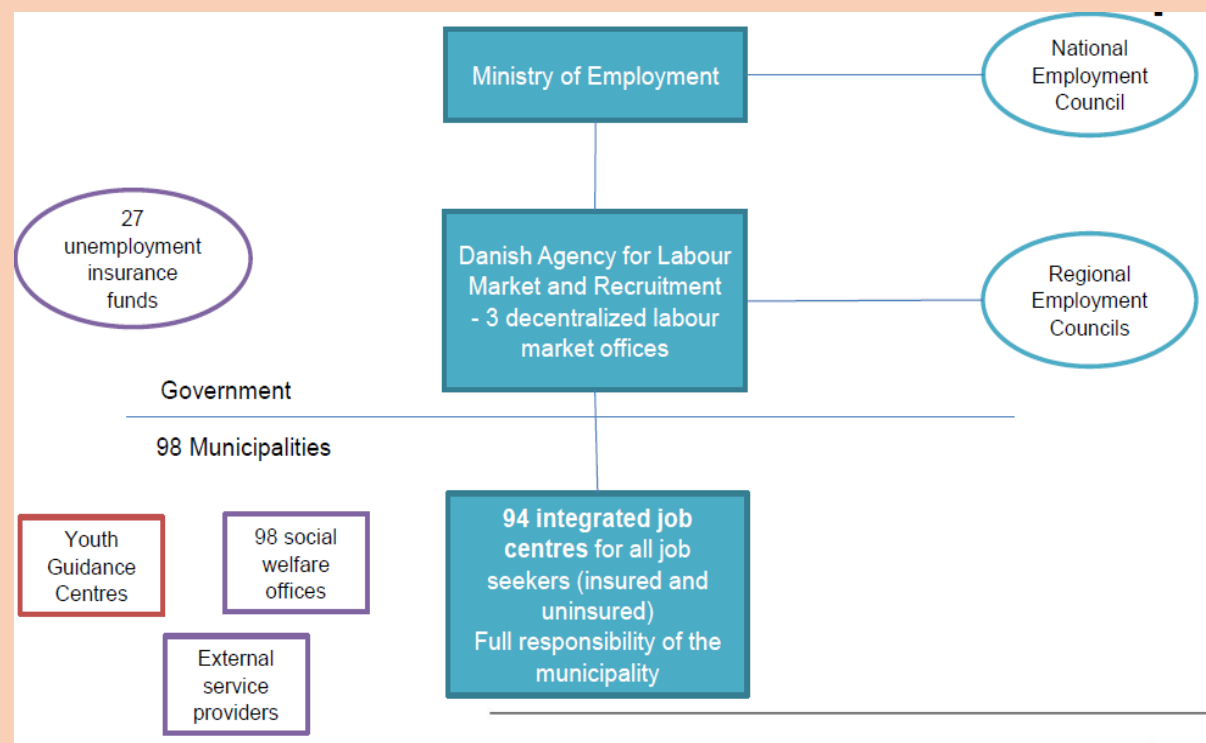
employment services for insured workers) to local government. The aim was to create a 'single gateway' to employment assistance for insured and uninsured workers, increase activation of social assistance claimants and better integrate employment assistance with other municipal services. The decentralisation of employment services to local government was intended to re-orient them towards quicker transitions to employment and to reduce the influence of the social partners (Jørgensen and Schulze, 2012). Ministers drove the reorientation of employment assistance through central funding arrangements with local government. At the same time Ministers required the PES and municipalities to contract out the delivery of some employment services (see below).

In 2005, the Government policy statement 'A new chance for all' announced a concerted push to remove inconsistencies in activation for insured and uninsured unemployed workers (Raisanen et al, 2012). A new profiling system was intended to reduce exemptions from activation to a small minority of social assistance clients and in 2006 the duration of UI benefits was reduced from four to two years.

Efforts to improve the activation role of local government were facilitated by major structural reform. In 2007 the number of municipalities was cut from 271 to 98. The reform was intended to improve the efficiency and capacity of local government to undertake their responsibilities, including their new role in employment services. The layer of county level government was also rationalised by the creation of four administrative regions governed by elected boards. In 2007 local government was also given greater responsibility for Jobcentres, many of which were initially co-managed with the PES, culminating in full devolution in 2009 when over 2,000 PES employees were transferred to local and regional government.

The reforms included the development of a new institutional framework for the delivery of integrated employment services (see Figure 6 which outlines the structure of the Danish system in 2015). The system has been designed to ensure national control and steering of activation policy, secured through a high degree of central accountability, combined with integrated management frameworks which give local government a considerable degree of flexibility at local level. There are contending views on how well the system delivers these objectives and there has been further reform as problems were encountered, employment levels varied, and as lessons on effectiveness have been learned.

Figure 6: The Danish National Framework for Employment Services Delivery, 2015



Source: *Danish Labour Market Policy - National Performance Management*, Jan Hendeliowitz, Chief Policy Advisor, Ministry of Employment, October 16, 2014.

4.3 The Danish Employment Services System: Target-setting, Accountability and Budget Management

At national level, the Danish Minister for Employment has overall responsibility for employment policy and the activation system. Each year the Minister sets three or four high-level targets for the system. Over the past few years the targets have given priority to reductions in the number of people unemployed for more than three continuous months (measured by outflows from unemployment); a reduction in the number of young people aged under 30 years claiming benefits; and reductions in the number of immigrants or the children of immigrants claiming benefits.

National legislation and regulations set the objectives and accountability framework for the system and include minimum measures for service delivery. These measures include the frequency of contact with unemployed claimants and their right to be offered active employment assistance and access to ALMPs after a specified duration of unemployment. The system has given high priority for Jobcentres to ensure that these activation guarantees are delivered.

Municipalities are required to develop an annual employment plan which reflects national goals although there is some flexibility if the target is less relevant to the locality in question (Mploy, 2011). The plan will contain an analysis of local challenges and circumstances as well as set objectives and outline operational priorities. It also will contain an outline budget for Jobcentre operations, employment

measures and benefit expenditure. When developing their plans municipalities are required to consult with local stakeholders and with their local employment council and the regional office of the Ministry. The municipality may also supplement national standards with their own priorities and targets. They can also coordinate the implementation of employment objectives with other services, cooperate with local partners and other municipalities, and target services at particular employers (Mploy, 2011). These additional municipal objectives will reflect the political priorities of the local administration and the views of the local employment council.

The 'Danish Agency for Labour Market and Recruitment',²⁴ which is part of the Ministry, is responsible for ensuring that minimum standards are met, and for monitoring the system and assessing whether the combined efforts of the localised delivery system are meeting national objectives (Hendeliowitz, 2014). It also has a role in developing new approaches and interventions, disseminating research findings and identifying and sharing best practice.²⁵ At the regional level the Ministry is supported by administrative regional units which supervise the Jobcentres and each year negotiate local targets and priorities with municipalities and subsequently monitor performance.

Each year the municipality is required to complete a performance audit of the impact and outcomes of their employment services. This is reviewed by the Regional Employment Council who can make recommendations for improvements. The regional offices have also been required to hold a minimum of four annual dialogue meetings with municipal and Jobcentre managers (albeit the meetings can be held with several Jobcentres at the same time). The meetings examine Jobcentre performance, how it may be improved and how best practice might be developed (Mploy, 2011). In the event of poor performance the focus is on analysing causes and developing remedial measures, for example, through bringing in external consultants, developing joint activities, and then agreeing an action plan with measurable results. The regional office must follow up and ensure compliance with such a performance improvement agreement. Ultimately, if poor performance continues, the regional office can recommend further action, including financial sanctions, to the Ministry.

Critically the Danish performance management system is underpinned by a publicly accessible national database with real time information on the delivery and outcome of services (www.jobindstats.dk). This internet portal enables local, regional and national managers to assess and analyse the performance of each Jobcentre against ministerial goals and other targets and benchmark their results against clusters of comparable municipalities.

²⁴ In 2014 the agency took on the functions of the previous 'National Labour Market Authority'. The primary role of the agency remains moving people from unemployment and social security benefits into employment and education but it now also has responsibility for work permits and for the Danish 'Green Card' system. Under the reorganisation the number of regional offices was reduced from four to three.

²⁵ The agency has focused increasingly on identifying and disseminating evidence on 'what works' and, amongst other things, an internet portal gives access to the results from evaluations, at www.jobeffekter.dk

The budget allocation and financing system for employment services also shapes the performance and accountability of municipalities. In Denmark local government is funded largely by local income tax and central government transfers. Expenditure on benefits and active measures for the unemployed is financed through central government refunds. Each year the Ministry informs the municipalities on the amount available which 'comprises a rate per unit per full time person' receiving public benefits, which may be adjusted if unemployment increases. The key incentive mechanism is that the Ministry will only refund a proportion of the municipality's expenditure on the unemployed. This funding mechanism first applied to social assistance claimants but was extended in 2010 when municipalities became responsible for payment of UI benefit (the maximum duration of which was also reduced from four to two years). These municipal refund payments are subject to performance. The financing is complicated but between 2010 and 2014 central government paid the municipality 75% of benefit when an unemployed person was in activation; 50% when the person was passive; and nothing if the person was not in activation when they were supposed to be (Andersen, 2011, p.30).

It was found that this financing mechanism created a strong incentive for the municipalities to get unemployed people into relatively ineffective low cost activation. The financing system was simplified from February 2015. The reform covers nearly all types of benefits (UB, social assistance, early retirement, etc.) making central compensation to municipalities the same for all types of benefits. For the unemployed the reimbursement system is now sequenced as follows. Between weeks 1 and 4 in the unemployment period the municipalities receive 80% of the benefit from central government; between weeks 5 and 26, 40%; between weeks 27 and 52, 30%; and after week 52, only 20%. If an unemployed person ceases to claim benefit for a year (in a period of three years) the funding sequence recommences. The difference in compensation when an unemployed person is passive or in an activation measure has been abolished. The reform has been phased in, to prevent too much disruption, and there are contrasting views on the impact it is likely to have on service provision, especially when transitional financial protection is removed from 2018.

By contrast, central Government funding for expenditure on Jobcentre administration and case management is included in a general block grant. Each municipality is free to determine staffing levels and the resources allocated to pay for case management but is accountable for delivering the services and targets agreed in the local employment plan. As a control measure central government caps the overall amount of expenditure that municipalities can spend on administration which means that the Jobcentre is competing locally with other policy areas and priorities to secure their operating expenditure.

The budget system is highly complex but generally the municipalities obtain a financial benefit when an unemployed person becomes employed as spending on public benefits is reduced and local tax revenues are increased. Despite criticism reviews of the financing system suggest that it encourages municipalities to give a high priority to employment services both because of the scale of expenditure, its political visibility and because performance levels may generate additional revenues or may entail financial liabilities.

4.4 The Role and Organisation of Danish Jobcentres

There are 91 Jobcentres in Denmark which means that nearly all 98 municipalities (apart from the smallest) have their own office which acts as the organisational focus of the local activation system. One critical difference to other countries, such as the UK, is that Danish Jobcentres have no direct responsibility for assessing benefit eligibility, paying out benefits or directly imposing sanctions. These tasks remain the responsibility of the separate UI funds for the insured unemployed and for the social welfare offices of municipalities. The suggestion is that this enables Jobcentres to focus on employment support and build a better relationship with unemployed people. Nevertheless, unemployed people who claim benefits are required to register with the Jobcentre and case workers are expected to ensure the individual is available for work and participates in activation measures. If the claimant fails to do so the case worker should notify the relevant benefit authorities.

The primary aim of the Jobcentre is to facilitate speedy transitions into employment or to assist people overcome the barriers preventing them from working. Jobcentre staff register, interview and initially screen job seekers and other working age claimants and allocate them to one of four 'Match Groups' according to their work capacity and likelihood of obtaining employment. These categories range from those able to take a regular job within three months through to those with serious barriers which mean they can neither work nor take part in employment measures. Where a person has no future capacity to work they may be referred to disability pensions. More specifically, Jobcentres are typically required to ensure all job seekers have a CV and a job plan, have a contact interview at least every three months, and that they then take up mandatory employment programmes after a particular period of unemployment (or full time training or education in the case of low skilled young people).

Jobcentres are managed through the goals and targets agreed in local employment plans. In one survey 84% of Jobcentre directors reported that they negotiated targets and performance requirements with their political and administrative managers (Mploy, 2011). A similar number of Jobcentres had opted to set out their own supplementary targets in addition to incorporating the Ministerial goals in their employment plan. Overall, 39% of Jobcentre directors reported they had high flexibility in management of goals and performance in employment measures, while 46% felt that they had moderate flexibility.

Municipalities now have control of how they staff their Jobcentre and deliver employment services and assistance. During the process of devolution local managers had to bring together the cultures of different staff coming from the PES and the municipality, with some remaining PES staff until 2009 (Lindsay and McQuaid, 2009; Walker and Sankey 2008). It appears that in many localities both groups of staff moved into new or different premises from those previously occupied by the two services. In most Jobcentres managers and staff who previously worked for the PES focused on employers and on claimants who were closer to the labour market, whilst municipal staff, often social workers, served the groups furthest from the labour market. Specialist cross-cutting teams had responsibility for particular priority groups, especially young people. Although organisational and cultural

differences were significant issues in the early period it seems that following full devolution differences dissipated (Mploy, 2011).

Despite service delivery improvements there has been criticism of Jobcentres and how they work with the unemployed. Much of the criticism concerns ‘meaningless activation’, generated by legal targets and financial incentives, and the poor quality of workfare programmes targeted at the long term unemployed. There has also been criticism of the ways in which Jobcentres failed to meet the needs of local employers. Negative perceptions of the system culminated in 2013 in the establishment of an expert group (led by Carsten Koch, an ex-Minister) to undertake a high-level review of the system (EC-CR, 2015). The first report, published in 2014, recommended changes in the system for the insured unemployed so they are no longer required to participate in one activation measure after another (Kvist, 2015, p.9). In 2015 this led to changes in financial incentives (described earlier) combined with greater integration of the work of Jobcentres and UI funds within what is intended to be a more individualised service delivery system (see Figure 7).

Figure 7: The Danish Contact and Activation Regime for the Insured Unemployed, 2015



Source: *Danish Labour Market Policy - National Performance Management*, Jan Hendeliowitz, Chief Policy Advisor, Ministry of Employment, October 16, 2014

The committee published a further report on services for social assistance claimants in 2015. Under the new system social assistance claimants are expected to agree a contact plan within a week and be allocated a case worker responsible for coordinating services and developing a job search or cross-discipline rehabilitation plan. This approach built on an earlier reform to disability benefits which had previously introduced cross-disciplinary rehabilitation teams whilst at the same time intensifying activity and integration measures targeted at those aged under 40. Social assistance claimants aged under 30 have also now been divided into two groups with skills training or education mandatory for the unskilled; and work activity mandatory for those with qualifications. The Koch Commission has also recommended the development of more employer based integration services targeted at the long term unemployed and disadvantaged social assistance claimants (Kvist, 2015),

4.5 The PES and Direct Contracts with Private Providers

The Danish PES contracted out some services before 2002 but in that year there was a step-change after the Liberal-led Government committed to expand the role of ‘other actors’ in the delivery of employment services. The label ‘other actors’ was used because the government wanted the involvement both of for-profit agencies

and of the non-profits that had previously delivered PES services, in particular trade union or union-affiliated training institutions and UI funds. The unions were supportive and saw this as an opportunity to regain influence and resources for their institutions (Larsen and Wright, 2014).

Between 2002 and 2005 the regional PES was given flexibility to organise the process of contracting out, deciding what types of service and which groups of insured unemployed would be targeted; the contract design and payment model; and managing the tendering, contract award and performance management process (Bredgaard, 2008). The only obligation was that at least 15% of the insured unemployed should be in services fully or partly provided by 'other actors'. Service providers were allowed 'freedom of methods' in working with clients, as long as they complied with the contract and legal obligations. Over a short period many different models for contracting out were tested.

The new market expanded quickly and by 2005 it was estimated that around 46% of the insured unemployed were placed with an estimated 159 recognised activation providers, two thirds of which were for-profit providers (Lindsay and McQuaid, 2008, p. 356). One factor driving growth was that PES offices used their flexibility to contract with external providers to meet administrative targets on the number of activation contacts they had to undertake with the unemployed. There was concern about the quality and effectiveness of provision and the Minister introduced constraints. These stipulated that from 2005 contractors could only be used 'where they make a difference' (not on administrative tasks), and that all contracts should be performance-based, with 75% of payment depending on proven employment outcomes which lasted at least 13 weeks (Bredgaard and Larsen, 2008). In a short time the market diminished, with the proportion of the insured unemployed contracted out falling to 22% in 2006, and to 10% in 2009 (unemployment also fell in this period). There was a 'shake out' of providers, with many non-profit organisations unable or unwilling to take on the risk of PbR contracts. Trade union affiliated providers and training institutes had delivered about half of provision in 2005 but by 2009 this share had fallen to 10%. Contracted employment services are now largely delivered by for-profit providers (Larsen and Wright, 2014).

Another factor behind the contraction of the market was devolution. In 2002 municipalities had also been encouraged to contract out some 10% of their reintegration services. It was hard for the Ministry to enforce this because of local government autonomy and the requirement was dropped in 2005. In the following early phase of PES devolution the economic incentives for municipalities encouraged them to use 'other actor's and this prompted an increase in contracting out. After 2008 municipalities were able to authorise private-sector providers to perform certain mandatory activation tasks, for example formulation of job plans and submission of offers as well as approval of on-the-job training and wage subsidies. This allowed providers to take on elements of Jobcentre activities and, where there was a lack of capacity, it gave the municipality an incentive to do so because central government refunded 50% of expenditure for placing people in activation measures (whereas the municipality had to pay 100% if it did not place the person in activation). However, budget cuts after 2009, and policy changes after 2011, including an amendment to the refund provision, significantly reduced municipal incentives to use external providers (Larsen and Wright, 2014).

Until 2014 there was still a mixed system but national tenders, which were typically targeted at specific groups, such as unemployed graduates or older workers, are now being phased out. Under these national tenders local Jobcentres had to refer target group claimants to the providers who were included in a national framework agreement. Such contracts typically paid an upfront fee of 25% with 75% of the agreed payment paid after the participant had been in employment of over 20 hours a week for six months. The aim was to ensure that services were delivered by specialised providers for these targeted groups.

Local jobcentres now have freedom to design their own tenders and in several regions Jobcentres have combined to design their own tender and procure services together, although such joint tenders must meet national procurement standards. There is much variation in the use of private providers ranging from some Jobcentres which do not contract out services to the most radical model, developed by the municipality of Gribskov, which has outsourced its Jobcentre entirely to a private provider (Mploy, 2011, p.59).

4.6 Private Employment and Temporary Work Agencies in Denmark

In 1990 the Danish Government ended the PES monopoly control of job broking and since then private placement agencies and TWAs have been free to operate. The proportion of TWA workers in the Danish labour force is amongst the lowest in Europe, although there has been an increase from an estimated 0.3% of the labour force in 1999 to about 1% in 2015 involving some 1,000 registered agencies. There are also few examples of other atypical working practices such as zero hour contracts or casual day labour (Hansen and Neilson, 2010). Data from the European Labour Force Survey shows also that few Danish people report using private employment agencies to search for employment (DGIP, 2013).

The low coverage of non-standard employment contracts partly reflects the Danish flexicurity model which gives greater flexibility in standard employment contracts (Madsen, 2015). Danish trade unions had also opposed temporary agency work, as well as other types of 'atypical' employment, on the grounds that temp workers would undermine the wage and working conditions of regular workers. Gradually, however, trade unions have accepted different types of flexible employment and have negotiated with employers on how to include TWA workers in the collective bargaining system. Over the past decade each of the larger trade unions has established entities to serve temporary workers and freelancers (DGIP, 2013). These entities provide information on workers' rights and access to services, such as, legal representation. In 2008 trade unions estimated that approximately half of TWA workers were members, but no reliable statistical data is available (Hansen and Andersen, 2008).

Temporary agency work is most common in sectors such as storage, construction, health care, teaching and agriculture, and these sectors are covered by collective agreements on general organisational, sector specific and/or company level. By 2008 it was reported that 80% of TWA workers were covered by collective labour agreements. Most of the regulation covering TWA workers is found in sector-specific agreements with protocols on the use of TWA workers (Hansen and Andersen,

2008). National labour laws have had a complementary role to ensure coverage for the minority of temp workers not covered by collective agreements. The social partners have also typically transplanted European Directives on working arrangements into their collective agreements (Madsen, 2015).

There has been recent controversy on the role that agencies play in the recruitment and employment of migrant labour from new EU Member States. The number of companies employing workers from these countries has increased and most of the migrant workers are employed in agriculture, the construction sector and the service sector (including travel and cleaning). This development, coupled with concern about illegal employment, prompted an inquiry by the Government leading to a report in 2012 (DGIP, 2013). The report reviewed 'social dumping'²⁶ and the challenge it posed for the Danish labour market model. It led to a number of changes in the application and enforcement of existing rules. This included the registration of foreign employment agencies and the introduction of an authorisation system for TWAs to ensure they paid wages and working conditions comparable to those for standard workers.

In July 2013 the 'Temporary Agency Workers Act' extended the right to 'equal treatment' to all Danish agency workers, although it exempts those employment sectors covered by collective bargaining agreements. It was anticipated that the legislation would, where necessary, be followed by revisions to collective agreements to ensure that the principle of equality between temporary and permanent workers is implemented (DGIP, 2013).

4.6.1 The Regulation of Temporary Work Agencies

In general private employment agencies and TWAs are only required to comply with commercial laws that apply to all businesses, such as producing an annual accounting report. Establishing a company to operate an agency essentially involves registering the company's purpose, expected income level and ownership structure. There are a few exceptions. In the transport and health sectors public bodies issue official licences or certificates and specific rules apply to TWAs. In the health sector, for example, an agency must employ at least one licensed nurse, who is responsible for hiring other nurses and managing contracts with health providers. In the transport sector drivers must be approved by the 'Public Traffic Agency', which ensures that drivers hold the appropriate transport licence (DGIP, 2013). Foreign companies 'posting' employees in Denmark must also register as a 'Foreign Service Provider' for immigration control purposes.

There are around 1,000 employment agencies in Denmark and they vary in size and in their share of the market. The average size is small - only 300 agencies have over five employees. In this context the larger agencies have sought to establish industry standards through self regulation and in 2011 set up the 'Temporary Work Agencies Certified in Denmark' (Vikarbureauer Certifiserede i Danmark). This merged two

²⁶ The term 'social dumping' is often used in European policy debates to point to 'unfair competition' between countries with very different wage and social protection levels. On one level it concerns the movement of employment to a low-wage country or area but in the context of the debate on TWA workers in Denmark it concerned the role of agencies in recruiting or employing lower paid migrant workers.

existing associations and is connected with the Danish Chamber of Commerce (Dansk Erhverv). The association represents and provides services to agencies but a key aim of the merger was to create a strong common industry standard and code of conduct.

The quality mark and approval process for the agency certification standard is managed by a separate independent association (VikarBranchen) and subject to external assessment by PWC, the auditing company (DGIP, 2013). To be approved an agency has to provide a service certificate prepared by the Danish Commerce Agency, proving their business registration. Further they must use an external auditor, provide proof of professional standards in managing confidential personal information and have a mandatory certification of training in employment law to ensure a knowledge of legal requirements and collective agreements. Members must observe provisions of collective agreements and social legislation and also commit to an ethical obligation to protect the members' reputation among customers, agency and public institutions. If a member agency violates the terms of the code of conduct or does not meet the regular controls, the company risks losing their certification.

4.6.2 The Terms and Conditions of Employment of TWA workers

The employment circumstances of TWA workers are shaped by a combination of national legal regulations and the varying terms outlined in collective labour agreements. Danish employment laws ensure that all workers have certain basic rights in relation to working hours, breaks, rest periods, night work and vacations. Collective agreements have also 'normalised' the conditions of TWA workers and over time these conditions have become equivalent to regular workers in terms of wages, pensions, holidays, sickness benefits, maternity leave, and so on (DGIP, 2013). There are, however, still disputes about which collective agreement applies to particular workers (and derived from this which pay and working conditions apply) (Andersen 2011). Trade unions also seek to shorten the period of employment before TWA workers gain full access to the benefits enjoyed by regular employees (Hansen and Andersen 2008).

The physical employment conditions of agency workers are regulated in the same way as that of regular employees and the user company remains responsible for health and safety, insurance and injury coverage (ELCJ, 2013). The Danish 'Work Environment Authority' undertakes more or less regular control visits to ensure workers rights and working conditions meet legal standards, especially those concerning their health and safety. The agency has varied sanctions if legal standards are not being met, related to how serious breaches are. Sanctions range from issuing improvement notices, through to fines and, ultimately, the closure of premises.

TWA workers who are outside collective agreements are covered by the terms of the 'Temporary Work Act' (2013) which also sets a benchmark for trade unions and employers to match. Under the equal treatment principle an agency must ensure that, at a minimum, a TWA worker stationed in a user company has the same terms and conditions of employment as would have applied under legislation, collective agreements or other binding general provisions if the TWA worker had been

employed directly by the user company. This equal treatment applies to working time, overtime, breaks, rest periods, night work, holiday, public holidays and pay, but does not necessarily apply to age-pension contributions if the TWA worker is compensated through other remuneration (but the TWA worker cannot be placed in a less advantageous position).

Under the Act, the user company must inform the TWA worker of vacancies so that the individual is on an equal basis with other employees in relation to obtaining permanent employment in the user company. Moreover, the temp worker must have access to collective facilities and benefits in the user company on equal terms with the user company's own employees, unless there are objective reasons for treating the agency worker differently.

The Act prohibits temporary agencies from successively stationing a TWA worker with the same user company without a justifiable reason. This prohibition is intended to ensure that no circumvention of the user company's seniority-based terms of employment, if any, take place. Moreover, on request to the employment agency, a TWA worker can receive information on the terms and conditions of employment to which he or she is entitled while stationed at the company.

Clauses prohibiting (or preventing) a TWA worker from taking up employment with the user company after being stationed there are invalid. However, the agency may request reasonable payment for services rendered to the user company in connection with the stationing, employment and training of a TWA worker.

Lack of compliance with the Act by either the agency or the user company may be penalised through fines and non-financial penalties in accordance with the nature of the violation. TWA agencies are treated like any other business regarding formal complaints of breaches of regulations and collective agreements with cases adjudicated and settled through civil courts or by the Labour Court.

Chapter 5: The Organisation and Delivery of Public Employment Services and the Role of Private Agencies in Germany

In the past decade there has been a significant increase in the German employment rate and unemployment according to the national administrative calculation has fallen from the very high levels experienced in the early 2000's. These changes have been facilitated by reforms in labour market policies that were recommended by the 'Hartz Commission' and implemented in federal legislation between 2002 and 2005 through what is known as 'Hartz I to Hartz IV'.²⁷ The reforms included labour market deregulation, including some changes in the regulation of PE&TWAs, and a transformation in the out of work benefit system and the management and organisation of the PES.

Before 2005 the UI fund provided a wage-related UB for the short term unemployed, with a gradually reducing amount of unemployment assistance for those who were long term unemployed. Local municipal governments provided separately funded means tested social assistance for the poor and uninsured. During the 1990s unemployment caseloads increased putting pressure on the PES and local budgets. Support for unemployed people was fragmented, the PES was seen as ineffective and municipal caseloads included an increased number of those on unemployment assistance whose benefits were 'topped up' to social assistance levels.

In 2005 the final 'Hartz' reform led to a new framework for the integrated provision of benefits and labour market services to the long term unemployed and other employable social assistance recipients. The German benefit system is now comprised of a BA administered wage-related UI benefit, which normally lasts for up to a year for those who qualify, and a safety-net means-tested benefit – 'basic income support for jobseekers'.²⁸ UI is funded by social insurance contributions but basic income support is now solely funded by the federal government and in much of Germany is administered through a network of local Jobcentres some of which are operated jointly by the PES and local authorities and others of which are solely run by the municipality. *'In effect', the Jobcentres 'now form a second tier of Germany's PES, organisationally (and, in most locations, also physically) separate' from the employment offices which serve insured jobseekers (Knuth, 2014, p.244).*

In 2014 an annual average of almost 5 million jobseekers were registered with the BA, of whom about 2.9 million were registered as unemployed. About a third of unemployed jobseekers received services from the BA's own front line offices, and

²⁷ The Hartz Committee was established in 2002 in response to persistent high levels of unemployment and in the wake of a 'scandal' where an audit found that BA recording practices exaggerated their job placement statistics. The audit found that only 30% of some 3.9 million job placements registered by the BA had been recorded correctly. A third had some evidence of BA involvement but did not meet the audit requirement, and there was no basis for the other third claimed. The conclusion was that BA offices were responsible for only 18% of job placements in the German labour market, not the 51% previously claimed (Finn et al, 2005).

²⁸ Although it is a household benefit all adult recipients of basic income who are able to work for three or more hours a day or for 15 hours a week must be available for and seeking work. This had the effect of further increasing unemployment which reached a peak of 11.2% in 2005 (Klueger, 2015).

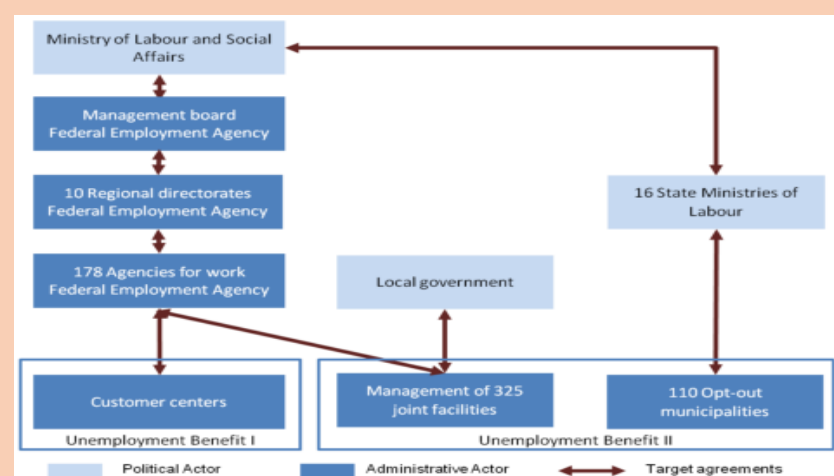
some 68%, mostly basic income recipients, were registered as unemployed with Jobcentres (Kreuger, 2015, p.5).²⁹

5.1 The Federal Public Employment Service (Bundesagentur für Arbeit)

Germany is a federal state and responsibility for employment policies and economic development is divided between the national government and regional states. Responsibility for the design and implementation of activation policies, employment services and labour market programmes is largely shared between federal and local government (see Figure 8). The 16 regional states have less direct influence but have significant powers to shape governance and legislation especially through their participation in the federal upper chamber of parliament, the *Bundesrat*.

National legislation sets the broad outlines of German employment policy and specifies labour market policy instruments to be applied nationally by the PES (Bundesagentur für Arbeit, abbreviated as BA). The BA is the central body responsible for labour market intelligence, the UI system, and the delivery of employment assistance and labour market programmes for most of the unemployed. It also has a direct role in the licensing and regulation of PE&TWAs.

Figure 8: The German Employment Services System



Source: Christensen et al (2014), p. 16.

The BA operates under the jurisdiction of the Federal Ministry for Labour and Social Affairs but is a quasi-independent agency, and enjoys some policy autonomy derived from its institutional setting and its responsibility to levy, manage and administer insurance funds (Mosley, 2012). The BA continues to have strong representation of employers and trade unions in its governance arrangements and it exercises much

²⁹ The German BA defines a person working under 15 hours and job seeking as unemployed. Note also that 57% of the 4.39 million people claiming basic income in 2014 were not unemployed. Of these some 430,000 were not counted as unemployed as they were participating in ALMPs (Kreuger, 2015). Another group were in low paid employment, including 'mini jobs'. Between 2005 and 2011 the number combining earnings and basic income increased from 872,000 to 1.4 million of whom about 55% worked less than 15 hours a week (Jobelius, 2012).

discretion in its operational business and its resource allocation for labour market programmes.

The BA is composed of a headquarters in Nuremberg and ten regional directorates which work closely and coordinate labour market policies with the policies of regional governments. The number of BA full time equivalent staff was some 108,000 at the end of 2013 (Krueger, 2015, p. 5). There are 156 large regional offices (each with 200 to 400 staff), a network of smaller branch offices, and approximately 404 local Jobcentres most of which are co-managed by the BA and municipalities (about a quarter are managed solely by municipalities, see later). In 2006 the OECD estimated that some 40% of the staff employed in front line offices could be broadly considered as delivering services in job placement and counselling (Tergeist and Grubb, 2006).

At the time of the Hartz reforms the management structure of the BA was modernised, giving it a greater focus on 'management by objectives' aimed at improving customer service and securing faster job placement. A three-member management board oversees the BA, with three-person Executive Boards also responsible for management at regional and district levels. Significantly, the influence of the social partners has been reduced with the tripartite advisory committees abolished at the middle level, and those at central and local levels losing their power to propose budgets.

The BA is accountable to the Federal Government and negotiates separate annual performance agreements for UB and basic income claimants which specify priority groups and targets for employment assistance. The BA has its own internal performance management system which is '*highly detailed; formalised and target-driven*' and also includes procedural standards (Jantz et al, 2015, p.953). Target setting incorporates elements of dialogue, with some targets set autonomously at the regional level, and national 'framework targets' reported to be only one element in a more consultative style of performance assessment (Weishaupt, 2011; Nunn, 2012). Each year the BA's offices and the joint Jobcentres are required to assess their local labour markets and jobseeker populations and to publish an annual integration and labour market plan which outlines local strategies and targets (Krueger, 2015).

The performance of each district is monitored monthly and Jobcentre performance benchmarked across comparable labour markets. Regular BA performance dialogue takes place at 'every management level' (Krueger, 2015, p.11). Tripartite committees also monitor local PES management and provide insight into the needs of local employers and employees.

PES performance is judged on verified job entry sustained for a minimum of seven days (Nunn, 2012, p. 45). The PES performance management system is designed also to deter the agency from 'parking' harder to place clients until they transition out of insurance benefits to the tax funded basic income support. A benefit duration measure means that the number of claimants exhausting their insurance entitlement has a negative impact on measured BA performance. Nevertheless there is criticism of the target-regime for inducing elements of 'creaming', reducing local flexibility and

for not providing 'incentives for long-term oriented integration strategies (Jantz et al, 2015, p. 954).

5.2 PES Service Delivery and Intervention Strategies

A central element of the post-Hartz reforms was the reorganisation of BA offices into new customer-oriented service centres which would serve as 'one-stop shops' for all labour market services. The design of these front line offices typically includes a reception area, a self-service zone with access to online jobsearch, and an advice and placement zone where job placement and case management take place (Kreuger, 2015). An initial benefit claim is made by phone or online and pre-profiling takes place on the basis of age, level of qualification, and so on, and a claimant is then allocated a 15/30/45 minute slot with a counsellor. Counsellors work most with those hardest to help and specialist Job Placement Officers concentrate on working with employers in particular sectors.

PES intervention strategies are based on jobseeker profiling undertaken at the first interview. An IT system segments claimants into six different profiles on the basis of their characteristics. Each profile is linked to a specific service strategy but counsellors have some discretion in how they treat individual claimants (Kreuger, 2015). After profiling claimants have to enter 'integration agreements' which set down the activities expected from jobseekers and the job search or integration strategy to be followed.

After the Hartz reforms the new focus on activation was accompanied by a stricter BA cost-benefit and impact calculation of the effectiveness of ALMPs, which corresponded with a reduction in the previous levels of investment, especially in training and public sector job creation schemes, both for the short term unemployed and for those receiving basic income.³⁰ As part of a drive to decentralise decision-making and allow more flexible use of funds PES managers have been given greater discretion to determine their own local ALMP policy mix (Tergeist and Grubb, 2006).

There has been a long term decline in spending on ALMPs (apart from a short period in 2008-09) reflecting policy choices and a decline in unemployment. Nevertheless in 2013 BA ALMP expenditure amounted to nearly €8.4 billion and a monthly average of 858,000 jobseekers participated in ALMPs delivered directly by the BA or by Jobcentres. The duration of participation was about four months. About 2.3 million people completed an ALMP in the year to July 2013 and 38.4% were in formal employment six months after completion (Kreuger, 2015, p. 7). It has been suggested that in order to meet performance targets front line officials select participants who are closer to the labour market. There has also been a significant fall in expenditure on labour market integration measures for basic income recipients which was reduced by €2.5 million, or 42% between 2010 and 2013. (Hanesch et al, 2015).

³⁰ In 2004 the BA started to evaluate the impact of ALMPs through a project called Treatment Effects and Prediction (TrEffeR). This compares the six monthly employment outcomes of a representative group of non-participants with participants for each programme. Its objective is to provide regular impact data to inform decisions on the use of specific programmes for particular target groups (Kreuger, 2015).

5.3 Joint PES and Municipal Jobcentres

Local joint agencies, previously known as 'ARGE', deliver 'one-stop' services in what are commonly called Jobcentres in much of Germany. The agencies are responsible for administering basic income and work-related requirements and for delivering employment support and assistance, including access to services provided by local government. Political conflict between the then Government, opposition parties and municipalities, concerning the respective roles of the PES and local government, means that initially 69, and now 105, 'opt-out' municipalities assumed full devolved responsibility for basic income claimants (see below). This thwarted the Hartz-related ambition of providing integrated employment and social support with services now delivered through 306 jointly operated Jobcentres and 105 municipal Jobcentres.

The joint Jobcentres are externally a single organisation but are staffed by employees and are accountable separately to the PES and municipality. About 56,000 PES staff work in the Jobcentres alongside an estimated 18,000 municipal employees (Krueger, 2015, p. 5).

There is variation in organisational and procedural structures but joint Jobcentres are established on the basis of a formal agreement between the local authority and the local BA. The appointment and powers of the chief executive of the joint Jobcentre are regulated by the agreement between the contracting parties. There are some mandatory requirements, such as providing an appeals procedure, but there is considerable discretion on the organisation of work processes. The local authority, for example, can carry out their responsibilities directly or delegate them to third parties. Each partner normally bears the costs of the services they provide in the joint centres (Mosley, 2005).

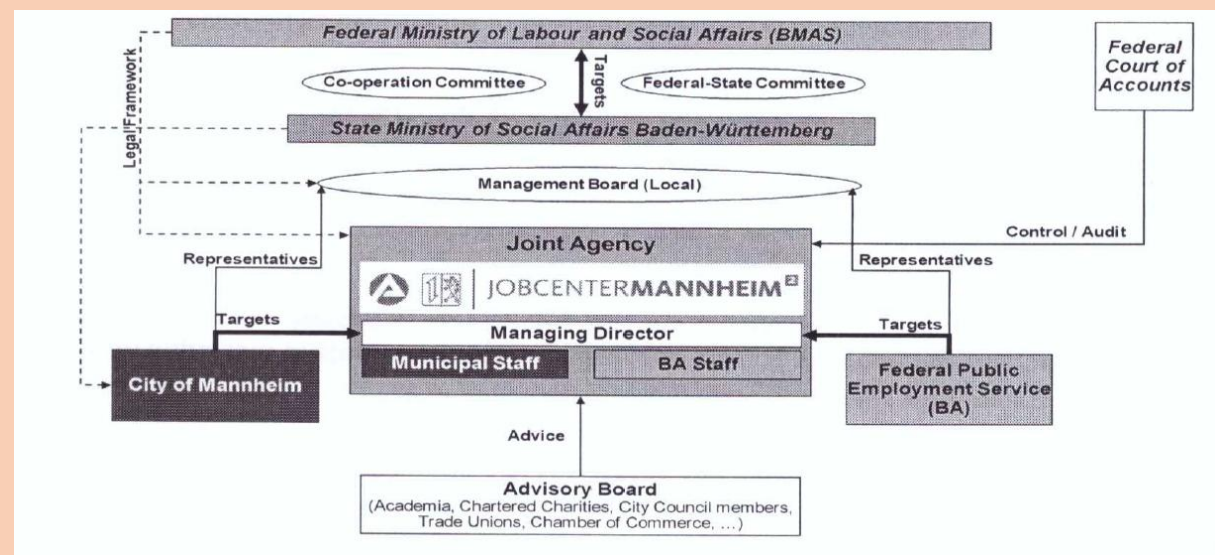
The BA is responsible for administering basic income and for financing and implementing active measures and the municipality is responsible for the administration and financing of some 75% of rent subsidies and of traditional social services (e.g. debt advice, drug and psychological counselling, child care provision). It is estimated that the federal share of basic income-related spending is 80%. The transition to basic income meant that municipalities were no longer responsible for partial financing of social assistance, but their continued responsibility for financing rent allowances was in part designed to give them a continuing incentive to support the successful implementation of reintegration measures (Mosley, 2005). There is, however, much variation in the levels of municipal investment in discretionary social integration services and in their coordination with Jobcentre employment services (Hanesch et al, 2015).

Federal resources for employment services and labour market programmes can be used flexibly and the national budget is allocated on the basis of a formula based on the number of claimants in the previous period. Local joint agencies are also allowed to transfer funds between their programme and administrative budgets. Federal basic income support payments are, however, a separate entitlement with no cap on the budget which is responsive to local demand from eligible claimants. The introduction of a performance variable in the federal distribution formula is considered to be politically unacceptable. Mosley suggests that the outcome means there is little financial incentive for the joint agencies (or 'opt-out' municipalities) to

improve performance and ‘a decline in the number of claimants may lead to reduced funding for active programmes and personnel’ – ‘good performance may cost you or your colleagues their job’ (2010, p.6, p.7).

Joint Jobcentres have their own management and governing board, in which the PES and municipal partners are equally represented (see Figure 9, which describes the organisational structure of the Jobcentre in the city of Mannheim). The formal agreement obliges both sides to engage in an ongoing process of coordination and negotiation of their business strategy. Mosley suggests that while this relationship is more than simple co-location (as in the Netherlands) it is highly dependent on good working relationships between the PES and municipalities. This relationship is constrained, however, by the ‘strong influence of the PES with its centralistic organisational culture’ which ‘greatly complicates decision-making in the Jobcentres’ (Mosley 2010, p. 5).

Figure 9: Organisational Structure - Mannheim Joint-Jobcentre



Source: Hörning, 2011

Performance management and service delivery in the joint Jobcentres is embedded in the federal PES system of national targets and service standards, and monitored through their integrated IT system. Centrally disaggregated local targets must, however, be approved by the joint Jobcentres governing body. The local PES director has the responsibility of winning approval and of mediating any conflicts. Crucially the special status of the joint Jobcentres gives ‘the local PES management itself more leverage to assert local discretion in dealing with the PES hierarchy’ (Mosley, 2010, p. 9). Nevertheless there has been friction between the national PES and joint Jobcentres with central regulation reported to be restricting the capacity of local agencies to adapt national employment programmes to the local needs of basic income claimants. This centralising tendency has been reinforced by the approach of Parliamentary scrutiny bodies and the German audit office that are critical of the loss of transparency and oversight involved in moving away from clear national rules and standardised programmes and practices.

The national PES has helped shape the model adopted in most joint Jobcentres where service delivery 'strongly resembles' that provided in BA offices for the insured unemployed. Key features include the separation of benefit administration and employment assistance and the differentiation of client services according to their assessed distance from the labour market. Each active claimant is allocated an individual counsellor and must agree an individual reintegration plan.³¹ More employable jobseekers are assigned to placement counsellors; while young people or adults with greater barriers are assigned to specialised case managers. In contrast with opt-out municipalities joint Jobcentres were characterised by higher uniformity and standardisation across different regions, and by the more frequent use of sanctions (ZEW, 2008). Some problems are reported to arise because there is no single local chain of command and only limited integration of PES and municipal IT systems and client data. It has also taken significant effort to develop a common service culture with tensions reported between the different approaches of BA counsellors and those of qualified social workers.

5.4 The 'Opt-out' Municipalities

The 105 'opt-out' municipalities do not participate in the PES national performance management system and define their own local goals and operational targets in relation to funding agreements and negotiation with their regional government. These municipalities have developed service delivery models separately and without access to the national PES IT infrastructure and support function available to the joint Jobcentres. Municipal advisory boards, with representation from the social partners and other welfare agencies, oversee local delivery.

Although 'opt out' municipalities are subject to national financial and audit controls their freedoms around monitoring service delivery mean that data definitions vary and comparison between opt-out municipalities or with the PES is difficult. Despite these organisational differences it appears that in practice similar goals are pursued under both models, with the municipalities giving somewhat less weight to rapid job placement and slightly more to maintaining or improving employability (Mosley, 2010, p.10). The municipalities also largely separate benefit administration and advisory services, with 'only very few' opting for integrated case management (Mosley, 2010). Opt-out municipalities were reported to make little use of competitive contracting when purchasing employment and training services whereas joint Jobcentres are required to use regional PES procurement centres.

There are no required quality standards concerning the delivery of employment and social reintegration services in both municipal and joint Jobcentres although there are efforts to improve quality and outcomes in both services. One recent review suggested that where a municipality has sole control cooperation with other municipal services is more effective but cooperation with the PES is 'more difficult'. By contrast where the Jobcentre is operated jointly cooperation within the Jobcentre is better but functions less well with the other municipal services (Hanesch et al, 2015).

³¹ German legislation on basic income requires a broad ratio of job advisors to clients of 1:75 in the case of young people aged under 25, and 1:125 for adults. The legal safeguard does not apply to conventional UB recipients.

5.5 The PES and Training and Employment Vouchers

Following the Hartz reforms several types of contractual arrangements between the BA and private providers were developed, acting as complementary options for the reintegration of the unemployed rather than as a full alternative to the public provision of employment services (Eichorst et al, 2008). Major innovations included the introduction of a training voucher, a job placement voucher, and an experiment with so-called 'Personnel Service (i.e. temporary work) Agencies'. There was also a significant reform in how BA offices subcontracted the delivery of programmes and services which previously had been procured directly by district-level offices and were often awarded to non-profit organisations with strong links with the social partners.

The BA introduced training vouchers for the unemployed in 2003 in combination with a new licensing system for an estimated 20,000 providers who were delivering skills programmes. Training vouchers are issued by case workers only after an assessment and matching process between participant characteristics and programme types which indicates likelihood of success (based on the expected reemployment probability). The voucher specifies the objective, content, and maximum duration of the course. The validity of training vouchers varies between one week and three months and can only be redeemed if used at a provider within daily travelling distance of the participant's home address (Huber et al, 2015).

Certified training courses are listed in an online tool (Kursnet) provided by the BA; staff are not allowed to give any advice on choice of provider: and providers are not allowed to reject applicants (to prevent creaming). The aim of the voucher system is to give unemployed people greater involvement in the decision about which provider to choose and to increase competition amongst providers. The new licensing rules for providers also introduced minimum performance requirements where providers risk losing their licence to accept vouchers if an expected 70% of participants do not get jobs or remain off benefits for six months. Although training programmes remain a major part of ALMP provision in Germany the increase in successful completion and job placement rates has been accompanied by a marked fall in the number of participants and training providers.

Separate job placement vouchers were introduced in Germany alongside liberalisation of the regulation of private agencies and, in the absence of fee-charging for individuals, they were designed to give private agencies and other intermediaries an incentive to place the unemployed. There have been various rule changes over the past decade but in principle all individuals claiming UI benefit for more than six weeks are eligible for a voucher; a restriction not applied to basic income claimants. The voucher is delivered through the BA and an eligible individual can request a voucher or a caseworker can offer the voucher to (selected) individuals. The recipient can then sign a placement contract with a private placement agency. The voucher lasts for three to six months but can be renewed. The agency can claim an initial payment of €1,000 after an employment placement is sustained for six weeks and a further €1,000 after six months unemployment or €1,500 for the long term unemployed. If employment terminates after less than three months, the agency has to reimburse the initial payment (Kreuger, 2015).

Usage of the job placement voucher has not been as extensive as anticipated and in 2014 the BA only redeemed the first payment of some 29,676 vouchers compared with the 283,959 which had been issued (Kreuger, 2015, p. 13). It is suggested that a 'considerable part' of the claimed voucher market is by non-profit organisations often in combination with the delivery training measures (DGIP, 2013).

5.6 The PES and Personnel Service Agencies

The 'Personnel Service Agencies' (PSA) recommended by the Hartz Commission were unsuccessful. These agencies were designed to more quickly integrate jobless people into the regular labour market by means of a new form of placement-oriented temporary job in which they were hired out to employers by a PSA. Participants were initially recruited on a short probation contract and paid the equivalent of their benefit payment; subsequently they were paid the same rate as for other temporary workers in the sectors in which they were employed. If no work was available the PSA was expected to provide support for vocational training. Unemployed people referred to the PSA had to participate or face a benefit sanction.

The BA developed tenders for the PSAs and invited private agencies and other organisations to bid to run them, with over half the PSA contracts being awarded to TWAs (WMP, 2012). A national network of 400 PSAs attached to BA employment offices started operations in 2003 and by the end of 2003 they employed about 30,000 unemployed people as temporary staff. It was anticipated that the PSAs would place over half their temporary workers in regular jobs, although only 43% were placed in the first year. PSA costs were comparatively high and they were controversial. The PSAs were discontinued in 2005 after evidence emerged that participants did not receive training in the time they were not in assignments and evaluation results, for 2003 and 2004, found that PSA participants were less likely to be in regular employment than a control group (WMP, 2012, p.94).

The experiment with PSAs failed but after an initial period characterised by poor practices by TWAs non-contractual relationships between the BA and TWAs has matured. Since 2007 formal cooperation agreements have been developed between the BA and private agencies at federal and regional level. These have included mutual commitments that have given agencies access to BA vacancy databases and improved the quality of the vacancies they register. The BA now perceives agency work as a normal part of the labour market with data suggesting that around 40% of job offers available in Jobcentres are reported by agencies (WMP, 2012).

More formal dialogue has also been established between the national BA and PE&TWAs including annual meetings with the relevant federations and some of the largest agencies. Recent dialogue has, for example, included the design and delivery of new forms of assessment and provision targeted at meeting the employment-related needs of the recent influx of asylum seekers and refugees.

5.7 The PES and Direct Contracts with Private Providers

Traditionally the public financing of private contractors in Germany was mainly grant based and carried out within the logic of administrative law. Private providers –

usually after close communication with the local branches of the BA – proposed measures in line with the national and legal framework of policy instruments and the local BA branch would decide which proposals were eligible. Grants went formally to the individuals that used the services or directly to the providers and there was little use of funding to directly incentivise performance (Lange, 2007; Bruttel, 2005).

In 2003 the application of public procurement law was made mandatory for contracting integration and placement services and, in 2005, the BA concentrated procurement in its regional offices. One intention was to limit the direct contractual links between local offices and providers which were perceived to have resulted in higher prices. Whilst providers who bid for tenders still had to meet basic quality standards, greater emphasis was put on price competition and more BA contracts were let on a 'no cure, no pay' or 'no cure, less pay' basis. One study reported that the average cost for placements by third parties was €600 in 2004 and €725 in 2005 (Schneider, 2008, p. 57). Another study reported that the median incentive payment for placing long term benefit claimants, varied between €950 and €1,260 per assigned job seeker according to age, gender and other factors. Many of these participants triggered additional and varying 'expense allowances' paid to the provider and worth between 7.5% or 12.5% of the potential incentive payment (Bernhard and Wolff, 2008, Table 2, p. 11).

Procurement reforms were introduced alongside reductions in the number of places purchased. Kaps (2010, Table 1) reports that in 2004 some 635,000 people participated in commissioned placement services, with a further 17,500 in 'integration measures' (where contracts were more flexible but higher risk because of 'a *bonus-malus-payment scheme*'). In 2007 the number of commissioned places fell to just under 245,000 whilst integration places increased to 95,500. In 2008 commissioned places increased to over 443,000 whilst integration places fell to just over 8,000. Kaps gives no explanation for these variations.

Schneider (2008) reports that in 2006 the number of participants in contracted out reintegration measures averaged about 112,000, with a budget of about €120 million. There were some 16,000 contracts let, typically of six or twelve months, and with between 50 and 150 participants (Schneider, 2008). Schneider concluded that the changes in procurement had led to a reduction in the number of local providers, the emergence of 'supra-regional providers' and a decline in competition. He reports that in 2006 competition for tenders in many areas did not exist and the BA received only a single provider offer for two thirds of the contracts it awarded.

There were other developments in contracting for services. Some joint Jobcentres who mainly use the regional procurement frameworks of the BA experimented with contracts and providers. In 2006 in Nuremberg, for example, the joint Jobcentre commissioned the for-profit provider *Ingeus* to deliver a pilot to test if a programme, based on the UK PbR Employment Zone model, could assist basic income claimants (Jordan, 2008).

Following several non-experimental evaluations which found little difference in the effectiveness of services provided by public and private placement services, in 2008, the BA started the 'Penguin' project (Krug and Stephan, 2013). The programme was designed to test whether intensive placement services for hard-to-place unemployed

individuals could be delivered as effectively and efficiently in-house as through contracted out providers. In the selected pilot areas harder-to-place UB claimants were randomly assigned to a private provider or to regular PES services after four months of unemployment. In 2009 over 220,000 claimants were assigned into the programme.

The two year contracts with private providers had a multi-tier payment structure comprised of a fixed payment component per unemployed person, ranging from €700 to €990 euro, and two performance payment components paid after three or six months unemployment, ranging from €150 to €1,500 euro each. Successful placement was defined as at least 15 hours a week in employment liable to social insurance contributions. Providers agreed to minimum performance standards and the BA could recover upfront payments if the minimum standard was not achieved.

To avoid creaming, private providers could not refuse to enrol unemployed people referred to them, and claimants faced sanctions if they did not participate. The provider had to see participants at least fortnightly but otherwise had flexibility in how they delivered services.

The evaluation findings showed that in the initial period of treatment the individuals who received conventional PES services had fewer days of unemployment and more days of employment than those with private providers, but these effects disappeared over the 18 month observation period (Krug and Stephan, 2013). The analysts pointed out that employment rates for both approaches did not exceed 20% and counselled caution in how the differential results should be interpreted suggesting, for example, that other contextual factors might have influenced the result, such as the difference in the transfer arrangements between public and private providers and the start-up challenges that had to be met by private providers.

Notwithstanding the evaluation results the BA continues to contract out a wide range of reintegration and training provision and in the more recent period is reported to have adjusted its procurement regulations to secure a better balance between the quality of services offered and the price expected by providers. Some case study evidence found, for example, that before this adjustment in approach procurement was price driven, accounting for between 65% and 75% of the marks awarded when judging bids (Greer et al, 2011, p.17).

5.8 Private Employment and Temporary Work Agencies in Germany

In Germany federal legislation regulates the activities of PE&TWAs but many important terms and conditions of TWA employment can be varied by collective labour agreements.

The compulsory licensing of private employment agencies, which provide job matching services, was deregulated in 2002, as part of the Hartz reforms. Since then such agencies are required only to register under social protection law which requires them to have a written contract with clients stipulating job matching services and to protect the confidentiality of client data (DGIP, 2013). The legislation also prohibits fee-charging of individual job seekers for placement. The PES is responsible for the monitoring and enforcement of these regulations.

At the time of reform the legislature requested that the federal Ministry of Labour and the associations for private agencies initiate a dialogue on quality standards, leading to the adoption of voluntary minimum standards in December 2003. These standards include requirements around the financial viability and probity of the agency; the professional competences of its staff; and transparent conditions of service provision (adequate premises, data protection, and so on). Enforcement of these standards is the responsibility of the industry association although there is *'ongoing dialogue'* between the associations and the Ministry to *'further adjust and develop these standards'* (WMP, 2012, Box 5). Apart from the use of job placement vouchers it appears that the private job matching market remains comparatively small and specialised with a significant presence in executive search and in transnational recruitment and placement of migrant workers (DGIP, 2013).

The TWA sector expanded significantly after Hartz-related reforms. The number of agencies increased by over 30% after 2005 with 17,700 registered in 2013 (DGIP, 2013, p.34). The number of TWA workers increased from 282,000 in 2005 to about 825,000 at the end of 2014, albeit such employment fell for a period following the global financial crisis (Kreuger, 2015). Data on the tenure of temp jobs shows that about half of these temp jobs lasted less than three months, with 8.7% lasting less than a week (DGIP, 2013, p.35). The data also suggests a 'stepping stone' effect and in the year to April 2014, for example, more than half the 405,000 jobseekers who ended a period of unemployment through TWA work were still employed between six and twelve months later (Kruger, 2015, p.11).

The legal foundation for temporary agency work in Germany is the 'Temporary Agency Work Act' (1972) which, with other legislation, sets basic requirements on how workers should be treated (BA, 2012). Many restrictive provisions were, however, deregulated within the framework of the Hartz reforms. These changes lifted restrictions on the maximum length of placement; the so-called synchronisation ban (which prohibited limiting the length of the employment contract to the duration of the placement at the user company); the restriction of temporary employment to the construction industry; the special limitation on long term placement; and a re-hiring ban (Spermann, 2011). The legislation instead established a legal principle that temporary workers should receive equal pay and treatment from the first day of employment unless they were covered by a collective agreement. One other permitted deviation was for TWA workers who were previously unemployed, and was designed in particular for the Hartz-proposed PSAs. This rule stipulates that during the first six weeks of temporary employment after an unemployed person takes a TWA job the person must be paid a net wage at least equivalent to what they would have received in UB (Stettes, 2008).

An immediate consequence of the new legislation was that separate collective labour agreements were swiftly negotiated with the main trade union federations by the industry associations then representing the TWA sector. The most important collective agreements are between the DGB (the German Confederation of Trade Unions) and the two TWA industry associations. The larger 'BAP' association (Employers' Association of Personnel Service Providers) suggests that about three-quarters of all TWA employees are working according to its collective agreement; the 'IGZ' (German Association of Temporary Employment Agencies), which represents

mainly small and medium-sized member companies, claims one third of TWA workers are covered by its agreement (WMP, 2012). There are also a comparatively small number of collective agreements covering TWA workers which have been negotiated by unions and agencies in particular sectors and in some individual workplaces. It is estimated that 95 % of the TWA sector is covered by collective bargaining agreements (WMP, 2012)

In Germany there has been intense debate about the growth of non-standard employment and the impact that temporary work, 'mini jobs'³² and other developments have had. Some analysts suggest that the regulatory changes have promoted labour flexibility and higher employment. Others argue the changes have undermined pay levels, conditions of employment and led to the displacement of permanent full time jobs. In response, the current Coalition Government, elected in 2013, committed to introduce a national minimum wage (implemented in January 2015) and to re-regulate TWAs. It is reported that the German Labour Minister plans new legislation which will limit the maximum duration of TWA temporary employment to 18 months and require that temporary workers be paid the same as full time employees after nine months employment.

5.8.1 The Regulation of Temporary Work Agencies

TWAs must obtain, renew and pay for an operating licence from the BA and risk financial and legal penalties if they do not do so (DGIB, 2013). In 2012 the one year cost of a licence was €750. The licence is issued by the BAs regional office and its terms apply to the company and to the individual owners. To qualify the agency must prove it has health and other insurance cover for its potential employees, and must show its financial viability. The agency is required to provide a surety of €2,000 per temporary worker or at least of €10,000. The one-year licence may be extended upon request and if it has been extended three times, it is possible for the company to obtain an unlimited permission. No specific professional qualifications are required from the agency.

If a TWA hires out workers without a valid licence, any contract with the user company is invalid and any temporary worker placed with them by the agency is treated as the user company's employee for the duration of the assignment.

Licensed TWAs have to submit reporting information to the BA twice a year. The data required includes the number of agency workers listed according to sex, nationality, occupational group and type of occupation practiced before joining the TWA. The agency must report the time and duration of working contracts signed with

³² The expansion of TWA jobs took place alongside the growth of 'mini jobs', which had been enabled by the Hartz reforms and represent the most common form of non-standard employment in Germany. Mini jobs allow workers to earn up to €450 per month and not pay tax and social security contributions. Employers pay a social security contribution of 20% (which covers health insurance, a contribution to the pension fund and a marginal wage tax) and also have to fund additional accident insurance (costing about an additional €60 per year). All part time workers, including those in mini jobs, should enjoy the same terms and conditions pro rata as equivalent full time employees with the same employer. In September 2010 7.3 million people, or one in every five employees, held mini-jobs, an increase of 1.6 million from 2003. About a third of workers take mini-jobs alongside their regular employment. Mini-jobs are largely made up of marginal part time employment and most are to be found in the low-skill segments of service sectors, led by catering, hospitality and construction.

each agency worker. It must also give a sector breakdown of the number of assignments made and the number of user companies (DGIP, 2013).

The BA monitors TWAs, and the agencies are also subject to scrutiny and inspection by the customs and border authority, especially the department monitoring illegal employment (DGIB, 2013). It was reported that between 2005 and 2008 the BA carried out 5,713 onsite inspections that were targeted more often at newly established agencies. They resulted in 3,819 administrative fine proceedings, mostly concerning the incorrect application of agreed labour commitments and inadequate wage records. In cases where the TWA fails to observe rules regarding social insurance law, recruitment from foreign countries, the employment of migrants, regulations regarding employment protection or duties stemming from labour law, a licence can be denied or withdrawn and the agency and its owners can be subject to fines and other legal penalties (DGIB, 2013). There are more severe penalties, including the possibility of imprisonment, for agencies that employ illegal migrant workers.

There is no voluntary code of conduct for TWAs, as there is for recruitment agencies, but there is an independently audited quality mark – ‘*Qualitätssiegel Zeitarbeit*’. Agencies can be awarded the standard if they operate according to a DGB-collective bargaining agreement or comply with the legal equal-pay principle and act according to other legal requirements and arrangements.³³ The agency pays a fee and is subject to continuous monitoring and an annual audit to ensure compliance with agreed standards. At the time of the research it was estimated that there were 130 companies with approximately 40,000 employees adhering to these TWA standards (WMP, 2012, para 6.7.2).

5.8.2 The Terms and Conditions of Employment of TWA workers

German law on TWA workers is based on the principle of equal treatment, and is therefore in compliance with the EU Directive. Continuing controversy about the treatment of TWA workers and concerns about possible displacement of permanent workers did, however, create pressure for improvements in collective agreements. In 2010, for example the TWA association agreements introduced a common hourly minimum wage, which varies slightly in different regions (BA, 2012). This was important because Germany did not have a national minimum wage until January 2015 (now set at €8.50 an hour). The minimum wage reform was followed in 2012 by industry association and sector-specific agreements which gave pay rises and established a phased system of sector-based premiums, which increase in relation to duration of employment in a user company, and over a period of time, give a gradual approximation to equal pay conditions.³⁴

³³ These requirements include no salaries below the poverty line; granting voluntary additional payments such as premium charges; correct classification of employees in pay scales; compliance with occupational health and safety provisions; proper payroll processing; no service contracts for work to circumvent collective bargaining agreements or the minimum wage; promotion of training opportunities for TWA workers; and so on (WMP, 2012, para 6.7.2).

³⁴ In 2012 the metalworking collective agreement set the following premiums. After six weeks all temporary agency workers irrespective of their wage level receive a premium of 15%; 20% after three months; 30% after five months; 45% after seven months; and after nine months the premium will be 50% of the agency reference wage according to the DGB –BAP/IGZ collective agreement (WMP, 2012).

The sector based agreements build on earlier equal treatment agreements negotiated with particular employers. The first example, agreed in 2007, concerned *IG Metall* and *Adecco* which stipulated that temporary workers assigned to Audi receive the same pay as that paid to permanent employees. Despite these improvements, a number of studies show a significant pay gap still exists - estimated at between 15% and 20% - between TWA workers and comparable permanent workers, partly because most assignments are short term so that duration premiums do not apply (WMP, 2012).

In general TWA workers earn wages according to the pay grade in the applicable collective labour agreement, and continue to do so during illnesses, vacations, and non-placement. The employment relationship is subject to all usual social contributions (i.e. pension, health, unemployment, accident insurance contributions), and TWA workers are entitled to elect, and to stand for election to, a works council if they exist in the agency they work for. They are also entitled to vote in the election for the works council at the user enterprise if they have been working at the establishment for longer than three months (but they cannot stand for election).

Agencies are legally required to issue their workers with a written document setting out their basic terms and conditions of employment within one month of starting employment. Amongst other things the document should contain a short job description; the composition, level and due date of pay, including all supplements, bonuses, and premiums; the agreed weekly or monthly working hours; and the number of days of annual leave (BA, 2012). An agency is not allowed to forbid a worker from entering an employment relationship with the user company once their employment contract with the agency has ended. About 70% of TWA workers are on open ended contracts with their agencies (WMP, 2012).

Legally, TWA workers can be used to replace striking workers but they are entitled to refuse to work at a user company that is directly affected by industrial action, and the agency must inform its employees of this right (BA, 2012). The established works council of a user enterprise must be informed about the use of TWA workers and can object under a very limited number of circumstances. In such a case, the user enterprise can apply to the local labour courts for an injunction overriding the works council's objection.

The overwhelming majority of TWA workers in Germany are included in the social security system, although the typically lower wage level and higher fluctuation in employment contracts will affect their contributions and subsequent level of entitlement to social protection. Nevertheless it was reported that in June 2011 some 95,256 TWA workers were marginally employed and exempted from social security contributions. Indeed because of low pay, 7.2% of social security contributing TWA workers and 11.7% of the marginally employed TWA workers were actually paid additional in-work social benefits to augment their wages (WMP, 2012).

Chapter 6: The Organisation and Delivery of Public Employment Services and the Role of Private Agencies in the United Kingdom

The British welfare state has changed radically. Recent governments have shared a common aim to create a flexible labour market underpinned by a 'work first' benefit regime that is complemented by tax and benefit policies designed to 'make work pay'. The rights and responsibilities of most working age adults receiving out of work benefits have been redefined and work-related conditionality has been extended to cover a more diverse group of claimants, including lone parents, spouses and people with disabilities and/or health-related problems. Welfare to work policies have been introduced at the same time as employment rights have been redefined and non-standard employment contracts, including temporary agency work, now apply to many UK workers.

Welfare reform has been coupled with organisational changes that have greatly altered the national agencies and contracted service providers responsible for delivering and administering cash benefits and employment services. This has included the creation of a modernised PES, called Jobcentre Plus (JCP), and the development of a quasi-market in the delivery of employment services. Contracted out employment services in Great Britain are now mainly delivered by for-profit prime contractors through PbR contracts. The development of the Work Program (WP) in particular included a series of innovations in the design, procurement, and delivery of outsourced employment services that have influenced subcontracting practices in other countries (for example, Ireland, Malta and Australia).

6.1 The UK Welfare to Work System and the Service Delivery Landscape

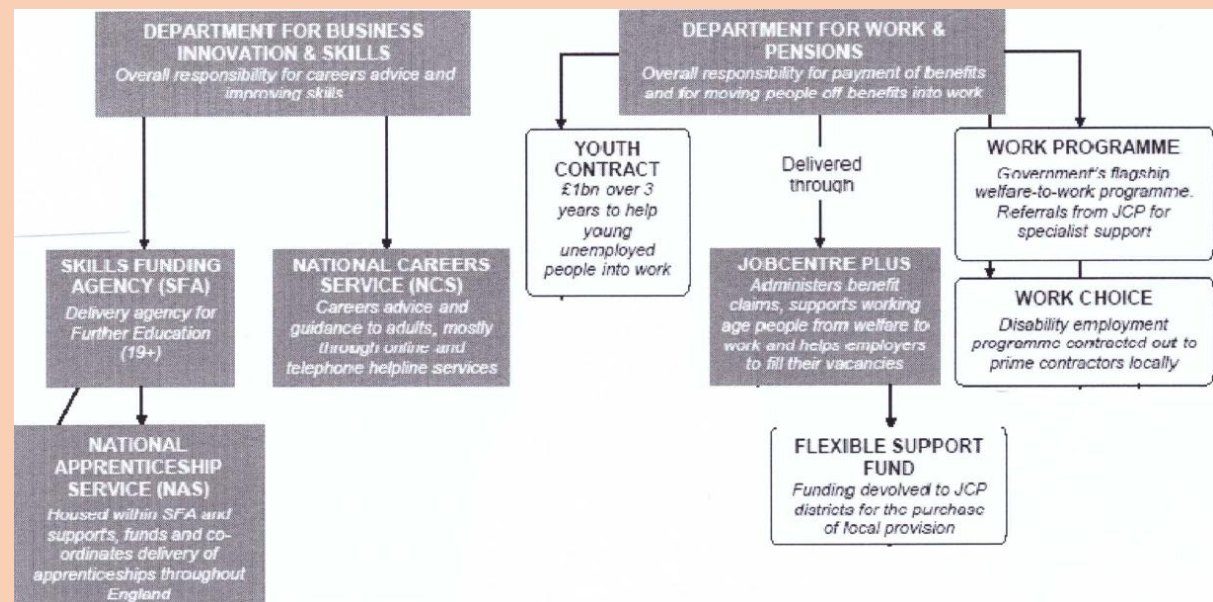
The UK has one of the most centralised systems of government in the OECD. Ministers and senior civil servants in London control the main levers of welfare to work policy and the design and delivery of cash benefits and tax credits is largely centralised. The national Department for Work and Pensions (DWP) is responsible for JCP which combines the functions of job broking, referrals to employment programmes and the administration of income-replacement benefits paid to claimants out of work. The DWP also procures most contracted out employment programmes nationally with only limited 'freedoms and flexibilities' exercised by local Districts. In England publicly funded skills training is the responsibility of another Department – the Department for Business, Innovation and Skills (DBIS) – which delivers its programmes through a separate delivery network (see Figure 11).³⁵ DBIS is responsible also for the oversight of most labour market legislation including that concerning PE&TWAs.

³⁵ The devolved governments in Scotland and Wales have separate responsibility for policy for skills, childcare, health, local government and regeneration, but DWP retains responsibility for Jobcentres and welfare to work programmes. In Northern Ireland the functions of the DWP are devolved and are delivered separately through the Department of Social Development and Department for Employment and Learning.

In contrast with most other OECD countries local government has played only a limited role in the design, commissioning and delivery of employment services for working age claimants. Many British local authorities have, however, developed a leading role in regeneration policies and job creation, especially in areas of high unemployment, and have developed related skills and employment programmes to ensure local residents can access job opportunities. Local councils also have responsibility for a range of other social services which play an important role in supporting residents to obtain cash benefits and employment. These services include childcare provision, welfare rights advice and the funding of specialised social inclusion services that work with highly disadvantaged groups, such as the homeless, refugees, and so on.

Local authorities have recently been given new incentives to combine their efforts, especially in city-regions, and in England to promote economic growth with employer-led 'Local Enterprise Partnerships' (LEPs). In 2011 39 LEPs were established by the DBIS following the closure of a statutory network of Regional Development Agencies. The LEPs cover a self-defined 'functional economic geography', have the support of employers and local government, and are tasked to provide strategic leadership and set out economic priorities for their areas. An important part of their remit is to ensure the skills system supports local economic growth and they are also expected to work with local employers, the DWP and learning providers to help workless people into jobs (Ward, 2014).

Figure 10: National Employment and Skills Support in England



The Government has devolved some budgets and powers to LEPs and these partnerships formulate local growth strategies (CLG and DWP, 2014, p.4). The Government has also introduced a competitive process whereby partnerships have bid for local 'City Deals' and now 'Growth Deals'. These 'deals' or agreements give partnerships or combined local authorities new ways of influencing and shaping local employment and skills provision including the integration of their efforts with those of

the DWP (see later). LEPs are, however, 'steered' primarily by the DBIS and the Department for Communities and Local Government.

The UK public sector system is complemented by privately financed PE&TWAs and an extensive network of non-profit and for-profit organisations that deliver publicly funded employment and skills programmes. Most employment programmes are funded directly by the DWP but some are funded separately by local government and partnerships often with the support of funding from the European Commission. Some specialised non-profit welfare to work services are financed by charitable grants and donations. Many non-profit organisations specialise in providing employment opportunities for groups such as young people, women, ex-offenders or people with disabilities. A wide range of for-profit organisations also deliver publicly financed employment services, especially the WP (see later).

6.2 The Role of Jobcentre Plus and the Introduction of Universal Credit

In 2002 the Government created the DWP and JCP. This reform merged the work of two national Departments which previously had separately been responsible for employment services and welfare benefits. The policy aim was to create an integrated work first activation system and from its inception the agency has had four key aims: to provide effective advice and support for claimants looking for work; to administer and pay working age benefits accurately; to ensure that claimants fulfill their responsibilities to look for work; and to support an efficient and flexible labour market by offering a free recruitment service to employers and matching unemployed people to suitable job vacancies.

In 2002 the new agency inherited a network of 1,500 offices and 90,000 staff delivering services to some 4.5 million working age claimants. Between 2002 and 2006 JCP implemented a new service delivery model where benefit claims and payments were administered through a network of 'telephone contact' and 'benefit delivery' centres, with benefits paid directly into each recipient's bank account. Front line services were delivered through a national network of some 800 employment-focused Jobcentres. The layout and organisation of front-line Jobcentres were modernised and the new open plan Jobcentres provided a more modern, appointment based service, supplemented by touch screen Jobpoint terminals through which service users could find job vacancies. The direct cost of JCP's modernisation was £1.9 billion, some £300 million below the original budget, and in this period full time equivalent staff numbers fell to about 69,000 (NAO, 2008).

Since 2010 the DWP and Jobcentres have experienced major reductions in their staffing and service budgets while implementing new Government programmes. The front line Jobcentre network has been rationalised and JCP's regional tier of management was removed, with 37 large districts reorganised into seven 'regional groupings'. In October 2011 further streamlining of management costs saw JCP's earlier quasi-independent 'agency status' abolished and management of the network is now undertaken directly by the Department.

JCP has continued to modernise service delivery through greater use of digital channels for managing communications, benefit transactions and job search. This

has included 'nudging' more claimants to make online claims for their benefits alongside the introduction of 'Universal Jobmatch'³⁶ - an online vacancy database and recruitment website on which benefit claimants are required to register and upload their CV. Universal Jobmatch's advisory function allows Jobcentre advisers to monitor individual job search activity; analyze CVs; identify skills or training gaps; and search, save and send targeted vacancies directly to claimants.

The DWP has since undertaken a process of converting its offices into 'Digital Jobcentres', involving a redesign of existing space and the removal of earlier Jobpoints and phones. In redesigned Jobcentres claimants are able to use on-site computer facilities or their own WiFi or Web Access Devices to make benefit claims, set up a Universal Jobmatch account and search for employment.

The new service delivery system is expected to deliver existing benefits, services and programmes, and manage the transition to the full introduction of a single working age benefit, called Universal Credit (UC). This benefit will gradually replace existing benefits for the unemployed (called Jobseekers Allowance, or JSA) and for people with work-limiting health problems and disabilities (currently Employment Support Allowance, ESA; or Incapacity Benefit, which ESA is gradually replacing). The timetable for UC introduction has been delayed with large-scale implementation now anticipated to accelerate later in 2016 with full coverage of all eligible claimants secured by 2021.

The gradual introduction of UC, and austerity-driven cuts in welfare payments, are having a major impact on the service delivery relationship between JCP and local government. DWP is implementing a 'digital by default' approach to making and managing benefit claims and it is envisaged that some 80% of UC claimants will manage all benefit related aspects of their claim online. DWP accepts that a significant group of claimants will experience transitional or longer term difficulties in meeting the behavioural and financial requirements of the new UC system. It published a framework jointly with the Local Government Association (representing all English local authorities) and the expectation is that each local authority will engage with their local DWP Partnership Manager and bring together organisations with the appropriate skills to provide local 'Universal Support' services. This support will include access to a more intensive face-to-face service for the most vulnerable households, with a strong emphasis on the co-location of relevant services, and will comprise assistance with digital inclusion, personal budgeting support, and 'bringing people closer to work'.

6.3 The Current Role of Jobcentres and Work Coaches

In 2015 new benefit claims are made on-line or via telephone. Most claimants are required to attend a 'Work Focused Interview' with a Jobcentre Work Coach (previously called Personal Advisers), usually within three to four working days. The

³⁶ Universal Jobmatch can be accessed on a computer and any internet-enabled device or mobile phone. In 2014 it was reported that 6.1 million jobseekers and 525,000 companies were registered, and on average 5.7 million job searches were undertaken each day. There was controversy over the introduction of mandatory Universal Jobmatch registration for benefit claimants and criticisms of the quality of some automated job matching (although this has improved as the quality system has been refined).

task of the coach is to assess employability, identify barriers and provide employment assistance. This may include matching and submitting the individual to vacancies. Claimants are then subject to activity requirements related to their benefit, with unemployed claimants subject to full conditionality.

At the new claim stage the interview with unemployed people is aimed at agreeing job goals, the claimant's availability for work, and job search activities. For claimants not subject to job search requirements, such as people with ill-health or with very young children, the discussion concerns how the claimant might prepare for work and steps they might take to improve their employability.

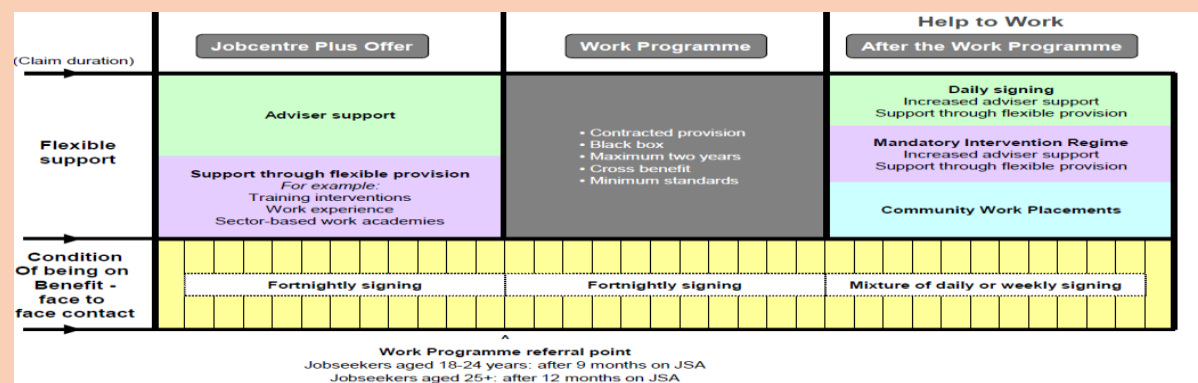
From 2014 the terms of the personalised agreement have been set out in what is called a 'Claimant Commitment'. This outlines more fully the claimant's responsibilities and includes a personal statement from the individual setting out what they will do to prepare for and find work based on a discussion with an adviser. The commitment is reviewed regularly and is backed by a strict compliance regime to ensure the claimant meets their obligations.

Beyond the new claim stage, unemployed claimants are required to attend fortnightly reviews to show their job search activity and discuss any changes in circumstances. This review process is designed to encourage continuous job search, ensure that claimants meet benefit conditionality, and discourage fraud. The aim is that 'job ready' unemployed people should seek work themselves and make use of 'self-service channels', such as Universal Jobmatch. As the length of time someone is unemployed increases, they have less and less choice over the sort of work they can decline and they are required to carry out mandatory activities that advisers believe will increase their employability. If unemployed people have been unable to find work for a period of nine to 12 months, they are referred to the Work Program (WP). Some groups, like young homeless people or ex-offenders, can be referred to the WP as soon as they start claiming benefit. Jobcentres are also the referral route to 'Work Choice', a smaller, specialist prime provider delivered programme for people with significant disabilities.

The current claimant journey through the employment services system is set out in Figure 12 which shows how the requirements placed on an unemployed claimant escalate the longer the period spent out of work.

There will be further change in the PES service delivery model as DWP implements new policies and adjusts to planned reductions in its budget. In particular the full roll out of UC will be accompanied by a new 'Work Coach Delivery Model, which will formally end the practice of specialist disability, lone parent and young people advisers and lead to mixed caseloads – with Work Coaches expected to advise claimants with a range of needs and conditionality requirements.

Figure 11: The Jobcentre Plus Regime for Unemployed Claimants



6.4 Delivering Employment Services – Jobcentres. Targets and Partnerships

The mainstream welfare to work delivery system is now comprised of a national network of Jobcentres alongside a mixed network of for-profit and non-profit prime contractors who deliver separately commissioned programmes targeted at the long term unemployed and other disadvantaged groups. Despite expenditure cuts the Government still spent some £2 billion on active labour market support in 2012-13 making it by far the largest provider of welfare to work and employment support services in local areas (HMG, 2014, p.48). Most of the budget is spent on Jobcentre operating costs and the related advisory services and programmes they deliver.

DWP has made major organisational changes since 2010 and suggests that these have enabled the organisation to secure the efficiency gains of a national procurement and contracting system whilst giving Jobcentres and prime contractors 'freedoms and flexibilities' which facilitate coordinated local service delivery and better engagement with local authorities.

The introduction of what is called the 'Jobcentre Plus Offer' gave DWP District Managers some flexibility in delivering the activation regime allowing front line advisers some discretion over the frequency of interviews required and the employment support made available to claimants. This approach is supported by a 'Flexible Support Fund', which replaced earlier more targeted discretionary funds. The fund can be used by advisers to provide individual support directly to jobseekers. Managers can also use it to fund local partnership working and to procure small scale programmes for specific target groups. The fund was allocated £136 million in 2014/15 but only £72 million was spent which was attributed to the fund's low profile and uncertainty about how it could be used which in turn 'allowed opportunities for partnerships with local authorities and agencies to be missed' (McGuinness and Kennedy, 2016, p.3). Little is known about the outcomes secured through this discretionary funding.

The local flexibilities of Jobcentres continue to be exercised within a clear national (vertical) accountability framework where front line staff must contribute to meeting DWP's national targets (Wilson and Gallagher, 2013). These are to 'move people off benefit, into employment, as quickly as possible' and reduce the monetary value of

fraud and error. The first target is measured only through off-benefit flows (measured at 13, 26, 39 and 52 weeks) with JCP tasked to ensure some 88.5% of those claiming JSA cease claiming within a year. These targets are supported by varied internal operational 'scorecards' that include other indicators through which managers steer the system and drive staff behaviour.

JCP is effective at meeting its formal targets and even during the recession, around 75% of JSA claimants were moving off benefits within six months of a claim and 90% by twelve months. However, this measure does not provide a complete picture of the performance of JCP. Off-flow simply means that an individual has ended their current claim – it does not necessarily mean that a claimant has found work. A cohort analysis of benefit leavers in 2011 found, for example, that only some 68% got work of whom 41% were employed full time, 18% part time and 9% were self-employed. Another 14% had claimed another out-of-work benefit and 18% were neither working nor claiming (Adams et al, 2012).

Early positive evaluation results of the more flexible JCP regime have since been overshadowed by concerns of perverse target-driven behaviour, such as preferential treatment for those claimants thought most likely to contribute to meet short term targets, the application of inappropriate sanctions and putting unfair pressure on people to drop their benefit claims (WPC, 2014). The implementation of the core benefit regime and concerns about the 'off-benefit' target has also been a source of tension between DWP, Jobcentres and local partners and in many high unemployment areas weakens the willingness of other organisations (such as health services) to engage closely with DWP provision (WPC, 2014).

Local Jobcentres continue also to deliver or refer service users to a range of nationally designed support measures - pre-employment training and work experience placements; Work Clubs; self-employment support; and the WP. Whilst some options are sourced locally most of the services are procured through a national framework with more expensive provision, such as mandatory work experience, delivered through prime contractors. The national framework excludes many smaller local providers (see below).

A further development has concerned changes to push the employment and skills systems together, especially in England (Simmonds, 2012; Devins et al, 2011). JCP, for example, now screens claimants for basic and English language skills and can mandate people to attend courses and it delivers 'sector based academies' with training providers targeted at improving the skills and job prospects of younger claimants. Much local adult skills provision is, however, funded by a Skills Funding Agency and continues to be commissioned separately from welfare to work programmes, as does training and advice provision for young people and adults. The result is that the commissioning and delivery of skills and employment support remains highly complex involving different Departments funding programmes with varied eligibility criteria, targeting and rewarding different outcomes, and delivering across differing geographical areas.

Mainstream welfare to work provision for the unemployed remains tightly focused on implementing the centrally defined activation regime but DWP Districts and Jobcentres have been given limited 'flexibilities and freedoms' allowing them to seek

better ways to deliver and coordinate services and to support and work with local partnerships.

DWP District Managers and specialist JCP 'Partnership Managers' are able to engage strategically with local stakeholders, councils and the LEPs, with DWP often providing information on benefit changes, the nature of the local labour market, the profile of workless claimants and the nature of demand from employers. DWP Districts are expected also to support the integration of employment and skills provision and to coordinate partnership priorities with the activities of WP prime providers and their subcontractors (DWP, 2011). The commitment to partnership working is largely voluntary, however, and local authorities, and now LEPs, have no direct role in the design or commissioning of JCP support and only limited influence on how resources are deployed to meet local needs (Wilson and Gallagher, 2013).

Local innovations in service delivery have been strongest when working with groups not covered by mandatory national requirements and not well served by mainstream provision. This includes programmes targeted at 'troubled families', people on disability benefits and more disadvantaged young people. Two significant service delivery developments concern outreach and co-location. DWP employment advisory services are now delivered from over 1,100 external locations, including community centres, prisons, and so on. Experiments in co-location have tested different approaches to partnership work where, for example, skills, careers, financial services and Jobcentre employment support are delivered alongside each other. It is likely such co-location of services will be further developed to include the delivery of UC-related services and to enable the DWP to further reduce the number of Jobcentres (as part of the Government's austerity-driven public expenditure reductions).

6.5 The DWP Commissioning Strategy and the Work Programme

Until 2007 JCP regional offices were largely responsible for the competitive procurement and management of a wide range of categorical employment programmes. These were designed in detail by the DWP and targeted at different groups, including the young and long term unemployed. As in many other countries outsourced employment services provision was delivered by an extensive network of non-profit, public and for-profit organisations (amounting to some 2,000 British providers in 2004). In 2006 JCP commenced an early version of 'prime contracting' which enabled it to reduce transaction costs and rationalise the provider network delivering the then Government's 'New Deals' for the unemployed.³⁷ The new contracts also introduced an element of price competition and PbR job outcome payments. In place of 1,000 individual contracts the New Deals were subsequently delivered through 94 prime providers, of whom 53 were for-profit, 27 non-profit and 14 public sector organisations (DWP, 2007). These prime contractors were given

³⁷ The New Deal programmes included support from a JCP personal adviser targeted at priority groups, especially the long term unemployed and lone parents. The adviser would work with participants, meeting with them as frequently as every two weeks. If the adviser could not place the participant they could refer them to more intensive support ranging from short job search or training courses to six months subsidised work experience. These more intensive forms of support were usually delivered by contracted providers.

some flexibility but were managed by JCP and still expected to deliver a centrally designed programme utilising subcontractors where necessary.

By 2007 there was, however, dissatisfaction with JCP control of the mainstream contracting process and the poor performance of centrally designed programmes. After being commissioned to review the welfare to work system the Freud Report (2007)³⁸ suggested little change to JCP services for the short term unemployed but proposed major changes in how employment programmes should be commissioned and extended to include people on disability benefits. Freud proposed a funding model where large prime providers would invest their own resources in services up-front and would be paid from the future benefit savings that would accrue from placing claimants into sustained employment. This risk transfer would align DWP and provider incentives and enable the Department to 'uncap' and extend activation programmes to cover many more workless people, especially those receiving disability benefits.

The then Government welcomed Freud's proposals and subsequently DWP (2008) published an overall 'Commissioning Strategy' outlining how the welfare market would be reformed and how the Department would in future procure programmes. There were three innovative elements to the proposed contracting model which in 2010 became central features in the design of the Work Programme (see Figure 12).

Figure 12: The Prime Contractor Model for Delivering Employment Programmes

Key features of the approach to commissioning employment programmes after 2008 included:

Prime providers and supply chains: The system was made attractive to larger scale, well capitalised prime providers who would be awarded long term and higher value contracts and would have responsibility for marshalling and managing an appropriate blend of subcontractors to deliver services for a wide variety of participants.

Payment by Results funding: Contract incentives and payment systems would be designed to reward long term employment retention with job outcome payments based on sharing with providers the benefit savings accrued when a participant sustains longer term employment. Payment systems would be differentiated recognizing that helping some claimant groups is more costly than helping others. Because the prime provider is paid primarily in arrears after they have secured job outcomes the organisation has to arrange finance to enable them to invest 'up front' and bear a greater share of the risk, on the basis of an income stream they expect to derive from future outcome fees.

Service standards and the black box: In return for accepting more risk prime

³⁸ David Freud, the author of the Report, was subsequently appointed as a Conservative member of the House of Lords and from 2010 has been a Minister of State at the DWP helping develop and enact the Government's welfare reform agenda.

providers are given greater flexibility to design their own service delivery system with little centralised prescription. These 'black box' contracts give providers freedom to use their expertise to do what they consider needs to be done to secure sustained job outcomes.

Within this new procurement strategy the Department recognised its role in market stewardship and ongoing dialogue and partnership with and between providers. In particular the DWP had already funded and facilitated the establishment of the now independent industry representative body, the Employment and Related Services Association (ERSA). This association brings together both prime providers and many subcontractors and seeks to develop the capacity and professionalism of the sector, whilst also representing the views of providers in dialogue with the Department and other public sector purchasers. Members of ERSA sign up to a code of practice. Compliance is voluntary and auditing minimal, but this sets out an ethical framework and principles guiding how providers should deliver services.

6.6 Work Programme Procurement, Prime Contractors and their Subcontractor Supply Chains

In 2010 the newly elected Coalition Government replaced most existing programmes with the large-scale PbR 'Work Programme'. The programme was to be delivered by large scale prime contractors and targeted at the long term unemployed and people on disability benefits assessed as capable of some work activity. Participants would be placed with providers for up to two years and it was estimated that the prime contractors would provide services for up to 3 million people over the five year contract period.

After an initial consultation period WP prime contractors were selected by the DWP through a two stage process during which potential providers had to show how they intended to subcontract services and manage their supply chains.

The first phase of selection involved qualifying for entry into a 'framework agreement'.³⁹ Applicant organisations had to demonstrate a track record of delivering large and complex contracts; capacity to deliver across the region(s) for which they had bid; and demonstrate their financial strength, including a minimal £20 million per annum turnover, to deliver primarily PbR contracts. DWP selected 35 prime providers from the 91 organisations that applied.

The framework selection process was followed by 'mini-competitions' for WP delivery in 18 'contract package areas' (CPA), each covering large populations (with London, for example, divided into only two CPAs). 40 separate contracts were available to ensure two or three providers competed in each area. WP bids were assessed in terms of cost and quality.

Eighteen organisations were initially awarded prime contracts. This comprised 15 private for-profit organisations, 1 quasi public sector organisation, and 2 non-profits (both of which have strategic relationships with for-profit companies). In addition to

³⁹ Formally the 'Preferred Suppliers for the Employment Related Support Services Framework', see <http://www.dwp.gov.uk/docs/erss-preferred-suppliers.pdf>

the commercial employment agencies Reed Personnel, Pertemps and Working Links, another private agency, Staffline, entered the market through an acquisition and it has now acquired other prime contractors, including A4e, making its renamed 'People Plus' subsidiary the largest WP contractor.⁴⁰

Prime providers were free to design their own delivery systems and were able to select their own subcontractors but they were expected to work with supply chains with the capacity to meet the needs of the different groups eligible for the programme in the locations for which they were selected. Supply chains also had to be selected in compliance with safeguards intended to protect the position of non-profit, specialist, community based and other 'third sector' providers which have been associated with a record of innovation and of working with the 'hardest to help' populations and localities.

The DWP does not prescribe subcontracting arrangements for primes but the Commissioning Strategy contained a 'code of conduct' which was designed to influence their behaviour. The values expressed in the code focus on best practice in supply chain management and equitable treatment for smaller providers. Subsequently DWP, in partnership with providers, developed a 'Merlin Standard' as the assessment and enforcement tool that now regulates compliance with the code of conduct (see www.merlinstandard.co.uk).

6.7 Work Programme Funding and Provider Incentives

The DWP and central Treasury negotiated a unique inter-Departmental funding arrangement for the WP which supplements core departmental funding (up to £2 billion between 2011-12 to 2014-15) with additional Treasury funding released as claimants stop claiming benefits (NAO, 2012). This arrangement was contingent on Treasury agreement to a WP funding model that was intended to ensure higher levels of performance.

The WP funding model includes differential prices, with participants divided into nine payment groups, based on age and the benefit the person is receiving when they start with the provider. The payment groups' act as a proxy for the relative employability of participants with higher prices paid to support those furthest from the labour market.

The payments made to WP contractors have comprised four elements:

- An '**attachment**' or start payment. This was a small fee of £400 or £600 paid when a claimant referred from the DWP is successfully enrolled on the programme. The attachment fee helped with initial cash flow **and ceased to be paid for new participants from 2014**.
- A **job outcome payment**. Paid when a claimant has been in work for either a continuous or cumulative period of employment, of 13 weeks for harder to place groups and 26 weeks for most JSA claimants (with the payment varying

⁴⁰ The companies acquired by Staffline include EOS, Avanta and A4e - <http://www.staffline.co.uk/staffline-acquisition-a4e/>

from £1,200 up to £3,500). The value of job outcome payments for JSA claimant groups is reduced in the later years of the contract.

- A **sustainment outcome payment**. A further monthly payment for keeping a claimant in employment, with up to 26 monthly payments possible for the hardest-to-place groups (varying from a maximum possible payment for the 'easiest' group of £2,210, to a maximum possible payment for the hardest group of £9,620).
- An **incentive payment**. For jobs delivered beyond a given performance level - defined by the DWP as 30% above the number of claimants who would have found employment without WP support.

The WP 'Invitation to Tender' set clear performance targets, in terms of the number of people getting jobs and keeping them, and when making bids prime providers were able to offer higher levels of performance and offer 'price discounts' on some of the payments. There has been much criticism of the basis on which these original performance assumptions were set with some observers arguing also that the DWP gave too much weight to price discounts when it awarded the contracts (WPC, 2013; NAO, 2012).

After the programme commenced prime contractors have been required by the DWP to meet the minimum performance levels set in each CPA or be subject to detailed performance improvement plans and ultimately risk losing a contract should results not improve.⁴¹ A further innovation, adapted from the Australian system, was 'market share shifting' where from mid-2013 DWP was able to move some 5% of new referrals *within* each CPA from low to high performers.

6.8 Black Box Contracting and DWP Performance Management and Oversight

The 'black box' approach to the design of WP services does not apply to performance, programme delivery and post-contract supply chains. DWP monitors prime contractor performance and if an organisation wishes to make changes in the service delivery system outlined in their bid or in their supply chains they must justify them to the Department with significant alterations requiring contract variations. Prime contractors do, however, have greater operational flexibility and the scrutiny of service delivery is 'light touch' in relation to earlier programmes. In particular, there is less detailed oversight of quality and participant experience which in previous programmes had been undertaken by an independent inspectorate.⁴²

Contract management is undertaken by a relatively small cohort of performance and account managers and other officials who have particular supervisory

⁴¹ While many prime providers have been subject to performance improvement activity, especially for the hardest to place groups, only one contract has been terminated. This was held by Newcastle College Group, coincidentally the only public sector entity to act as a WP prime provider. Technically this provider did meet minimum performance standards but because these were flawed DWP used another contractual right to be able to 'break' the contract with NCG (NAO, 2014).

⁴² In 2010 the DWP announced that 'Ofsted', the independent regulator for most education and skills provision in England, would no longer undertake inspections of the DWP's welfare to work programmes. Instead the remit of the DWP's own provider assurance teams was extended to cover, 'in a light touch way', some of the quality issues that formed part of external inspections.

responsibilities, such as specialists who investigate allegations of fraud. DWP Performance Managers are the main point of contact at delivery level. They monitor administrative and performance data and undertake monthly reviews which can be face-to-face, by telephone or paper exercises. The intensity of the reviews is determined by a risk assessment. These managers use DWP's 'Performance Improvement Framework', which sets out a process for assessing a range of factors including whether providers are delivering minimum standards and achieving contractual job outcomes. Significant underperformance may be tackled through a formal 'Performance Improvement Notice' indicating that the prime is at risk of breaching the contract and they are then monitored through a more rigorous process (CESI-NIESR, 2014).

6.9 Work Programme Performance

The implementation of the WP has attracted criticism and been punctuated by negative media coverage about poor performance, the poor quality of services for harder-to-place jobseekers and the negative impact of the PbR funding model on third sector and specialist subcontractors. Much of the criticism of the WP concerned its failure to meet its first year targets. The position subsequently improved and by the end of 2015 job outcome and retention performance for the long term unemployed was above minimum targets, especially for young unemployed people aged 18 to 24 (see Figure 13).

Figure 13: Work Programme Performance 2011-2015

Performance data shows that between its launch in 2011 and December 2015 the WP recruited some 1.81 million participants. Some 503,160 (27.79%) of those who had been on the programme long enough to secure a sustained job outcome had done so. The data also show that:

- Of the 314,510 JSA claimants aged between 18 and 24 who joined the programme 115,490 (36.72%) found sustained employment;
- Of the 767,810 JSA claimants aged over 25 who joined the programme 245,150 (31.92%) found sustained employment;
- Of the 397,850 early JSA entrants, JSA claimants migrated from a disability benefit, and JSA Prison Leavers who joined the programme 106,750 (26.83%) found sustained employment;
- Of the 329,830 ESA claimants who joined the programme 35,790 (10.85%) found sustained employment;
- The weakest performance is reported for claimants aged over 50 (15.4% of whom found sustained employment) and those with a disability (17.3%).

Source: *Quarterly Work Programme National Statistics to December 2015*, Department for Work and Pensions, at <https://www.gov.uk/government/statistics/work-programme-data-to-december-2015>

The DWP was also successful in its aim of driving consolidation in the contracted employment services market. The value of contracted out programmes was estimated at £800 million in 2014/15, nearly 70% of which was allocated to the WP, and the Department was now mainly dealing with 15 prime providers who were each earning in excess of £10 million a year (TWD, 2015). This consolidation has reduced

the DWP's transaction costs and improved the efficiency of providers but the danger is that the delivery systems created by these organisations are now heavily reliant on DWP contracts, especially the WP.

In 2015 the National Audit Office concluded that the WP was generating similar outcomes to the programmes it replaced but for half the cost. This efficiency was offset, however, by the low job outcomes secured for disability benefit claimants which has remained significantly below expectations. There was also geographical variation in WP performance with results often lowest in local authorities and areas within CPAs with the highest levels of unemployment (CESI, 2014; Davies and Raikes, 2014; NAO, 2014). Unemployed WP 'graduates' return to JCP provision when their participation ends and the DWP put in place an intensive mandatory job search regime for JSA returners but made little provision available for those on disability benefits.

Varied assessments have now also highlighted what many consider to be the 'counter-productive' WP PbR funding regime where, because of lower than expected performance, and less income from job outcomes, primes have fewer resources to invest in the hardest-to-help participants and in high unemployment areas (Riley et al, 2014; Davies and Raikes, 2014). Primes may be able to cross-subsidise their resources between such client groups and local areas but they have limited incentives to do so. By contrast, it was increasingly suggested that local government and local partnerships are better placed and motivated to tackle under-performance if they were given greater control of the WP and related resources.

6.10 The Revised DWP Commissioning Strategy and the Devolution of Employment Programmes

After a period of consultation in 2014 DWP published a revised Commissioning Strategy. This sets the broad framework within which it intends to design and procure future programmes. The strategy reaffirms the Department's commitment to competitive tendering, longer term contracts and to working centrally with 'top-tier' providers who can deliver larger national PbR programmes. It also re-commits DWP to partnership working and to moving to more *'integrated forms of commissioning at the national, sub-national and local level, especially to support those furthest from the labour market'* (DWP, 2014b, p.23).

In 2015 the newly elected Conservative Government announced plans for further reductions in public expenditure including significant cuts in welfare benefits and employment programmes. In 2017, when the WP contracts finish, Jobcentres will become solely responsible for working with all unemployed claimants in their first two years of unemployment. A new and smaller 'Work and Health Programme', targeted in particular at people on disability-related benefits, will be commissioned and will be worth about 20% of the value of the programmes it replaces. This expenditure reduction is partly justified by reference to the marked fall in long term claimant unemployment but is mainly driven by the aim of reducing the deficit in general public finances.

It is significant also that future employment services provision and the developing activities of Jobcentres will be shaped in the context of the devolution deals

discussed earlier with cities such as Manchester and London viewing the new arrangements now being implemented as pathways to greater devolution of all employment and skills programmes (Finn, 2015). The Government's approach will become clearer in 2017.

6.11 Private Employment Agencies and Jobcentre Plus

In addition to the role that private agencies play in the direct delivery of employment and skills programmes, the British PES has since the 1980s had a formal partnership agreement with PE&TWAs.⁴³ The most recent version of the partnership was agreed between the DWP and the 'Recruitment and Employment Confederation' (REC) in 2010. The REC is the peak body for PE&TWAs and has about 3,500 member businesses, with more than 7,700 branches, representing 80% of the UK recruitment sector by turnover.⁴⁴

The aim of the national level partnership agreement is to drive engagement between recruitment agencies and Jobcentres both nationally and locally. The objectives in the agreement commit both parties to:

- help people into work by giving them the right support and the best opportunities for training and jobs;
- share expertise to create the best ways of helping people back into work;
- deliver a professional service;
- promote the benefits of a diverse workforce by offering employers clear guidance and support to attract and recruit the widest possible range of people seeking work;
- act as champions against discrimination and challenge unfair employment policies.

Amongst other commitments the REC and the DWP agreed to the following joint working arrangements:

- to ensure claimants are aware of the benefits of working with recruitment agencies;
- to communicate the objectives of the strategy to Jobcentres and agencies and provide support to enable delivery where appropriate; and
- to prepare each other for changes to services and the welfare reform agenda.

As part of the agreement, senior representatives from the REC and Jobcentres meet on a quarterly basis to share intelligence on the latest labour market trends and to identify policy challenges and where required, approach government about them.

⁴³ Both JCP and the agency association suggest that their activities now complement rather than compete with each other but in the early 1980s the situation was very different. Private agencies played a key role in successfully lobbying the then Government to end one objective of the PES which at that time was to increase its general share of the vacancy market (Price, 2000). Subsequently the PES has focused more on servicing employers that have vacancies relevant to benefit claimants, not all job seekers.

⁴⁴ The REC was established in 2000 by the merger of the Institute of Employment Consultants, which was the professional association of individual members of the recruitment industry, and the Federation of Recruitment and Employment Services, which was a trade association for the corporate industry. The REC continues also to represent more than 5,700 individual members of what is now called the Institute of Recruitment Professionals.

DWP managers may also attend REC sector group meetings and regional policy forums (EJML, 2011).

One practical example of collaboration concerned a short term programme introduced during the recent recession when there was increased unemployment amongst more experienced and higher skilled workers, including managers and professionals. These claimants had different needs from most Jobcentre clients. The DWP approached the REC in early 2009 to explore ways in which recruitment agencies could provide additional support to jobseekers in this 'professional' category.

The 'Job-search support for newly unemployed professionals' programme ran from April 2009 until March 2011, and was aimed primarily at unemployed people who had recently left a professional or executive job. Interested agencies had to formally register their interest to the DWP, submit an application and be accepted as a supplier of support services through the initiative. The agencies' role was to advise jobseekers referred by Jobcentre advisers about the best way to go about finding new employment. The agencies were paid a fee of £150 and provided a range of support which could include mentoring and coaching; motivational support; assistance in writing updated CVs; providing market information about job prospects and facilitating job matching. There was no formal evaluation or monitoring of outcomes but the programme assisted over 80,000 jobseekers.

There is little detailed information on how Jobcentres handle vacancies notified to them by private employment agencies and TWAs but unemployed claimants can be encouraged to consider temporary jobs and registering with private agencies counts as one of the steps to be taken to show a claimant is actively seeking work. Non-standard employment vacancies are now more prevalent and TWA and other temporary jobs constitute over one third of new job starts. Leaving a temporary job is also one reason why almost half the unemployed people who find jobs return to make a new benefit claim within twelve months.

6.12 Private Employment and Temporary Work Agencies in Britain

Despite the increased significance of PE&TWAs there is only limited research on their operations and their impact on the employment prospects of particular groups in the UK. Moreover, as in the other case study countries, inconsistent definitions and methodologies mean that there is varied data available on the scale of TWA employment.

The REC undertakes monthly monitoring supplemented by an annual assessment of conditions in the industry (based on findings from its own surveys and official data). The most recent annual assessment, for 2013/14, estimates that the sector helped more than 630,000 people find regular employment and on any given day 1.15 million people were employed on a temporary or contract assignment secured via a PE&TWA (REC, 2014). An earlier analysis estimated that if one million TWA workers were deployed it was likely there were 1.5 million people registered as temporary workers with agencies.

The REC report for 2013/14 found that the industry had recovered from the effects of the recession with a total industry turnover for the year of £28.7 billion (an increase of 8.2% over the previous year). It was estimated that agencies directly employed 96,397 staff. Over 90% of sector income was derived from TWA work, with direct job placements showing a weaker recovery. One significant factor explaining the slow recovery of regular placement activity was that employers were instead directly recruiting staff and increasingly making use of social media (especially LinkedIn).

Results from the national Labour Force Survey find lower numbers of TWA workers than the REC estimate. This data series shows that the number of TWA workers reached a peak of 275,500 in 2001 and was around that level before falling in the recent recession to a low of 245,000 in 2009. The recovery was initially slow but accelerated with the number of TWA workers reaching over 321,000 in Winter 2012 when they comprised an estimated 1.27% of the employed workforce. Nearly 70% of these workers were paid by the agency, and just over 30% were paid by the user company (Forde and Slater, 2014). In Winter 2014 the total was slightly higher at 328,000, with 88,000 indicating they were employed part time (Office for National Statistics, Table EMP07, accessed September, 2015).

In 2015 the industry association estimated there were over 18,000 agency offices in the UK (CIETT, 2015). The sector is comprised of a small number of large, mainly national and international providers, complemented by a greater number of specialist and smaller agencies operating at a local or regional level (many of which employ less than ten employees).

There is much debate about the merits of PE&TWAs and their relationship with poor employment practices and non-standard employment contracts (Maroukis, 2015). While many agencies adhere to good working practices, there have been problems with exploitative practices in some parts of the industry. Another significant development has been a marked increase in the number of other intermediaries which use 'contrived contracts' to disguise employment relationships. Common contrivances include disguising temporary employment as self-employment and/or devising contractual arrangements whereby agency workers do not pay their full tax liability or social insurance contributions. Self employed workers are not covered by the European Agency Worker Directive and these contrived employment relationships are the subject of much controversy (which is likely to result in further regulation in the near future: Seeley, 2015).

6.12.1 The Regulation of Recruitment and Temporary Work Agencies

The legal framework governing PE&TWAs in the UK dates from the Employment Agencies Act (1973). The legislation included the requirement to obtain a licence and established an 'Employment Agency Standards Inspectorate' (EASI) to monitor agency practice and enforce legal obligations. The licensing system was abolished in 1994 and although the subsequent Labour Government did not reintroduce licensing it did more clearly define the responsibility of agencies in the 'Conduct of Employment Agencies and Employment Businesses Regulations' (2003). These regulations prohibit agencies from fee-charging and from other poor employment practices (see later).

Two sectors are regulated more strictly. The first concerns nursing and domiciliary care agencies where agencies *may* need to be registered with the Care Quality Commission in England (or equivalents in the other UK countries). The key principle is whether an agency is through the workers it supplies undertaking a 'regulated activity', such as assessing a service user's needs or drawing up a social care or health plan. If the agency is involved in undertaking such activities it needs to meet registration requirements, but if the agency is simply supplying staff to organisations that carry on regulated activities, but do not provide any regulated activities themselves, they are exempt from registration.⁴⁵

The other registration requirement regulates agencies (commonly known as 'Gangmasters') which supply labour in the farming, food processing and shellfish gathering sectors which together include some of the lowest-paid and most vulnerable workers in the UK (Maroukis, 2015). The Gangmasters Licensing Act (2004) was introduced in the wake of the death of 23 immigrant shellfish pickers in a tragedy earlier that year.⁴⁶ The legislation established a non-departmental public body, the Gangmasters Licensing Authority (GLA), with its own inspectors, to ensure that regulated agencies meet minimum employment standards. The GLA (2015) also works closely with law enforcement bodies to identify, disrupt and dismantle serious and organised crime, including people trafficking and other related illegal exploitative employment practices associated with the sectors it is responsible for.

In addition to civil penalties including denial or withdrawal of a licence the Gangmasters legislation created four criminal offences arising from the licensing system:

- operating as an unlicensed Gangmaster;
- entering into arrangements with an unlicensed Gangmaster;
- obstructing GLA officers; and
- having false documentation.

To obtain a Gangmasters licence, the rules require payment of a fee linked to the agency's turnover ranging between £250 and £4,000 for businesses turning over under £1 million to over £10 million respectively. Agencies also have to pay for inspections of their work environment in order to obtain licensing approval, with fees charged ranging from £1,600 to £2,500, according to agency turnover. In 2014/15 the GLA issued about 2,000 licences and it was estimated that the system was protecting some 550,000 workers in the sectors covered (GLA, 2015, p. 2).

Other regulatory changes that shaped the agency industry concerned general legislation on employment rights including that derived from European Directives. In particular there was much controversy about the implementation of the Agency Workers Directive (2008). After much debate between the Government, PE&TWAs, employers and trade unions, an agreement was reached on how the equal treatment principle would be applied in the UK (Forde and Slater, 2014). The specific UK

⁴⁵ For more information see - <http://www.cqc.org.uk/>

⁴⁶ The workers were Chinese immigrant labourers who were left to drown by their employers as a fast tide swept in around them at Morecombe Bay in Lancashire. The unregulated Gangmasters were subsequently convicted of manslaughter, and some deported back to China.

legislation came into force in October 2011 establishing the obligations of both agencies and user companies.

In the UK the actual oversight of regulations and PE&TWA employment practices has been 'light touch'. In particular the activity of the original inspectorate, EASI, diminished after the general agency licensing requirement was abolished. By September 2013 there were only eleven people working in EASI, including eight inspectors, nominally covering some 18,000 agency offices. At this point most of the inspectors were transferred to another department to work specifically on minimum wage enforcement in the agency sector. In November 2014 it was reported that only two inspectors, supported by one administrative officer, remained in the EASI (Hansard, WA, 11 November, 2014).

In its last formal annual report for 2012/13 the EASI reported that it had received 858 complaints and undertaken 229 targeted inspections (EASI, 2013). In that year inspectors had identified 1,479 infringements; issued 471 warning letters; recovered about £170,000 in unpaid wages; and carried through seven successful prosecutions and two prohibitions (preventing named individuals from running an agency for a period of years). Most of the complaints and infringements found during inspections related to non-compliance with issues related to record keeping and written notifications not being sent to user companies or work seekers.

The resources of the GLA and the scope of its regulatory activity are more significant. At the time of its annual report for 2014/15 the authority employed 69 staff undertaking the core functions of licensing, intelligence, compliance and enforcement. In that year the authority reported that more than 3,000 workers had been assisted to prevent them being subjected to exploitative practices, 222 successful convictions had taken place and steps taken to recover £3.5m on behalf of workers. There had also been 104 licence application inspections and 103 compliance inspections, which had resulted in 27 licence refusals and 23 revocations (GLA, 2015).

The work of the two specific agency inspectorates overlaps with the remit of other regulatory and enforcement authorities, including officials enforcing the national minimum wage; health and safety at work; tax and social insurance obligations; as well as officials from criminal law enforcement and the UK Borders Agency. Individual workers, with or without the support of trade unions, may also pursue grievances on employment rights through a quasi-judicial system of Employment Tribunals.

The UK's 'Advisory, Conciliation and Arbitration Service' offers advice and guidance to workers and employers on issues related to workplace disputes and grievances on pay and rights at work, including advice for temporary workers employed through TWAs. This service is now responsible for 'one stop' online and telephone support where advisers can give information and guidance about basic workplace rights covered by enforcement bodies.⁴⁷ They can also put callers in touch with the

⁴⁷ Of the 900,000 calls to the Acas helpline in 2014 some 2,250 were about the Agency Workers Regulations. Analysis of the calls showed that agency workers were often unaware of, and afraid of asserting, their statutory rights (Acas, 2015).

relevant enforcement body, such as the GLA or EASI, who will investigate further and take enforcement action where necessary.

There has been much debate about labour market regulation and the disparity between the weak regulation of most PE&TWAs compared to the stricter supervision of agencies in the sectors covered by the GLA. The UK Government has undertaken a review of the regulatory framework for the recruitment sector and after publication new legislation is expected to follow in 2016. In the meantime the DBIS announced the appointment of a new 'Director of Labour Market Enforcement and Exploitation' in 2015 who will align and oversee the work of the GLA, the EASI and minimum wage enforcement. There is concern, however, that a reduction in resources and a narrower, more targeted approach focused on 'vulnerable workers' and the minimum wage, will mean less regulation of most private employment intermediaries. By contrast trade unions and advocacy organisations have lobbied for the powers and resources of the GLA to be extended to cover other sectors, especially the construction industry.

Self-regulation plays an important role in the sector and the REC has a code of practice which sets out ten principles that all members are expected to adhere to. Since 2012 member agencies have been to carry out a bi-annual compliance test. This is essentially a self-assessment exercise structured around 100 multiple-choice questions with a pass rate of 80% required for continued membership. REC can undertake spot checks on agencies, investigate complaints and refer cases to the EASI. The Association of Labour providers, which works specifically in the sectors covered by the GLA, also has a similar code of practice, as do some of the smaller agency organisations representing specialists, such as those covering services in modelling, entertainment and IT. Complaints can be made about agencies and if upheld members may be expelled from the associations but an agency can continue to operate unless action is taken by a statutory regulator.

6.12.2 The Terms and Conditions of Employment of TWA workers

Collective bargaining is less developed for agency workers in the UK, where no government approved system of labour agreements exists. Trade unions may negotiate provisions on temporary staff in their workplace agreements but there is little information available on these provisions. Most trade union activity concerns the role of the Trades Union Congress in raising awareness about and enforcing the legislative rights of agency workers, although some trade unions do directly organise TWA workers and have recognition agreements, especially with larger agencies.

The 'Agency Worker Regulations' (2010) and the 'Conduct of Employment Agencies and Employment Businesses Regulations' (2003) together set out the rights of agency workers and the liabilities and duties of PE&TWAs. Agencies and user companies must also observe other general labour and health and safety at work regulations, including paying the national minimum wage, and must adhere to equal opportunities legislation. All agencies are required also to check that their workers have a legal right to work in the UK and where necessary undertake 'criminal records checks' to ensure that their temps are legally able to be employed in workplaces with specified service users (such as, children or vulnerable adults).

Under the conduct regulations the agency must record details of each vacancy they receive from a user company before they introduce or supply an agency worker to that user company. The agency must give the TWA worker information about the identity of the user company; the start date and duration of assignment; the job role, responsibilities and hours; the necessary skills and experience; the potential health risks; and the potential expenses that the agency worker would incur. The user company is responsible for supervising and directing the agency worker while they undertake the assignment. The user company must, under the conduct regulations, provide in writing information on the level of basic pay, overtime payments, bonus schemes, performance appraisal, annual pay increments, voucher schemes and annual leave entitlement. In special cases such as pregnancy, it is the user company's responsibility to carry out a workplace risk assessment if required and to make adjustments to remove the risk if necessary or offer suitable alternative work.

The conduct regulations further restricts agencies from:

- charging a fee to a job seeker for job finding services (although fees are permissible for agencies in the entertainment and modelling businesses);
- sharing the agency worker's personal details;
- advertising jobs which do not exist;
- withholding payments or wages due to TWA workers for work they have carried out, regardless of whether they have timesheets;
- supplying a TWA worker to replace an individual taking part in industrial action; and
- preventing a TWA worker from working elsewhere, from terminating their contract with the agency, or requiring them to tell the agency the identity of any future employer.

Agencies themselves may hire workers, who they provide to businesses. In such cases, the TWAs may charge an additional fee to user companies for their services.

The UK Agency Working Regulations (2010), which translate the European equal treatment principle into UK law, can be divided into rights which are available from day one of their employment on an assignment, and rights that come into force after twelve weeks (Forde and Slater, 2014, p. 13). The user company has liability for ensuring day one rights for agency workers which essentially comprise the same access to facilities such as staff canteens, childcare and transport as a comparable employee of the user company, and the right to be informed about job vacancies.

After a 12-week qualifying period, agency workers are entitled to the same basic conditions of employment as if they had been directly employed by the hirer on day one of the assignment. This specifically covers pay, including any fee, bonus, commission, or holiday pay relating to the assignment. It does not include redundancy pay, contractual sick pay, and maternity, paternity or adoption pay. After twelve weeks the agency worker also acquires 'duration of working time' rights including, for example, any annual leave above what is required by law. Agency workers are also entitled to paid time off to attend ante-natal appointments during their working hours.

The regulations cover continuous assignments within a user company. In reality many agency workers are sent on assignment to many companies, often through multiple agencies (Forde, 2001). Some may therefore accrue twelve weeks of continuous employment but not with a single user company. The regulations stipulate that if an agency worker is working on more than one assignment the accrual to twelve weeks will occur separately across each assignment. The regulatory guidance also sets out a range of 'anti-avoidance' stipulations which are designed to prevent assignments being structured in such a way so as to prevent an agency worker completing a qualifying period. (DBIS, 2011).⁴⁸

The most significant regulation concerns the 'Swedish Derogation', which applies to the European legislation and has been used widely in the UK. The derogation applies when a TWA offers an agency worker an ongoing contract of employment and pays the agency worker between assignments. It effectively means that after twelve weeks with a user company the agency worker will not be entitled to the same pay as if they had been recruited directly. Workers covered by this exemption will, however, still be entitled to other provisions under the regulations, for example, annual leave after twelve weeks. For the derogation to apply, the TWA must offer an agency worker a permanent contract of employment and pay the worker some pay between assignments. Workers should be told that entering into the contract means giving up the entitlement to equal pay.

There are rules about how much and for how long the agency must pay workers, under these derogation agreements. It must be at least half of pay received on assignment based on the highest rate during the previous twelve weeks and it cannot be below the national minimum wage (DBIS, 2011). The payment between assignments must also last for at least four weeks before the contract can be terminated (Acas, 2013). During non-working periods, the agency must take reasonable steps to find future assignments for the temp worker who in return may be obliged to demonstrate their continuing availability for work.

It was expected that few TWAs would make use of this option, since it required agencies to find employment for temporary workers on a continuous basis, or pay workers whilst they were not on assignment. There is evidence, however, that after implementation employers, especially in the retail and food distribution sectors, required the agencies they used to switch their labour supply to workers employed under the Swedish derogation. Another survey found that other employers that regularly used agency workers sought to avoid equal treatment obligations and '*changed their working practices to avoid using agency workers for more than twelve weeks*' (Jordan et al, 2013, p.23). No evidence has been found to show that the 2010 regulations reduced demand for agency workers (Forde and Slater, 2014, p.18).

⁴⁸ These regulations focus on what comprises the twelve week continuous employment period; the movement of agency workers around a series of roles within the same firm; and the movement of agency workers onto contracts with different subsidiaries within the same organisation.

Chapter 7: Conclusion

This report has reviewed developments in the design and delivery of public and private employment services in four case study countries. Each country is characterised by distinctive institutional and service delivery systems. Responsibility for insurance based and means tested benefits and publicly financed employment services is often divided between different institutions and delivery agencies and these differences are complicated further where they overlap onto divisions of responsibility between levels of government. Despite these differences in each country the PES continues to play a central role in the delivery of employment services.

The role of the PES has been shaped by different activation policies and changes in how people apply for and how employers recruit workers. Activation reforms have intensified work-based requirements and extended them to cover more diverse groups of working age benefit claimants. Job matching and placement has been transformed by the diffusion of online technologies and the spread of non-standard employment contracts in more flexible labour markets. In each of the countries the PES has been enabling and requiring more employable clients to use self-service channels to undertake their own job search whilst investing in a more personalised service targeted at priority groups, including the long term unemployed or those considered at risk of long term welfare dependency.

In each country changes in benefit entitlement and eligibility rules have been coupled with organisational change. The reasons for the perceived inadequacies of earlier arrangements are contested, but at least part of the problem has been attributed to the 'top down' inflexible nature of national policy formation and implementation; to the fragmented structure and role of the traditional welfare bureaucracies and national employment services; and to the absence of competition and market forces. PES monopolies in labour intermediation have been dismantled, new service delivery models have been introduced and national agencies now have to work in new partnerships and different types of decentralised arrangements.

In all four countries policy makers suggest that activation reforms have contributed to reducing benefit caseloads and improving employment rates. Whilst the net impacts specifically attributed to changes in activation requirements or service delivery reforms may appear small over time they are likely to have significant aggregate and cumulative employment and budgetary effects. When activation strategies and employment service reforms are effectively communicated and delivered they also may induce large motivational effects, which can prompt and assist those capable of working to take up employment and discourage benefit claims from those who are not genuinely seeking employment.

It is difficult to disentangle the impacts of reconfigured service delivery systems from the wider work-based activation reforms within which the new arrangements are embedded. The findings from the case study countries confirm, however, that the design and delivery of benefit systems and the organisation, management and front line delivery of employment services are important influences on the level and persistence of unemployment and benefit dependency. There are a range of factors

that contribute to the relative effectiveness of service delivery reforms but some that may have contributed to improved employment outcomes include performance management, greater inter-agency collaboration, contracting out and decentralisation.

7.1 Lessons for Policy Makers in Other Countries

Despite differences in governance, labour market contexts and social security systems the service delivery reforms implemented in the case study countries may be of use to policy makers in other countries as they make choices about which policies and programmes to implement in the context of the distinctive national challenges they face.

7.1.1 PES Performance Management

The design of funding and performance reporting mechanisms is critical for accountability and for shaping the priorities and behaviour of the PES and contracted out service providers. In each country there has been change in performance management and the orientation of service delivery systems to focus on outcomes achieved rather than only on how budgets are spent. This has involved job placement targets for the PES and performance related payment systems for contracted providers. There is now much accumulated experience about how best to design and implement such systems in ways that improve outcomes and accountability whilst ensuring that service providers do not focus solely on those already closest to the labour market.

7.1.2 Coordinated Service Delivery

Another important trend concerns the integration and coordination of employment and benefit service delivery within 'one stop' or 'one counter' arrangements that require the PES, local government and other agencies to work together. Despite contextual differences findings from the comparator countries identify some design elements that can facilitate different approaches to coordinating and/or co-locating services. One important element concerns the development of local agreements outlining service protocols, working methods and respective organisational responsibilities. 'Legacy' IT systems and PES and local government data and service delivery protocols can facilitate (or hamper) coordination and 'user journeys'. At its best, investment in more integrated information systems enables service providers to coordinate separate administrative data on clients, establish eligibility and referral mechanisms, track interventions and monitor subsequent progress.

7.1.3 Contracting Out the Delivery of Employment Services

Contracting out the delivery of employment services has proven to be a complex undertaking with public purchasing authorities in the case study countries having to make frequent adjustments to financial incentives and contract terms as delivery problems have arisen and external conditions have changed. Evaluations report mixed results with negative evaluation findings showing little evidence of increased efficiency or innovation. More positive findings suggest, however, that well-designed performance based contracts can reduce delivery costs, give access to skilled staff

and services unavailable in the public sector and bring innovation to service delivery. The common risks are that providers may service only the most job ready and 'park' the hardest to help and otherwise exploit weaknesses in contract design. Some key lessons from the case study countries include:

- The development of an effective contracting system is likely to require an extended period of monitoring, evaluation and modification. It is important that when contracting for employment services the purchaser should design the process in ways which allow lessons to be learned rapidly and necessary adjustments to be made.
- There are many choices to be made about contract design and how to organise procurement that will shape subsequent delivery and impacts. A key finding from the Netherlands, Germany and the UK, concerns the negative impact of contract selection processes that gave too much weight to the lowest priced bids which resulted in unviable contracts. The challenge for the purchaser is to balance a range of possible bid selection criteria in ways that secure value for money but do not undermine provider capacity to deliver effective services.
- Contracting requires effective information systems that enable the purchaser to track participants, monitor provider performance and verify service delivery and outcomes. There is a need also for skilled contract managers to undertake procurement and performance management and for such expertise to be concentrated in regional or national offices and not directly connected with immediate local delivery.

7.1.4 Decentralisation and the Delivery of Employment Services

There is little specific evidence on the particular impact of decentralisation but positive evaluations from wider OECD experience suggest that giving lower tiers of government or partnerships responsibility for funding of services, benefit payments and responsibility for programmes has encouraged innovation and enabled local actors to design and provide more coordinated services better tailored to the needs of local communities and employers (Froy and Giguère, 2010). There is evidence also that devolved responsibility for financing benefit payments has given lower tiers of government stronger incentives to keep unemployment low (Finn, 2015). The development and design of 'block grants', which give local governments flexibility and incentives to increase efficiency, have been strongly associated with reductions in welfare caseloads but they also risk 'under provision' with harsher gatekeeping and budget cuts undermining poverty reduction. The Netherlands model illustrates how devolution and falling caseloads can be combined with common national benefit entitlements but that these national requirements need to be further enhanced by minimum standards for employment services.

The challenge for policy makers is how best to structure their employment and welfare system to allow for the flexible delivery of localised strategies within a coherent and equitable national policy. Balancing national and local priorities requires an agreed and transparent performance framework where the central, national body has the authority and responsibility to analyse performance information through which it can assess and evaluate the effectiveness of local activation strategies and hold delivery agencies to account. National objectives often are the

basis for negotiated agreements and targets with lower tiers of government and, as in Germany and Denmark, may be monitored and managed through performance reporting systems; central or regional scrutiny and evaluation; and the incentives and sanctions embedded in conditional central funding. Such mechanisms are important to mitigate the potential for misaligned or conflicting incentives, especially the risk that in multi-tiered policy systems some levels may have strong incentives to shift costs and resist central reform.

Implementing more decentralised arrangements has to take into account the personnel; organisational and fiscal capabilities of local government. It would not be feasible, for example, for local areas to acquire or replicate the expertise of national agencies so the central Ministry should facilitate capacity building, the collection of comparable information on service provision and outcomes, evaluation and the transfer of best practice. Central government can also sponsor a differentiated model where, as in the UK, lower tiers of government negotiate different levels of responsibility and test, evaluate and develop new approaches to local design and delivery before a possible move to fuller decentralisation.

7.1.5 The Public Employment Service and Private Employment and Temporary Work Agencies

In each of the case study countries the PES works alongside a more or less extensive network of PE&TWAs which has given the PES increased flexibility to adapt services and meet changes in demand. These agencies have also become an important source of employment opportunities for PES clients, although there was mixed evidence and views on whether the job opportunities and experience offered by TWAs in particular acted as 'stepping stones' to regular jobs or were precarious 'dead ends'. Increased temporary agency work was, however, a common feature in each country, although its prevalence varied and its buoyancy was highly sensitive to the economic cycle.

Relationships between the PES and PE&TWAs varied with the closest working arrangements evident in the Netherlands and the UK where formal partnership agreements help structure the relationship between both sectors. There had been more or less success for the PES in learning from and adapting some intermediation practices of private agencies and attracting agencies to deliver contracted out services, but experiments with publicly financed TWAs servicing PES priority groups had mixed success. The successful Netherlands model was subsequently privatised and the unsuccessful German model was quickly abandoned.

In each country the PE&TWA sector was characterised by a number of large international and national agencies complemented by many smaller specialist and local agencies, many of which operated in poorly regulated sectors of the labour market. National federations sought to promote best practice and the interests of the sector through self regulation and cooperation with statutory enforcement bodies. However, in each country there was criticism of agency involvement in exploitative and sometimes illegal working practices, often involving migrant workers, especially in sectors such as cleaning, agriculture and construction. Perceptions of agency employment practices were also tainted by the emergence of new arrangements,

such as contrived self-employment and umbrella agencies, which in the UK and the Netherlands evade regulatory and tax requirements.

Agency regulation has been liberalised in each case study country but Ministries continue to regulate the commercial activities of PE&TWAs and the different ways in which they treat their clients and temp workers. These regulatory environments are affected by sector specific and wider labour market factors, including more general national regulation of employment conditions. Key principles specific to agencies included the prohibition of fee-charging for job placement and the extension of equal treatment requirements to TWA workers so that they may benefit from the same remuneration levels as comparable regular workers and/or qualify for more secure employment.

National regulatory regimes have been shaped by EU Directives and ILO Conventions but each country had distinctive approaches to licensing, transparency and to enforcement. In Germany, Denmark and the Netherlands in particular negotiated collective labour agreements were used to vary national entitlements. Despite the diversity of practices the experience of the case study countries underlines the importance of supplementing collective and sectoral self-regulation with the activity of adequately resourced public agencies. Such regulatory agencies must have the capacity to undertake monitoring and enforcement activity and provide information and access to complaint procedures for employers and individual workers, especially those employed in sectors, such as food, hospitality and care work, where there is growing demand for cheap and flexible workers.

Annex A: Eurociett Code of Conduct (extracts)

Principle 1 – Respect for Ethical and Professional Conduct

Members shall observe the highest principles of ethics, integrity, professional conduct and fair practice in dealing with temporary agency workers and all other relevant stakeholders, and shall conduct their business in a manner designed to enhance the operation, image and reputation of the industry.

Principle 2 – Respect for Laws

Members and their staff shall comply with all relevant legislation, statutory and non-statutory requirements and official guidance covering Private Employment Agencies.

Principle 3 – Respect for Transparency of Terms of Engagement

Members shall ensure that workers are given details of their working conditions, the nature of the work to be undertaken, rates of pay and pay arrangements and working hours.

This principle complies with EU Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

Principle 4 – Respect for free-of-charge provision of services to jobseekers

Members shall not charge directly or indirectly, in whole or in part, any fees or costs to jobseekers and workers, for the services directly related to temporary assignment or permanent placement.

Principle 5 – Respect for Health and Safety at Work

1. Members shall act diligently in assessing risks related to health and safety prior to the assignment of agency workers in their workplace.

2. Members shall inform agency workers whenever they have reason to believe that any particular assignment causes an occupational health or safety risk.

This principle complies with the EU 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.

Principle 6 – Respect for Diversity

Members shall establish working practices that safeguard against any unlawful or unethical discrimination.

Principle 7 – Respect for the Worker's Rights

1. Equitable, objective and transparent principles for the calculation of agency workers' wages shall be promoted, considering national legislation and practices.
2. Members shall not restrict agency workers' right of freedom of association.
3. Private employment agencies shall not make workers available to a user company to replace workers of that company who are legally on strike, except where such a provision is prohibited by national or local law.

Principle 8 – Respect for Confidentiality

1. Members shall ensure confidentiality in all of their dealings.
2. Members and their staff shall ensure that permission has been given and documented before disclosing, displaying, submitting or seeking confidential or personal information.

This principle complies with the EU Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Principle 9 – Respect for Professional Knowledge and Quality of Service

1. Members shall work diligently to develop and maintain a satisfactory and up to date level of relevant professional knowledge.
2. Members shall ensure that their staffs are adequately trained and skilled to undertake their responsibilities and assure a high quality service.

Principle 10 – Respect for Fair Competition

Members shall assure mutual relations based on fair competition.

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