“Pseudo-Contracted” Workers in Greece

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Non-standard forms of employment, also called “flexible” or “new forms” of employment, such as temporary employment, part-time employment, seasonal employment, project agreement, leasing through TWAs, and outsourcing are a worldwide rapidly expanding phenomenon that affects more than one-third of the worldwide workforce. Flexible or new forms of employment emerged in the 1980s and gained popularity during the acute financial crisis (2007), as well as during the recent pandemic COVID-19 that also hugely affected Europe and the USA. More specifically, in 2022, the EU-27 marked rates of 12.1% of temporary employment and 17.6% of part-time employment over total employment. Enterprises turn to flexible forms of employment when aiming to reduce labour costs and to increase their productivity and competitiveness. More specifically, enterprises reduce their internally allocated range of tasks and assign part of or entire activities to external undertakings, thus expanding labour market segmentation and amplifying social inequalities among the employees.

Keywords: leased workers ; temporary work agencies ; business service providers

1. Leased and “Pseudo-Contracted” Workers in Greece and the Europe

The leasing of workers through TWAs made its first appearance in the USA in the 1940s, in western European countries in the 1960s, and in the rest of the European countries during and after the 1990s (Voss et al. 2013; Papadimitriou 2007). An enterprise that leases personnel is called a “Temporary Work Agency” (TWA) or “Temporary Agency” or “Agency Work” or “Agency Employment” (ILO 2009, 2013). In Europe, the leasing of workers through TWAs is one of the most developing forms of employment (Hakansson and Isidorsson 2012; ILO 2009, 2013). In 2022, leased workers amounted to 2.6% of the total employed population in the EU-27 (Eurostat 2023).

The European Directive 2008/104/EC, after 30 years of tough negotiations, provides protection for those employed through TWAs in the EU. In Greece, the “leasing” of workers was officially recognized and delineated initially with Law 2956/2001 and later on with Law 4052/2012, which also incorporated the European Directive 2008/104/EC (2008). Thus, it is seen that the establishment of a framework for the protection of workers leased through TWAs was greatly delayed both on a Greek and an EU level (For details regarding Greece see Section 2 Labor Laws in Greece). Pursuant to the Private Employment Agencies Convention (ILO, Convention 181 on 19.6.97), the legal structure and operation of the Temporary Work Agencies, both in Europe and internationally, is established through a triangular relation (TWA-leased worker–user undertaking) (ILO 2009, 2022a).

The term “leasing” of personnel through TWAs means the temporary work, which is provided by the leased worker to a second user undertaking. In particular, the leased employee enters into a contract or dependent work relationship, full- or part-time, for a fixed or indefinite period with the TWA (direct employer), to provide their services not to the TWA itself, but temporarily to the user undertaking (indirect employer). The remunerations of leased workers, during their temporary placement with the indirect employer, are, as the law provides, those that would apply if the employees were hired for the same job position and with the same qualifications by the user undertaking, in accordance with the European Directive 2008/104/EC (European Directive 2008/104/EC 2008; Greek Laws 4052/2012 and 2956/2001) (For details regarding Greece see Section 2 Labor Laws in Greece). Therefore, the remunerations cannot be lower than the specified sector-level or professional or business-level Collective Agreements, which apply to the permanent employees of the indirect employer. It is worth noting that in the UK and Ireland, leased workers may also be under a “sui generis” agreement, meaning that apart from a contract with a TWA they may also be working as freelancers (Agrapidas 2006, 2013).

Although the EU has established a robust institutional framework for the protection of leased workers on the basis of the European Directive 2008/104/EC, this form of employment is correctly considered as one of the most vulnerable forms of work due to the segmentation of the labour market and the co-existence of two employers, i.e., the TWA and the user-undertaking (Fudge 2011; Doerflinger and Pulignano 2015). More specifically, although flexible forms of employment represent a large amount of manpower, they are considered to be among the most precarious. Temporary employment,

leasing through TWAs, contracted workers, and non-standard forms of employment mainly include low level occupations, deprived of professional advancement, with low salaries and benefits, lack of education and training, and higher labour insecurity that gives rise to labour dissatisfaction and negative consequences on the worker's mental and physical health (Ferreira and Gomes 2022; Thomson and Hünefeld 2021; Mitlacher 2008).

As mentioned above, the leasing of workers through TWAs is one of the most developing forms of employment and the relevant employment rates vary across Europe. In 2022, leased workers amounted to 2.6% of the total employed population in the EU-27 (Eurostat 2023). The countries with the highest rates of leased workers in 2022 were the Netherlands (5.2%), Spain (3.9%), Ireland (3.7%), Germany (3.3%), and Sweden (2.8%). At the other end of the scale, the countries with the lowest rates of leased workers were Belgium (1.9%), Portugal (1.4%), Italy (1.0%), Denmark, and Greece (0.6%) (Eurostat 2023). In Greece, there is reasonable suspicion that the numbers of leased workers are actually higher. A possible reason is that contracted workers employed at the premises of the user undertaking (i.e., in-house outsourced workers) are possibly workers who are actually leased. Consequently, if this is true, it is undoubtable that the number of leased workers is higher (Rompoti and Ioannides 2019, 2023).

According to the above, researchers' basic research assumption is that a portion of the contracted workers through in-house outsourcing are actually leased employees and that they are remunerated less than the permanent personnel. More specifically, strong indications lead researchers to believe that the employers hire these contracted workers in order to circumvent the European Directive 2008/104/EC and the Greek laws. In particular, the European Directive and the Greek Laws provide equality between the leased workers through TWAs and the permanent employees for the period that the leased workers are assigned to the user undertaking. Thus, contracting companies often operate unlawfully as TWAs by concealing the leased personnel. Researchers believe that it is possible that "virtual/pseudo contracting" is also the case in other EU countries, however there are no relevant empirical studies available (For details regarding Greece see Section 2 Labor Laws in Greece).

According to the literature, the main reason for which employer undertakings decide to lease workers through TWAs is to cover their short-term and emergency needs (Eichhorst et al. 2013; Autor 2008; Forde and Slater 2005). In addition, a significant incentive is the reduction of the labour cost, since this form of employment allows the user undertakings to avoid assuming any employer obligations and liabilities (e.g., hiring processes, salaries, withholding of contributions, etc.). In this way, the user-undertakings are not burdened with costly potential dismissals, which would apply had they been the direct employers (Eichhorst et al. 2013; Autor 2008). Another main reason for opting for this form of employment is the immediate and reliable spotting of flexible human resources, equipped with the appropriate qualifications, skills, and specialties, who provide expertise, new knowledge and innovative ideas to the user undertakings. Moreover, the latter may employ "knowledge economy" workers (Forde and Slater 2005). These are employees in high-expertise posts of the tertiary sector (provision of services, such as technical, administrative, and managerial professions, IT professions, etc.). Finally, the user-undertakings have the opportunity to assess the work quality and the skills of the workers leased before hiring them permanently to their businesses so as to avoid any financial or other risk in the future (Autor and Houseman 2010; Forde and Slater 2005).

The main incentives for enterprises to adopt the practice of outsourcing and use contracted workers are to reduce the labour costs, enhance flexibility and make use of more specialized human resources, who carry expertise and innovative ideas in their field (Costa 2001; Galanaki 2005). When outsourcing takes place within a group of companies, it is called "internal outsourcing", while when used to external businesses, it is either "in-house outsourcing" or "out-house outsourcing". "In-house outsourcing" means that in order to complete a task, the contracted workers must work at the premises of the project-assigning business (user undertaking), while "out-house outsourcing" means that the contracted workers complete the project at the facilities of the contractor. Outsourcing, especially "in-house outsourcing", should not be confused with the leasing through TWAs, because although the two concepts share some common traits, they are actually very different. The basic difference between a worker leased through a TWA and a contracted worker is the temporary employment or leasing of the leased worker to a second undertaking (user business). On the contrary, the task of a contracted worker, either out-house outsourced or in-house outsourced, is to complete and deliver a project to the entity that has assigned it.

However, apart from the advantages for the businesses, literature only contains a few disadvantages of this practice. More specifically, there are indications that Businesses Service Providers (contractors) and users conclude "virtual or pseudo" project agreements (Zerdelis 2017; Leventis 2017; Rompoti and Ioannides 2019, 2023). Undoubtedly, such agreements benefit the user undertakings, providing higher flexibility and reduction of the labour costs. Especially in Greece, it is most probable that some employers aim to avoid the restrictions applicable for the case of leased workers, as set by Laws 4052/2012 and 4254/2014, as well as to avoid equal pay and other rights both for the leased and the

permanent workers, as stipulated by Laws 4052/2012 and 4093/2012, which incorporate the European Directive 2008/104/EC into the national legislation (European Directive 2008/104/EC 2008; Law 4052/2012 2012; Law 4254/2014 2014; Law 4093/2012 2012) (For details regarding Greece see Section 2 Labor Laws in Greece). It should be noted that the salaries, insurance rights, and the rest of the working conditions of the contracted workers who either work at the facilities of the user undertaking (in-house outsourcing) or at places other than the user's premises (out-house outsourcing) are set mainly in Greece in accordance with the National General Collective Labour Agreement (NGCLA). Therefore, the salaries are not determined by the sector-level or same-profession or business-level collective labour agreements that apply to the permanent employees of the user undertakings. Therefore, contracted workers do not have the right to salaries equal to those of the permanent employees of the user undertaking, whereas, as already mentioned, workers leased through TWAs do benefit from this right. Therefore, the contracted workers receive lower remuneration and benefits compared to the permanent employees of the user undertaking. (Details about Greece can be found in Section 2 Labour Laws in Greece). It is our opinion that this leads to dissatisfied contracted workers on an employment level, as they are deprived of the opportunity to pay equality and professional advancement in the user undertaking. On top of that, they feel great insecurity regarding their future in the job.

The robust institutional framework of the European Directive 2008/104/EC on leased workers is bypassed through the emergence and development of other forms of employment, such as in-house outsourcing or the conclusion of "virtual or pseudo projects" between Business Service Providers and user undertakings (Rompoti and Ioannides 2019; Zerdelis 2017; Leventis 2017). Workers contracted through Business Service Providers and placed at the user undertaking to complete a project (in-house outsourced workers) are called in the research "pseudo-contracted" workers, as they have traits of leased workers through TWAs. More specifically, the research showed that contracting businesses in Greece usually undertake fake or "virtual" projects or pseudo-contracts and operate unlawfully as TWAs, thus concealing what is actually the leasing of workers (See details about Greece in Section 2 Labour Laws in Greece).

It is also worth noting that many groups of companies (usually multinational) operate a subsidiary Temporary Agency Work and operate a subsidiary Business Service Provider (contractor). This raises red flags, as it is a strong indication that contracting businesses often operate as TWAs and lease personnel.

It is evident that a "grey zone" is created between leasing personnel through TWAs and "pseudo" contracting that covers up illegally leased personnel, when the workers are employed at the premises of the user undertaking (Rompoti and Ioannides 2019, 2023; Zerdelis 2017; Leventis 2017).

In Greece, neither the legislators nor the jurisprudence have dealt in depth with the issue of pseudo-contracting, as has been the case in Germany. The German law on personnel leasing through TWAs was amended on "1 April 2017" incorporating provisions in order to fight illegal leasing of workers through virtual project agreements. More specifically, the German law imposes to TWAs and the user undertakings to explicitly identify their agreements as "personnel allocation agreements", otherwise they are considered void, and the leasing of workers is illegal.

The main criterion for distinguishing the phenomenon of leased personnel through TWAs from "contracted" personnel is the exercise of the managerial right (e.g., instructions about the place, working time, etc.), stipulated by the European Directive 2008/104/EC, which sets the provisions on temporary work through TWAs. In particular, the managerial right over the employee contracted through a contracting enterprise is exercised by the contractor who bears the responsibility of the project, while in the case of employees leased through TWAs, it is the user undertaking who exercises this right (indirect employer).

In the absence of legislative provisions on illegal leasing of workers in many EU countries, the jurisprudence (courts) has set a list of criteria-characteristics to make the distinction between leasing of workers through TWAs and the "virtual" contracting that covers up leased workers.

According to the relevant literature (Greiner 2014; European Directive 2008/104/EC 2008; Ulber 2013; Schuren 2007; Ulrici 2017; Hamann 1995; Sansone 2011; Zerdelis 2017; Leventis 2017; Law 4052/2012 2012, etc.), the list of criteria-indications set by the jurisprudence, as well as the labour law incorporated into researchers' questionnaire of primary research, are:

First, the use of employees by the user undertaking exercising the managerial right. Consequently, when the user undertaking exercises the managerial right, this is an indication of personnel leasing agreement through TWAs. Second, the use of equipment and materials of the user undertaking (e.g., computers, telephones, chairs, etc.). This criterion is indicative of personnel leasing agreement through TWAs. Third, the integration in or cooperation with the permanent staff of the user undertaking. This criterion is another indication of personnel leasing agreement through TWAs. Fourth, the

way of determining the remuneration or remuneration per hour (e.g., remuneration per working hour). This criterion is indicative of personnel leasing agreement through TWAs. Fifth, the contract sets the number of employees as well as their required qualifications (e.g., knowledge, certificates of study, etc.). This is a criterion of personnel leasing agreement through TWAs. Sixth, the working hours are the same or almost the same as those of the permanent employees. Undoubtedly, this is indicative of personnel leasing agreement through TWAs. Seventh, the project agreement between the user undertaking and the contracting business mentions a general description of the project (e.g., secretarial or administrative support), and more clarifications are provided to the employees by the user undertaking. This criterion is an indication of “pseudo-contracting” agreement. As widely known, the phenomenon of leasing employees means that the user undertakings define what tasks the employees should fulfil. Eighth, when the duration of the project and the type of duties of the workers in the user undertaking concern constant and ongoing duties. Particularly, these duties were previously performed by the permanent personnel. These are indicative of a “pseudo-contracting” agreement as the project should have an expiry date and cover needs of a temporary nature. Ninth, the assignment and execution by the contracted staff of tasks that are irrelevant to the project they have been asked to complete. This is another indication of the “pseudo-contracting” agreement, as the user undertaking assigns to the workers other tasks or additional tasks than those originally described in their contract. Tenth, the Business Service Providers (contractors) do not have the appropriate organization, logistical infrastructure, or know-how to provide their services to many different sectors and different enterprises. This criterion is indicative of a “pseudo-contracting” agreement, since contracting businesses illegally operate as TWAs that simply lease personnel. Eleventh, in the event of any problem arising during the project, the workers are accountable to the user undertaking. This is indicative of a “pseudo-contracting” agreement, as the contracted workers are accountable to the contractors. Particularly, the responsibility regarding the deficiencies and defects of the project during its course or when it is completed is legally borne by the contracting enterprise.

The above criteria-indications were utilized in researchers' primary empirical research by incorporating them in the questionnaire that served as the basic tool. To our knowledge, it is the first time on an international level that a distinction has been attempted between leasing workers through TWAs and “pseudo-contracting”, as there are no other empirical studies on this issue.

It is worth noting that the literature also includes a part of authors who question some of the above criteria-indications about the distinction between a genuine project agreement and the leasing of workers through TWAs (Baeck and Winzer 2015; Rieble and Vielmeier 2011; Hamann 1995).

Their arguments are mainly as follows: First, as far as the equipment that the contracting workers are using to complete their tasks, it is not necessarily provided by the contracting company, but it could be also become available through the user undertaking. Thus, the use of the equipment of the user undertaking does not mean that the role and character of the project agreement is altered and that a practice of covering up leased personnel is employed. Secondly, the permanent personnel of the user undertaking may well give instructions and supervise the contracted workers, without it raising doubts about the role of the project agreement. Third, the close collaboration between the contracted workers and the permanent staff of the user undertaking aiming to carry out a project does not necessarily conceal a practice of leasing workers. On the contrary, it could actually be a factual project agreement and the collaboration between contracted and permanent workers is a prerequisite for a successful outcome. Fourth, it is possible that the project agreement only lays out a general description of the project and that further instructions are provided at a later stage by the user undertaking; this should not question the role of the project agreement. Fifth, many project agreements set the remuneration based on the hours required for the completion of the project. This way of payment does not alter the nature of the project agreement and should not automatically lead to the assumption that this is a case of concealed leasing of workers.

2. Labor Laws in Greece

The institution of leasing workers through TWAs was officially recognized in Greece in 2001 with Law 2956/2001. Many EU member states had already recognized it many years ago (Papadimitriou 2007; Voss et al. 2013). The delay of recognition and legalization of this practice in Greece was due to the actions of Greek unions that argued that this form of employment should have been prohibited from the start (Zerdelis 2017; Stratoulis 2005). However, the embracing of this practice by employers and the fact that the lack of a legal framework was leading to the encroachment of the workers’ labour rights, led the national legislators, with the accordance of the unions, to recognize this practice in order to provide statutory protection of the leased workers. In more details, the conceptual and institutional content of the “leasing” of workers was initially delineated in Greece in 2001 with Law 2956/2001 (2001) (articles 20–26) and in 2003 with Law 3144/2003 (2003), as well as with subsequent amendments in 2010, 2012, and 2014 pursuant to the respective laws: Law 3846/2010 (2010), Law 3899/2010 (2010) and Law 4052/2012 (2012) (Articles 113–133), Law 4093/2012 (2012) and Law 4254/2014 (2014). Law 4052/2012 (2012), amended pursuant to Law 4093/2012 (2012) and Law 4254/2014 (2014),

incorporate in the Greek legislation the regulations of the European Directive 2008/104/EC (2008) on the rights of workers “leased” though TWAs.

Law 4052/2012 (2012) specifically concerns the provision of a minimal legal protection regarding the “equation” of pays and of the basic labour and insurance rights between “leased” and permanent workers employed at the user undertaking for the same job position and with similar qualifications.

In addition, Law 4052/2012 (2012) and Law 4254/2014 (2014) contain stricter provisions on trade union rights and on the hygiene and safety of the leased workers, as well as stricter conditions regarding hiring and dismissing such workers.

Moreover, Law 4052/2012 (2012) provides that the length of assignment of a leased worker to the user undertaking cannot exceed a period of 36 months in Greece. In the event that this period is exceeded, the worker reserves the right to conclude an indefinite term employment contract with the user undertaking (Law 4052/2012 2012, article 117).

Moreover, Law 4093/2012 (2012) provides that 23 days must elapse for the renewal of the contract between the leased worker and the TWA; in the event that the worker continues working at the user undertaking after the expiry of their temporary placement with the user undertaking (max 36 months). In the event that the time-frame of 23 days has not elapsed, the worker reserves the right to conclude an indefinite term employment contract with the user undertaking (Law 4093/2012 2012, article 1).

To be noted that the maximum length of temporary placement of the leased workers with the user undertaking is set in the EU by each member-state individually and not pursuant to the European Directive 2008/104/EC (2008). However, the existence of different maximum periods set by the national states may turn void the efforts made with the provisions of the European Directive 2008/104/EC (2008) aiming to the protection of leased workers and of temporary employment offered through TWAs (Zerdelis 2017; European Directive 2008/104/EC 2008; Rompoti and Ioannides 2019, 2023).

Especially in Greece, it is noted that currently employers are attempting to circumvent the laws protecting leased workers through TWAs and they do so by reducing the demand of services through TWAs and increasing the demand though Business Service Providers or contracting businesses. This shift is due to the fact that employers now consider leasing workers to be an expensive form of employment, since the Greek legislation has incorporated European Directive 2008/104/EC (2008) that provides pay equality and equal work conditions and rights for leased and permanent staff, for the entire period that the leased workers provide their services at the premises of the user undertaking. Thus, employers try to circumvent the European Directive and they seem to have turned from the practice of leasing workers through TWAs to assigning services or projects to contracting businesses. The contracted workers then complete the project or service assigned either at the premises of the contractor (out-house outsourced workers) or at the location of the user undertaking (in-house outsourced workers). Note that contracted workers in Greece do not receive the same remunerations and do not benefit from the same insurance rights as the permanent employees of the user undertaking that assigns the project. Pay inequality is not justified by a difference of educational background between the two categories of workers. Many times the contracted workers are more qualified than the permanent staff. Lower salaries and less rights mainly stem from the fact that contracted workers mainly sign in Greece the National General Collective Work agreement (lower thresholds of pays and less rights that use as a safety net for the entirety of workers), whereas the permanent staff sign the Sector-Level Collective Agreement (higher pays and more rights based on the sector of employment). Therefore, the existence of contracted workers circumvents, the legislative framework of the European Directive. There is no specific European Directive or legislation to protect contracted workers, as is the case for workers leased through TWAs, and they are only covered by the laws and the collective agreements that concern the overall working population.

The use of contracted workers at the premises of the user undertaking (in-house outsourced workers) for the fulfilment of a project often creates a grey zone between actual contracting, leasing of personnel through TWAs and virtual or pseudo-contracting, the latter concealing, the workers that have been unlawfully leased. In more details, when contracting companies in Greece place workers at the premises of the user undertaking for the completion of a project (in-house outsourced workers), they usually operate “unlawfully” as TWAs, covering up the “pseudo” or allegedly “contracted” workers, who are actually leased personnel. These workers are characterized as “pseudo-contracted” staff on the grounds that they share the same traits as the workers leased through TWAs. As already mentioned, the main feature of the Temporary Work Agencies is the temporary leasing of workers to the user undertakings (Rompoti and Ioannides 2019, 2023). This practice is what researchers call “pseudo-contracted workers”, since they mainly have the traits of leased workers and not of contracted ones. Therefore, the contracting companies do not mainly operate as businesses offering outsourcing services, but rather as TWAs.

Undoubtedly, the fact that permanent staff, workers leased through TWAs and contracted workers all work at the same location, renders even more difficult the distinction among them. As already stated, the main criterion to distinguish a leasing agreement from a contracting agreement is the exercise of the managerial right, also recognized by EU's labour law.

More specifically, the contractor exercises the managerial right in the cases of contracted workers, and he is responsible for the completion of the project. On the other side, the managerial right over workers leased through TWAs is exercised by the user undertaking (indirect employer). Nevertheless, it is noted that, in practice, it is the user undertaking that exercises the managerial right over contracted workers, a fact that indicates that contracted workers show traits of leased workers. There are, of course, several other main criteria-indications to distinguish the two forms of contracts, and they are used both in Greece and other EU member-states due to the lack of a specific legislation on the protection of contracted workers.

The above analysis underlines the need for a common European policy on labour relations through the enactment of EU directives and their incorporation in the national legislation of each member-state, though allowing part of the decision and policy making to the member-states.

The aim is to develop an institutionally robust European Social Model (ESM) that will promote social discourse, collective agreements and negotiation, pay equality for all workers, the European social policy, and social justice (Rompoti et al. 2022; Rompoti and Feronas 2017; Jakab 2022).

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