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**Is this the Future?
Hybrid Models of Regulating
Temporary Work Agencies**

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Set up

1. Characteristics of TWA sector
2. Current Solutions in Highly Regulated Countries: Hybrid Policy Frameworks
3. Developing a Conceptual Framework for Hybrid Models
4. An Empirical Application: the Netherlands and Israel

1. TWA sector: difficult to regulate and politically controversial

- Triangular Relationship
- Combination of Employment and Commercial Contract
- Relatively new industry in a highly institutionalized labour market context
- Low Threshold
- Different Locations
- Politically Sensitive Sector

Examples of Potential Problems: Types of Fraud

- Hours worked are not accounted for in the administration
- Hours worked are accounted for in the administration under a different name
- Hours worked are accounted for by a different identity. For example workers that are registered as self employed but de facto have an employer-employee relationship with the company
- Manipulation of the registered place of work: for example a company registers a worker as a home worker so the principal does not have to pay taxes and premiums over a compensation for a home worker
- The intermediary abuses lack of knowledge of Dutch law and rules: for example the company requires a Bulgarian who signs a Dutch contract which authorizes the company to remit income tax refunds to the company.

2. Policy Solutions: Modes of Regulation

- Traditional Solution: Licenses -> do not meet standard
 - Radical Solution: All inclusive employment contracts (Regalia, Schmid)
- New Solution: Regulatory hybrid, a combination of command and control regulation and methods of self regulation ->
 - Active involvement intermediaries
 - Active intervention by public actors in implementing enforcement

3. Towards an analytical framework of Hybrids of Hard – Soft law

- *Objectives* of soft law (Lobel, 2003)
 - A post union alternative or method to avoid unionization and labour standards
 - Promoting labour standards where traditional standards are no longer effective
 - A means of circumventing labour market regulation
 - A part of new governance that seeks to redress intrinsic limitations of traditional regulation
- What is the *relationship* between hard and soft law?
 - Typology of Hybrid forms of regulation* (Trubek & Trubek 2007)
 - Rivalry
 - Complementarity
 - Integrated Transformation

4. Empirical Application: two regulatory governance systems

- Israel: Derogation norm for TAW that permit CLA's to override State authored norm
- The Netherlands: Self regulated certification and compliance system, managed by the temporary work industry, incorporated in the Civil Code, in combination with a legal duty to register for all temporary work agencies

The Netherlands

1. Certification

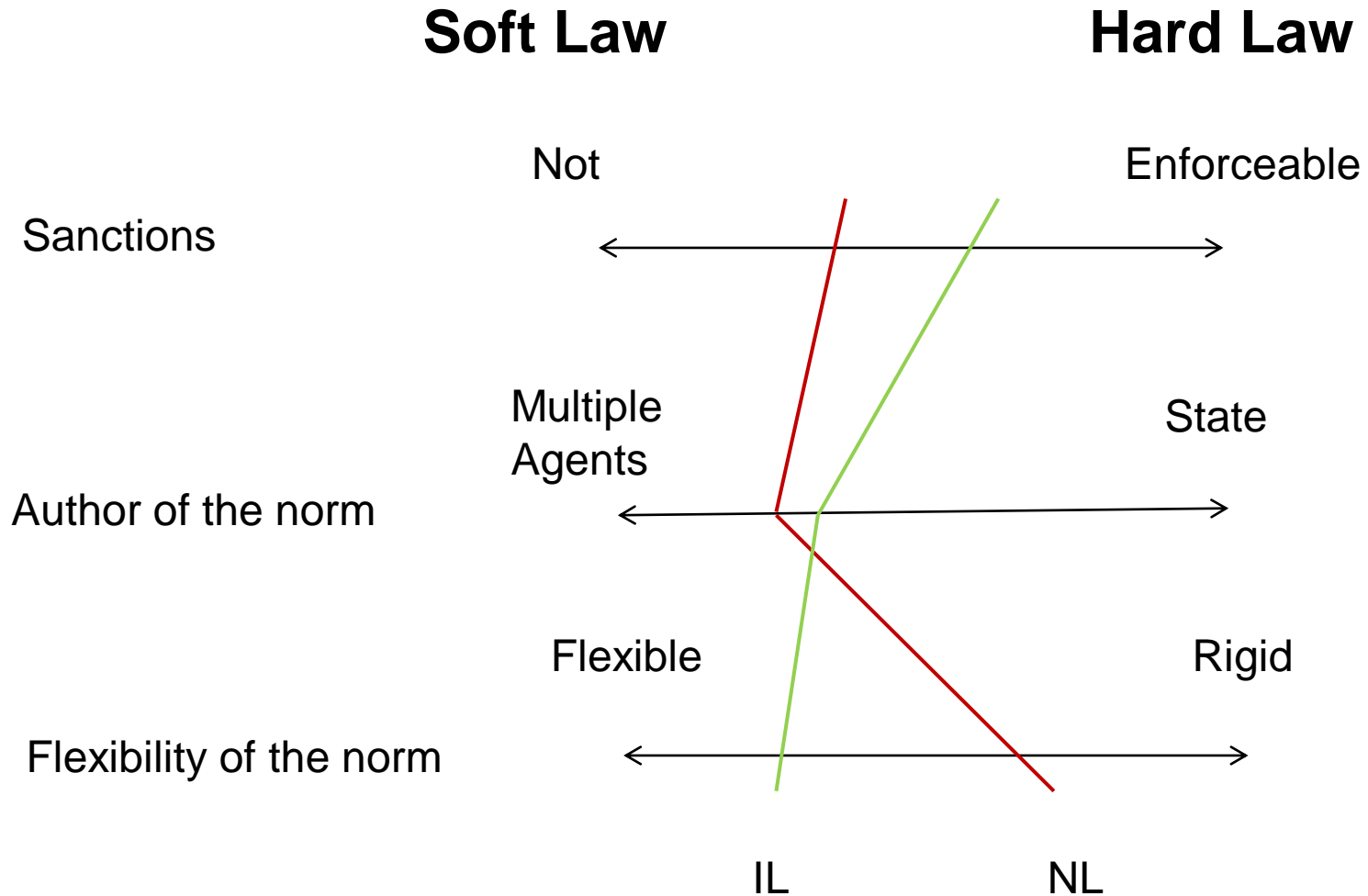
1. Certification (NEN norm 4400 1 and 2) provides guarantees to user firms and principals of (sub) contractors against liability claims for incomplete or incorrect failure to pay social insurance contributions and taxes
2. Selfregulation and compliance system is incorporated in the Civil Code (2010). The Labour Inspectorate concentrates control on not certificated TWA's

2. Registration (January 2012) :

1. Duty for TWA to register at private body *Stichting Normering Arbeid* (SNA)
2. Administrative penalty for user firms working with non registered TWA (fine €12.000 per employee)
3. Legal basis for providing information regarding companies that commit offenses by the Tax office and Labour inspectorate to a private body , run by the sector (SNCU)

→ Transformation towards further integration

Empirical application of the Framework: Israel and The Netherlands



5. Conclusions

- Hybrids as promising new forms of regulation
 - A means towards political compromise as well as a strategic field in which all parties seek to affect the composition of the hybrid to advance their interests
 - Strength is process based; ability to increase number of participants in regulation
 - No guarantee of more just solution, or loss of rights and responsibilities
 - An expansion of the institutional repertoire
- Our conceptual framework offers the opportunity to better interpret these configurations
- Empirical research must determine the de facto effectiveness of the hybrids