Comparative Report 2015

The concept of worker under Article 45 TFEU and certain non-standard forms of employment

Written by Dr Charlotte O'Brien, Prof Dr Eleanor Spaventa, and Joyce De Coninck
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FreSsco
FREE MOVEMENT OF WORKERS and SOCIAL SECURITY COORDINATION

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The concept of worker under Article 45 TFEU and certain non-standard forms of employment

Directorate-General for Employment, Social Affairs and Inclusion
FreSsco (Contract No VC/2014/1011 'Network of Experts on intra-EU mobility – social security coordination and free movement of workers / Lot 1: Legal expertise in the field of social security coordination and free movement of workers')

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EXECUTIVE SUMMARY

In analysing the responses, what is immediately clear is the significant diversity of approaches taken to defining migrant work. This diversity applies within each of the types of non-standard work looked at, so the result is a great multiplicity of statuses. The choice made by the Court of Justice of the European Union (CJEU) not to define terms crucial to the worker concept has created a wide scope for Member States to effectively (and unilaterally) modify the concept of work, and so the gateway to EU rights, according to national preference. In some cases, it seems that this scope has been overstepped, so that national rules are, at least in practice, if not in theory, all but decisive. In the light of changing labour environments and practices, these national divergences leave many who otherwise fit the *Lawrie-Blum* criteria (services performed for and under the direction of another person for remuneration)[1] being inappropriately deprived of rights. They also create significant legal uncertainty – the same set of facts could lead to an individual being characterised as a worker in some Member States and not others, or even, receiving different judgments as to their status in the same Member State. Section 2 to this report identifies, on the basis of the legal framework and CJEU case law, potential areas of uncertainty and contestation – genuine and effective criteria; retention of worker status; jobseeker rights; borderline cases. These did indeed generate a wide range of national approaches evident in the questionnaire responses. This summary now highlights key problems identified in this report. It is also important to note that despite those uncertainties national courts and tribunals are not referring those matters to the CJEU for clarification: for instance, we have hardly any references in relation to atypical employment contracts. This might indicate both some confusion as to the guidelines set by the CJEU, and the fact that given the vulnerability of the claimants in those cases administrative decisions as to entitlement might go unchallenged. It might also reflect the difficulty in mounting challenges to administrative practice – which would require cumulative evidence – in *individual* cases.

The use of thresholds and reversed burden of proof

Part-time and atypical work is on the rise, but the CJEU's case law does not give much detail on how to distinguish between 'genuine and effective' and 'marginal and ancillary' work for the purpose of equal treatment with regard to social advantages – a borderline becoming increasingly important in a changing labour market, with more at stake as the welfare rift between the economically active and inactive becomes crucial. Several Member States employ hours or earnings thresholds. In some States there was evidence that the thresholds are in practice determinative even where there is legal or administrative provision for work outside the thresholds to be found to be 'work' for EU law purposes. Furthermore, one effect of the thresholds is, in many cases, to create a reversal of the burden of proof – so that workers are assumed to be in marginal and ancillary work, and must adduce (sometimes, considerable) evidence in order to displace that presumption. These different thresholds would result in the same work being found to be work in some States and not others. For those States using a more case-by-case approach, there was a problem of consistency.

Zero-hour contracts, on-call contracts and fixed-term contracts

There is no clear guidance on whether a global assessment of a period in which work is undertaken should be made, or whether each contract should be assessed separately. The latter approach raises the risk that persons actually working relatively consistently, but via a series of short-term contracts with erratic hours, would be found to have been in a series of 'marginal' jobs. Thanks to the use of thresholds reversing burdens of proof, and the preferential weight given to regular and consistent hours in 'genuine and

[1] Judgment in *Lawrie-Blum*, C-66/85, EU:C:1986:284.

effective' assessments, workers on zero-hour contracts are more likely to face significant difficulties demonstrating that their work is genuine and effective. The status of those on zero-hour contracts between calls to work is unclear.

Extra factors used to assess genuineness of work

Some States make findings that the claimants' motives in working was to access welfare benefits, and take that into account to find that the work itself was therefore not genuine. This is problematic, because (a) such findings are of necessity rather speculative and, (b), in any case, it is not clear that EU law treats such motives *to work* as being material. Indeed, the case law of the CJEU seems to indicate that – save for cases of 'abuse' which have yet to be defined, the migrant's motivation to move is immaterial to her or his rights.

The consequences of a finding of 'marginality' – treatment of jobseekers

In many cases those found to be in marginal work will be treated as jobseekers even though they may in some cases be conducting substantial periods of work. Here it is worth noting that none of the States with earnings or hours thresholds suggested that there were exceptions or differential limits for workers with reduced earning capacity due to disability or child care responsibilities, or due to caring for persons with disabilities. So there is a risk that persons performing what is for them a realistic *maximum* period of work will nonetheless be treated as jobseekers, with all the duties, and the lack of entitlements, that implies. The current uncertainty about jobseeker benefits, and what counts as a "*benefit facilitating access to the job market*" (*Vatsouras*[2], *Alimanovic*)[3] therefore affects a great number of part-time and atypical workers, since they are often likely to be found to be jobseekers.

Being found to be a jobseeker leads to further divergence in treatment according to the State in question, with different approaches taken to entitlements, and to duration of residence rights, and to the *Antonissen* test.[4] The *Antonissen* test determines whether a right to reside as a jobseeker is kept beyond an initial qualifying period which goes from three to six months, by virtue of continuing to seek work and having a 'genuine chance' of being engaged. Some States do not stipulate a specific test at six months, while others impose very stringent tests. Of particular concern here are the tests imposed in some Member States which are likely to be more restrictive than those allowed in EU law. This report identifies a number of cases indicating how difficult it may be to prove that one has a genuine chance of engagement.

Retaining worker status

For those who move in and out of work – possibly due to the rise in flexible and atypical contracts – the role of Article 7(3) of Directive 2004/38/EC is vital, but there is little guidance on the appropriate duration of retained worker status, giving rise to some divergent practices in implementing Article 7(3) of Directive 2004/38/EC. In particular, contrary to some of the national practices, there appears to be no basis in EU law for imposing an *Antonissen* test on those retaining worker status having worked for more than one year, especially not for imposing such a test (which requires imminent employment) at six months. For those who have worked for less than a year, reliant on Article 7(3)(c), it should be noted that the Directive sets a 'floor' – requiring that worker status shall be retained for not less than six months. This has been implemented instead as a ceiling in most States, so that six months is the maximum possible duration of

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[2] Judgment in *Vatsouras and Koupatantze*, C-22/08 and C-23/08, EU:C:2009:344.

[3] Judgment in *Alimanovic*, C-67/14, EU:C:2015:597.

[4] Judgment in *Antonissen*, C-292/89, EU:C:1991:80.

retained worker status. As for those who wish to rely on the *Saint Prix*[5] ruling, which provides that retained workers status for women after childbirth for at least that time for which maternity leave is provided in the host State, the duration of such a right remains unclear in respondent States.

Apprenticeships

There are widely different constructions of apprenticeships, traineeships and internships within the respondent States. The frameworks in which they are constructed give rise to significant variance in wage entitlements, and in the status accorded under national law. However, these statuses would bear some closer scrutiny, since simply legally classifying apprenticeships as study should not in itself exclude the possibility that they fulfil the *Lawrie-Blum* criteria.

Volunteering

There was a greater degree of harmony in responses on volunteering than in other sections of the questionnaire. Notwithstanding the very different histories, regimes, and forms of volunteering in the States, they were all excluded from the possibility of being work. There seems to be little possibility of opening up access to Article 45 TFEU by viewing volunteering as a gateway to work, and in some cases it is not considered as even evidence of a prospect of work. Thus, volunteers are, generally, not eligible for social rights *qua* volunteers.

Bogus self-employment

The misclassification of workers as being self-employed is recognised as a problem in most respondent States, with efforts being made to identify and counteract it. These efforts are, however, not coordinated, with different approaches to the definition of self-employment – which in some States echoes the definition applied to workers, and in others is based on demonstrating turnover rather than wages or hours. Having adopted different definitions, States then have different approaches and procedures for verification.

Parasubordination

The growth in the grey area between employment and self-employment – possibly due to the rise in casual contracts and flexible, on-call work – has been recognised in a number of States, though responses vary widely. Several do not recognise a 'third status' in law, and rely very much on the binary employment/self-employment framework (with divergence evident in how likely parasubordinates will be classed as one or the other). Others have created a third status, but the form this takes varies significantly between States. For example, in some Member States, the economically dependent are a sub-category of the self-employed, while others have a separate 'parasubordinate' category). The sheer diversity of approaches means that workers in this category will have very different statuses and entitlements from one Member State to another.

Other fringe workers

There is significant variation in approaches taken to sheltered/rehabilitative work, and the exercise of the '*Bettray*[6] exception', whereby work undertaken as part of a drug addiction rehabilitation programme is not to be considered 'work'. This exception could be usefully revisited and scoped out, to determine its breadth, and to avoid unprincipled and automatic exclusions: the CJEU has consistently narrowed the 'rehabilitative' work

[5] Case C-507/12 ECLI:EU:C:2014:2007.

[6] Judgment in *Bettray*, C-344/87, EU:C:1989:226.

exception (e.g. in *Fenoll)*[7] so that work that is of some economic value is also considered work even when it does not seem to form part of the 'normal employment market'. Given the fact that sheltered work might be the only employment available for very vulnerable people (e.g. disabled workers) it is crucial to generate greater consistency between States. Similarly, automatic 'economic inactivity' classifications should be discouraged and examined in the context of workfare programmes, since there is a risk that they mask actual work being done, creating the possibility not only of exploitation but also of depriving EU nationals of earned entitlements.

This research has shown that the settled Union meaning of migrant work is in practice neither a 'settled' nor a 'Union' meaning. States have exercised, and stretched, their considerable discretion on undefined terms such as marginal and ancillary, while the labour market has shifted creating new 'norms' and new patterns of work not standard at the time the definition was formulated. The result is a great variety of national definitions, including practically determinative thresholds, meaning that part-time and atypical workers are – in spite of accounting for an ever greater fraction of the workforce, and in particular of the non-national workforce – at significant risk of exclusion from the worker definition. The treatment of those with erratic hours, or moving between short-term contracts, and the different approaches to worker status retention all serve to disadvantage those in atypical work or on zero-hours contracts. Different approaches to residence rights for jobseekers and *Antonissen* tests mean that those at risk of 'marginality' may face high hurdles in getting any residence right recognised. In the context of other relationships exhibiting *Lawrie-Blum* criteria, such as apprentices, parasubordinates, rehabilitative work and workfare, the status accorded varies dramatically between States, and in many cases this classification is automatic. These factors mean that there is little legal certainty in this area, and that those who are most vulnerable to social and financial exclusion are also most vulnerable to exclusion from the rights and freedoms afforded by EU law.

[7] Judgment in *Fenoll*, C-316/13, EU:C:2015:200.

1. INTRODUCTION

The concept of worker is, in theory, a matter of 'settled',[8] and 'well-established'[9] case law. According to that case law, 'worker' has a Union meaning, which cannot be modified by Member States. That Union meaning is expressed in the well-rehearsed combined *Lawrie-Blum*[10] and *Levin*[11] formulation of services performed under supervision of another in return for remuneration, so long as such activities are genuine and effective and not on such a small scale as to be marginal and ancillary. This year's comparative report examines to what extent this definition effectively provides for a common Union meaning, applied in a harmonious way as between Member States. The definition allows for some discretion, as it itself rests upon national authorities' own definitions of certain terms – such as 'marginal and ancillary'. These terms, which define the borders of the worker concept, in effect are gate-keepers of free movement and Union citizenship rights. The consequences of being found to be or not to be a worker for residence rights and social entitlements for whole families (e.g. an unconditional right to reside without having resources or comprehensive health insurance, rights to equal treatment in relation to most matters including welfare assistance, the right of education for children *etc*) are increasingly significant, in an era of welfare retrenchment, and in the light of findings by the Court of Justice of the European Union (CJEU) giving a more restrictive interpretation than previously to rights of EU migrants deemed to be economically inactive. As part-time work and atypical contracts are on the rise, the borderlines of the worker concept are more crucial for an increasing number of people. Without examining national definitions, there is a risk that this area of contestation goes unexamined, under the umbrella of the common Union meaning. This report examines national practices defining, implementing, and delineating the fringes of the Union concept of 'worker'.

Methodology

The authors composed a questionnaire for national experts in each of the respondent States. The questionnaire was divided into separate sections, each dealing with a different relationship, each of which might fulfil the Union criteria to be considered work: part-time and atypical work; apprenticeships; volunteering; bogus self-employment; parasubordination; other fringe work – such as rehabilitative/sheltered work, and participation in workfare programmes. For each relationship, the questionnaire required evidence of the legal framework and status accorded to individuals, and identified a number of scenarios in which national practice and discretion was important in creating boundaries to the worker concept, and focused on requiring respondents to provide evidence of national administrative and legal practices. Example practices included the use of thresholds to define 'marginal and ancillary'. Other aspects of the work threshold are examined – for example, the status of those moving between a series of fixed-term posts, and conditions or time limits imposed upon retaining worker status. The questionnaire also asked about the consequences of these national practices, and the use of *Antonissen*[12] tests in relation to people who fall foul of the worker definition and are treated as jobseekers (testing for the genuine chance of securing employment after an initial time of seeking – usually three months).

The report is organised as follows: section 2 covers the legal framework and case law of the CJEU, focusing on key areas of uncertainty and controversy. Section 3 provides a summary of the questionnaire responses on national law and practice, broken down by question. This is followed by a cross-cutting analysis of those findings, which flags up key

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[8] Judgment in *Vatsouras and Koupatantze*, C-22/08 and C-23/08, EU:C:2009:344, paragraph 26.

[9] Judgment in *Genc*, C-14/09, EU:C:2010:57, paragraph 36.

[10] Judgment in *Lawrie-Blum* EU:C:1986:284.

[11] Judgment in *Levin*, C-53/81, EU:C:1982:105.

[12] Judgment in *Antonissen*, C-292/98, EU:C:1991:80.

issues and problems within each of the relationships examined. Country sheets are contained as an annex, summarising entire questionnaire responses by country.

2. THE EU LEGAL FRAMEWORK AND THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

2.1. The definition of 'worker' in the CJEU's case law

The definition of a worker has remained unchanged over the years: the essential characteristic of the employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which she or he receives remuneration.[13] The fact that the definition of 'worker' has remained unchanged does not mean, however, that its application to actual cases is not challenging. In particular, the development of the employment market towards a more fluid and less regulated environment where atypical employment relationships are increasingly common; the reliance on part-time work as necessity rather than choice; the creation of Union citizenship which alerted national authorities to the challenge to their welfare provision arising from a less 'bureaucratised' migration; as well as the increased mobility of students, all contribute to a new landscape where the constituent elements of an employment relationship, even though unchanged since the 1980s, become once again contested.

In particular, and as we shall see throughout this report, on the one hand the case law of the Court of Justice of the European Union (CJEU) is wavering; on the other hand, national authorities are giving a very restrictive interpretation of the guidance long established by the CJEU on who should be defined as a worker. Furthermore, it is interesting to note that despite the fact that atypical employment contracts are becoming increasingly common, national courts and tribunals have so far resisted from referring preliminary questions to the CJEU to enquire as to the extent to which those relationships are protected by the Treaty. This, of course, means that the most vulnerable workers might be deprived of meaningful (and much needed) protection in EU law.

In this report we will first look at the more recent case law of the CJEU on the constituent elements of an employment relationship, to then turn our attention to 'borderline' cases, i.e. those instances where current judicial guidelines are more difficult to apply. Next, we will consider national law and practice to then highlight the challenges for the future: in particular, if the European Union is to continue to rest on the freedom of movement of workers, as well as capital and businesses, it is crucial that it protects the more vulnerable workers in the Union economy.

2.1.1. Remuneration

Remuneration has been defined as consideration for services provided; in the *Steymann* case the CJEU accepted that 'remuneration' needs not be monetary but rather can be a *quid pro quo*, in the form of lodgings and board.[14] Whilst this case was delivered in the context of the free movement of services, there is broad academic consensus that its significance embraces all of the economic free movement provisions. Consistently, in the context of the Turkey association agreement, the CJEU accepted that an 'au pair' relationship, where a person receives a small salary together with lodging and boarding, can be considered, provided it is effective and genuine, an employment relationship.[15] In *Trojani* the CJEU further clarified that not only, in principle, *quid pro quo* does not exclude the existence of an employment relationship; but also that, if the activity is carried out on a permanent basis or without a foreseeable limit to its duration then it

[13] Judgment in *Lawrie-Blum* EU:C:1986:284, paragraphs 16 and 17; judgment in *Martinez Sala v Freistaat Bayern*, C-85/96, EU:C:1998:217, paragraph 32; in the judgment in *Raccanelli*, C-94/07, EU:C:2008:425 the CJEU gave very little guidance as to whether docotoral students should be defined as workers.

[14] Judgment in *Steymann*, 186/87, EU:C:1988:475.

[15] Judgment in *Payir and Others*, C-294/06, EU:C:2008:36.

should be assessed under the free movement of workers rather than under the self-employed provisions of the Treaty.[16] All in all, the assessment of the existence of remuneration is left to the national courts as it really does entail a factual assessment. On the other hand, it is more difficult to determine when the activity is *genuine* and *effective* and not so marginal and ancillary to exclude the existence of an employment relationship. In this respect the guidelines provided by the CJEU do not seem entirely consistent.

2.1.2. The genuine and effective criteria

From a very early stage, the CJEU found that the definition of 'worker' for the purposes of Union law should encompass also those working part-time. In particular, in *Levin* the CJEU stated that:

> *"[S]ince part-time employment, although it may provide an income lower that what is to be considered to be the minimum required for subsistence, constitutes for a large number of persons an effective means to improve their living conditions, the effectiveness of Community law would be impaired and the achievement of the objectives of the Treaty would be jeopardised if the enjoyment of rights conferred by the principle of freedom of movement of workers were reserved solely to persons engaged in full time employment earning, as a result, a wage at least equivalent to the guaranteed minimum wage in the sector under consideration."*[17]

This is possibly the single most significant development in creating transnational solidarity in the European Union. Given that workers enjoy full equal treatment in relation to social and tax advantages, the inclusion of part-timers in the definition of 'worker' opens up national welfare systems to claims from Union migrants in relation also to means-tested benefits, insofar as it allows migrants to supplement their earnings through welfare benefits. In monetary terms this means that Union migrants are entitled to draw from a welfare state to which they might have not made any contribution at all given their low earnings.[18]

Whilst this step is entirely consistent with a literal and teleological interpretation of the Treaty, it also creates its own interpretative challenges: in particular, if welfare tourism[19] is to be avoided whilst movement must be guaranteed, how can we distinguish the 'good' from the 'bad' migrant? In order to attempt this distinction, the CJEU held that, in order to be protected under Article 45 TFEU, the migrant must engage in an activity which is 'genuine and effective' and not on such a small scale as to be 'marginal and ancillary'.[20] In this way, the CJEU sought to distinguish between for instance the bona fide migrant who did not manage (or was not in the condition) to find full-time employment, from those who might only be seeking a nominal amount of work, so as to be able to exploit the welfare resources of the host Member State.

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[16] Judgment in *Trojani*, C-456/02, EU:C:2004:488.

[17] Judgment in *Levin* EU:C:1982:105.

[18] See judgment in *Kempf v Staatssecretaris van Justitie*, C-139/85, EU:C:1986:223.

[19] This is the phenomenon, never actually proven in empirical studies, whereby Union citizens would move *with the sole purpose* of exploiting the welfare provision in other Member States; in the *Dano* case, the CJEU implied that Ms Dano moved for the sole purpose of drawing on benefit provision; whether that is actually true is open to debate, as Ms Dano declared that she originally moved to Germany to look after her sister's five children http://www.dailymail.co.uk/news/article-2835442/The-Roma-gipsy-sparked-crackdown-benefit-tourism-Elisabeta-Dano-25-tracked-German-city-finding-centre-landmark-welfare-case.html. In any event one would think the assessment of the reasons for migrating, if relevant at all, are a matter of fact to be left for the national court.

[20] Judgment in *Levin* EU:C:1982:105.

In order to draw this distinction, the CJEU really focussed on the intent of the claimant, rather than on a mere quantitative assessment. Thus, in *Kempf*, a German piano teacher giving 12 lessons a week in Belgium was held to be a worker and for this reason was entitled to welfare provision to supplement his salary when he found himself incapable to work for health reasons.[21] In *Lawrie-Blum* the CJEU found that a person engaged in preparatory training in the course of occupational training had to be regarded as a worker if the training period is completed under the conditions of genuine and effective activity as an employed person, even if the trainee's productivity is low, and she or he works only a small number of hours per week and consequently receives limited remuneration.[22] More recently, in *Genc*,[23] the CJEU restated that the employment relationship should be looked at as a whole, and that the fact that the worker was only employed for 5 and a half hours a week did not, in itself, exclude the existence of a genuine employment relationship.

The fact that a worker has worked only for a short period of time in a fixed-term contract does not exclude her or him from the scope of Article 45 TFEU, provided that the activity is not purely marginal and ancillary. In *Ninni-Orasche*,[24] the issue for consideration was whether the claimant, who had worked for just two months and a half, could nonetheless be considered a worker, and therefore have a right not to be discriminated against on grounds of nationality in relation to study finance for a university course. The CJEU instructed the national court to have sole regard to the nature of the activity, i.e. whether it was genuine and not purely ancillary, in order to determine the status of Ms Ninni-Orasche, and to disregard any other consideration, including the fact that she had taken up the job years after having first entered the host territory; that soon after taking up the job she obtained a qualification which made her eligible for enrolment in a university; and that she was looking for a job in between finishing her short fixed-term employment and enrolling at university.

The reason why an individual moves to seek work in another Member State is immaterial to her qualification as a worker. Thus, it is irrelevant that a person has moved for the sole purpose of triggering the Treaty and therefore benefit of rights granted by EU law, provided that she pursues or wishes to pursue an effective and genuine activity.[25] In *N.*,[26] the CJEU was faced with a Union citizen who had applied for a maintenance grant in Denmark. The claimant had entered the Danish territory after having applied for a course at the Copenhagen Business School. He then worked for a few months pending the start of his course and continued working part-time during his course. The issue was therefore whether he was to be qualified as a 'worker' and hence be entitled to equal treatment in relation to social advantages (including the maintenance grant) or whether he was to be treated as a student and hence not eligible to equal treatment in relation to study aids (including the maintenance grant). In the earlier case of *Brown* the CJEU had held that if the primary purpose for which the person had moved was to undertake university education, and the employed activity, whilst being genuine, was purely ancillary to the studies, then the rights to equal treatment in relation to social advantages might be of more limited application, and the worker/student would not be entitled to maintenance grants otherwise available to workers who, after having worked, decide to pursue training relevant to their previous occupation.[27] In *N.*, on the other hand, the CJEU,

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[21] Judgment in *Kempf* EU:C:1986:223.

[22] Judgment in *Lawrie-Blum* EU:C:1986:284, paragraphs 19-21; judgment in *Bettray*, C-344/87, EU:C:1989:226, paragraph 15; judgment in *Bernini v Minister van Onderwijs en Wetenschappen*, C-3/90, EU:C:1992:89, paragraphs 15 and 16.

[23] Judgment in *Genc* EU:C:2010:57.

[24] Judgment in *Ninni-Orasche*, C-413/01, EU:C:2003:600, paragraph 32.

[25] Judgment in *Levin* EU:C:1982:105; judgment in *Akrich*, C-109/01, EU:C:2003:491.

[26] Judgment in *N.*, C-46/12, EU:C:2013:97.

[27] Judgment in *Brown v Secretary of State for Scotland*, C-197/86, EU:C:1988:323; judgment in *Bernini* EU:C:1992:89, paragraphs 20 and 21.

consistently with *Ninni-Orasche*, restated that the motives for migration are immaterial to the definition of worker: it then indicated that provided the economic activity was not on such a small scale as to be marginal and ancillary, N. should be treated as a worker with all the privileges that that status entails. In *O* the CJEU found that the fact that a student had worked for four days during the Christmas holidays did not per se entail that the activity was marginal and ancillary: rather in order to determine the genuine nature of the employment relationship the national court would have to consider:

> "*factors relating not only to the number of working hours and the level of remuneration but also to any rights to paid leave, to the continued payment of wages in the event of sickness, and to a contract of employment which is subject to the relevant collective agreement, to the payment of contributions and, if this applies, to the nature of those contributions*".[28]

It is therefore clear, although as we shall see not applied in those terms in the national context, that it is not the 'quantity' of work to matter for the purposes of Union law, but rather the 'quality': a few hours worked, if genuine, might still engage the Treaty and the protection it entails.

This said, the case law relating to 'special' employment, i.e. employment which pursues also a social (non-economic) aim, is more confused. In the *Bettray* case the CJEU had held that work cannot be regarded as an effective and genuine economic activity if it constitutes merely a means of rehabilitation or reintegration for the persons concerned and the purpose of the paid employment, which is adapted to the physical and mental capabilities of each person, is to enable those persons sooner or later to recover their capacity to take ordinary employment or to lead as normal as possible a life.[29] In the case of *Birden*,[30] in the context of the Turkish Association Agreement, the CJEU held that the ruling in *Bettray* was confined to the facts of that particular case and could not therefore be extended to a State-sponsored working scheme aimed at (re-)introducing those in receipt of social assistance to the employment market. On the other hand, in *Trojani*[31] the CJEU again restated the relevance of the social motive leading to employment for the definition of 'worker'. Here, a French citizen living in Belgium worked about 30 hours a week for the Salvation Army as part of a personal socio-occupational reintegration scheme; in return for his work he received board, lodging and some pocket money. He then claimed subsistence benefits, which were denied on the grounds that he was not a worker within the meaning of Article 45 TFEU and was therefore not entitled to social assistance. On a preliminary ruling, the CJEU held that in deciding whether work is to be regarded as an 'effective and genuine' economic activity the national court:

> "*must in particular ascertain whether the services actually performed by Mr Trojani are capable of being regarded as forming part of the normal labour market. For that purpose, account may be taken of the status and practices of the hostel, the content of the social reintegration programme, and the nature and details of performance of the services.*"[32]

Yet, in *Fenoll* the CJEU further circumscribed the *Bettray*/*Trojani* approach, possibly to the sole case of employment in the context of a drug rehabilitation scheme.[33] Thus, it held that the fact that the employment was aimed at persons with a severe mental disability who would not be employable in normal conditions, and the activities to be carried out were adapted to the employee, did not exclude the fact that the activity was

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[28] Judgment in *O*, C-432/14, EU:C:2015:643, paragraph 25.

[29] Judgment in *Bettray* EU:C:1989:226.

[30] Judgment in *Birden v Stadtgemeinde Bremen*, C-1/97, EU:C:1998:568.

[31] Judgment in *Trojani* EU:C:2004:488.

[32] Judgment in *Trojani* EU:C:2004:488, paragraph 24, emphasis added.

[33] Judgment in *Fenoll*, C-316/13, EU:C:2015:200.

genuine and effective. It therefore seems that work performed in the context of a social programme and work performed as part of a reintegration programme in the context of drug addiction are different, even though in both cases the work might be adapted to the needs of the employee, be characterised by lower productivity, be remunerated less, although being still capable of producing output of some economic value. It is only natural then to ask oneself whether such a distinction is moral, rather than legal, possibly based on a superficial assessment of the addiction phenomenon pursuant to which those addicted to drugs would have contributed to their misfortune in a way that those who are long-term unemployed or disabled have not.

2.1.3. Retention of the status of worker

The status of worker, with all the benefits which that entails, is retained when a worker is unable to work as a result of illness or accident; when she or he is duly recorded in involuntary unemployment having been employed for more than one year and having registered as a work-seeker (if the worker has been employed for less than a year the status as a worker is retained for no less than six months); or when she or he embarks in vocational training related to the previous employment (in the case of involuntarily unemployment the latter condition does not apply, and the worker can choose any vocational training).[34] The retention of the status of worker is important both in order to establish unconditional residence, and for entitlement to welfare benefits. In relation to vocational training, welfare benefits include maintenance grants during education, and the Directive codifies, seemingly in a slightly more generous way, pre-existing case law.

In the case of *Lair*,[35] the CJEU – relying on the fact that secondary legislation provided for rights for workers who are no longer active either because of involuntary unemployment, illness, or retirement – held that migrant workers "*are guaranteed certain rights linked to the status of worker even when they are no longer in an employment relationship.*"[36] It then specified that in the fields of maintenance grants for education there should be either some continuity between the previous occupational activity and the studies undertaken; or the worker has become involuntarily unemployed and is obliged by the conditions of the job market to retrain in another field. As we have seen above, in relation to involuntarily unemployed workers, Article 7(3)(d) of Directive 2004/38/EC does not link the possibility to retrain in another field to the conditions of the job market.

What constitutes 'involuntary unemployment' depends on the circumstances. Thus, the CJEU has clarified that a worker might be qualified as involuntarily unemployed even when she or he is unemployed as a result of the expiry of a fixed-term contract,[37] i.e. when the unemployment is not caused by dismissal. Whether in such cases the worker is involuntarily unemployed depends on several circumstances and in particular the structure of the labour market in that sector, i.e. whether the fixed-term contract is usual practice in the sector concerned, whether it is imposed on the worker etc.

In *Saint Prix*[38] the CJEU also clarified that a worker who has given up her job during the late stages of pregnancy and the aftermath of childbirth (basically a worker on maternity leave) retains the status of worker provided that she returns to work or finds another job within a reasonable period after having given birth. In order to decide whether the interval is reasonable, national courts have to take into account both the personal circumstances of the claimant and the normal period of maternity leave in the State concerned.

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[34] Article 7(3) of Directive 2004/38/EC.

[35] Judgment in *Lair v Universität Hannover*, C-39/86, EU:C:1988:322.

[36] Judgment in *Lair* EU:C:1988:322, paragraph 36.

[37] Judgment in *Ninni-Orasche* EU:C:2003:600, paragraph 32, and see Article 7(3)(c) of Directive 2004/38/EC.

[38] Judgment in *Saint Prix*, C-507/12, EU:C:2014:2007.

2.1.4. Jobseekers

Article 45 TFEU would lose much of its effect if Union citizens were not entitled to move in order to seek work, as it might be difficult to find employment from abroad. For this reason, the CJEU had no hesitation in holding that Article 45 TFEU also applies to jobseekers, who have a right to move to another Member State to seek employment.[39] This was then codified in Directive 2004/38/EC, so that jobseekers have an unconditional right of stay for three months, and are entitled to stay beyond that time if they can prove that they are looking for employment and that they have genuine chances of being engaged.[40]

Originally, the CJEU had excluded jobseekers from the right to equal treatment in relation to social and tax advantages, and limited their right to equal treatment in relation to access to the labour market. However, in the case of *Collins*,[41] the CJEU changed its interpretation of Article 45 TFEU in the light of the introduction of Union citizenship. Since Union citizens are entitled to equal treatment in regard to all matters falling within the material scope of the Treaty,[42] it was no longer possible to exclude from the scope of application of Article 45(2) TFEU (which provides for the general right to equal treatment of workers) benefits of a financial nature for jobseekers. Thus, following the ruling, jobseekers became fully protected by Article 45 TFEU, and would be entitled to equal treatment in the host Member State, even in relation to welfare benefits. However, the CJEU also made clear that Member States could justify indirect discrimination (a residence requirement is always to be so considered), in particular by claiming the necessity to ensure that a genuine link exists between claimant and labour market, therefore limiting, if not eliminating, the possibility of welfare tourism. The CJEU then recognised that a residence requirement is, in principle, an appropriate way of ensuring that the claimant is genuinely seeking work (although, the length of residence required must not go beyond what is necessary).[43]

The ruling in *Collins* created a prima facie tension between the CJEU's interpretation of Article 45 TFEU and the provisions of Directive 2004/38/EC which allowed Member States to exclude jobseekers from the right to equal treatment in relation to social assistance. Since secondary legislation must comply with the Treaty, there was a danger that the *Collins* interpretation might lead to the (partial) annulment of Article 24 of Directive 2004/38/EC; or else, the CJEU would have had to revisit its case law. The occasion for clarification manifested itself in the case of *Vatsouras*,[44] where a German court enquired as to the relationship between Article 45 TFEU and Directive 2004/38/EC. The case related to two Greek nationals who were denied a job-seeker benefit. The CJEU confirmed that:

> "*in view of the establishment of citizenship of the Union and the interpretation of the right to equal treatment enjoyed by citizens of the Union, it is no longer possible to exclude from the scope of [Article 45(2) TFEU] a benefit of a financial*

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[39] Judgment in *Antonissen* EU:C:1991:80; judgment in *Commission v Belgium*, C-344/95, EU:C:1997:81. In *Antonissen*, the CJEU held that six months was to be considered a 'reasonable time', and in *Commission v Belgium* it indicated that even three months would be enough, provided the jobseeker was allowed to prolong her stay if she had a genuine chance to find employment. Article 5 of Regulation (EEC) No 1612/68 makes clear that jobseekers have a right to receive the same assistance from the host Member State as that granted to own nationals.

[40] Articles 6 and 14(4)(b) of Directive 2004/38/EC.

[41] Judgment in *Collins*, C-138/02, EU:C:2004:172.

[42] See in particular the judgment in *Grzelcyk*, C-184/99, EU:C:2001:458 and the judgment in *D'Hoop*, C-224/98, EU:C:2002:432.

[43] The ruling in *Collins* was confirmed in the judgment in *Ioannidis*, C-258/04, EU:C:2005:559 (again Directive 2004/38/EC was not relevant in that case).

[44] Judgment in *Vatsouras* and *Koupatantze* EU:C:2009:344.

nature intended to facilitate access to employment in the labour market of a Member State."[45]

More recently, in *Alimanovic*,[46] and as we shall see in detail further below, the CJEU held that the concept of social assistance is not to be interpreted so narrowly after all: thus, all benefits which aim also to ensure the subsistence of the claimant and their dignity are to be considered 'social assistance' which needs not to be extended to the foreign jobseeker.

2.2. Borderline cases

In this section we will highlight some issues arising from the case law which might be particularly relevant in relation to atypical employment relationships.

2.2.1. The remuneration requirements and unpaid work

The first issue that arises in relation to the definition of worker is the importance of remuneration: in particular, and as mentioned above, the CJEU has accepted that remuneration:

- can be constituted also by a quid pro quo (*Steymann*, *Payir*);
- can be lower than normal remuneration (*Fenoll*);
- and that it need not be necessarily proportionate to the output of the employee (*Fenoll*), provided that the work is of some economic value.

There is therefore an open question in relation to work that is of economic value but is not performed in market conditions: that would be the case, for instance, for work performed in the commercial branch of a non-governmental organisation, work performed in the context of unpaid internships or work-experience schemes. In a changing labour market where unpaid work experience might be the first step towards securing paid employment, the matter might become increasingly important: in this respect, three different interpretations are possible.

First it could be argued that non-remunerated work never constitutes work for the purposes of Article 45 TFEU: this interpretation would, however, be problematic in the above mentioned cases where a non-paid activity constitutes the first (and sometimes necessary) step to access the employment market. To deny then unpaid workers any protection in those circumstances might erect some significant barriers to access to the employment market: if, for instance, a period of unpaid activity (internship) is a necessary *de facto* precondition to be considered eligible for employment, then depriving the worker from Treaty protection might exclude foreign workers from the relevant employment market.

Secondly, the unpaid intern could be simply treated as a jobseeker so that the migrant would receive some protection in EU law: this would be important in two respects. It would link the protection provided by EU law to the actual intention of the migrant to enter the employment market; and it would ensure that migrants in those cases are protected, at least to a certain extent, and that they do not have to satisfy the sufficient resources and comprehensive health insurance requirements. On the other hand, this interpretation might be burdensome if the Member State requires the jobseeker to register with the unemployment office.

Thirdly, it could be argued that remuneration is not an essential part of the employment relationship if all the other conditions are satisfied: in particular, the condition of

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[45] Judgment in *Vatsouras and Koupatantze* EU:C:2009:344, paragraph 37.

[46] Judgment in *Collins* EU:C:2004:172.

subordination is a matter of fact that presupposes obligations on the part of the employee, such as the obligation to show up at work and perform given activities. It could then be argued that, provided that the work performed is of economic value to the employer, the absence of remuneration is immaterial.

2.2.2. Jobseekers

One of the problems with the application of free movement and social security rules at present is the failure to recognise that the labour market has changed considerably since the 1970s. In particular, the permanent, well defined, well regulated, employment contract is for many workers an aspirational aim, especially for those employed in non-skilled positions.[47] In this respect individuals might find themselves in and out of work, might accept to work for very few hours because nothing better is on offer, might accept unpaid employment or spurious self-employment relationships, might be looking for a job whilst in employment or seek to enter or re-enter education. The current legal framework might, then, fail to capture the actual practice of work; it might also be at odds with other European Union strategies, such as flexicurity, which recognise the fact that employers might need a more flexible workforce which therefore needs to be protected as such, i.e. as a flexible workforce.

It is in this light that rulings such as *Alimanovic* should be assessed. Here it should be remembered that post-citizenship, the CJEU had held that jobseekers fell within the scope of Article 45(2) TFEU and were therefore entitled to equal treatment, even though Member States would be able to justify indirect discrimination on ground of nationality, especially by restricting benefits to those claimant who had established a real link with the domestic employment market.[48] In *Vatsouras*[49] the CJEU further held that welfare benefits which aim at facilitating access (or re-entry) to the employment market were not to be defined as 'social assistance' for the purposes of Article 24(2) of Directive 2004/38/EC. That provision allows Member States to refuse social assistance, *inter alia*, to work-seekers: the ruling in *Vatsouras* therefore limited the significance of that exclusion insofar as jobseekers would benefit from equal treatment rights in relation to at least some welfare benefits.

In *Alimanovic* though, the CJEU seemed to retract, at least to a certain extent, from *Vatsouras* by giving a very narrow definition of benefits that are intended to facilitate the 'search for employment'. In particular it held that if "*the predominant function of the benefits at issue […] is in fact to cover the minimum subsistence costs necessary to lead a life in keeping with human dignity*" then those would be considered as 'social assistance'. As a result, those types of benefits would fall within Article 24(2) of Directive 2004/38/EC and Member States would not be obliged to confer entitlement to those benefits to work-seekers from other Member States. The ruling in *Alimanovic* therefore significantly curtails the significance of the ruling in *Vatsouras*; indeed whether any benefits at all might be available to the migrant jobseeker will depend on the relative importance given to the living with dignity vis-à-vis accessing the employment market criteria: after all, any monetary subsidy to work-seekers is intended to meet basic subsistence costs in order to allow those looking for a job to survive (with dignity).

Finally, the ruling in *Alimanovic* is part of a bigger trend in the case law which sees the CJEU increasingly retreating from a Treaty-based interpretation of the free movement provisions, to follow the letter of Directive 2004/38/EC. As we shall see in the next

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[47] "*The proportion of the EU-28 workforce in the age group 15–64 years reporting that their main job was part-time increased steadily from 16.7 % in 2004 to 19.6 % by 2014'; also 'In 2014, the proportion of employees in the EU-28 with a contract of limited duration (fixed-term employment) was 14.0 %*". Eurostat 'Employment Statistics' Data from August 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics, last accessed October 2015.

[48] Judgment in *Collins* EU:C:2004:172.

[49] Judgment in *Vatsouras and Koupatantze* EU:C:2009:344.

section this has a significant impact on the rights of migrants. Furthermore, in those same rulings the CJEU applies Directive 2004/38/EC with preference to Regulation 883/2004/EC on the coordination of social security benefits.

2.2.3. Workers and economically inactive citizens: the evolving relationship between Treaty rights and Directive 2004/38/EC

It is well known that the development of Union citizenship was, at first, entirely the result of a judicial dialogue between national and European courts: it is through this dialogue that the concept of Union citizenship acquired real substance as well as explosive potential. In particular, the constituent cases on Union citizenship, and especially the rulings in *Grzelcyk* and *Baumbast*,[50] established a hierarchy of sources so that any rule adopted in secondary legislation to 'limit' or regulate the free movement rights of Union citizens would have to be construed as a limitation to a fundamental right conferred by the Treaty on Union citizens and would have to be interpreted accordingly. As a result, whenever a Member State sought to limit rights to residence, movement or equal treatment, even consistently with secondary legislation, it would have to comply with the principle of proportionality (and with fundamental rights as general principles of Union law). This in practice meant that the individual circumstances of the claimant would always be relevant in assessing the legitimacy of the authorities' action: it might be in principle acceptable for a Member State to refuse residency rights to someone who does not possess comprehensive health insurance, but it would be disproportionate to refuse residency rights to an individual who possessed health insurance which was not comprehensive; who had lived in the host country for a significant amount of time and who had never relied on the host State's welfare provision *(Baumbast*). It might be in theory acceptable for a Member State to limit a study loan to those who had resided in its territory for a certain amount of time, so as to ensure a link between benefit recipient and host welfare society, but it would be disproportionate to do so through criteria that would not allow the claimant to establish membership of the host welfare community through alternative means (*Bidar*). It might be ok to limit welfare benefits available to migrant jobseekers, but the Member State must allow the claimant to prove that she or he had established a real link with the host employment market (*Collins*). This case law might have been problematic in that it made it challenging for the authorities administering benefits and residence permits to decide on eligibility: and yet, it really did empower the migrant by ensuring that she or he would be treated in as fair a way as possible. In other words, it recognised the relevance of the many different circumstances in which individuals might find themselves.

From a purely legal viewpoint this approach was also consistent with hierarchy of sources and the expansionary nature of individual rights. Thus, a right conferred in a document of superior ranking (Treaty) can only be limited by a source of inferior ranking (Directive) where this is allowed, implicitly or explicitly, by the superior source; and where the limitation is pursuing a legitimate interest (ensuring that migrants do not disrupt the welfare provision of the host welfare State) in a proportionate way. And, this approach was also codified in Directive 2004/38/EC, and especially in Article 14(3) therein, which provides that an expulsion measure can never be the automatic consequence of a Union citizen's recourse to social assistance in the host State.

This said, in more recent case law the CJEU has changed its interpretative path: in particular, in cases such as *Dano* and *Alimanovic*, the CJEU decided not to make any reference to the existence of Treaty free movement rights: this is not only a shift in interpretation but it also has noticeable consequences. Thus, in *Dano,* the CJEU held that in order to enjoy the rights conferred by Directive 2004/38/EC the claimant must satisfy the conditions to obtain residence provided for in that instrument, i.e. economic activity

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[50] Judgment in *Grzelcyk* EU:C:2001:458, judgment in *Baumbast and R*, C-413/99, EU:C:2002:493.

or economic independence. If the claimant does not fulfil those criteria then she falls outside the scope not only of Directive 2004/38/EC, but also of the Treaty: she therefore cannot claim an alternative route to establish her rights despite the fact that, pursuant to traditional interpretation, by moving from one Member State to another she had exercised Treaty rights and therefore should have enjoyed at least some protection in EU law. The same approach is visible in *Alimanovic*, where the Treaty free movement of workers provisions are not mentioned and the national court is simply required to classify the benefit in question, rather than to assess whether its denial would be proportionate given the individual circumstances of the claimant.

Furthermore, the CJEU is also privileging the application of Directive 2004/38/EC over that of Regulation (EC) No 883/2004 on the coordination of social security benefits. As a result, even in those cases like *Dano*, where the Regulation would seem to point at the eligibility of the Union citizens to the benefit claimed, the application of the Directive might exclude this result.

Whilst the above discussion might seem overly theoretical, the consequences of this new approach are palpable: thus, it leaves a broader margin for political discretion in deciding the contours of Union citizenship. It signals an acceptance by the CJEU of the limits of Union citizenship as a legal and political project. But also, and perhaps more worryingly, it might signal that a generous and purposive Treaty-based interpretation of the free movement of workers provisions might become less common.

3. SUMMARY OF FINDINGS OF NATIONAL LAW AND PRACTICE

Much variation exists in the respective approaches employed by Member States in dealing with the rights of migrant workers, which can be attributed – in part – to the varying approaches taken in the regulation of different types of work, including atypical forms of employment. In what follows, an overview is provided of the most significant findings concerning various types of (atypical) employment. More specifically, an overview will be given of noteworthy findings related to part-time work and atypical work; zero-hour contracts and on-call contracts; apprenticeships, training and internships; voluntary work; bogus self-employment; parasubordination; and finally, other additional types of fringe work.

3.1. Part-time and atypical work

3.1.1. Defining worker status

3.1.1.1. General observations

A majority of Member States (**AT, DE, IE, LV, LT, LU, MT, NO, PL, PT, RO, SI, ES, SE, CH**) do not impose working hour or earnings thresholds and apply a case-to-case approach in determining what constitutes work. However, **Romania** appears to have a *de facto* threshold via the 'normal working schedule' (8 hours/day or 40 hours/week). This is applicable for all workers; part-time work is permitted by means of an exception.

Also, **Switzerland** appears to have a *de facto* threshold to have employment recognised – income gained must reach at least the minimal yearly contribution of CHF 392. The minimum increases according to the financial situation of the insured person; e.g. with a fortune of CHF 8,400,000 or more the person is considered unemployed if his or her income brings less than CHF 9,800. In assessing whether an activity constitutes work, elements such as, amongst others, personal dependency, continuity of employment, regularity of employment, duties and the applicability of collective agreements are taken into consideration. Various other Member States (**BE, BG, HR, CY, DK, FI, FR, EL, IT, NL, UK**) have nevertheless imposed such thresholds as a means to define what constitutes work. It is interesting to note that these Member States more readily impose *de facto* working hour thresholds as opposed to earning thresholds. Furthermore, several Member States impose both working hour thresholds as well as earnings thresholds.

Within this vein **Belgium, Cyprus, France,** and **Liechtenstein** impose working hour thresholds. A nuance is in order however; as such working hour thresholds are often not explicitly stipulated in legislation and are rather the result of case-to-case assessments. This is the case in **Belgium, Cyprus** and **Denmark**, where no explicit working hour thresholds have been imposed as such and *de facto* thresholds are the result of case law assessments. Similarly in **France**, for certain aspects of labour and social security law, guidelines – albeit non-binding – have been issued, which encompass specific working hour thresholds that need be met for an activity to be considered as work, ranging from 60 hours of work per month or 1200 hours per month. In **Liechtenstein** the short stay permits require a 50% working hour threshold to be met to be considered as work, whereas an 80% threshold is imposed in case of long-stay permits. The percentage is calculated in reference to a regular work schedule of 42 hours a week; that means around 21 hours for 50% and 33 hours for 80%. In **Malta**, although no threshold for qualifying as a worker exists, under the Social Security Act a threshold is imposed of 8 hours per week for an individual to be deemed to be engaged in an insurable activity. This is solely in order to determine social security insurability and does not affect the qualification of worker.

Italy and the **United Kingdom** on the other hand have imposed earning thresholds in determining what constitutes migrant work. **Italy** in particular applies a *de facto* threshold, as actual work is distinguished from an activity that is marginal and ancillary by a threshold whereby an individual must earn less than € 7,000 per year, and less than

€ 2,000 per employer. In the **United Kingdom** a two-tiered approach is employed whereby, firstly, an earnings threshold has been imposed which need be met for a certain period for the individual concerned to be deemed a worker. Secondly, if this threshold cannot be met, subsidiary criteria may be tested in order to verify whether indeed the activity may still be regarded as work. For this to be the case, however, the activity must be genuine and effective.

Lastly, certain Member States (**FI, EL, NL**) impose both a working hour threshold as well as an earnings threshold. In **Finland** for example an individual must be employed for at least 18 hours per week or 80 hours per four weeks and earn a minimum of € 1,165 per month. Similarly in **Greece**, in order to be deemed a worker a given minimum threshold floor must be met in conjunction with specific minimum earning thresholds. However, *in casu* these thresholds are only for specific industries, specific professions and occupations as well as geographical locations as stipulated in the collective agreements concerned. In the **Netherlands** on the other hand, the definition of what constitutes work is highly dependent upon various legislative instruments. In determining residence rights and migrant work for example, the genuine nature and effectiveness of work will be determined by non-cumulative indicators obliging the individual concerned to either receive income which exceeds 50% of the social assistance standard, *or* who works at least 40% of the normal full-time working time. In subsidiary order, if the foregoing criteria are not met, a case-to-case assessment will ensue taking into consideration all relevant factors. Lastly, in **Poland** a preliminary distinction must first be made between employment contracts vis-à-vis civil law contracts, of which the former are regulated more stringently. In the case of employment contracts, workers with full-time contracts are entitled to a basic minimum salary (PLN 1850 according to the Act on Minimal Remuneration, consolidated text, Official Journal 2015, pos. 2008) regardless of how many hours they work.

3.1.1.2. Worker status vis-à-vis zero-hour and on-call contracts

In a number of Member States (**EL, IE, IR, LV, LI, MT, NL, SE, CH, UK, PL**) zero-hour contracts and on-call contracts are *de facto* permitted. However, in several of the aforementioned Member States it appears that certain safeguards need be met for zero hour and on-call contracts to be permitted. In **Ireland** in particular, zero-hour contracts are solely allowed insofar minimal protection is accorded to the individual concerned whereby she or he will receive minimum payments despite not having worked minimal hours. Similarly, in the **Netherlands** and the **United Kingdom** contracts as such are permitted insofar as they do meet the criteria of being genuine and effective. It appears that in **Greece, Iceland, Malta, Sweden** and **Switzerland** no additional conditions have been imposed for zero-hour and on-call contracts to be considered as work, and a case-to-case assessment is thus required. In **Malta** if the 8-hour working threshold is not met, however, the work will be uninsurable.

In various other Member States (**AT, BE, HR, FI, FR, PT, RO, LV**) zero-hour and on-call contracts are simply not permitted. In **Austria** for example, every contract must stipulate a minimum of set hours to be worked by the individual concerned. Similarly, in **Croatia** this must be included in the employment contract. Recalling the hour thresholds imposed in **France,** zero-hour contracts are similarly not permitted. In Latvia, the law requires employment contracts to be entered into in writing and to include agreed daily or weekly working time; however, our respondent noted that *de facto* zero-hour contracts still existed, especially in retail. **Portugal** and **Romania,** as mentioned, do not necessarily impose working hour thresholds as such in determining what constitutes work, but nevertheless require employment contracts to incorporate a provision on the required working hours of the individual concerned, entailing that zero-hour and on-call contracts are not permitted. In Lithuania such contracts 'are not known'.

In **Bulgaria, Germany,** and **Spain** mixed regimes apply whereby zero-hour contracts are not permitted, as opposed to on-call contracts, which are allowed. In **Bulgaria** for example, on-call provisions are permitted in standard contracts, which state that in case

of an emergency the individual concerned will need to be available. The duration thereof depends upon the individual and the concrete situation at hand. In **Germany** on-call contracts are equally so permitted, insofar the employment agreement stipulates a period of time to be worked on a daily and weekly basis. Insofar this is not done a working time of ten hours must be deemed to have been agreed upon. Finally, **Spanish** legislation defines part-time work in a very broad manner thus including very short part-time work and excluding zero-hour contracts. It appears that *de facto* on-call contracts exist and are permitted, however; some part-time contracts could have a similar effect to on-call contracts, as a part-time worker having been hired for ten or more working hours per week on an annual basis can agree to perform supplementary hours.

In the **Czech Republic, Italy** and **Slovenia** zero-hour contracts are simply not known and thus not regulated.

3.1.1.3. Worker status and the treatment of separate, consecutive, and temporary periods of work

Not much evidence was available on whether separate, consecutive periods of work are assessed together as potentially constituting work, or whether they are assessed individually. The respondent from Switzerland indicated that a ‘global view is preferred whereby all relevant work in its entirety is taken into consideration’. In Bulgaria, all forms of employment are accumulated to ensure entitlement. In Belgium it seems that all forms of employment undertaken in the relevant three month window are taken into consideration together – but to the exclusion of work completed prior to the most recent three months. The case-by-case approach of the UK creates the risk that persons who complete several short-term fixed-term contracts may be found not to be workers for the purpose of benefit entitlement because decision makers may consider each job separately, rather than cumulatively, and find each to be of too short a duration, or too irregular, to constitute genuine and effective work. Although a global approach was promoted in *NE v Secretary of State for Work and Pensions*,[51] where Judge Rowland held: 10 [9] "*Where short periods of temporary work are not separated by longer periods of no work, it will often be appropriate to regard the person concerned as having become a worker rather than a workseeker*", this approach could be contrasted with the decision maker guidance, according to which ‘intermittent’ work and ‘erratic’ work, or work intended to be short-term at the outset, is less likely to be found to be genuine work[52] (so that a lot of consecutive short-term contracts might each be found not to be work).

3.1.1.4. Worker status and interruptions of periods of employment

As above, there is limited evidence on whether and when breaks in work history, necessitated by the ending of fixed-term contracts, cause worker status to be lost. Some States have a presumption in favour of retained worker status. In Austria, a three month break will not cause worker status to be lost. In Latvia, Lithuania and Spain, a willingness to look for work, and actively seek work, having registered at an unemployment office, suffice to retain worker status, under Article 7(3) of Directive 2004/38/EC. In other Member States, if the interruption caused aerage hours to fall below a threshold – as in Belgium – it could cause the work to be classed as marginal and so worker status could be lost. In some States (e.g. **CZ**, **UK**) a case-by-case approach is followed, so the effect of interruptions depends upon their frequency, length, and the work history.

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[51] [2009] UKUT 38 (AAC) (13 February 2009) UTJ.

[52] Decision Makers’ Guide Vol 2 Amendment 28, June 2014, paragraphs 071180 and 071211.

3.1.2. Defining an activity as 'genuine and effective'

A number of Member States (**BE, BG, CZ, DK, DE, LI, NL**) have imposed additional criteria in order to determine whether work is genuine and effective. In **Belgium** for example, work not exceeding 12 hours per week is quasi-irrefutable evidence of the activity being marginal and ancillary. This presumption is thus a *de facto* working hour threshold and individuals working less than 12 hours per week will thus in all likelihood not be deemed a worker. Similarly, in **Germany**, **Liechtenstein** and the **Netherlands**, reference is made to earnings and working hours for the work to be deemed genuine and effective. **German** case law varies as to whether the genuine nature and effectiveness is determined by reference to the minimum subsistence level. For example, a court recently ruled that an income less than 25% of the minimum subsistence level is to be equated to marginal and ancillary activities and thus does not constitute genuine and effective work. In several cases, the courts highlighted that all circumstances (earnings, working hours etc) have to be considered in order to determine if a person qualifies as a worker.[53] Yet, at the same time, some courts clearly identified the economic value of the work, i.e. the monthly earning, as a key aspect.[54] In some case law, earnings of €154[55] or €175[56] per month have been considered sufficient to qualify as a worker. Yet, the courts explicitly based their finding on further circumstances of the relevant case (e.g. later wage increases and registration with social insurance). In summary, one may conclude that the judiciary decides on a case-by-case basis by first looking at earnings and working hours, but nonetheless (additionally) takes into account further circumstances of the relevant case.

In **Liechtenstein** and the **Netherlands** a working hour threshold of 50% or 80% and 40%, respectively, are applied in determining whether work is genuine and effective (for additional details see *infra* Annex). In **Denmark** on the other hand, recall that a case-to-case assessment remains pivotal despite the *de facto* hours threshold. A number of elements will be considered in determining the genuine and effective nature of the activity including, amongst others, entitlement to paid leave, remuneration during illness, duration of employment and whether a collective agreement is applicable during employment. Similarly in the **Czech Republic** regard will be had for various factors derived from various legislative instruments, of which monthly remuneration will be an important aspect.

In the remaining Member States (**HR, CY, FR, EL, IS, IE, IT, LV, LT, MT, NO, SI, ES, SE, CH, UK**) no explicit conditions have been imposed in order to assess whether work is genuine and effective. Rather a case-to-case assessment applies whereby all relevant quantitative and qualitative factors are taken into consideration.

3.1.3. Defining an activity as 'marginal and ancillary'

Whereas a majority of Member States (**AT, CY, HR, EE, EL, FR, HU, IS, IE, MT, NO, RO, SI, ES, SW, CH, UK**) have not established criteria to determine what is to be defined as marginal and ancillary, various other Member States (**BE, CZ, DK, DE, FI, EL, IT, LU, SK**) have taken to establishing such criteria. **Belgium** and **Denmark** apply the condition that work below 10-12 hours per week is in all likelihood marginal and ancillary. Similarly, in **Luxembourg** it is commonplace to regard work below 10 hours per week as marginal and ancillary. In the **Czech Republic** on the other hand, earnings

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[53] *LSG Berlin – Brandenberg* (Social Court of Second Instance) 17 February 2015 L 31 AS 3100/14 B ER, L 31 AS60/15 B ER PKH, paragraph 11; *OVG Berlin-Brandenberg* (Administrative Court of Second Instance), 30 March 2011 – OVG 12 B 15.10 paragraph 32.

[54] *SG Heilbronn* (Social Court of First Instance), 18 February 2015 – S10 AS 3035/13 paragraph 34; *LSG Nordrhein-Westfalen* (Social Court of Second Instance) 30 January 2008 – L 20 B 76/07 SO ER, paragraph 23.

[55] *VG Bremen* (Administrative Court of Second Instance), 28 September 2010 – 1 A 116/09, paragraph 35.

[56] *OVG Berlin-Brandenburg* (Administrative Court of Second Instance), 30 March 2011 – OVG 12 B 15.10, paragraph 6, 24 ff.

are somewhat more determinative of whether work is to be deemed marginal and ancillary. Insofar remuneration does not meet a certain amount in order to participate in sickness insurance, the activity concerned may be regarded as marginal and ancillary. Recalling that in **Germany** (marginal and ancillary) work is determined on a case-to-case basis, it need nevertheless be noted that reference to the minimum subsistence level is also a means frequently used to determine whether work is marginal and ancillary as opposed to genuine and effective. In **France** there is no threshold in the legislation; however, in relation to certain benefits, non-binding guidelines have been issued which contain hours and income thresholds. Lastly, in **Italy** two conditions need be met for work to be perceived as marginal and ancillary. Firstly, the individual concerned must earn less than € 7,000 per year and secondly, the individual concerned must earn less than € 2,000 per employer.

3.1.4. Part-time work in practice

Part-time work manifests differently in the different respondent States, and the responses indicated different concerns and preoccupations. With regard to being defined as a migrant worker, several respondents (**BE**, **DK**, **EE, FI, FR**, **IT**, **NL**, **UK**) pointed to the thresholds outlined in the first section as simply dividing 'work' from 'not work'. Others emphasised reference to protections for part-time workers such as non-discrimination provisions with regard to full-time workers (**AT**, **DE**, **IE**, **MT**, **ES**, **SE**, **CH**). In **Greece** there is a presumption of full-time work which can be overcome by notification in writing to the labour inspectorate. For some, the concern is about preventing forced part-time work (**LT**, **NO**). Some responses noted that part-time work was not prevalent in those States (**CZ**, **HU**, **PT**).

3.1.4.1. Zero-hour and on-call contracts in practice

Zero-hour and on-call contracts are not without controversy. Not surprisingly this has resulted in a varied approach by Member States in the treatment thereof. In **Austria, Belgium, Bulgaria**, **Croatia, , Germany**, **Portugal, Spain** and **Hungary** zero-hour contracts are simply not permitted, although some countries permit on-call contracts (**BG, DE, HU**). In addition, a finding of a zero-hour contract being established will result in retroactive wages and contributions or alternatively a fictitious amount in **Austria**. This practice is also applied in **France**, where zero-hour contracts will be re-qualified as being a standard contract.

In various other Member States (**LI, LT, LU, MT, SI, CH**) zero-hour contracts are not a well-known phenomenon and are thus not explicitly regulated. However, recall that despite the lack of regulation thereof in **Switzerland**, employment contracts need nevertheless stipulate the amount of hours to be served. Consequently, abuse of zero-hour contracts in said States is likely to be limited.

Within this same vein a number of other States (**CY, DK, EL, IE, IT, NL, NO, SE, UK**) do permit zero-hour contracts, albeit to varying degrees and not always explicitly. In **Cyprus** for example, zero-hour contracts are *de facto* permitted. Such contracts are not specifically regulated. Rather, they are regulated by general legislation and case law concerning employment whereby work is assessed by reference to the case specific facts, entailing that the approach is extremely flexible and thus subsequently may permit on-call and zero-hour contracts. The most relevant criterion, moreover, to determine the relationship between the employer and the employee, is the control the former has over the latter, which is again, demonstrative of the fact that zero-hour contracts are in fact possible. Similarly in **Denmark**, zero-hour contracts are *de facto* permitted, as an individual assessment on a case-to-case basis of hours actually worked, rather than contracted for, will determine whether the individual is actually deemed a worker from an EU perspective. In the **Netherlands**, **Sweden** and the **UK** zero-hour and on-call contracts are permitted insofar they adhere to the criterion of genuineness and effectiveness, which thus implies a case-to-case assessment.

Conversely to the foregoing, zero-hour and on-call contracts are explicitly regulated in **Greece, Ireland** and **Italy**. In fact, in **Greece** employers appreciate such contracts as it provides them sufficient flexibility with respect to employment sectors such as tourism and hospitality. Moreover, it appears that in Greece many of those employed by zero-hour contracts are in fact employed full-time as a form of hidden employment. In **Ireland** two legislative instruments govern zero-hour contracts and casual (part-time) contracts. Zero-hour contracts are subsequently defined as being those contracts where the person concerned works less than 25% than the work originally planned. However, *de facto* zero-hour contracts are not permitted, as people engaged by such contracts in such circumstances are entitled to several minimum payments. Lastly, in **Italy** on-call contracts/intermittent contracts (see *supra*) are regulated and subdivided into two forms. One type of on-call contract obliges the individual concerned to be available, whilst a second type does not oblige the worker to be available. Worker status for the second type of contract is only acknowledged when the person concerned is working, not during periods in which they are waiting to be called.

3.1.4.2. Required proof for entitlement to welfare benefits

As a preliminary observation it need be noted that the required documentation for entitlement to welfare benefit applications by migrant workers will be – in part – determined by the type of welfare benefit sought and what is to be considered a welfare benefit, rendering an simplistic overview of the requisite evidence rather difficult. However, generally it can be held that a number of Member States (**BE, DK, FI, IT, LV, MT, NL, NO, SI, SE**) regard proof of (previous) employment and/or remuneration, or contributions, sufficient to demonstrate entitlement to (certain) welfare benefits. It need be noted that this implies that the employment contract is in conformity with national legislation and thus in certain cases with thresholds as previously discussed. Several other Member States (**LU, PL, RO, ES**) note that proof of completed insurance is sufficient to demonstrate entitlement to welfare benefits. In **Romania**, the individual concerned will need to have worked at least 4 hours per day for at least 2 years to be entitled to an unemployment benefit.

A large number of Member States (**BG, CY, FR, DE, EL, HU, IS, IE**) on the other hand note that various pieces of evidence need be submitted in demonstrating entitlement to various welfare benefits. In **Bulgaria** for example, unemployment benefits require proof of length of service, and of salary. In case of unemployment beyond the statutory determined period for receiving unemployment benefits proof will need to be furnished that such welfare benefits are not received elsewhere. Similarly, in **Cyprus**, to establish entitlement to minimum guaranteed income, proof of work schedule, monthly income and copies of employment contracts for the past five years will need to be provided. In **France** proof of health insurance will need to be provided, or, if only having just started employment, proof of the contract concerned or the salary slip must be furnished. Lastly the individual concerned has to prove that the working hour threshold has been met. Within this same vein, **Germany, Greece** and **Ireland** require proof of, amongst others, the time of employment, the continuance thereof, contributions, tax payments as well as the place and working sites. In **Iceland**, access to welfare benefits is determined by the respective municipalities, which in turn will depend upon legal residence. With respect to part-time employees it need be noted that they will need to seek full-time employment. In order to receive financial assistance, proof will need to be provided that the person concerned is effectively seeking employment unless they can justify not doing so. The determination of whether someone is effectively looking for a job requires four job applications per month. In case of refusal of a job offer, justification will need to be provided; if not, support will be reduced by 50% for the month concerned as well as the following month. Those who are unfit for employment will moreover need to partake in a specific programme aimed at increasing capacity of work fully or partially (again unless there are justified reasons for not abiding by this condition). In **Hungary** entitlement to welfare benefits is dependent upon the legal relationship as opposed to actual hours worked. Additionally, for some welfare benefits proof will need to be given of residence in Hungary.

Finally, in **Croatia** entitlement to welfare benefits is limited to Croatian citizens and foreigners with permanent residence. As an exception thereto, certain individuals may be entitled to one-off payments and temporary accommodation insofar their living situation requires it.

3.1.4.3. Entitlement of zero-hour contract and on-call contract workers to welfare benefits

In the large majority of Member States (**AT, CY, CZ, DK, FR, DE, EL, HU, , IE, MT, NL, NO, PL, SE, CH, UK**) workers on on-call contracts, zero-hour contracts and casual contracts are entitled to welfare benefits. However, it need be noted that the entitlement is somewhat nuanced. Without delving into the particularities of each legal regime (see *infra* Annex), a few examples are given. In **Austria** contracts as such are treated as regular contracts with the distinction that the lower salaries accorded in such contracts will result in limited benefits and potential residence issues. In the **Netherlands**, in order to be entitled to welfare benefits, migrant workers have to provide proof concerning the sources of income, including employment contracts and salary slips. For those on zero-hours contracts entitlement is linked to residence. Lastly, it need be recalled that on-call, zero-hour and casual contracts need to adhere to the criterion of genuineness and effectiveness, as explicitly noted by various Member States (**FR**, **DE**, **SE**, **CH, UK**), which may render entitlement to welfare benefits somewhat more cumbersome.

Due to unawareness of such contracts or lack of regulation thereof, there is no clarity as to the applicable welfare benefit regime (**BG, HR, FI, IT, LI, LU, SK, SI**).

Finally, in **Belgium** and **Iceland** on-call workers and workers on zero-hour or casual contracts are not entitled to welfare benefits.

3.1.4.4. Additional factors impacting worker status

In assessing worker status in case of part-time work, the question furthermore arises as to whether certain specific factors are relevant in the determination of work. In particular, the question arises as to whether the familiarity with work, the motive for employment and/ or the physical capacity to work affect worker status. In not one single Member State are all three criteria simultaneously relevant in determining what constitutes genuine and effective work. Conversely, in a large majority of Member States (**AT, BE, CY, CZ, FI, FR, HU, IS, IT, LV, LI, LT, MT, NL, NO, PT, RO, ES, SE, CH**) these elements are simply not taken into consideration at all.

In several Member States (**HR, DK, DE, EL, IE, LU, PL, SK, SI, UK**) however, some of these elements are in fact relevant in defining genuine and effective work. In **Croatia** in particular, only the motive for taking up employment is taken into consideration, to ensure that employment contracts are not concluded for the sole purpose of acquiring entitlement to benefits (particularly with respect to maternity benefits). **German** practice indicates that familiarity with work and the motive for taking up a given job has been taken into account when assessing the genuine and effective nature of a job. Physical capacity, however, is not a factor taken into consideration in assessing whether an individual is engaged in genuine and effective work. In **Greece** and the **UK** on the other hand, physical capacity to perform work may be deemed relevant in ascertaining whether work is genuine and effective, whilst the other criteria are not deemed relevant. In **Luxembourg** both motive and physical capacity to perform work are taken into consideration, whilst in **Slovenia** familiarity with work and the physical capacity to perform work may be deemed relevant in ascertaining the genuine and effective nature of an activity. Finally, in **Denmark, Poland, Ireland** and **Slovakia** it appears that the factors do not explicitly impact the determination of whether work is genuine and effective, but rather have a *de facto* ancillary impact. In **Poland**, with regard to motivation for work, the Social Security Institution (*ZUS*) tends to refrain from granting benefits in some suspicious cases and justifies the refusal by a reference to the rules of

lawful social conduct, though the case law confirms that such a refusal is not legally justifiable.

3.1.5. Treatment of individuals not considered to be workers

It is possible for individuals to be engaged in a gainful activity, yet not meet the imposed national or European thresholds to be considered a worker as such. In these cases it is interesting to see how the various Member States approach the status of the individuals concerned.

3.1.5.1. The status accorded to non-workers

In the large majority of Member States (**BE, BG, CY, CZ, DK, FI, FR, DE, EL, IS, IT, MT, NO, NL, PT, RO, SK, CH, UK**) individuals employed by part-time contracts who are not considered to be workers, are nevertheless accorded the status of a jobseeker or a similar status. In **Belgium** for example, such individuals can be seen as jobseekers or economically inactive citizens. In a number of Member States (**BG, DE, IS, MT, NL, CH**) explicit additional requirements need be met, however, in order to effectively be granted the status of a jobseeker. In **Bulgaria** and **Malta** for example, explicit mention is made of the requirement to register as a jobseeker at the competent offices. In the **UK**, this registration must happen 'without undue delay', even if the delay was due to the person being on a zero-hours contract, unaware that she or he had become unemployed, and 'quite reasonably' waiting for more hours – *VP v Secretary for Works and Pensions* (JSA) [2014] UKUT 32 (AAC)). In **Germany,** the **Netherlands** and **Switzerland** the person concerned will have to furnish proof that she or he is effectively looking for employment and/or has a genuine chance of finding employment. Furthermore, in **Iceland** for example, the individual concerned will need to prove that she or he has sufficient means to provide for her or himself and is not an unreasonable burden upon the system of the Member State concerned. A similar practice is found in **Denmark**, where state authorities verify whether the jobseeker is or has become an unreasonable burden. In **Portugal** and **Slovakia,** mention is made of the fact that the person concerned may be registered as a jobseeker insofar she or he is not simultaneously registered as being self-employed. In **Italy** a distinction is to be made between intermittent workers, ancillary workers and seasonal workers. Intermittent workers who are obliged to be available are deemed workers, whilst the other sub-category may be qualified as jobseekers in waiting periods between on-call work. Ancillary workers on the other hand can never be considered as workers and can therefore be qualified as jobseekers. This same reasoning is applicable to seasonal workers. Lastly, mention need be made of the fact that the status of jobseeker is at times subject to explicit durational limitations. For instance in **Cyprus** the status of jobseeker is possible at any time if available at any moment for work in the territory of Cyprus. Upon expiry of a three-month period the person concerned may lose his or her status as a jobseeker.

In **Hungary, Slovenia** and **Sweden** individuals engaged in part-time employment will – in all likelihood – not be accorded the status of jobseeker even with a very low level of work. Whilst in **Hungary** the individuals concerned may be able to register for labour market services, they will not be able to register as jobseekers as they are still in a form of gainful employment.

3.1.5.2. Treatment of non-workers

Not surprisingly, as the conditions to be considered a jobseeker vary somewhat between the different Member States, the treatment of jobseekers also varies . Whilst a number of Member States (**BG, CY, FI, EL, IE, IT, NO**) have placed temporal restrictions on the entitlement to jobseeker status, others (**BE, MT, PT, SI, SE**) have imposed tests to assess the genuine chance of employment of the person concerned (or, in the case of **Portugal**, to assess a real link with the labour market). Other Member States (**DK, FR, DE, IS, PL, UK**) have gone one step further and in some instances impose temporal restrictions in conjunction with a test to assess whether there is a genuine chance of

employment. In the **Czech Republic** and **Switzerland** it appears that no time limits and no additional tests have been imposed to assess whether there is a genuine chance of employment.

Of the Member States which have restricted entitlement to jobseeker status solely via the means of a time limit, **Hungary**, **Finland**, **Ireland** and **Norway** limit entitlement to jobseeker status to six months if the individual concerned was not previously employed for at least a year, although in Norway, if the individual concerned does not pose an unreasonable burden she or he may be permitted to remain for longer than 6 months. If she or he had been in gainful employment for a duration exceeding a year, no durational limitation is imposed. In **Greece** on the other hand, jobseeker status may be retained for a duration of approximately three months. Lastly, in **Italy** a distinction need be made between those entering Italy in search of employment and those who are already in Italy and looking for employment. The first category must register and are granted six months to find employment. The latter category must register, be available and have one year to find employment.

The tests to assess whether a genuine chance of employment exists vary from Member State to Member State. In **Belgium** proof may be required whereby the individual demonstrates that she or he has sufficient resources and a genuine chance of employment. It appears from case law, however, that the latter is restrictively interpreted and marginal employment may not suffice in demonstrating a genuine chance of employment. In **Malta** registration is requisite at the Employment Training Corporation, a personal action plan must be followed and offers of employment must be accepted unless not doing so is warranted and justifiable. In **Portugal** and **Sweden** no explicit time limits are imposed if the individuals concerned are genuinely and effectively searching for employment. The **Portuguese** system does not provide for tide-over allowances; however, young individuals may be entitled to social income for insertion, which fosters integration in the labour market insofar a real link between the person concerned and Portugal can be established, and insofar they are registered in the appropriate employment service for at least 6 months. Beyond 6 months the existence of a real link is beyond doubt. However, it need be noted that in **Sweden** no evidence as such is required during the first six months whereas beyond that timeframe the individual concerned must demonstrate that she or he has a real chance of finding employment.

Furthermore, certain Member States have imposed temporal restrictions on the entitlement to jobseeker status and have developed a test to assess whether a genuine chance of employment exists. Similarly to **Hungary**, **Ireland** and **Norway**, the temporal restriction holds that insofar the person was not previously employed or resident in that Member State for the duration of a year, she or he will be entitled to jobseeker status for the duration of six months, whereas anyone complying with the one-year threshold will be permitted to retain jobseeker status indefinitely. This is the case in **Denmark**, **France, Iceland** and the **United Kingdom**, although in the UK a genuine prospect of work test is applied after six months to those who have worked for more than a year. In these Member States the individual concerned must show that she or he has a genuine chance of employment, which is to be demonstrated, amongst others, by submitting factual evidence that the person concerned is actually looking for employment, or by demonstrating that she or he has accepted offers of employment. In **Iceland** there must additionally be evidence that the person concerned has private means of subsistence, which meets at least the minimum level of subsistence. In the **United Kingdom** reference is furthermore made of the need to demonstrate a change of circumstance which facilitates the chances of finding employment.

In **Poland** those individuals who have lost their employment retain the right to stay on the territory in specific cases for the duration of three months, six months or longer if they entered Poland with the intention and capacity to demonstrate that they are actively seeking work and have genuine chances of finding employment. All forms of evidence may be submitted within this respect and no one test applies. Again, even without adherence to the foregoing, an individual may be entitled to remain on the territory

insofar she or he has sufficient resources to support her or himself and are covered by a social security scheme; or if she or he attends professional training and is covered by the social security scheme or has private health insurance; or alternatively, if she or he is married to a Polish citizen.

Lastly, in **Slovenia** a genuine chance of employment may be tested in case unemployment benefits are prolonged from three to six months. One of the factors that is taken into account in the assessment is whether the reason behind the move to Slovenia was due to family reunification or due to genuine better employment opportunities.

Conversely, it appears that no temporal restrictions have been imposed with respect to the retention of jobseeker status in the **Czech Republic** and **Switzerland**.

3.1.5.3. Welfare and benefit entitlement of non-workers

In a limited number of Member States (**DE, EL, IS**) jobseekers have access to labour market entry programmes only. In **Greece** for example, jobseekers are allowed to partake in subsidised programmes co-financed by employers which facilitate access to the labour market. The duration of programmes as such and the entitlement to partake therein is subject to a durational limitation of one year. In **Iceland** benefits are reserved to individuals with legal residence in Iceland, which in turn is inextricably entwined with either gainful employment and/or having sufficient means to provide for her or himself. No specific benefits are provided for jobseekers. There are however – similarly to **Hungary** – certain services which can be requested (assistance in job search including guidance from job councillors including assessment and assistances with the drafting of a CV, employment-related rehabilitation groups, vocational remedies, drafting employment search schedules). If the individual concerned has already worked in Iceland however, certain benefits do become available.

In a majority of Member States (**BE, BG, CY, DK, FR, HU, IE, IT, LU, MT, NL, NO, PL, PT, SE, SK, CH**), contrary to the foregoing, access to benefits for jobseekers – albeit limited and/or conditional in some – is guaranteed for jobseekers. As access to welfare benefits vary tremendously per Member State, only several examples are given (see *infra* Annex for all examples). In **Belgium** jobseekers have access to tide-over allowances if they are young unemployed individuals in search of a first job. However, such allowances are limited to those who pursued education in Belgium or who are the child of a migrant worker in Belgium. Entitlement to contributory benefits will depend upon the jobseekers' contribution history. Lastly, Regulation (EC) No 883/2004 governs classic unemployment benefits. In **Denmark** jobseekers are entitled to the same benefits as national jobseekers if they are involuntarily unemployed and registered at the local job centre. An individual and concrete assessment is required and will be decided upon by the state municipality. This will be notified to the state authority, which will subsequently assess whether the individual concerned does not pose an unreasonable burden upon the social system. **Portuguese** legislation prescribes equal treatment as being guaranteed for contributory benefits. However, jobseekers are not entitled to solidarity-based benefits. The Portuguese system does not provide for tide-over allowances; however, young individuals may be entitled to social income for insertion, which fosters integration in the labour market if a real link between the person concerned and Portugal can be established, and if they are registered in the appropriate employment service for at least six months. Beyond six months the existence of a real link is beyond doubt. Lastly, in **Sweden** there is no distinction between workers and jobseekers as concerns social assistance and in particular programmes to facilitate access to the labour market. Concerning social security benefits generally, a distinction can be made between work-based insurance and residence-based insurance. The latter can be attained if the person concerned intends to stay in Sweden for more than a year.

Finally, in **Lithuania** and **Slovenia** part-time workers are not subject to minimum thresholds, so found to be workers, and so not treated as jobseekers.

3.1.5.4. A Genuine chance of employment' for non-workers

In applying a test to ascertain whether the individual concerned has a genuine chance of finding employment, a number of States (**CY, CZ, DK, DE, EL, IT, NL, PT, SE, CH**) apply a case-to-case approach, whereby all relevant facts are taken into consideration. Certain elements that are taken into consideration in applying a case-to-case assessment are whether the individual concerned has mastered the relevant language for a given workplace (**DK**); the personal circumstances of the individual, including amongst others, family situation, medical history, age, and (previous) recourse to social benefits (**NL**); and whether the individual can prove via factual evidence, that she or he is actively looking for employment (**PT**).

In **Belgium, Ireland, Malta** and the **United Kingdom** a limited explicit test applies. In **Belgium** for example marginal employment does not suffice in demonstrating (in addition to sufficient resources) a genuine chance of employment. In **Ireland** to be registered as a jobseeker and be accorded the rights associated thereto, the individual concerned must be unemployed at least four days out of seven, be capable and available and seeking employment. For the jobseekers *allowance* a habitual residence test is imposed as well as a means test. Furthermore, in **Malta** registration is required as well as participation in training, unless an objective justification can be given warranting the absence of participation therein. Lastly, in the **United Kingdom** the notion of changed circumstances may be pivotal in the assessment of whether an individual has a genuine chance of finding employment. In addition, regard will be had of whether the individual concerned has taken up any offers of employment.

The foregoing is, yet again, not applicable to **Lithuania** and **Slovenia** as in both cases the individuals concerned as regarded as workers.

3.1.6. Assessing equivalence between the notions of worker from a national and European perspective

In several Member States, the notion of worker differs for domestic social security purposes vis-à-vis domestic taxation purposes, and as such is not equivalent to the notion of worker employed by EU legislation. This is the case in **Belgium,** the **Czech Republic,** and **Hungary**. In **Belgium** in particular, there is no formal equivalence as the three domains are entirely separate. Social security law departs from the labour law notion of worker and includes and excludes a number of specific types of work. Income tax is levied on employment income (above a certain tax-free minimum). In practice, however, there are similarities between the various notions as most part-time workers work 12 hours and 40 minutes per week whilst the threshold for genuine work lies at 12 hours per week. In the **Czech Republic** the scope of workers under social insurance legislation is much wider than that under labour law. Similarly in **Hungary**, the notion of worker under social security legislation is much broader. For taxation purposes a distinction is made between resident and non-resident private individuals. The former is subject to all-inclusive tax liability, whilst the latter will only be taxed upon income originating in Hungary.

Within this same vein, no equivalence exists in **France, Germany, Iceland, Italy, Liechtenstein, Lithuania, Sweden** and **Switzerland**, despite many common factors the various definitions may have. Conversely, in a number of Member States (**AT, BG, HR, DK, EL, IE, LV, NO**, **RO**, **SK, SI**) the definitions are approximately equivalent.

3.2. *Apprenticeships, training and internships*

3.2.1. Apprenticeships

3.2.1.1. The legal status of apprentices

In a large majority of Member States (**, BE, BG, HR, FI, FR, DE, EL, IS, IE, IT, LT, LU, NO, PL, SK, ES, CH**) apprenticeships are regulated distinctly from regular employment. Not inconceivably, the regulation thereof varies tremendously per Member State. In **Austria** apprenticeships refer to a combination of practical work and education, and is limited to certain professions only. Despite being distinct from regular employment, apprentices are nevertheless treated like employees. In **Belgium** an apprentice may fall under different forms of legislation and thus have a different status. A distinction is made between a pupil-apprentice and apprenticeship to gain access to liberal professions. The former category refers to a young person in secondary education which provides for an apprenticeship and who is not governed by the labour market despite the fact that many labour law provisions apply. The latter refers to individuals geared for professions such as advocacy, architecture, audit, doctor, and bailiff. These individuals are considered either self-employed or employed with the exception of a bailiff apprentice, who is neither). Much like in Belgium, a **Polish** apprenticeship may be carried out under numerous legal forms. Depending on the form, the individual concerned will be considered a worker or not (for the various forms of apprenticeships, see *infra* Annex). This same approach is also followed in **Slovakia**, where two forms of apprenticeships/vocational training can be identified – work-based training and education-related training. The former allows the employer to offer training to employees insofar this is required and necessary, and eligible for tax incentives within this respect.

Croatian apprenticeships are regulated as an aspect of vocational training of pupils in secondary school for the purpose of learning certain crafts. As such it is not considered to be an employment relationship. In **Ireland** the regulation of apprenticeships also refers to work-based learning, which is conducted in conformity with an agreement drawn up, including the rights and obligations of the employer, the school and the student concerned. The student concerned must have reached the age of at least 16. General labour legislation and collective agreements are applicable to apprenticeship and for those younger than 18 specific protective provisions concerning health and safety are applicable. If the apprenticeship is not related to upper secondary education, it will be considered as workplace learning and also be subject to general labour legislation and collective agreements, including minimum wages. **Norway** employs a similar approach whereby the apprentice concerned is bound by an apprentice contract in the company concerned in which she or he is an employee, the rights and obligations of which are determined by the contract concerned and collective agreements. This is also the case in **Lithuania** where apprenticeships are solely concluded with respect to students and are concluded between three parties (institution of education, the student, and the host organisation). The period of apprenticeship is unpaid and throughout this period the individual concerned is not deemed a worker. If the organisation does choose to remunerate the individual concerned, an employment contract must be concluded.

Bulgarian legislation provides for vocational training on the job and during unemployment, respectively. Workers can enter such training without absence from work, and for registered unemployed individuals a number of programmes and courses exist. For the apprentice jobs taken up by unemployed individuals, employers receive a given sum, of which the duration may not exceed twelve months. Throughout the training/apprenticeship the mentor must provide training at the respective workplaces. Insofar the mentor consequently keeps the individual in a working capacity for at least the same duration of the apprenticeship she or he will be provided an additional financial sum, which cannot exceed 24 months.

Apprenticeships may be paid or unpaid in **Finland**, the former being particularly true for university students. For paid apprenticeship the salary is usually lower than the salaries

for regular employees (70%-90%). Usually these payments meet the minimum threshold for the apprentices to be considered as workers. However, they are not treated identically to workers, as – for what concerns social security – they are treated as a student.

Apprenticeship in **France** is available to individuals aged between 16 and 25, binding the individual concerned to an employer by a specific employment contract. The employer is thereby bound to provide remuneration and vocational training. This can be established for a fixed or indefinite duration. Similarly, in **Spain,** apprenticeships are available to persons aged 16-25 who lack acknowledged vocational qualification. However, contrary to France, they are considered as employees in the form of temporary work. The work permitted under an apprenticeship in Spain is limited to 75% of regular working time during the first year (75% of the maximum working time envisaged by the collective agreement; failing this, in accordance with the law, 30 hours per week) and 85% during the second and third year (85% of the maximum working time envisaged by the collective agreement; failing this, in accordance with the law, 34 hours per week). Consequently, they are entitled to at least the same percentage of the minimum wage (the monthly minimum wage in 2016 is € 655.2 / 14 payroll payments). EU national apprentices are accorded equal treatment in this respect.

In **Germany** the apprentice will be treated as an employee, if she or he is remunerated. Within this same vein, in **Greece**, the predominant goal of an apprenticeship, by means of a contract with the employer, is to acquire a vocational specialisation or learn a skill as opposed to receiving remuneration, which is the main goal of an employment relationship. The substance of the relationship thus defines the qualification thereof and can be re-assessed by a judge. In **Liechtenstein**, apprentices are assimilated to workers and are consequently treated as employees from age 17 onwards.

In **Latvia** the concept of work-based learning is used (not apprenticeships) and it is part of the formal education system, trainees are not remunerated and a specific tripartite contract is signed between the company, educational institution and the trainee. In cases where employers decide to pay the trainees, an additional employment contract has to be signed (the Labour Law provides that a fixed-term employment contract may be entered into in order to perform short-term work, such as (among others), work of a student of a vocational or academic educational institution, if it is related to preparation for activity in a certain occupation or study course) and the general minimum wage provisions have to be observed in this case. Any forms of internships, apprenticeships or traineeships outside the education system or without an employment agreement are regarded as undeclared work.

In **Ireland** apprentices are treated like employees, albeit that remuneration may legitimately be reduced. Apprenticeships are limited to certain sectors but equal treatment is guaranteed in this respect vis-à-vis EU nationals. Similarly, in **Italy**, apprentices are considered as workers. Apprentice contracts last for a minimum duration of six months and most labour law legislation applies with the exception of legislation on unfair dismissals. Also in **Liechtenstein**, **Luxembourg, Malta** and **Switzerland**, apprentices are treated as regular employees, though specific additional legal provisions may be applicable to them (**CH**). Under the Act on Apprenticeship, in **Romania**, apprentices are deemed workers.

Contrary to the foregoing, certain Member States (**CZ, NL, SE, UK**) have not regulated apprenticeships. In the **Netherlands** on the other hand, much debate surrounds the notion of apprenticeships. In the **United Kingdom**, apprenticeships are not regulated as such, and a case-to-case assessment of the particular circumstances is pivotal in determining whether the individual concerned should be regarded as an employee. In **Malta**, apprentices are treated as employees and are registered as full-time apprentices in the ETC employment register.

Lastly, **Slovenia** has adopted an approach distinct from the aforementioned Member States. In Slovenia the notion of apprenticeship was introduced in 1996 and abolished

ten years later. Currently, Slovenian legislation only recognises the notion of practical training. This is allowed for a maximum of 24 weeks in three years, of which eight per year *albeit restricted to certain professions*.

3.2.1.2. Labour law and welfare entitlements of apprentices

Various Member States (**AT, HR, DK, DE, EL, FR, IE, IT, LI, LU, ES, CH, UK**) accord apprentices access to minimum wages and/or other welfare benefits, as they are assimilated to regular employees (see *supra* 3.2.1.1. The legal status of apprentices).

In **Germany**, access to minimum wages is not guaranteed. Moreover, as concerns study grants it need be noted that only those individuals with residence in Germany will have access to such grants. In **Greece,** pursuant to a number of legislative instruments 51 Vocational Education Schools have been established for the purpose of educating students by means of the apprenticeship system. It combines in-class education with remunerated traineeships in public and private entities, thus facilitating entry into the labour market of the individuals concerned. In **France** on the other hand, apprentices benefit from labour law and are effectively entitled to a minimum wage, which consists of a percentage of the minimum wage. This percentage can range between 25% to 78% depending on the age of the apprentice and his or her evolution in the vocational training. Much like in France, apprentices in **Ireland, Italy, Liechtenstein, Luxembourg** and **Switzerland** are treated very similarly or identically to employees. In **Norway** access to benefits and minimum wage are regulated via sectoral collective agreements. The apprentice has the right to sickness and holiday benefits in the same manner as ordinary employees. Equally so, apprentices have the right to unemployment benefits. Lastly, in **Spain** and the **United Kingdom** minimum wages are accorded to apprentices, albeit necessary to note that in **Spain** these wages represent only a percentage of the actual minimum wage, and in the **UK** they are potentially considerably lower than the national minimum wage for non-apprentices.

Contrary to the foregoing, several Member States (**BE, FI, IS, PL** and **RO**) have alternative approaches whereby a distinction is made between student-based vis-à-vis work-based apprenticeships (see *infra* Annex). In **Cyprus** and the **Czech Republic** however, no or highly limited minimum wages are available to apprentices.

Finally, it appears that in a large majority of Member States (**AT, BG, CY, DK, DE, El, FR, HR, IS, IE, LI, LU, MT, NO, PL, RO, SE, ES, CH**) EU national apprentices are accorded equal treatment vis-à-vis national apprentices. In **Italy** minimum wages are guaranteed, albeit subject to the nuance that they may be lower than the general minimum wage for regular employees. Apprentices are thus regarded as 'subordinate employees'. They enjoy all the same entitlements with the exception of wages and dismissals as regular employees. Particularly concerning dismissals, during the training period apprentices are protected, whilst beyond these periods the contract may be terminated at will. Furthermore, in a number of Member States (**BE, FI, HU, LI, NL, SK, UK**) there are simply no relevant sources which can provide guidance as to the treatment and benefit entitlement of EU national apprentices.

3.2.1.3. Apprenticeship wages vis-à-vis thresholds for migrant work

In a number of Member States (**HR, CY, CZ, FR, EL, LT, IE, IT, LI, LU, MT, NO, PL, RO, ES, SE, CH**) apprenticeship wages simply cannot be compared with thresholds for defining migrant work as such thresholds have not been established. The relationship between apprenticeship wages and thresholds for defining migrant work in other Member States (**BE, BG, FI, DK, FR, DE**) on the other hand, are subject to particular regimes and thus vary per Member State.

In **Belgium** wages are set according to sectors, with the exception of pupil apprentices (those who wish to enter a liberal profession) who do not receive wages. Similarly, in **Bulgaria** wages for apprentices are determined in the same manner as wages for

Bulgarian citizen workers. More specifically, they are set with reference to the duration of work and the statutory and collectively agreed minimum thresholds for payments per hour and per month. Paid apprenticeships in **Finland** more often than not meet the minimum wage threshold to be considered as work. In **Germany** minimum wages are not applicable to apprenticeships. However, it appears that *de facto* apprenticeship wages do meet a given threshold thereby avoiding the qualification of being a marginal and ancillary activity. Rather, it appears that apprenticeships in Germany facilitate the qualification of work. Furthermore, in the **United Kingdom** apprentices will need to have met a minimum level of payment for national insurance to be considered as work.

For an apprenticeship to be considered as work in **Denmark,** a minimum working hour threshold, rather than a wage threshold, will need to be met, which *de facto* entails that the apprentice concerned will have to have worked 10-12 hours per week.

3.2.2. Training

The qualification of training is subject to a large number of different regimes amongst Member States. Whilst certain Member States identify training as being an activity distinct from any formal qualification of work (**AT, CZ, MT, RO, UK**), a number of other Member States (**HR, CY, FR, EL, IS, LI, SI, ES**) regulate training as being exclusively related to a formal working relationship. Yet another group of Member States (**BG, FI, DE, IE, LU, SK, CH**) apply a mixed regime in regulating the concept of training, whereby training can either be identified as a form of employment, or not related to employment at all.

In **Austria** training is conceptually distinct from employment contracts and places the interest of the student at the forefront of the activity as opposed to the interest of the employer. Training in the **Czech Republic** is qualified as being a systematic preparation for future employment. It does remain possible, however, despite not being qualified as a form of formal employment, to be covered for social security risks. In **Malta** training is perceived as occupational skill development intended to facilitate market entry. As such, trainees are not considered as employees and may thus retain unemployment status. Remuneration of trainees in Malta is at an approximated 80% of the weekly minimum wage. The minimum wage for 2016 is € 158.39/week (under 17), € 161.23/week (17 years) and € 168.01/week (18 years and over). Training in **Romania** is related exclusively to education and serves as the practical application of theoretically acquired knowledge by a student/pupil during their respective studies. Consequently, a traineeship is the result of an agreement between the secondary or higher educational facility, a company and a trainee. Finally, in the **United Kingdom** traineeships are regulated and permitted for a duration not exceeding six months. Traineeships are not remunerated and as such cannot be qualified as being any form of formal employment. Traineeships are restricted to individuals between the ages of 16-24 and who are either unemployed or have limited work experience despite being eligible for work in the United Kingdom.

Certain other Member States (**CY, FR, EL, IS, LI, SI, ES**) regard training to be exclusively and inherently related to various forms of formal employment. Similarly in **Spain,** training is directed at younger individuals and only permitted for a number of specific professions. Within this context, trainees are entitled to a fixed salary percentage, vis-à-vis workers in equivalent positions. Training in **Cyprus** appears to be – albeit implicitly – connected to forms of employment as it defines the latter as being *"planned and systematic learning, training and re-training process of persons which leads to the effective execution of work through the acquisition, development and improvement of knowledge or skills or the differentiation of thinking processes and perception aiming at the improvement of economic importance".*[57] As such it is thus also deemed an insurable activity. In **France, Iceland** and **Liechtenstein** it appears that training is

[57] See the country sheet of Cyprus.

simply deemed to be an inherent aspect of working time. Training in **Slovenia** translates into the right to and the obligation of on-going education in accordance with the requirements of the working process with the purpose of maintaining and/or improving the skills to perform the work under the employment contract, to keep employment and increase his or her employability. The employer consequently has to provide such education and training if the working process requires the latter, and in certain instances the employer will have to bear the costs thereof. Provisions concerning the duration of the training will have to be enshrined in a contract on education and/or collective agreements, and a (limited) right of absence need be granted in order to allow the trainee to take the relevant exams. In **Greece** on the other hand, it appears that training is somewhat more to the detriment of the individual performing said activities. A number of legislative instruments have resulted in amendments with respect to labour rights, including amongst others provisions concerning training. The duration of a training period has increased from two to twelve months, which allows employers to hire personnel for an indefinite duration, with an initial training period and subsequently dismiss them after twelve months without being obliged to pay any compensation.

Finally, in a number of Member States, traineeships are subject to a mixed regime, whereby training can either be deemed inherently connected to regular forms of employment or not considered as a form of employment at all. Within this vein, training can take one of several forms in **Bulgaria**. It can refer to continued education during the adult working life. Such training can be free, meaning that the employer or an employment agency pays for training which is intended as a condition for finding a job, maintaining a job or enhancing the worker's capacity and efficiency. Training can also take the form of on-the-job training. This type of training on the job can only be concluded once and allows the employee to acquire specific skills/specialties. With respect to the latter it need be noted that the permitted duration of training cannot exceed six months. In **Finland, Germany**, **Luxembourg** and **Switzerland** training can be deemed a form of regular employment when the traineeship is effectively remunerated. Similarly, in **Ireland** a case-to-case analysis of the traineeship ensues, whereby remuneration will be indicative of a qualification as regular employment. Remuneration is also important in **Lithuania** as concerns traineeships. If an individual receives training in order to acquire professional skills she or he must be remunerated. If this is not the case, the activity will be deemed illegal work. Training as such is not considered a form of employment. Support for the acquisition of professional skills (as equivalence of training) is one of the active measures of labour support for persons taking up their first employment. If the employer wishes to receive a special subsidy for having hired an individual in this respect, she or he must conclude an employment contract with the person concerned. During the period of training the person is treated as a 'normal' worker and all employment guarantees, including wage must be applied to her or him. According to a Lithuanian draft law, an employment contract for training would have the same status as a fixed-term contract with no restriction to the status of worker. In **Slovakia** training is provided for in a number of scenarios ranging from insufficient professional knowledge and skills, to loss of the ability to carry out work in recent employment. The labour office may provide a contribution towards education/training covering the complete cost or a percentage thereof. Furthermore, there are various schemes of training and education, both theoretical and practical, offered during working time, which entitle the employee to compensatory wages and the employer to contributions, both in case of pre-defined justified costs.

For the sake of completeness, it need be noted that several Member States do employ a different unique approach, distinct from the foregoing, for what concerns traineeships, whilst in the **Netherlands** traineeships are not regulated. Somewhat in line with Finland, Germany, Luxembourg and Switzerland, training in **Denmark** will be qualified as work if the *Lawrie-Blum* conditions are more or less met, via documentation in the shape of a contract or enrolment at a school. If it is not paid it will have to be remunerated in other manners in order to be regarded as work. In **Italy** training is considered as an aspect of the apprenticeship relationship. Outside the framework of apprenticeship, training is not acknowledged as a form of employment. Recalling that there are a number of ways

training can be qualified in **Poland,** the categorisation thereof will depend on whether the training is effectuated via one of the four forms (via an employment contract, via a civil law contract, as a graduate, or via the diverse other forms). Depending upon the form used for the training, remuneration will or will not be granted. In **Sweden** trainees will be considered short-term employees, unless the trainee is still subject to high school education.

3.2.3. Internships

In **Cyprus,** the **Czech Republic, Iceland** and **Malta**, internships are simply not regulated. This does not mean, however, that there is no relevant practice to speak of. In the **Netherlands** for example, a circular has been disseminated concerning the required standard payments that should be made out to an intern and denoting the applicability of labour law-like provisions applicable to internships. In **Iceland** on the other hand, the nature of the internship will depend in its entirety upon the specific facts inherent to that case.

In a number of Member States (**AT, BG, HR, DK, FI, FR, DE, EL, IE, IT, LV, LI, NO, RO, SK, SI, ES, SE**) internships are indeed regulated. Similarly to the construct of training, internships are either explicitly conceptually distinct from an employment contract or inherently connected thereto, or subject to a mixed regime where they are tread on the verge of both and can thus be one or the other.

In contrast with training, far more limited number of Member States deem internships to be inherently and exclusively connected to employment contracts. In **Greece, Liechtenstein** and **Sweden** this is the case, however. In **Greece** internships are seemingly treated similarly to training as the duration thereof has been increased from two months to twelve months, thus entailing that the employer throughout these first twelve months of employment can dismiss the individual concerned without any obligation to pay compensation of any sort. In **Liechtenstein** and **Sweden** internships will simply be considered as (short-term) employment.

In most Member States (**BG, HR, DK, FI, DE, IE, LV, NO, RO, SK, SI**) which regulate the construct of internships on the other hand, internships will be subject to a mixed regime, where elements inherent thereto will determine whether the internship is to be deemed employment or not, or whether it is a starting point for employment. In **Bulgaria** in particular, internships are qualified as a means of employment for someone aged below 29 who has completed secondary or higher education and has no work/professional experience in the profession concerned. The internship may not be less than six months and may not exceed twelve months. As concerns the distinction between a paid and unpaid internship – the distinction concerns who pays for the time of service. *De facto*, most internships are paid, however, whilst for unpaid internships there is no remuneration and no social security contributions. Internships in **Croatia** are quite similar to training in the sense that legislation may provide that a given profession may require having taken a professional exam/work experience, which can be accomplished by means of occupational training in the form of an internship. These are (unlike training) unpaid and are not deemed an employment relationship. However, the employer is nevertheless required to pay compulsory pension and health insurance contributions for the intern. In **Denmark** the qualification of an internship will be determined by adherence to the *Lawrie Blum* conditions – insofar these have been met (which requires a case-to-case assessment) an internship will be qualified as employment. Similar to training, in **Finland, Germany Ireland** as well as in **Latvia** and **Norway** an internship will be considered as being employment if it is remunerated. The objective of an internship in **Romania** is to facilitate the transition from university to the labour market. It consists of a short-term (six-month) employment contract. The intern has worker status. Similarly, in **Slovakia** internships are considered as graduate practice, and are defined as being the acquisition by a graduate of professional skills and practical experience under guidance of an employer who is professional within the graduates field of completed education. It can be concluded for a maximum duration of

six months and cannot be extended. It is to be divided in 20 hours per week. It is only graduates up until the age of 26. Within this vein the Labour Office will grant the graduate, throughout the Graduate Practice, a monthly lump-sum contribution. Finally, in **Slovenia** internships are in fact traineeships. In certain professions, various legislative instruments oblige the individual concerned to commence their first employment as a trainee. The purpose is to obtain required qualifications in order to exercise an independent profession for example. It may not exceed one year unless otherwise regulated by legislative instruments. It may also be proportionally extended if the trainee works part-time. Throughout the traineeship the employer must provide the trainee with guidance enabling her or him to exercise the work independently. The characteristics of the traineeship are furthermore to be elaborated upon in specific legislative acts, and are to be concluded by participation in an examination in order to conclude the traineeship. Voluntary traineeships are tolerated but are nonetheless regulated as well. In **Luxembourg**, there are two different categories of internship: internships as part of a school programme, and voluntary internships in a firm. Both may be paid/unpaid. A wage may be paid at the discretion of the employer. There is no legal minimum or maximum. For the first kind, the internship contract, signed by the school, the trainee and the training institute, is not an employment contract. Nevertheless, trainees qualify for industrial injury insurance covered by the school. For the second type, even if internship is unpaid, trainees are assimilated to workers regarding social security. They are compulsorily insured, but there may be exemptions from paying contributions for the national sickness insurance and old-age pension insurance.

In **Austria, France, Italy** and **Spain** internships are seen as completely distinct from an employment contract and interns are thus not considered as workers. In **France** for example, interns must be registered as students in a higher education programme and an agreement must be signed between the intern, the company and the educational facility. They are not to work, but rather must be trained by means of performing certain activities in a company. Lastly, they have a right to allowance which is not to be equated with a salary in legal terms insofar the duration of the internship exceeds two months. Consequently, interns do not meet the criteria of genuine and effective under EU law. In **Italy** on the other hand, internships are considered as a *stage* for which no remuneration is received and for which individuals are not considered as workers. The main goal of an internship in **Spain** is the training as opposed to work. Consequently interns are not considered employees irrespective of whether or not they are remunerated.

Some Member States employ a unique approach concerning internships. In **Belgium** no rigid distinction exists between the constructs of an apprenticeship, traineeship and internship. In addition, with respect to **Poland** the qualification of an internship will depend in its entirety upon which of the four aforementioned contracts the internship is subject to. In **Switzerland** a case-to-case approach is employed whilst in the **United Kingdom** the status of the individual concerned can vary according to circumstance so as to be categorised as a worker, volunteer or employee. In **Lithuania** internships are not yet recognised.

3.2.4. Equivalence between apprenticeships, training and internships vis-à-vis 'genuine and effective work'

In a number of Member States (**DK, EL, IE, LI, PL, NO**) apprenticeships, trainings and internships are, if remunerated, treated in an equivalent manner on a national level with the EU approach to determine worker status. Similarly, in **Denmark** there is equivalence. Recall in this respect that it is the central state administration which determines whether an individual has worker status and thus whether she or he has access, on equal terms, to social assistance. Such equivalence is also found in **Greece**, **Ireland**, **Liechtenstein**, **Luxembourg** and **Poland.**

Conversely, no equivalence exists between these notions for national purposes vis-à-vis the EU approach in **Austria, Belgium, Bulgaria, Czech Republic, Germany, Italy, Malta,** the **Netherlands** and **Sweden.**

Certain other Member States employ an entirely distinct approach. In **Lithuania** apprenticeships and training do not fall under the scope of labour relations. As concerns **Iceland** it can be said that there is semi-equivalence. Apprenticeships and training would normally be subject to remuneration in accordance with collective agreements and therefore be treated as work for domestic social security and tax purposes. These would therefore be likely to be subject to remuneration that could exceed the earning threshold referred to in A) 1). The nature of internship is more uncertain and would have to be examined on a case-by-case basis.

3.3. Voluntary work

3.3.1. Legal framework across Member States

Prior to delving into the legal framework which defines voluntary work in the respective Member States, note need be made of the fact that not all Member States effectively regulate voluntary work. In fact there is no legislative framework concerning voluntary work in **Austria, Bulgaria, Cyprus, Denmark, Finland, Greece,** the **Netherlands, Norway, Sweden, Switzerland** and the **United Kingdom.** This does not mean, however, that no practice can be identified in any of these Member States concerning voluntary work. Rather, in **Austria** and **Ireland** voluntary work is dealt with by case law. In the **United Kingdom** on the other hand, volunteers are not considered as workers. However, the volunteer organisation may conclude a volunteer agreement concerning the level of supervision and support, the training they will get, whether they will be covered by liability insurance, health and safety issues and any expenses the organisation will cover. This form of agreement is not obligatory.

The legal framework for defining voluntary work in Member States (**BE, HR, CZ, FR, DE, IS, IE, IT, LI, LT, LU, MT, PL, PT, RO, SK, SI, ES**) where the latter is regulated differs somewhat depending on the different Member States. In what follows, a short overview is given of how the different Member States approach voluntary work.

In **Belgium** the Act of 3 July 2005 defines the rights and duties of volunteers. Volunteering does not contribute to establishing the right to reside, unless the volunteer qualifies for the status of a migrant worker.

Volunteer work in **Croatia** is regulated under the Volunteering Act and defined as an activity of interest for the Croatian Republic and includes provision of personal time, effort, knowledge and skills in the performance of services or activities to the benefit of other people or for the common benefit without remuneration. Contracts regarding the volunteering can be concluded which stipulate the rights and obligations of respective parties.

Volunteer work in **France** is extremely narrowly defined, as minimal thresholds suffice to establish that work has been conducted. A legislative act concerning volunteering has been applicable since 1986, but was recently reformed in March 2010. The amendment introduced the '*service civique*', which refers to a voluntary commitment for a continuous period ranging between 6-12 months for persons aged between 16-25. In addition, a '*voluntariat de service civiqueé'* exists for periods ranging between 6-24 months for persons older than 25 and who seek to volunteer at a registered company. These contracts must be written, and do not encompass an element of subordination. Labour law is not applicable despite the fact that volunteers do benefit from certain social security rights (retirement rights) and an ad hoc allowance.

Volunteer work in **Lithuania** is partly regulated. It concerns socially useful activities carried out by a volunteer free of charge the conditions thereof determined by the parties concerned. Only non-profit organisations can organise volunteers. The latter two parties are exceptionally bound by a civil legal relationship. No employment guarantees are applicable to said relationships (i.e. they are not treated as workers for what concerns taxation, social security or other employment rights).

In **Germany** three forms of volunteer work are acknowledged. Firstly, there is the Federal Volunteer Service. Secondly, there is the Youth Volunteer Service. Lastly, there is Pro Bono Work*.* In **Luxembourg** on the other hand, volunteer work is subdivided into two categories of voluntary work. These categories are referred to as *Benevolat* and *Voluntariat*, the first of which provides for limited social security coverage whilst the second is aimed at individuals under the age of 30 and is well defined.

With due reference to the rights of entry and stay for three months and beyond three months, it appears that volunteering is possible in **Iceland** and serves as a ground for residence insofar certain conditions have been met. The volunteer must be between 18 and 30, and must volunteer for an agency recognised by the European Voluntary Service. Moreover, a contract must be signed which provides for volunteering of at least three months and must contain certain obligatory elements (such as duration of the contract, benefits, daily working hours, daily and weekly rest periods, the right to pursue studies and provisions on health and sickness insurance). In other entities proof would be required concerning health insurance and means of support.

The Act on Activities Performed for Public Benefit and Voluntary Work (2003) in **Poland** defines volunteers as persons who voluntarily and without remuneration perform work for institutions or organisations of the category defined in said Act and under the rules specified by said Act. They may be engaged by NGOs or other organisations which perform activities for the public benefit or public administration bodies and their units. Volunteers cannot, however, be engaged in companies of which the sole purpose is economic gain.

In **Portugal** volunteer work is governed by Law 71/98 and by Decree-Law 389/99, which define voluntary work as actions of common and social interest performed without compensation by natural or legal persons within projects, programmes and other forms of intervention for the service of individuals, families and the community. Similarly, volunteer work in **Romania** is governed by Law No 78 of 2014, which describes the detailed conditions governing the volunteering activity. Volunteer work is to receive support from the public administration and is deemed by law to be an activity of public interest.

Volunteer work in **Slovenia** is regulated in the special Volunteering Act of 2011 and defined as being an act in social interest and activity without pay of individuals, who with their work, knowledge and experience contribute to the improvement of living conditions of individuals and groups of persons and to the development of a humane and equal society founded upon the notion of solidarity. It cannot be considered as work, as one of its main features is the absence of remuneration. One cannot conclude a volunteering arrangement for matters that are to be dealt with via an employment contract.

In **Spain** volunteers are excluded from the scope of workers due primarily to the fact that the philosophy behind work vis-à-vis volunteering is different. The parties concerned must sign a solidarity commitment acknowledging the altruistic nature of the agreement.

A number of Member States merely refer to the legislative framework concerning volunteer work. In the **Czech Republic** the legal framework for voluntary service is enshrined in Act No 198/2002 Coll. Voluntary work in **Italy** is regulated by national framework law No 266 of 1991. In **Malta** voluntary work is regulated by the Voluntary Organisations Act, which defines volunteering as services provided without remuneration, to a voluntary organisation. In **Slovakia** the Act on Voluntary Work and the Act on Employment Services govern voluntary work.

Finally, note need be made of the fact that volunteer work in **Liechtenstein** is considered as employment. This follows from national immigration law implementing the EEA Agreement (Article 3, paragraph 2, c) *PFZV* (*Verordnung über die Freizügigkeit für EWR- und Schweizer Staatsangehörige*)).

3.3.2. Employment rights of volunteers

As the respective legislative frameworks concerning the notion of voluntary work in the various Member States is bound to differ somewhat, it need not surprise that the employment rights, or rights similar thereto, may vary somewhat for volunteers per Member State. Within this context it need be noted that a number of Member States (**AT, CY, DK, FI, FR, DE, EL, IS, IE, IT, LT, LU, MT, NL, NO, ES, SE, CH, UK**) simply do not provide any employment or employment-like rights, or only provide limited rights as such. Whilst no grounds for such rights were found in the majority of the aforementioned States, **France** does provide for minimal social security coverage as concerns retirement benefits and an additional ad hoc allowance. Other than these two entitlements, however, no labour law provisions apply and no element of subordination should be present in the exercise of volunteer activities. In **Germany** volunteers do not enjoy general protection by labour law provisions, but are nevertheless covered as concerns provisions pertaining to health and safety at work. This is also the case in **Ireland, Italy** and **Spain**. A somewhat more comprehensive framework applies in **Greece**. As there is no relevant legislation or legislative instruments, volunteers do not enjoy or benefit from particular protection. In the absence of specific legislation, however, general regulations concerning employment, residency, social benefits, health benefits and mobility apply. Issues pertaining to volunteer rights as such are dealt with on a case-to-case basis. As a result of lacking regulation, however, various (serious) problems have arisen.

Contrary to the foregoing, volunteer work is subject to a substantially more comprehensive framework in various other Member States (**BE, HR, CZ, LI, PL, PT, RO, SI**) to the benefit of the volunteer. In **Belgium** the volunteer organisation has the obligation to inform the volunteer with respect to his or her rights and duties as well as to grant the person concerned insurance. The volunteer may be reimbursed for costs, which will not need to be proven if they do not exceed a given amount (€ 33/day and € 1308/year). Despite the volunteering relationship not being qualified as an employment relationship in **Croatia**, similar rights can be identified and will be prescribed in the volunteering agreement. The individual concerned is subsequently entitled to, amongst others, safe working conditions, recovery of expenses, and insurance against occupational disease or accidents at work. Similarly to the practice in Croatia, in the **Czech Republic** Section 5 of Act No 198/2002 Coll. regulates the agreement on volunteer service, established between the 'posting organisation' and the volunteer. This agreement is, as regards content, similar to an employment agreement, only that there is no entitlement to remuneration. The act on voluntary service makes reference to the labour law legislation. The volunteer is protected as regards working time and right to holiday, albeit somewhat more limited with respect to e.g. ending of voluntary service. In **Poland** a similar agreement is requisite. This agreement is concluded between the relevant parties and written if the duration of the volunteer work exceeds 30 days. A number of rights are to be adhered to, such as a safe and hygienic working environment, the coverage of costs of travel and accommodation and potentially food. In addition, the volunteer must be informed of any risks to his or her health stemming from the nature of the volunteer work. The volunteer may be entitled to health benefits as well as benefits stemming from accidents at work. Additional insurance against accidents/misfortunes need be provided for if the volunteer work exceeds 30 days. Also in **Romania** the volunteering activities are to be preceded by a contract – the content of which is regulated – between the volunteer and a non-profit organisation. The rules applicable to a volunteer activity are again very similar to an employment relationship. Volunteering can be considered as work experience, however, and it may result in the granting of residency rights in Romania throughout the duration of the volunteering (for EU migrants). Certain types of volunteering such as emergency services are excluded from this regulatory framework, however. Finally, in **Slovenia** an agreement may also be concluded which must take into consideration maximum permitted weekly working hours, weekly and daily rest and rest of children younger than 15 years of age. Certain additional labour laws are equally so applicable to voluntary traineeships.

In **Portugal** access to social insurance benefits is conditional upon: (i) being above 18 years old, (ii) being enrolled in a voluntary programme, (iii) not benefiting from social security derived from a professional activity, i.e. unemployment benefits; (iv) not currently being a pensioner (Article 6 of Decree-Law 389/99). In addition, similar employment rights can be identified, such as the right to hygiene and safety conditions, the establishment of the content, nature and duration of work and lastly reimbursement of expenses made in the development of voluntary services.

Finally, volunteering in **Liechtenstein** is considered as employment and as a result volunteers are considered employees.

Despite the various aforementioned rights accorded to volunteers, which resemble employment status, volunteering as such does not provide for a direct gateway to employment. Indeed, it may serve as a means to facilitate access to employment *indirectly* – as is the case in a large number of Member States (**AT, BE, HR, CY, CZ, DK, FI, FR, DE, EL, IS, IE, IT, LT, LU, MT, NL, NO, PT, RO, SK, SI, ES, SE, CH, UK**) – by the forging of pertinent connections with certain professionals, though a *direct* link thereto cannot be established**.**

3.3.3. Volunteering and EU migrants

3.3.3.1. Access to volunteering

As concerns access to volunteering opportunities for EU migrants vis-à-vis Member State nationals, it appears that the majority of Member States (**AT, BE, BG, HR, CY, CZ, FR, DE, EL, IS, LT, PT, RO, SK, SI**) provide for equal access with respect thereto. In addition, in **Bulgaria** migrants are allowed to engage in long-term volunteering which may be seen as grounds for obtaining a permanent residence in Bulgaria. In **Germany** on the other hand, it is made clear that volunteering is not to be considered as work. To ensure that volunteer work does not become the main means of financing for EU volunteers, a time limit upon volunteer work has been imposed.

In various other Member States (**DK, FI, IE, IT, LI, MT, NL, NO, ES, SE, CH**), no clear principles have been established on equal access to volunteering for EU migrants.

3.3.3.2. Volunteering and the entitlements of EU national jobseekers

An additional question that arises when discussing EU migrants who engage in volunteer work in another Member State is what the impact is of such volunteering activity upon their respective status as a jobseeker. In a number of Member States (**AT, HR, CY, DK, FI, DE, IT, LT, LU, MT, NO, PL, PT, RO, ES, UK**) the exercise of a volunteer activity simply does not impact the status of a EU national jobseeker. As noted by **Austria** for example, this is to be attributed to the fact that volunteer work as such is not considered as employment, thus entailing that it cannot impact jobseeker status in that respect. Similarly, in **Croatia** volunteering is not considered as an employment relationship or any other form of gainful activity, which could affect the status and entitlements of unemployed individuals.

In various other Member States (**BE, CZ, FR, IS, IE, SI, CH**) the status as a jobseeker may be affected – albeit with varying intensity – by the exercise of volunteer work. In **Belgium** for example, jobseekers receiving unemployment benefits are indeed allowed to engage in volunteering although it must be authorised. The authorisation may be denied in case of bogus-volunteering or if this would hinder the individual concerned in his or her availability for the labour market. According to the Council for Alien Law Litigation, volunteering is not demonstrative of the individual concerned having a genuine chance of being hired. In **France** EU national jobseekers are allowed to retain the status as jobseekers whilst engaging in volunteer work, albeit subject to the nuance that they are not immediately available. As a result of the fact that the volunteer may not be immediately available, the individual concerned may be excluded from the right to reside

inherent to the jobseeker status. In **Iceland** volunteers are subject to the obligation to notify the Directorate of Labour upon commencing a volunteering position. Failure to do so may result in the loss of unemployment benefits. Similarly in **Slovenia**, the competent authority must be notified and voluntary work is taken into account when assessing the activities performed by the jobseeker. In **Ireland**, volunteer work may be regarded as evidence of a genuine search for employment thus solidifying the jobseeker status. Finally, in **Switzerland** EU national jobseekers are entitled to engage as volunteers if they have sufficient resources so as not to become a burden upon the Member State concerned.

3.4. Bogus self-employment

3.4.1. Distinguishing self-employment and regular employment

It can generally be held that Member States approach the distinction between self-employment and regular employment in three distinct manners. Firstly, a number of Member States (**AT, BE, CY, IS, IE, LV, NL, NO, PL, PT, SI, ES, SE, CH, UK**) apply various criteria in order to distinguish between the two forms of employment. Within this context certain criteria may carry more weight than other criteria. However, all relevant facts are given due regard and a case-to-case assessment ensues. As a second approach, a number of Member States (**BG, HR, CZ, DK, FR, DE, EL, IT, LI, LU, MT, RO**) focus on the notion of subordination – also referred to as a form of dependence – of the worker vis-à-vis the employer. Subordination can be of a personal nature or of an economic nature. Depending on the various Member States, focus will be on the personal form of subordination whereby the worker is bound by instructions of the employer, or economic dependence. Other Member States simply take both forms of subordination into account. Lastly, a limited number of Member States apply an individual approach distinct from the aforementioned two approaches.

In **Austria,** case law established criteria to distinguish between self-employment and employment. In particular employment is characterised by the *provision of services*, based on *an employment contract*, in a state of *personal dependency* (which entails working personally, subject to directions, under control of the client, being integrated in the operational structure of the client's undertaking, being bound to fixed working hours and a fixed working place). Within this same vein, in **Belgium** legislation provides for a set of general and specific criteria that are to be applied in distinguishing between employment and self-employment. The general criteria are applicable to all sectors and refer to the *will of the parties*, *freedom to determine working time*, the *freedom of the organisation of the activity*, and *subordination/hierarchical control*. It appears that this last factor is instrumental. The specific criteria as allowed by legislation are applicable in certain sectors where bogus self-employment is prevalent, and encompasses a rebuttable presumption of employment. The legislation concerned allows for requalification, and a social ruling by the Administrative Commission for the Settlement of Labour Relations can be requested concerning the nature of an employment relation. A single definition of self-employment is not readily available in **Icelandic** legislation. Rather, elements of the definition of what constitutes self-employment can be found in various pieces of legislation, of which taxation legislation is the most decisive. Self-employment is determined on a case-to-case basis taking into consideration a number of characteristics such as *content and nature of the contract, who is responsible, and who is providing accommodation and tools*. As is the case in Austria and Belgium, all of these criteria are deemed relevant. Also in line with the foregoing, **Ireland** has developed case law and a comprehensive code of practice which provides for a number of criteria that need be taken into consideration. These criteria include, amongst others, the *nature of the remuneration,* the *degree of control*, schedule *of work* and *to what extent materials are provided for*. In **Latvia** taxation legislation provides for specific criteria which can be used to distinguish between employment and self-employment. These criteria are self-standing and refer to, amongst others, *economic (in-)dependence*, *assumption of a financial risk*, *integration of the payer into an undertaking*, *existence of actual holidays and leave for the payer*, *management or control of other persons*, and *whether the payer*

is the owner of the assets. As can be derived from the foregoing a number of these elements are recurring. They include amongst others subordination, assumption of financial risk, the provision of materials, a work schedule, and the nature of the contract. Similar criteria are taken into consideration in the assessment of self-employment in the **Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland** and the **United Kingdom.** For all the foregoing Member States a case-to-case assessment is undertaken, taking into consideration the aforementioned criteria.

In various other Member States it appears that the sole criterion to distinguish between self-employment and regular employment is the notion of subordination. As aforementioned, this criterion can either refer to personal subordination or economic subordination. In some Member States both forms of subordination are taken into consideration when assessing whether employment should be considered as self-employment or regular employment. In **Bulgaria,** no clear legal definition exists as to what constitutes self-employment. Relevant provisions are scattered in various legislative instruments (registration legislation, social security legislation). *De facto* it appears, however, that the distinction rests upon the idea that the person must perform the work individually/personally and that the individual concerned works for her or himself rather than in a hierarchical relationship. In **Croatia** the determination of subordination will be assessed by taking into account whether the individual concerned has the freedom to determine working time, the organisation of the work, and whether she or he receives instructions to complete the work. In **Germany** both personal and economic dependence are key in determining whether an activity constitutes self-employment or regular employment. In **Greece** on the other hand, solely personal subordination is taken into account – economic dependence will only be taken into consideration if the dependency is overwhelming. Similarly, subordination is key in **Denmark, France, Italy, Liechtenstein, Luxembourg, Malta** and **Romania**.

Finally, in **Finland, Lithuania** and **Slovakia** different criteria apply in determining whether an activity should be considered as one or the other. In **Finland** self-employed persons are distinguished from employees via the *entrepreneurs pension insurance*. Each entrepreneur/self-employed individual should have this pension insurance if she or he is between 18-68 years old, lives in Finland and has been self-employed at least for four months and earns at least € 7,502.14 per year. No definition of self-employment is found in **Lithuanian** legislation. To distinguish self-employment from regular employment reference is made to a *formal criterion* – i.e. an employment contract and a declaration to the social security authorities. Lastly, in **Slovakia** a negative approach is employed in determining whether or not an activity is self-employment. More specifically, there are six acknowledged and legally tolerated forms of self-employment – if the activity does not fall within the ambit of one of these six forms, it will not be deemed as self-employment.

3.4.2. Distinguishing self-employment from unemployment

In a number of Member States (**BE, CZ, EE, FI, EL, HU, LV, LT, LU, NL, NO, PT, RO**) no specific sources exist which define the distinction between unemployment and self-employment. In **Luxembourg**, the key difference is simply the cessation of activity. However, in certain other Member States such criteria do exist. Whilst some of these Member States (**DK, LI, SK, SI, ES, SE, CH, UK**) impose *de facto* wage thresholds to distinguish between self-employment and unemployment, others (**AT, BG, HR, FR**, **PL**) use unique individual means to make this distinction. Another group of Member States (**CY, DE, IS, IE, IT**) note that a case-to-case determination is applied in determining the distinction between self-employment and unemployment.

A *de facto* wage threshold can be ascertained as a means to make the distinction in **Liechtenstein, Slovakia, Slovenia, Spain, Sweden, Switzerland** and the **United Kingdom**. In Poland, it is noted that self-employment presupposes taxed income and social security subscriptions. In **Liechtenstein** in particular social security legislation distinguishes between self-employment and unemployment via reference to a threshold

of income (CHF 234 per year; Article 25 *AHVV*, which corresponds to a yearly wage of CHF 3,000) that need be met. Below said threshold an individual is held to contribute as though not engaging in an economic activity. Similarly in **Switzerland** the income gained must reach a minimum threshold – if not the individual concerned would be considered as being without an economic activity. The income gained must reach at least the minimal yearly contribution of CHF 392 (the minimum increases according to the financial situation of the insured person; e.g. with a fortune of CHF 8,400,000 or more the person is considered as unemployed if his or her income brings less than CHF 9,800 in terms of social contributions; the aim is to avoid wealthy people doing a small job in order to be treated like an employed or self-employed person with consequently weak contributions). If these amounts are not attained, the individuals concerned are considered as individuals without an economic activity.

In **Slovakia** (self-)employment is distinguished from unemployment by reference to the sum of minimum wage, the advances of health insurance premiums, social insurance premiums as well as of contributions to old-age pension savings. Whilst there is no *de facto* threshold to distinguish self-employment from unemployment in **Slovenia,** self-employed individuals need to be able to pay social security contributions. Hence a minimal income threshold will need to be met. Since 2013 all self-employed persons (apart from those being employed and self-employed at the same time) have to pay full contributions to pension and invalidity insurance (the minimum contribution calculation base is 60% of yearly average salary, calculated to a month). This means they have to be active and earn enough to cover this (and other) expenses, so a self-employed person could not realistically be marginally active.

Spain, Sweden and the **United Kingdom** also require social security contributions to be met, which in turn means that a certain income level has to be met. In Spain, there is no such thing as a parti-time self-employed person, thus a self-employed person has to pay the full minimum contribution, i.e. 264.44 € per month in 2015. Irrespective of their income, an EU national insured as a self-employed person in the social security system is considered a worker.

In **Malta**, to be self-employed, a person needs to register with the employment authorities as such, maintain VAT registration, comply with local taxation procedures such as trading, profit and loss accounts etc. Payment of self-employed contributions needs to be based on the earnings derived from the self-employed activity. Earnings means the income derived by the self-employed person from any economic activity (including the exercise of any trade or profession), and is to be taken net of expenses directly incurred in generating that income. The weekly contribution a self-employed person has to pay is based on the income the person declares, being a minimum of € 28.73 per week and a maximum of € 51,73 per week in 2016. If she or he is registered as self-employed and no earnings are derived or the earnings are less than € 910 per year then no social security contributions are due and therefore the person is not insurable under the Social Security Act.

As aforementioned, other Member States (**AT, BG, HR, FR, PL**) employ an individual technique in determining the distinction between self-employment and unemployment. In **Austria** in particular, an individual will be deemed unemployed as soon as she or he is no longer obliged to pay pension insurance contributions, which in case of self-employment is formally at the point where the individual concerned retracts the authorisation to perform a business granted by the Austrian Chamber of Commerce. However, in very specific circumstances, without loss of the said authorisation, the individual concerned can nevertheless be deemed unemployed. In **Bulgaria** on the other hand, employment status (irrespective of whether it concerns regular or self-employment) is determined by reference to proof attesting to the fact that the person is indeed occupied, receives a form of income for the work she or he does, pays the respective contributions and pays taxes for the income she or he receives. The status of unemployment is attained following registration as such in the competent labour office. In **Croatia** six scenarios are used to determine whether an individual is (self-)employed

and thus not unemployed.[58] In order to prove self-employment as opposed to unemployment in **France** the individual concerned will have to provide proof of having paid the requisite contributions as well as proof of affiliation to old-age insurance. Finally, in **Poland** the distinction between self-employment and unemployment is assessed via the practice of an economic activity, irrespective of income thresholds.

As aforementioned, certain Member States (**CY, DE, IS, IE, IT**) make the distinction between self-employment and unemployment based upon a case-to-case assessment.

3.4.3. Self-employment vis-à-vis labour law and benefit entitlement

Not surprisingly, the status of self-employment entails in a vast majority of Member States (**AT, BE, BG, HR, CY, CZ, FI, FR, IS, IE, LV, LI, LT, LU, PL, RO, SI, SE, CH, UK**) that labour law provisions are not or only to an extremely limited extent applicable to the individuals concerned. Within this context a slight nuance is in order, however. In several Member States (**BE, FR**, **PL, SE, UK**) limited labour law provisions are indeed applicable – in particular as concerns health and safety at work. In addition to the foregoing, self-employed individuals in said Member States have access to social security coverage and welfare benefits. However, yet again, a small nuance is in order. Whilst in certain Member States self-employed workers enjoy the same rights to social security coverage as regular workers, in certain other States such coverage is limited to particular branches of social security. For example, such coverage is limited in, amongst others, **Ireland**, **Liechtenstein, Lithuania** and **Switzerland**. In **Liechtenstein** social security coverage is limited to old-age benefits, survivor benefits and disability benefits. However, as noted by **Switzerland,** in certain instances it may nevertheless be possible for the self-employed individual to opt for voluntary complementary insurance. A noteable exception to the 'limited rights' approach appears to be **Spain**, where, if contribution conditions have been met, self-employed individuals can access social security benefits related to healthcare, accidents at work and occupational diseases, temporary disability, maternity and paternity, risk during pregnancy and lactation and adoption, permanent disability, retirement, survivors' pension, dependant child and out-of-work benefits, and social services related with re-education, rehabilitation and old-age assistance are available to self-employed individuals.

Contrary to the foregoing, in **Germany, Italy** and **Norway,** self-employed individuals enjoy a somewhat less protected status whereby neither labour law provisions nor social security provisions are applicable. In **Germany** in particular this is the case, albeit necessary to note that this is not the case as concerns health insurance, which remains applicable even with respect to self-employed individuals. Moreover, whilst in **Norway** self-employed individuals are excluded from most benefits, in **Italy** self-employed individuals are excluded from both labour law provisions as well as welfare benefits.

3.4.4. Treatment of bogus self-employment

3.4.4.1. The regulation of bogus self-employment

Bogus self-employment can be defined as occurring when an individual is registered as being self-employed, but is *de facto* bound by an employment relationship.[59] In those Member States that acknowledge or have been confronted with the phenomenon of bogus self-employment, it need not surprise that measures have been taken in order to fight this practice. To this end, a vast majority of Member States (**AT, BE, HR, FR, EL,**

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[58] See the Croatian country report.

[59] Y. Jorens, D. Gillis, L. Valcke & J. De Coninck, 'Atypical Forms of Employment in the Aviation Sector', European Social Dialogue, European Commission, 2015.

IS, IE, LV, LI, LT, MT, NO, PL, PT, RO, SI, ES, SE) – as a curative measure – have undertaken to reclassify the working relationship to a regular working relationship in case of findings of bogus self-employment. Of the aforementioned Member States, a number of initiatives related to such reclassification are noteworthy. In **Portugal** for example, following a finding of bogus self-employment by the Authority for Employment Conditions, the parties concerned will have ten days to sign an employment contract – if this is not done, the re-classification will nevertheless occur. In **Iceland** and **Slovenia** such reclassifications need to be effectuated by a (labour) court.

In **Italy** a distinct approach is employed in dealing with bogus self-employment. In fact, such contracts are accorded the status of parasubordination, which is the status for those in the grey zone between self-employment and regular employment, with less rights vis-à-vis regular employees. In **Switzerland** reclassification does not occur. Rather the individual concerned will merely be considered as not engaging in an economic activity.

Conversely, in **Cyprus** and **Finland** it appears that the notion and issues related to bogus self-employment are either rare or non-existent. As a result thereof, no pertinent sources could be found.

3.4.4.2. The consequences of bogus self-employment

Whereas it can generally be held that consensus exists amongst Member States that bogus self-employment is to lead to a reclassification of the working relationship (see *supra*), it appears that certain differences do exist amongst the Member States as concerns the consequences accorded as a result of the reclassification. In a number of Member States (**AT, BE, EL, IS, LV, LI, LT, PT, RO, CH**) retroactive contributions and taxes, and/or fines will need to be paid. In **Austria** and **Belgium** in particular it appears that the retroactive contributions are, however, limited in time. In **Austria** social security contributions will need to be retroactively paid for a maximum period of five years. In **Belgium**, following requalification, retroactive settlement of contributions will take place, which is limited to three years. The calculation of the contributions is a complex system for which two methods are employed (either fictitious income to determine the contributions, or the income received as a self-employed individual). Generally the individual concerned will be entitled to benefits in full, due to having paid contributions as a self-employed individual. However, she or he may lose pension rights for anything exceeding three years. Also, the competent Member State may change in a cross-border scenario.

In addition to the foregoing measures, **Bulgaria,** the **Czech Republic** and **France** impose sanctions as a result of bogus self-employment, which is to be distinguished from the aforementioned retroactive contributions. In the **Czech Republic**, when bogus self-employment is discovered, a fee may be imposed of up to € 74,000, whilst sanctions in **France** are solely imposed upon the employer and may be criminal and/or civil in nature.

Finally, in **Germany, Ireland, Malta** and **Spain** a combination of the two foregoing approaches is employed whereby both retroactive contributions will be demanded, in addition to potential sanctions.

3.4.5. Verification of self-employment

Interestingly, the verification of declarations of self-employment is demonstrative of a distinct divide amongst the Member States. Whilst a number of Member States (**BG, CY, EL, IS, IE, MT, PT, RO, SK, SE, CH**) routinely verify such declarations, a number of Member States (**AT, BE, DK, FR, LT, NO, PL, SI, ES**) do not impose such routine verifications.

Mindful of the aforementioned divide as concerns the verification of declarations of self-employment, it is interesting to note the various measures taken and mechanisms established to verify self-employment across the Member States. These measures can be

divided into two distinct groups. Firstly, a number of Member States (**AT, CY, DK, EL, MT, NO, PT, SK, CH**) verify self-employment (retroactively) via court proceedings and/or administrative authorities. Secondly, a number of other Member States (**BE, DE, HU, IS, IE, IT, PL, RO, SI, SE**) achieve the verification of self-employment via declarations, tax authorities and/or other competent authorities, which receive relevant data as such pursuant to registration and/or certifications. In **Poland**, the relevant administrative body may require different types of evidence, including contracts, invoices, information about the performed activities, the account of witnesses *etc*. It may also ask other bodies and institutions for information and verification.

Concerning the first type of verification of self-employment, certain noteworthy examples are described in what follows. **Denmark** notes that elements to be taken into consideration in an assessment of the employment relationship are documents attesting to the economic activities pursued by the person concerned, the registration and via tenancy agreements for office space. In **Greece** verification occurs by the Administration of OAEE or by audit bodies from *IKA*, which often organise audit controls, in order to 'capture' ambiguous cases of employment. In **Malta** on the other hand, the Labour Inspectorate carries out investigations both *ex officio* as well as on the basis of complaints received. The inspectors seek the information necessary, which leads them to ascertain whether there is a case of bogus self-employment and whether the law is being complied with. If there appears to be a breach of law, the inspectors consider the arguments of the alleged perpetrator and request that the situation is rectified. If the person concerned persists in breaching the law, the inspectorate is empowered to institute criminal proceedings against the latter and in terms of law. In **Poland** various documents may be requested to attest to the status of self-employment, including amongst others contracts, invoices, information about the performed activities, the account of witnesses *etc*. It may also ask other bodies and institutions for information and verification.

As aforementioned, verification in numerous other Member States occurs via taxation authorities and/or other competent authorities as a result of registration and certification of the individuals concerned. A few noteworthy examples in this respect are described in what follows. In **Belgium** verification is achieved on the basis of taxation data (inlandrevenue), which has to be declared mandatorily. In **Hungary** self-employment is verified by means of a self-employment card or certificate attesting to the registration thereof in the Public Self-Employed Registry. Additionally, self-employment is verified either via the system run by the tax authority or the Public Self-Employed Registry. **Irish** verification of a self-employment status commences with the registration of the individual concerned with the Revenue Commissioners. Self-employed persons must subsequently confirm their status on the submission of tax returns. The Revenue Commissioners carry out non-audit compliance interventions, audits and investigations (including unannounced visits) to verify declarations of self-employment. In some cases, the Revenue Commissioners will carry out joint operations or inspections with other bodies, such as the Department of Social Protection, the National Employment Rights Agency or the national police force. In **Italy** these verifications are achieved via certification commissions. The findings of these commissions are not *de iure* binding upon courts. However, during court proceedings these findings tend to be followed insofar the facts of the case have not changed substantially. The taxation authorities in **Slovenia** have issued a guide, which further elaborates upon the notion of bogus self-employment. The taxation authorities can furthermore, in case of a finding of bogus self-employment claim taxes and social security contributions. Finally, in **Sweden** verification occurs via the declaration of taxes and the acquisition of the Business Tax Certificate. If an individual foregoes the declaration of his or her taxes, the person concerned will lose said certificate.

3.5. *Economically dependent workers and parasubordination*

3.5.1. The status of economically dependent workers

When discussing various forms of employment and in particular the divide between regular typical employment vis-à-vis self-employment, mention needs also be made of economically dependent workers, and how such workers are regarded and treated across Member States. It appears that while certain Member States (**CZ, IS**) consider economic dependency merely as a factor to help determine self-employment vis-à-vis regular employment, other Member States (**AT, HR, FR, DE, EL, IT, NO, PT, SI, ES**) accord economically dependent workers a separate status separate from both self-employment and regular employment. This entails that a large number of Member States acknowledge a third type of work in addition to the traditional dichotomy between self-employment and regular employment. Finally, a number of Member States (**BE, HU, IE, LV, LI, LT, LU, NL, PL, RO, SK, SE, CH**) have yet to establish a specific legal regime associated to the status of economically dependent workers. It need be noted, however, (see *supra* 3.4.1. Distinguishing self-employment and regular employment), certain Member States may regard the construct of economic dependency as a relevant factor – much like the **Czech Republic** and **Iceland** – in the determination of self-employment vis-à-vis regular employment.

Recall that in **Austria** economic dependency is not determinative to distinguish between self-employment and employment. However, the Austrian Supreme Court has established several conditions in order to ascertain whether an individual is *economically dependent.* Such conditions include that the person concerned has no real operational structure, is providing services predominantly deploying his or her own workforce, has minor capital expenditures, and a stipulation of non-compete clauses. It appears that in addition to self-employment and regular employment, this form of employment is subsequently a third form of employment. In conformity with Austrian practice she or he is characterised as being *personally independent*, but providing services to a restricted amount of clients only.

Similarly in **Croatia** economic dependency is considered as a third form of employment, encompassing elements of self-employment as well as regular employment. That would be the case for instance for journalists who exercise certain tasks exclusively for one particular publisher. The person concerned will pay social security contributions and taxes in relation to his or her earnings. Within this context, it need be noted, however, that there has been case law, albeit rare, wherein the employment relationship was in fact re-qualified to being regular employment.

Parasubordination, as explained, as a third category of work, does not exist in **France** as it does in the aforementioned Member States. Rather, the legislature has identified various forms of employment relationships which do not fall entirely within the category of self-employment/regular employment, including, amongst others, journalists, models, home workers and artists. These categories of individuals will be subject in certain instances to an employment contract and thus enjoy labour law protection, and some will be subject to mixed regimes. As a result of such mixed regimes, various labour law provisions may be applicable, in addition to the social security entitlements also available. In the **United Kingdom**, a 'third form' of work exists – the 'worker' category used under s230(3) of the Employment Rights Act 1996.

Within this same vein, in **Germany** a third category of economically active individuals is recognised in German legislation (in addition to self-employment and regular employment). This third category is described as encompassing individuals who are economically dependent yet are not bound by instructions and therefore not *personally dependent*. A mixed regime of rights and obligations applies to these individuals, as they are often qualified as self-employed persons in need of additional labour law protection.

In **Greece** economically dependent work as a self-employed person as such is unknown in legislation. However, specific legislation has been adopted for work, which cannot strictly be qualified as either self-employment or regular employment. For the categories of work encompassed in said legislative instrument, a presumption of an employment contract applies with all subsequent consequences. For other forms of employment which fall within this grey zone, the applicable rules on self-employment will apply.

Economically dependent workers in **Italy** are qualified as para-subordinate workers as stipulated by the 2015 Jobs Act. Such working relationship must be continuous and coordinated and entail personal work for a single private undertaking or public administration.

Norwegian legislation acknowledges *non-employed employees*. This refers to individuals who receive a salary/wage without being temporarily or permanently employed. This category of workers can include – by means of an example – freelance workers, and is somewhat reminiscent of the regime in Croatia.

Portugal, Slovenia and **Spain** also recognise the notion of economically dependent self-employed workers. **Portugal** accords them additional protection in case of cessation of their activities. In order to be eligible for the allowance pursuant to this legislation, a number of conditions must be met, including an 80% threshold and residence in Portugal (frontier workers are thus denied an allowance as such).

In contrast, a number of Member States (**BE, CZ, HU, IS, IE, LV, LI, LT, LU, NL, PL, RO, SK, SE, CH**) have not enacted a (*de facto*) separate regime for economically dependent workers. As noted this does not entail that economic dependency is not deemed relevant in the determination of self-employment vis-à-vis regular employment – quite the contrary as demonstrated in the **Czech Republic** and **Iceland**. However, it need be noted that in **Belgium** for example, economic dependency is not a criterion to distinguish between various forms of employment. Rather, personal subordination is the primary criterion to make this distinction. Hence, whilst economic dependency may be taken into consideration in a case-to-case assessment of the relevant facts, it is not necessarily determinative for this distinction.

3.5.2. Labour law and welfare benefit entitlements of economically dependent workers

In view of the foregoing, whereby it is clear that economically dependent workers are either subject to a distinct third regime of rights and obligations distinct from both self-employment and employment, or not regulated at all, it need not surprise that such workers are hardly treated like regular employees. Whilst in **Austria** economically dependent workers are treated like regular employees as concerns social security coverage, and in part as concerns labour law provisions, this is not automatically the case in other Member States. In a number of Member States (**HR, CY, HU, IS, LV, NO, ES**) economically dependent workers are in fact treated as though they are self-employed. In **Spain**, such workers have the entitlements of self-employed persons, and in addition rights to redundancy pay and paid holidays. In line with the foregoing, certain other Member States (**CZ, DE, IT, SI**) have enacted a specific mixed regime, which combines the particularities of self-employment and regular employment as a tailor-made approach to the protection of this third category of workers. Lastly, various Member States (**FR, EL, IE, LI, LT, LU, NL, PL, RO, SK, SE, CH**) have refrained from imposing a standard approach. Rather, these States focus on a case-to-case assessment of the relevant facts, before determining the labour law applicability and benefit entitlements of economically dependent workers.

Concerning those States which accord economically dependent workers the status of self-employed individuals, the following examples are noteworthy.. In **Cyprus**, despite economic dependency upon one client, no distinct legal regime for such workers applies, and the individuals subsequently formally have the status of self-employed persons. As a result, labour legislation is not applicable; whereas such individuals will be entitled to

social security benefits if the requisite conditions are met. Similarly, in **Hungary** labour law provisions are not applicable to economically dependent workers. This approach is also apparent in **Croatia, Iceland, Latvia** and **Norway.**

As previously indicated, in the **Czech Republic, Germany, Italy** and **Slovenia** a (*de facto*) specific mixed regime has been established. Whilst in the **Czech Republic** it is contended that a regime as such exists, it nevertheless appears that labour law is applicable, whereas social security entitlement will be available to the individual concerned albeit in a more limited manner than for employees. Similarly in **Germany** a mixed regime of rights and obligations applies. In **Italy** concerning social security rights, progressive entitlement to a number of social security benefits was established via legislation. Consequently, such workers now have access to rights such as limited maternity rights, family allowances, parental leaves, accident and disease on work insurance. Similarly, albeit via case law instead of legislation, a third category of workers has emerged as concerns labour law, whereby certain labour law provisions have been extended to para-subordinates. Lastly, in **Slovenia** limited labour law provisions apply and such workers are accorded equal treatment as concerns social security, including mandatory contributions/coverage for unemployment.

Finally, a number of Member States (**FR, EL, IE, LI, LT, LU, NL, PL, RO, SK, SE, CH**) resort to a case-to-case assessment of the relevant facts in order to determine the rights and obligations incumbent upon the worker concerned.

3.5.3. Labour law and welfare benefit entitlements of economically dependent EU national workers?

Economically dependent EU national workers generally enjoy the same labour law and welfare benefit entitlements as national workers, as indicated by a number of Member States (**AT, HR, CY, DE, EL, HU, IE, IT, LI, NO, SI, ES**). However, in **Portugal** equal treatment concerning economically dependent workers is restricted to those individuals effectively residing in Portugal, entailing that such benefits are not available for economically dependent frontier workers.

3.6. Other fringe work

3.6.1. The regulation of rehabilitative work and/or sheltered work

Whilst in a number of Member States (**AT, FR, NL, PT, SI, SE**) rehabilitative or sheltered work enjoy a specific legislative framework, in other Member States (**HR, CZ, FI, EL, IS, IT, LT, MT, NO, PL, SK**) such work is qualified as regular employment or as one of the aforementioned forms of employment, or else there have been no legal authorities to indicate a different approach should be taken.

Case law and practice in **Austria** have resulted in the acknowledgement of rehabilitative and sheltered worker as distinct from a normal employment contract due to the fact that the former is in the interest of the individual concerned, whereas the latter is in the interest of the employer. Similarly, in **France** rehabilitation centres have been set up to facilitate access to work for individuals with disabilities, and which are governed by a specific legislative framework. Individuals employed via such rehabilitation centres are not considered as employees under French legislation. Within this same vein, rehabilitative and sheltered work in **Portugal** is governed by the Act on Employment in Public Functions, which establishes a special legal framework for workers with special needs. In addition, in **Slovenia** work as such is governed by the Vocational Rehabilitation and Employment of Disabled Persons Act. As such, in Slovenia sheltered work is to occur in a working place and working environment adjusted to work capacities and needs of such a person, who is not employable in a regular working place. Sheltered labour places are determined in an act by the employer or in the risk assessment statement. Sheltered employment is provided by employment centres, but also by disability companies. In addition, work at the home of a disabled person may be qualified as a sheltered

employment. It is important to note that a disabled person concludes an employment contract for sheltered employment. Furthermore, the way and scope of professional assistance and guidance of a disabled person and other services have to be determined in said employment contract. Participants in rehabilitative/sheltered work in **Sweden** (*skyddat arbete)* are not regarded as workers according to the law on employment protection. They are, however, entitled to, amongst others, remuneration in accordance with collective agreements. In relation to Union citizens, activities aimed at rehabilitating persons to go back to work are considered to fall outside the concept of worker, according to the National Board of Health and Welfare.

In the **Netherlands** legislative amendments have been adopted concerning the notions of rehabilitative and/or sheltered work. Until 1 January 2015 the *Wet Sociale Werkvoorziening* (Social Employment Law) provided rules intended to provide work for the purpose of maintaining, restoring or improving the capacity for work of persons who, for an indefinite period, are unable, by reason of circumstances related to their situation to work under normal conditions. For that purpose, Dutch local authorities were to be set up, with financial support from the state, undertakings or work associations, the sole purpose of which is to provide the persons involved with an opportunity to engage in paid work under conditions which correspond as far as possible to the legal rules and practices applicable to paid employment under normal conditions insofar as the physical and mental capacities of the workers do not justify a derogation in that regard. As of 1 January 2015, with the entry into force of the Participation Act, these social workplaces are regulated by municipalities, as a result of which the possibilities to work in such places may vary from municipality to municipality. Municipalities may offer 'residents' the possibility to work in social employment places. Participation in social employment in itself does not give rise to worker status for the purposes of Article 45 TFEU. Finally, the Law on Provision of Incapacity Benefit to disabled young people (*Wet arbeidsongeschiktheidsvoorziening jonggehandicapten – 'the Wajong'*), which as of 1 January 2015 has been brought under the umbrella of the Participation Act) provides for the payment of a minimum benefit to young persons who are already suffering from total or partial long-term incapacity for work before joining the labour market. Disabled young people are defined as residents who on their 17th birthday were already incapable of work or who, if they become incapacitated subsequently, have studied for at least 6 months during the year immediately preceding the day when their incapacity for work arose. Employers who hire a person receiving a *Wajong* benefit may pay less than the minimum wage; the benefit thus to a varying degree replaces the wage that should ordinarily be paid and received.

As aforementioned, in a large number of other Member States (**HR, CZ, FI, EL, IT, NO, PL, RO**) rehabilitative and/or sheltered work is considered as either regular employment or another form of widely recognised employment (see *supra*), with all labour law provisions and welfare benefits associated thereto. This does not entail, however, that additional protective provisions are not provided for. For example, in **Croatia** employment is available for individuals with a disability in integrative and protective workshops. However, the workers, contrary to the foregoing category of Member States, do retain worker status. Similarly, in the **Czech Republic** employment of persons with disabilities is regulated by labour rehabilitation and sheltered workplaces made available by labour offices. The person concerned can, via these means, acquire the status of an employee. **Finland** notes that indeed rehabilitative work and sheltered work can be qualified as regular employment, albeit with some differentiation concerning the applicable rights and obligations. This same approach is applied in **Iceland**, **Italy, Norway, Poland,** and **Slovakia**. In **Norway**, the Work Environment Act governs rehabilitative and sheltered work and the individuals concerned are regarded as employees. Similarly, individuals in **Greece** who have a disability of 50% or more are entitled to work in sheltered workshops and enjoy employee status. Polish legislation recognises the employment by cooperative bodies, which are associations of persons acting and performing economic activities in the interest of its members. Persons employed by such bodies are considered workers under the Polish labour code, and thereby also by the Act on entrance and stay of the EU citizens in Poland. Social

cooperative bodies constitute a special form of such bodies and combine features of entrepreneurship and an NGO (social entrepreneurship). The members of such body need to be at least 50% persons at risk of social exclusion. Though employment in sheltered work enterprises and vocational activity establishments that are provided in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities is aimed strongly on rehabilitation of workers with disabilities, their work is recognized as genuine and effective as they work on regular employment contracts.

In a number of other Member States (**BE, CY, DK, DE, LV, LI, LU, ES, MT, UK)** there are no indications in domestic legal sources as to how rehabilitative and/or sheltered work fit into Article 45 TFEU. This may imply that individuals in work as such are deemed as regular employees, albeit necessary to note that this has not been confirmed thus far. Indeed, **Ireland** notes in this respect that no distinct legal regime can be observed for the purpose of rehabilitative or sheltered work, and as such there is no certainty as to the status of such workers.

3.6.2. The regulation of students who work

It is interesting to note that with respect to students who work only a limited number of Member States – **Belgium** and **Croatia** in particular – have established a specific statute for such workers. In particular in **Belgium** students jobs are allowed for a totality of 50 days per year. Such jobs are subject to a distinct legal regime, whereby lower social security contributions are paid. In **Croatia**, student centres act as mediators, but the employed students are not considered 'workers' despite the applicability of similar employment-like elements. **Liechtenstein** has established a threshold for working students to qualify as workers: as soon as students demonstrate that they work at least '50%' they may qualify for worker status. But the national law (Article 5 *PFZV*) does not expressly say what 50% signifies. Therefore, an evaluation is likely to be made based on the hours (at least 20 hours per week). No income threshold is expressively defined by the law. The **Netherlands** has also established a student specific threshold: students who work 56 hours a month or more are considered workers for the purposes of, and thus become entitled to, student financial aid covering maintenance costs. As 56 or more hours of work a week as a rule comes close to 40% of the normal working time in a given sector, the student-workers concerned will as a rule also be regarded as a worker for the purposes of residence under the Aliens Act, Decree and Circular. Such student-workers are in principle not entitled to (supplementary) social assistance as they are either not fully available for additional work or receive an income exceeding the social assistance standard.

Conversely, the majority of Member States (**CZ, DK, FI, FR, DE, EL, IS, IE, IT, NO, PL, RO, ES, SE, CH, UK**) treat students who work as regular workers or as apprentices or trainees, or do not have any domestic authorities suggesting they be treated differently, such as in Lithuania. This does not entail, however, irrespective of the applicable regimes, that no additional protective and tailor-made provisions exist for particular student jobs. In the **Czech Republic** for example, there is no specific regime applicable to student jobs and they are subsequently subject to general labour legislation. However, if it concerns students below the age of eighteen, protective provisions apply whereby regard is had for working hours, overtime, working conditions, and certain prohibited work. Similarly, **Italy** notes that students will be considered as workers, albeit additional protective provisions may apply to facilitate their continued education. **Iceland** prohibits the employment of individuals below the age of sixteen. However, employment of individuals aged sixteen or above is subject to normal labour legislation. In the **United Kingdom** students who work are also subject to the same regulations as non-students who work. However, they are more likely to have part-time, temporary (summer jobs) and possibly be on zero-hour contracts.

The same approach is adopted in **Denmark, Finland France, Germany, Ireland, Malta, Norway, Sweden** and **Switzerland**. In **Norway**, students who work are equally so governed by the Work Environment Act and are to be regarded as employees. In

Switzerland, as soon as they work, students can qualify as workers. Students will subsequently be categorised as, amongst others, regular employees, apprentices and trainees insofar the respective conditions with respect thereto have been met.

3.6.3. The regulation of individuals bound by workfare programmes

The regulation of persons on workfare programmes is subject to specific legislation in a substantial number of Member States (**HR, CZ, FR, DE, IE, IT, LT, SI, SK, ES, SE, CH**). In a far more limited number of Member States (**BE, FR, EL, NO, RO**), such workers fall under one of the aforementioned categories of workers. In addition to the foregoing, a number of Member States (**CY, IS, LV, PL, UK**) simply do not have any sources available with respect to persons engaged in workfare programmes.

Concerning the Member States, which have enacted specific legislation concerning workfare programmes, the following examples are noteworthy. As will be observed, none of the workers within the framework of such programmes are considered as regular employees.

In **Croatia**, entitlement will be conditioned upon the furnishing of evidence as to why – insofar the individual concerned retains the full or partial capacity to work – offered jobs, or partaking in various trainings/retraining or communal workfare programmes have not been engaged in at risk of losing the minimum guaranteed income.

Most contracts in **France** aimed at facilitating employment, are regular employment contracts. However, a specific contract, i.e. a CIVIS/social integration contract, is meant to enable young individuals aged between 16 and 25 to find employment in the event that they are facing difficulties doing so. The contracts concerned are concluded with local employment offices and are renewable. As a result, welfare benefits become available after the age of 18 to cover periods of unemployment.

Workfare programmes as such do not exist in **Germany**. However, there is the *One Euro Jobs* programme, which allows for participation by participants that are entitled to social assistance. Participation in the programme is not determinative for the receipt of social assistance but it may indirectly impact the social assistance received. This does not qualify as work and the individuals concerned are not qualified as employees.

Somewhat similarly to the foregoing, in **Ireland** the JobBridge Scheme is available, which enables 6-9 month internships with a host organisation to facilitate access to employment. Participants retain social welfare payments as well as an additional € 50/week. They are not considered as employees. In addition, the First Steps Programme, as part of the EU Youth Guarantee is in the process of being set up.

In **Slovenia**, the *ZDR-1* regulates a special employment contract for the purpose of executing public works (in its Article 64). An unemployed person who is engaged in public work concludes an employment contract with the employer – a provider of public works. This is concluded for the duration of 1 year and may be extended for an additional year.

In **Spain** the Public Employment Services manage a work experience programme targeted specifically at young people (between 18 and 25 years of age) who, due to their lack of work experience, have difficulties finding employment. This work experience is not considered employment. It is implemented in companies engaged in the programme, and may last between three and nine months. Participants receive a scholarship from the company for an amount of at least 80% of the IPREM (multiplier for the public income index) in force at any given time (currently € 532.51/month).

Those participating in workfare programmes in **Sweden** are considered as unemployed. This means that if she or he is not actively seeking work or is hindering the chances of

finding employment, benefits may be withdrawn as noted in the Regulation on Activity support.

In **Switzerland**, the Swiss federal unemployment insurance organises work programmes for jobseekers (Article 64a *LACI*). In criminal law, a sanction can furthermore be replaced by workfare (Article 107 of the *Code penal suisse*, RS 311.0). The Cantons are competent to adopt rules about social assistance. The legislation of the Canton of Zürich, for instance, contains rules about workfare; every person who benefits from social assistance has, in principle, to accept such work. However, it need be noted that as these individuals are dependent upon social assistance they do not qualify as workers under the FMP-Agreement.

Several other Member States (**BE, FR, EL, MT, NO, RO**) simply do not subject workers engaged by a workfare programme to a distinct legislative framework. In **Belgium** in particular, all those who lack sufficient means of existence are entitled to the right to societal integration, which consists either of a cash benefit and/or employment. Concerning the latter, the Public Centres for Social Assistance act as the employer and can post the individual concerned to a third party. This can nevertheless be held to constitute migrant work. In **Norway**, individuals engaged by workfare programmes are governed by the Work Environment Act and are to be regarded as employees.

3.6.4. Conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC

3.6.4.1. Incapacity or illness

In a large majority of Member States (**AT, BE, CY, CZ, DK, FR, DE, IS, IE, IT, LV, LI, LT, MT, NL, NO, PL, PT, RO, SI, ES, SE, UK**) no general time limits are imposed upon the retention of worker status following incapacity or illness, so long as the incapacity is temporary. Generally no additional conditions are imposed either. As noted by **Austria** a case–to-case assessment will be requisite in order to determine the loss of worker status. However, a few exceptions and nuances are necessary. In **Belgium** for example, despite the lack of formal time limits and additional conditions, it appears that the Council for Alien Litigation is in fact extremely strict when assessing whether worker status should be retained. Furthermore, in the **Czech Republic** sickness benefits may be retained up to 380 days of illness. Permanent residence may be granted in case of grade-3 disabilities. In **Denmark,** in order to retain worker status, the illness is required to have occurred during the employment as opposed to afterwards, albeit that this will be subject to a case-to-case assessment. In **Slovenia** mention is made of the fact that despite no general time limits or conditions applying, special rules are imposed, however, following the termination of a contract of a disabled person who has not fully lost her or his working capacity. Finally in the **United Kingdom** workers can also retain worker status when they stop working if they are temporarily unable to work due to illness or accident; no time limit is stipulated.

In **Croatia, Greece, Slovakia** and **Switzerland** on the other hand, conditions have been imposed. In **Croatia** as soon as employment is discontinued the individual loses worker status. However, for the purpose of retaining temporary residence the person is nevertheless considered as a worker insofar a number of conditions are met. The social security entitlements nevertheless change subsequent to the loss of employment. In **Greece,** if the individual concerned is not disabled beyond 50%, she or he will not lose his or her worker status. Worker status will be retained irrespective of time limits insofar the disability or illness is temporary and not definitive. Finally, whilst in **Slovakia** the time limit is set at 42 days, the time limit in **Switzerland** is held at five years.

3.6.4.2. Involuntary unemployment

In **Belgium, Italy, Liechtenstein, Portugal, Romania, Slovenia** and **Spain** no additional time limits or specific conditions are imposed concerning the retention of

worker status pursuant to involuntary loss of employment. However, it need be noted yet again, that in **Belgium** in particular, the practice with respect thereto is in fact very stringent, arguably to the detriment of the individuals concerned.

In the majority of Member States (**AT, HR, CY, DK, FR, DE, EL, IS, IE, LV, LT, LU, NL, NO, PL, SK, SE, CH, UK**) however, it appears that time limits and/or additional conditions for the retention of worker status have been imposed. In a number of these respective Member States (**CY**, **DK, FR, DE, IS, IE, LV, LU, NL, NO, PL, SE, UK**) the imposed time limit and conditions are identical. If the individual concerned had been employed for the duration of at least one year prior to the involuntary unemployment, she or he will retain worker status for an indefinite amount of time. If the person concerned had been employed for less than one year, she or he will retain worker status for a maximum duration of six months in said Member State. In addition to these time limits, persons in said States will have to register as being unemployed and/or participation in vocational training may be required as noted by **Ireland.** In addition, in **Iceland** and the **United Kingdom,** proof will need to be provided attesting to the fact that the person concerned is effectively looking for employment. In the **UK**, this condition also extends to those who have worked for more than one year.

In **Lithuania** worker status is retained insofar as the claimant is registered as a jobseeker and in case of preceding employment having been of a fixed nature, for six months.

Somewhat distinct from the foregoing, in **Austria** no time limits are imposed if the person concerned is registered as unemployed and available for national labour market authorities (the dissolution of the agreement cannot have been based upon mutual agreement). In **Croatia** as soon as employment is discontinued the individual loses worker status. However, for the purpose of retaining temporary residence the person is nevertheless considered as a worker insofar a number of conditions are met. The social security entitlements nevertheless change subsequent to the loss of employment. Finally, in **Malta** it suffices for the individual concerned to register as being unemployed whilst genuinely looking for employment.

3.6.4.3. Pregnancy and maternity

In **Denmark, France, Germany, Italy, Liechtenstein, Romania, Slovenia** and the **United Kingdom** no additional time limits and/or conditions have been imposed concerning the retention of worker status pursuant to *Saint Prix*.

In several Member States, however, time limits and/or additional conditions have been imposed. In **Belgium** for example, the Council for Alien Law Litigation distinguishes cases of marginal work from the *Saint Prix* judgment, whereby worker status is not retained when the employment preceding the cessation was marginal of nature. Similarly to the retention of worker status in case of involuntary unemployment in **Croatia,** worker status will be lost if the employment is discontinued. However, for the purpose of retaining temporary residence the person is nevertheless considered as a worker insofar a number of conditions are met. The social security entitlements nevertheless change subsequent to the loss of employment. In **Greece,** worker status will be retained during the pregnancy/maternity for a period of 18 months. In **Malta** worker status will be retained if return to work is effectuated within a reasonable time following the birth. Reasonable time, however, is not defined. Finally, in **Slovakia** worker status will be retained for three years, whilst in **Switzerland** worker status will be retained for five years.

3.6.5. The loss of worker status

In a significant number of Member States (**AT, BE, DK, FR, DE, IS, IT, LI, LT, LU, MT, NL, NO, PL, PT, RO, ES, CH**) the most prevalent effect following loss of worker status will be the conjoint loss of residence rights. This is subject to the nuance, however, that

this loss will not be automatic. In **Austria** for example, loss of residence may occur if the person concerned had not been in Austria for more than five years. Moreover, for this to occur specific procedures must be followed and actions must be taken. In **Belgium** on the other hand, the loss of residence is quasi-automatic, the practice of which has become subject to scrutiny by the European Commission. In **Germany,** the **Netherlands, Spain** and **Switzerland** loss of residence will be subject to an assessment as to whether the individual concerned has sufficient resources to nevertheless retain residence. The procedure after failing to retain worker status in **Lithuania** is not stringent and individual situations must be assessed with respect to all relevant facts. Insofar individual conditions such as actively looking for employment are not met, she or he will be asked to leave the State within 30 days, which may be extended in certain cases.

As concerns other Member States, reference is made to additional consequences which may occur. In the **Czech Republic** for example, there is sole mention of the loss of insurance, as is the case in **Finland**. In **Greece**, the consequences are mainly related to labour law (dismissals) and/or tax law (tax evasion). Specifically, the labour relation is retroactively considered as void and the loss of worker status might lead to the finding of tax evasion. In **Ireland** on the other hand, the consequences depend upon the individual circumstances, and the length of residence in Ireland. In terms of residence and access to benefits, Directive 2004/38/EC governs the implications. The main consequence attached to the loss of worker status in Latvia is the loss of state-paid health care. Upon loss of employment, the employer is under an obligation to notify this to the competent National Health Care Centre. In Slovenia worker rights will no longer be enjoyed, whilst in Sweden the loss of worker status will similarly lead to impacts on the access to social assistance benefits. However, for the latter State, an overview of the consequences is difficult to ascertain in view of the fact that various government authorities are competent for various consequences.

3.6.6. Additional forms of fringe work

In **Greece** note can be made of accommodation owners (personal business) with an accommodation capacity of up to ten rooms. At present, these are qualified as a form of minor ownership, which is currently subject to the obligatory social security affiliation to the *OGA* (Institution of Farmers) and not the *OAEE* (Institution for Independent Professionals). This might entail that owners of small accommodation might be qualified as workers under Article 45 TFEU. There is disagreement amongst legal scholars as to whether it is appropriate to qualify small accommodation owners as workers.

Note can also be made of various forms of work in **Liechtenstein** concerning persons practicing sports, members of Church, artists and au pairs.

Another kind of fringe work relations in **Italy** is the *Prestazione occasionale* (occasional work), which is defined by the law as those para-subordinate forms of collaboration occupying the worker no more than 30 days per year with the same employer *and* providing the worker with a wage less than € 5,000 per year. In such cases, occasional workers do not have access to the welfare benefits provided for para-subordinate workers.

Short-term work in **Slovenia** is regulated by legislation and may be performed by marital, extra-marital or same-sex partners, or parents or children (of an owner or his or her spouse/partner), lasting for a maximum of 40 hours per calendar month. It may be performed only in micro-companies or institutes or with self-employed persons with a maximum of 10 employees. Such work must moreover be without remuneration. Hence, it is not genuine work. Despite not being qualified as genuine work, certain provisions such as those concerning health and safety remain applicable.

Finally, in the **United Kingdom** the position of agency workers is unclear and complex and has not been clarified by case law entailing that the relationship between workers, the agency and the employer may be unclear and possibly open to abuse. The Agency

Worker Regulations, which came into effect in October 2011, give agency workers the right to no less favourable treatment – that is no less favourable than the treatment available to directly employed staff. However, the provision for equal pay only comes into effect after a period of twelve weeks of employment, which leaves workers who are supplied to employers for a short time vulnerable, and it incentivises agencies and employers to contract for short periods to avoid the additional rights and costs provided for by the regulations.

Clearly, the foregoing findings are demonstrative of various and extremely varied trends in the application and regulation of migrant work and atypical forms of work in particular. These discrepancies and differences can be attributed to any number of factors relating to, amongst others, the prevalence of migrant work in the respective Member States, political perspectives and the prevalence of various forms of atypical employment. In what follows an analysis is provided of these findings in view of the relevant CJEU case law concerning migrant work across Member States.

4. CROSS-CUTTING ANALYSIS OF NATIONAL FINDINGS IN THE LIGHT OF THE CJEU CASE LAW

What is immediately clear from the questionnaire findings is that there are many different approaches taken to defining migrant work, and in particular taken to each form of non-standard work. The result is a great multiplicity of statuses depending on the Member State. The accepted tenet that the concept of migrant work has a 'Community meaning' is somewhat undermined by the variety of definitional mechanisms used to include or exclude EU migrants from residence rights and social entitlements.

In *Hoekstra*,[60] the Court of Justice of the European Union (CJEU) declared that the Treaty provisions on the freedom of movement for workers would be "*deprived of all effect and[…] [Treaty objectives] would be frustrated if the meaning of such a term could be unilaterally fixed and modified by national law.*"[61]

It seems that, partly due to changing labour environments and practices, which create new work phenomena not envisaged by the CJEU, and partly due to the definitional grey areas deliberately left by the CJEU, Member States are giving their own interpretations as to what counts as work.

4.1. The boundaries of part-time and atypical work – 'marginal and ancillary' work

It is important to first address the boundaries of the 'straightforward' employment relationships in which the *Lawrie Blum*[62] criteria are not disputed. For 'part-time and atypical work' in category 'A' of the questionnaire[63] the key distinction is between genuine and effective work, and marginal and ancillary work. Part-time and atypical contracts are on the rise,[64] especially in the lower paid sectors in which EU migrants are often concentrated.[65] As such, the boundaries of what counts as work are ever more pertinent, and likely to be increasingly contested. It is not sufficient to assume that the CJEU has dealt with this in prior case law, as is evident in the various rules emerging in different Member States with regard to part-time and atypical work – rules which can result in significant social and financial exclusion for the workers concerned, since being classified as a job-seeker, or economically inactive, can have severe consequences for social entitlements and the ability to subsist.[66]

As we have seen in section 2, the combined *Lawrie Blum, Levin*[67] and *Kempf*[68] formulation is very broad – with the CJEU appearing to conceive of 'marginal and ancillary' as a residual category. The importance of part-time work was recognised as

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[60] Judgment in *Hoekstra*, C-75/63, EU:C:1964:19.

[61] *Ibid*, paragraph 1.

[62] Judgment in *Lawrie-Blum* EU:C:1986:284.

[63] See 3.1 in this report.

[64] "*The proportion of the EU-28 workforce in the age group 15–64 years reporting that their main job was part-time increased steadily from 16.7 % in 2004 to 19.6 % by 2014'; also 'In 2014, the proportion of employees in the EU-28 with a contract of limited duration (fixed-term employment) was 14.0 %*". Eurostat 'Employment Statistics' Data from August 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics, last accessed October 2015.

[65] Koch, M. & Fritz, M. *Non-Standard Employment in Europe: Paradigms, Prevalence and Policy Responses* (Palgrave Macmillan, 2013): "*Migrants were more likely to be in fixed term contracts than native born workers in all countries except Austria in 2005, and the difference was at least 50% in Ireland, the UK, Greece, Spain and Finland*."

[66] See O'Brien, C. 'The pillory, the precipice and the slippery slope: the profound effects of the UK's legal reform programme targeting EU migrants' 2015, 37(1) *Journal of Social Welfare and Family Law* 111.

[67] Judgment in *Levin* EU:C:1982:105.

[68] Judgment in *Kempf* EU:C:1986:223.

constituting "*for a large number of persons an effective means of improving their living conditions*" even if it provided "*an income lower than what is considered to be the minimum required for subsistence*", and so part-time work could not be excluded from free movement rights, as otherwise "*the effectiveness of Community law would be impaired, and the achievement of the objectives of the Treaty would be jeopardised*."[69]

For the CEJU in *Levin,* the key component of genuine work therefore seems to be whether it is an effective means of improving living conditions. Given the recognised prevalence of part-time work, and its importance for 'a large number of persons' the presumption is in favour of a finding of work:

'the concepts of 'worker' and 'activity as an employed person' must be interpreted as meaning the rules relating to freedom of movement for workers also concerns persons who pursue or wish to pursue an activity as an employed person on a part time basis only and who, by virtue of that fact obtain or would obtain only remuneration lower than the minimum guaranteed remuneration in the sector under consideration.'

This presumption is rebuttable:

> "*Whilst part-time employment is not excluded from the field of application of the rules on freedom of movement for workers, those rules cover only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary*."

This scheme suggests that only in borderline cases will part-time work and atypical work need to be examined as possibly marginal and ancillary. However, a number of questionnaires appear to suggest that national authorities reverse both this presumption and the burden of proof, so that part-time and atypical workers are required to demonstrate that they are not in marginal and ancillary work, but are in genuine and effective employment. Some Member States impose hours thresholds, some impose earnings thresholds, and others do not have thresholds but require that hours and earnings are taken into consideration. Where thresholds are imposed, (in theory) claimants are entitled to a case-by-case assessment. However, here two issues arise: (a) there seems to be doubt in some responses as to how seriously this assessment is taken, and suspicion that the initial thresholds are practically determinative and (b) even where a case-by-case assessment is permitted, it is subject to the presumption of marginal work and a reversed burden of proof for the claimant as mentioned above.

For instance, **Finland** imposes an 18 hour per week threshold, or else 80 hours in 4 weeks with hours worked in each week, combined with a €1,165 per month earnings threshold. **Denmark** imposes a 10-12 hour per week threshold, **Belgium** a 12 hour threshold, and in **Germany** an 8 hour threshold has been used (below which individual circumstances should be examined – below 3 hours it is assumed work is marginal and ancillary). However, the German threshold is not decisive – and there is significant case law suggesting that contrasting assessments are made in factually similar cases of persons with low hours; the cases on low earnings above might be contrasted with the case in which three to four working hours one day a week together with 'totally insignificant earnings' was held insufficient in 1999 in order to qualify as worker according to the association agreement with Turkey because it indicates only 'marginal and ancillary' work.[70] The *Bayerische Verwaltungsgerichtshof* (Administrative Court of Second Instance) has concluded that the provisions of the association agreement do not apply in case of workers not obliged to contribute to the social insurance system.[71] At the

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[69] Judgment in *Levin* EU:C:1982:105, paragraph 15.

[70] *VG München* (Administrative Court of First Instance), 2 February 1999 – M 21 K 98.750, InfAuslR 1999, 223.

[71] *Verwaltungsgerichtshof Bayern* (Administrative Court of Second Instance), 14 March 2000, InfAuslR 2000, 269.

moment, this would indicate an earnings threshold of € 450 per month – a so-called 'mini-job'.[72] However, more recent decisions explicitly differ from these restrictive views and confer the status as worker also to persons with 'mini-jobs'.[73] The *Verwaltungsgerichtshof Baden-Württemberg* (Administrative Court of Second Instance) in a ruling of 2012 held that earnings below the minimum subsistence level as well as claiming social benefits do not necessarily exclude qualifying a person as a worker.[74] The **French** system appears to impose an indirect threshold for qualifying as a worker for the purposes of claiming some benefits, by requiring workers to be affiliated with the French health insurance scheme, which our respondent worked out corresponded to a threshold of either 60 hours a month or earnings equivalent to 60 times the hourly minimum wage. (Alternatives covering different lengths of time were also provided – 120 hours over 3 months or 1,200 hours over a year). The **Dutch** system requires that a worker earns more than 50% of the social assistance standard, or works at least 40% of the normal working time. The **United Kingdom** has introduced a Minimum Earnings Threshold equivalent to the point at which employees start paying National Insurance, which is currently £155 per week,[75] equivalent to 23 hours per week at the national minimum wage. **Luxembourg** appears to draw upon an unofficial 10-hour threshold, below which work is considered marginal. Luxembourg does not consider intermittent, short-term work to be work. The criteria that need be met are either income amounting to 50% of the social assistance standard, which means 50% of the Social Minimum Income (*RMG*) for one adult (€ 1,348 per month since 1 January 2016), which is € 674 per month, or employment amounting to 40% of normal working time, which means 40% of 40 hours per week, which is 16 hours per week (Article L. 211-5 of the Labour Code).

Italy has established a category of 'lavorio accessorio' – marginal and ancillary workers – which cannot include those who earn more than €7,000 per year or more than €2,000 from a single employer. It is not clear whether it is expected that in order *not* to be classified as marginal and ancillary the reverse applies – i.e. whether they must earn more than €7,000 per year in order to be classed as doing genuine and effective work.

The thresholds in **Belgium**, **Denmark** and the **UK** are not officially determinative. The Danish response makes it clear that the Danish immigration service couple their threshold with references to EU case law suggesting that it is not possible to set a lower limit for the duration of employment, and that every case has to be assessed on a concrete and individual basis. However, the response also notes that work below the 10-12 hours threshold is typically treated as 'marginal and ancillary and not actual economic activity'. 'Normally […] the definition of work requires 10 to 12 hours per week', so that someone on a zero-hour contract will need to show that she or he fulfils this minimum. Those on zero-hour contracts are advised to work for 3 months before making claims, and to then show that they have met the weekly minimum. Or, if found to be workers at the outset, they will then be monitored for 3 months to assess whether they have continued to pass the threshold.

Likewise, in **Belgium**, there is a theoretical possibility for those beneath the 12 hour threshold to be found to be workers, but the information gathered by the respondent suggests this is very unlikely. First of all, decision makers are not obliged to refer such cases for further examination to the Immigration Office, and when they do, the Immigration Office 'in all likelihood refuses it'. The 12 hour threshold exists in 'unpublished guidelines' but appears to be determinative: 'work shorter than 12 hours is in practice **quasi-irrefutably presumed to be marginal and ancillary**. Further

[72] Section 8, Book III of the Social Code.

[73] *OVG Berlin-Brandenburg* (Administrative Court of Second Instance), 30 March 2011 – OVG 12 B 15.10, paragraph 33.

[74] *Verwaltungsgerichtshof Baden-Württemberg* (Administrative Court of Second Instance), 29 October 2012 – 11 S 24/12, paragraph 25.

[75] Decision Makers' Guide Vol 2 Chapter 7, Part 3, paragraph 073035, Amendment 30, February 2015.

elements are unlikely to enable a person, who works less than 12 hours, to obtain the status of migrant worker'.[76] The respondent highlights a case in which a person who worked 278 hours over 6 months, so 46.33 hours per month, (not far off the 12 hour per week threshold) was found not to be a worker.[77]

The **UK** also provides, at least in theory, for work below the threshold to be genuine and effective. Again, doubts have been raised – through research conducted separately by one of the authors of this report[78] – as to the genuine nature of the second tier of the test, and whether it allows for the expansive approach mandated by the CJEU, or is treated as all-but determinative. However, of particular note here is that the test reverses the presumption – in favour of a finding of marginal and ancillary work – and reverses the burden of proof, at a high threshold point. So earnings below £155 (24 hours per week at the national minimum wage) will trigger a presumption that work is marginal and ancillary and it is up to the claimant in each case to displace that presumption. The Decision Maker Guidance indicates this presumption with the words "*part time employment is not necessarily always marginal and ancillary*".[79] As a statement of probability, this means it 'usually is marginal and ancillary' and only in exceptional cases will it be found to be genuine and effective.

In other Member States, responses suggest that there are no exact thresholds, but that hours and earnings are taken into account as part of a wide assessment. The result in some cases – such as Ireland, is a considerable variation in approaches even within one Member State due to decision maker discretion (which is perhaps inevitable if there is a case-by-case assessment).

Atypical workers will often perform a series of separate, consecutive periods of work. It is not clear in most Member States whether the approach taken to separate periods of work is altered by there being gaps between those periods. Periods may fall to be assessed separately rather than cumulatively, and gaps may themselves constitute periods in which the person was not a 'qualified person' if not otherwise covered by Article 7 of Directive 2004/38/EC. Or the periods may be amalgamated into the overall period of work. Here, a case-by-case approach seems to be taken, meaning there is little certainty as to how long gaps need to be for the worker status to be lost. In the UK there is some judicial authority for treating a broken period of work as work overall if the time spent in work was longer than a period of not work: *NE v Secretary of State for Work and Pensions*,[80] where Rowland held: 10 [9] "*Where short periods of temporary work are not separated by longer periods of no work, it will often be appropriate to regard the person concerned as having become a worker rather than a workseeker*". However, this approach could be contrasted with the decision maker guidance, according to which 'intermittent' work and 'erratic' work, or work intended to be short-term at the outset, is less likely to be found to be genuine work[81] (so that a lot of consecutive short-term contracts might each be found not to be work).

4.2. The rights of 'workers'

As a brief aside, we should note that even being classified as a worker is not necessarily determinative of rights, as a few Member States seem to have different approaches to social assistance entitlement. The **Netherlands** do not allow access to social assistance for any EU migrants, workers included, for the first three months of residence. It is not

[76] Belgian questionnaire response.

[77] Council for Alien Law Litigation, 27 December 2012

[78] As part of the EU Rights Project www.eurightsproject.org.uk.

[79] Department of Work and Pensions (2014) 'JSA)IB) – Right to Reside – establishing whether an EEA National is/was a worker or self employed person Memo DMG 1/14, 19.

[80] [2009] UKUT 38 (AAC) (13 February 2009) UTJ.

[81] Decision Makers' Guide Vol 2 Amendment 28, June 2014, paragraphs 071180 and 071211.

clear how compatible this rule is with EU law – as it represents an expansive interpretation of the derogation in Article 24(2) of Directive 2004/38/EC. In practice, a number of Member States have a similar *de facto* approach, by only recognising worker status until at least three months of work have been performed (**BE**), or only allowing automatic recognition of worker status after three months of work have been performed (**UK**).[82]

A rather startling response from Croatia suggests that only Croatian citizens resident in Croatia and foreigners with permanent residence are entitled to welfare benefits.[83] Others may get one-off payment or temporary accommodation.[84] If this continues to be the case then this would surely be a significant infringement of the equal treatment to which EU migrant workers are entitled.

4.3. On-call and zero-hour contracts

There is significant variation in the very existence of zero-hour contracts, since several Member States do not recognise them as legal, while others do. In general, those workers with zero-hour or on-call contracts will have a harder time than 'typical' workers establishing their worker status, and are more likely to face a reversed burden of proof. In Italy, on-call workers are divided into two categories – those who have an obligation to be available when not working, and those for whom no such obligation exists – they can turn down shifts. Status in the latter category is only 'worker' during the time they are working – not while they are waiting between calls: "*when the employer does not call the worker, no relationship exists between the parties*".[85] This could be problematic, as it can create an incentive for employers to have a large number of people 'not obliged' to work shifts on their books, who are in turn doubly disadvantaged in not receiving protection as EU workers between calls.

4.4. Other factors affecting the definition of work: familiarity, motivation, physical capacity

A number of Member States (DE, IE, LU, PL and UK) suggest that one or more factors such as familiarity, motivation and physical capacity play a part in the overall assessment of the work. Here, two key points are worth noting – the role of the perceived 'motive' to get eligibility for benefits, and the UK's regard for perceived physical capacity. In Germany there have been rulings finding that someone who takes up work in order to become a migrant worker eligible for benefits is not a worker.[86] This is potentially controversial. It is now not disputed that the economically inactive who move solely to seek benefits in another Member State are not entitled to equal treatment in the context of social assistance, but extending this principle to those who *work* – and indeed finding that work has an ulterior motive – does not have a sound basis in EU law. In Germany the position is that the freedom to move to work is to enable access to employment but should not be a 'door opener' to accessing social benefits. In EU law, work has traditionally been the 'door opener' to accessing a host State's solidarity system, and the key indicator of social and economic integration. When it comes to identifying someone's

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[82] See the Decision Maker Guidance: 'Part 3 - Habitual residence & right to reside - IS/JSA/SPC/ESA' para 073038 'An EEA national who has worked as an employee or in a self-employed capacity will be automatically considered as a worker or self-employed person for the purposes of EU law if 1. their average gross earnings from employment or self-employment in the UK were more than £646 pcm (£149 a week) in 2013/14, and or £663 pcm (£153 a week) in 2014/15, and 2. **the gross earnings were at or above that level for a continuous period of 3 months immediately before the date from which benefit has been claimed.'** (emphasis added). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470826/dmgch0703.pdf

[83] Under the Social Welfare Act Art 22(1) - Official Gazette Narodne novine Nos 157/13 and 152/14.

[84] Aer 22(3) social welfare act.

[85] Trib Perugia 2.5.2014.

[86] LSG Berlin-Brandenburg Social Court Second Instance 4 June 2015.

motive as purely being to gain a right to reside, it seems that someone's natural affinity for the work plays a part – in that a former teacher with a degree in engineering and chemistry, who took up work as a cleaner was found not to be a worker since she or he must have taken it up just to get a right to reside, as the work did not correspond with her or his qualification.[87] This approach is also problematic, not least as many EU workers are overqualified for the positions they occupy[88] – positions which in many cases might be taken up for a number of different reasons, such as to regularise their right to reside as well as to earn money, but also as a first step on the employment market ladder, or in order to gain language proficiency and so on. Furthermore, it should be remembered that the reasons that lead someone to migrate have always been immaterial: for instance in *Akrich* the CJEU clarified that the fact that a couple had migrated to another Member State with the sole intention to trigger the right to family reunification conferred on migrants by Union law was immaterial to the definition of migrant worker.[89] In the above mentioned case of *N.*[90] the CJEU found it equally immaterial that the worker might have entered into an employment relationship with a view to benefit from study support at university. Consistency would therefore require that the same approach be taken more generally in relation to welfare benefits.

In Poland, in theory, the motive of getting access to benefits does not preclude someone from being a worker as the key criteria are activities performed and contributions made. But, in practice, refusals happen where decision makers are suspicious that someone's motivation for movement was to access benefits, with reference to 'lawful social conduct'. Case law suggests that authorities are not allowed to refuse benefits on that basis, but the respondent finds that they do so nevertheless. In Croatia, it seems that there may be a refusal to recognise worker status for pregnant women if it is believed that the employment contract was concluded solely for the purpose of obtaining maternity benefits. This would bear more investigation, as on the face of it this represents not only a barrier to the free movement of workers but also direct discrimination on the grounds of sex.

The UK has regard, in conjunction with other criteria, to physical capacity to perform the work when retrospectively deciding whether someone really was a worker, if it transpired that they had to leave their employment for reasons related to capacity or disability.[91] This is deeply problematic, since it invites post hoc speculation on the part of decision makers, which is potentially discriminatory on the grounds of disability. It goes against the trend within the EU of creating a more inclusive workplace and of activating disabled persons in the labour market, if they take part in work and then are later found to have not really been workers. This factor derives from a single Upper Tribunal judge. It has been crystallised into the Decision Maker Guidance – and decision makers are not required to adduce contemporary occupational health reports or conduct an investigation with the help of experts – and is listed under 'factors to be taken into account' as one of twelve principles derived from EU law. It is not – it has no basis in EU law and it contradicts the case law analysed in section 2 in relation to genuine and effective activity (see in particular *Fenoll*).[92]

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[87] OVG Rheinland Pfalz Administrative Court of Second Instance 2 April 2009.

[88] A UK study has found that male immigrants from the 'new' EU12 States are more likely than their UK born counterparts to be overqualified for their jobs. S. Altorjai 'Overqualification of immigrants in the UK' Institute for Social and Economic Research, University of Essex, Working Paper No 2013-11 July 2013, 29. According to a 2011 Eurostat study the average overqualification rate of natives in EU Member States was 21%, and the rate for non-native EU nationals was 28%. Schuster *et al Recognition of the Qualifications and Competences of Migrants* (2013 International Organisation for Migration) 17.

[89] Judgment in *Akrich* EU:C:2003:491.

[90] Judgment in *N.* EU:C:2013:97.

[91] Department of Work and Pensions (2014) 'JSA)IB) – Right to Reside – establishing whether an EEA National is/was a worker or self employed person Memo DMG 1/14, 25.

[92] Judgment in *Fenoll* EU:C:2015:200.

4.5. The entitlements of workers treated as jobseekers

Those who are found to be in marginal and ancillary work do not have worker status and so are treated as jobseekers, notwithstanding that they are actually performing economic activities. This has significant repercussions for social welfare entitlement. In Italy jobseekers are not entitled to any cash benefits; in Portugal they are not entitled to benefits from the 'solidarity system' though they may be entitled to income for reinsertion into the job market. Elsewhere, there is great uncertainty. In the Netherlands, jobseekers are excluded – beyond the first three months of residence – from social assistance,[93] but in practice some municipalities give social assistance to jobseekers found to be residing lawfully. In the UK, rules have recently changed to withhold Jobseeker's Allowance (and other benefits) from jobseekers for the first three months of residence, to strip EU national jobseekers of entitlement to Housing Benefit, and to limit JSA entitlement to three months. For some Member States the definition of a '*Collins'* benefit is rather in doubt – i.e. what counts as facilitating access to the labour market. In Germany only help with jobseeking, rather than cash benefits count – an approach apparently endorsed by the CJEU in *Alimanovic*.

The limits and conditions placed on jobseekers' rights to reside vary widely between Member States. Most Member States proceed on a case-by-case basis, yielding different approaches to what counts as evidence of continued jobseeking and of a genuine chance of employment. In Germany, participation in job interviews, visiting companies and responding to job adverts have been found to be positive factors.[94] In contrast, a claimant who had collected job adverts, assembled handwritten addresses, telephone numbers and a job application was not found to have proved continuing jobseeking and a genuine chance of being engaged.[95] It seems that temporary incapacity may result in failing the *Antonissen* test in Germany.[96]

Very restrictive interpretations of genuine chances of employment are taken in Belgium and the UK. In Belgium, if someone is in part-time work which has been found to be marginal and ancillary, that work will not count as evidence of a genuine chance of employment. In the above mentioned case, in which a worker performed 46.33 hours per month, she was found not only not to be a worker, but not to have a genuine chance of employment and so not to have a right to reside as a jobseeker either.[97] Other cases include a claimant who had been in genuine and effective work for three months, but was found after two months of marginal and ancillary work not to have a genuine prospect of engagement, because she had not submitted the certificate of equivalence of her degree, and the information provided on her work-seeking efforts was considered insufficient. This suggests a very heavy evidential burden being placed on the claimant – the mutual recognition of qualifications should create more of a responsibility on Member States than it does for individuals. There was no regard in the case to her possibly being classed as having retained worker status.[98]

Being in subsidised work, far from providing evidence of increasing one's chances of re-entering the labour market, is considered evidence of there *not* being a genuine prospect of work[99] – which may raise issues of disability discrimination, as well as calling into question the premise of labour market reintegration programmes. In another case, a person who had been resident in Belgium for eight years and was working under the programme of the Public Centre for Social Assistance, had his right to reside terminated,

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[93] Article 11(2) of the *Participatiewet*.

[94] *VG Regensberg* (Administrative Court of First Instance), 14 February 2014.

[95] *Bayerischer Verwaltungsgerichtshof* (Administrative Court of Second Instance), 11 February 2014.

[96] *Oberwaltungsgericht Schleswig-Holstein* (Administrative Court of Second Instance), 26 June 2014.

[97] Council for Alien Law Litigation, 17 December 2012.

[98] Council for Alien Law Litigation, 27 Feb 2015

[99] Council for Alien Law Litigation, 13 June 20123

having been found to be neither a worker nor someone with a genuine chance of engagement. Rather counter-intuitively, a claimant having taken steps to enhance their employability has been taken as evidence that they do not have a genuine chance of engagement, as in the case of a claimant who undertook language training, integration training and employability training – all of which apparently was evidence against a right to reside.[100]

The UK approach has recently changed to introduce a 'Genuine Prospects of Work' test after three months of claiming Jobseekers Allowance. This test requires 'compelling evidence' of a genuine prospect of work – which must be a prospect of 'genuine and effective work' (i.e. must pass the Minimum Earnings Threshold or will be presumed to be marginal and ancillary unless this is rebutted with sufficient evidence).[101] The nature of the 'compelling evidence' required is the subject of considerable controversy in the UK,[102] and it makes it unlikely that many people will be found to have a prospect of work. There are two types of 'compelling evidence' described in the guidance. The first is an actual offer of employment, which must include sufficient detail to convince the decision maker that it is genuine and effective – containing details of hours, pay and duration *etc*. The offer of work based on a zero-hour contract is unlikely to constitute compelling evidence, and a person with that job offer will be found not to have a genuine prospect of work, regardless of how many hours the person is going to work in reality.[103]

The second type of compelling evidence is a change of circumstances in the last two months which makes 'imminent' employment likely, where the person concerned is waiting for the outcome of job interviews. This is a very specific set of facts. The guidance stipulates that any other evidence, even if 'compelling', of a genuine prospect of work, is irrelevant if it does not fit the 'two month change of circumstances' criterion.

The approaches in the UK and Belgium seems to conflict with the formulation in *Antonissen*, since they do not appear to honestly assess whether someone has a 'genuine chance' of being engaged.

4.6. Retained worker status

For those who are recognised as having been workers, but who have temporarily stopped work, the implementation of Article 7(3) of Directive 2004/38/EC is crucial. This was addressed in the questions at section F (2) of the questionnaire,[104] but their analysis logically follows on from the preceding section. With regard to 7(3)(a) of Directive 2004/38/EC, temporary illness and incapacity, almost all respondents did not report that the retention of worker status was subject to any time limit – with the exceptions of Switzerland – a 5-year time limit – and Slovakia – a 42-day time limit. This 42-day limit seems to have no basis in EU law, and would certainly be challengeable as a limit placed on Article 7(3)(a) of Directive 2004/38, as an obstacle to movement, and as an undue restriction on a right enshrined in Directive 2004/38/EC.

The respondent from Greece indicated that there is an incapacity 'cap' placed on those wishing to retain worker status – that they must not be disabled by more than 50%. It is not clear how this works in practice if, for instance, a person's degree of disablement

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[100] Council for Alien Law Litigation, 11 Dec 2012

[101] Department of Work and Pensions 'Habitual residence and the right to reside – JSA' Memo DMG June 2014, 15.

[102] See the work of the Child Poverty Action Group on this: 'Martin Williams 'Kapow to the GPOW' July 2015 [Kapow to the GPOW], last accessed October 2015.

[103] Department of Work and Pensions 'Habitual residence and the right to reside – JSA' Memo DMG June 2014, 15; example scenario 5 shows a decision against a claimant having a GPoW because 'the income, hours per week and duration cannot be confirmed'.

[104] See 3.6.4. in this report.

varies over time. Nor is it clear that this cap would be compliant with equal treatment obligations on the grounds of disability, so long as the incapacity was temporary, or if they would in the future be able to return to the job even with a high degree of disablement.

When it comes to retaining worker status following involuntary unemployment, most Member States do not impose a time limit on that retained status for those who have worked for more than one year and so fall under Article 7(3)(b) of Directive 2004/38/EC. In Greece there is an 'approximate' time limit of 12 months. Several States (SE, PL, NO, NL, LU, LT, LV, IE, DK, FR and DE) then impose a six-month ceiling on retention of worker status for those who have worked for less than one year, and so fall under Article 7(3)(c) of Directive 2004/38/EC. The UK seems to be alone in treating those under Articles 7(3)(b) and 7(3)(c) of Directive 2004/38/EC similarly. Those who have been working for more than one year are subject to a six-month limit on retention of worker status, after which they can retain it for longer only if they pass the 'compelling evidence of genuine prospects of work test' placed on jobseekers.[105] As noted earlier, this test is extremely difficult to pass, and at most only allows for a very short extension, since passing the test involves proving that you are about to start work (either because you have a job offer, or because you have evidence that an imminent offer of employment is likely). This time limit, and this test, imposed on those with retained worker status under Article 7(3)(b) of Directive 2004/38/EC does not seem to be supported by EU law.

As for retaining worker status under *St Prix*,[106] very few Member States have stipulated conditions or time limits. In Greece, worker status is retained for 18 months, in Slovakia three years, in Switzerland five years. It does not appear that other Member States have defined what constitutes a 'reasonable period' following child birth for worker status retention, and we may expect to see some problems emerging as this ruling begins to bite, and States start capping the period.

4.7. Apprenticeships/traineeships/internships

Moving into non-standard forms of occupation, the diversity of approaches between Member States is evident. As apprenticeships can form the gateway to some forms of employment, their status, and accessibility to EU migrants can be crucial. Some Member States treat them, at least in some circumstances, as effectively being workers (DE, FR, AT, IS, IE, LI, IT), others as students (EL, HR) and others may treat them as potential workers, depending on circumstances (PL, LT, BE, LV), but who may not be found to be in genuine and effective work; in the UK for instance, apprentices aged 16-18, or 19 or over and in their first year, are only entitled to a National Minimum Wage of £3.30.[107] This means that to automatically pass the Minimum Earnings Threshold they would have to work 47 hours per week. In some Member States (CZ, NL and RO) the situation of apprentices is not regulated, creating uncertainty and debate.

As a consequence, welfare entitlement of apprentices varies enormously between Member States, since entitlement is dependent upon their status within Directive 2004/38/EC. Rights to remuneration vary considerably, from unremunerated placements (LT, in some cases LV), to posts with partial remuneration (HR, 10% in the first year, 20% in the second, 25% in the third), through to posts with only partly lower than non-apprenticeship remuneration (ES, 75% in the first year, 85% in the second). In France alone, remuneration may vary between 25-78% of the relevant minimum wage.

[105] Decision Maker Guidance Vol 2 Amendment 31, June 2015, Part 3 paragraph 073090.

[106] Judgment in *Saint Prix* EU:C:2014:2007.

[107] UK Government: National Minimum wage rates: https://www.gov.uk/national-minimum-wage-rates, last accessed October 2015.

The significant variation in approaches to, and so rights of, apprentices, trainees and interns is some cause for concern. It is not clear what the rationale for distinguishing between those apprentices that are paid from those that are not, nor how Member States determine whether apprenticeship is more like work or study. It is also worth noting the Cypriot respondent's comment that in any case, workers must be 28 years old before they are entitled to the minimum wage.

4.8. *Voluntary work*

Unlike the other areas covered by the questionnaire there does seem to be some consistency in the approach to volunteering within Member States – although voluntary work is very differently defined and conceived of, and provided for legislatively in different ways, the common denominator is that it is not considered to be 'work' for EU purposes. It is generally not considered to be a 'gateway' to work in any formal sense, nor is it particularly considered to be evidence of a person's prospects of work (this was specifically stated in a Belgian case).[108] It may, however, in Germany, be considered alongside actual paid employment as evidence in favour of a 'strong commitment to employment'.[109]

There were a few noteworthy points. In France there are different forms of volunteering. One form, described as volunteering, though forming a type of part-paid civic service, i.e. '*service civique*', involves a payment of €573 per month, and the respondent noted that it is not clear what the status of an EU national in such a role would be. In Bulgaria there is provision for obtaining a residence permit on the ground of long-term volunteering.[110] The Law on Entry, Stay and Departure of the Republic of Bulgaria of EU citizens and their family members is being amended to add, after the term employee, 'volunteer who has concluded a contract for long-term volunteering according to the Law on Volunteering'.[111] It is not yet clear what the implications are for social entitlements, but in any case it represents an interesting, and apparently unparalleled, development in terms of a volunteering-based residence right for EU nationals.

4.9. *Bogus self-employment*

Many States are concerned about the problem of bogus self-employment, and attempts by *de facto* employers to avoid financial, fiscal, and employment law obligations. Most adopt a similar mechanism to distinguish between self-employment and employment – i.e. a variation on the notion of subordination, which may be determinative (BG, HR, DK, FR, EL, LU; DE, AT, RO and CZ refer to 'dependence') or may be one of a group of factors (UK, IE, IS, BE, LI, NL, NO, PL, PT, ES, SE and CH). In distinguishing self-employment from economic inactivity, there is some inconsistency. Some States demand requisite contributions to have been made, (SE, LI, FR, BG and AT) which would imply income of a certain level (in LI, for example, this corresponds to a yearly wage of CHF 3,000) – often meaning the business must be in profit. Denmark just requires that there be actual turnover and thus evidence of economic activity. Germany adopts the same test for 'genuine and effective' as opposed to 'marginal and ancillary' activity as used for workers.

Most Member States exclude the self-employed from most labour law provisions, while including them in the duty to make social security contributions and so entitling them to (some) social security coverage (AT, BE, BG, HR, CY, CZ, FR, IS, LV, LI, LU, SI, PL, SE, CH and UK). In Italy, however, the self-employed are excluded from welfare benefits. If

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[108] Council for Alien Law Litigation, 17 December 2012.

[109] Administrative Court, 23 January 2013.

[110] Law on Foreigners in the Republic of Bulgaria, Article 10.

[111] Item 19 in the Law on Foreigners in the Republic of Bulgaria, Article 24 paragraph 1.

self-employment is found to be bogus, it will usually result in reclassification as employment – if it meets the definition of employment. In Italy there is the possibility of being classified as a parasubordinate. Reclassification may result in requiring retrospective payment of contributions.

Member States differ quite widely on whether routine verification of self-employment takes place – with approximately a third routinely verifying declarations, a third not routinely verifying, and a remaining third where the situation is not clear. Whether routine or not, different means of verifying self-employment were deployed – courts, administrative authorities, taxation procedures, registration and certification procedures. There is no correlation between 'type' of verification and whether such verification is routine, reactive or random.

Confusion over the fringes of the definition of self-employment creates problems when it comes to social entitlements, since the self-employed are, like workers, within the personal scope of Directive 2004/38/EC. There is little guidance available on this matter, and some definitional tools would be useful, to prevent completely disparate and unrelated exclusions being created in different Member States. The difficulty in getting businesses into profit should be taken into account when delineating the scope of self-employment.

4.10. Parasubordination

There is a wide variation in how the concept of parasubordination is received in different States. Several do not recognise the category at all; in others there is a recognised grey area between employment and self-employment, but this is not accounted for legislatively, in systems which still rely on a clear distinction between the two, and in a few the concept has come to be recognised and regulated.

In the Czech Republic, Latvia and Iceland, parasubordinates will generally be treated as self-employed. In many States (BE, HU, IE, LI, LT, LU, NL, PL, RO, SK, SE and CH), parasubordinates will be assessed to see whether they should be treated as self-employed or as employed. So-called 'third' forms of employment have been identified as between employment and self-employment in Austria (where the person has personal independence but provides services to one or a few clients only); Croatia (for journalists who are technically self-employed but work for one publisher); Germany (the personally independent but economically dependent); Greece (which nevertheless then divides those in the grey area between those with employment rights and those to be treated like the self-employed); Italy (which has the category of 'parasubordinate' in the Jobs Act 2015 – defined as continuous, coordinated personal work for a single undertaking; Norway (non-employed employees – wages without employment, e.g. freelance workers); Portugal (the economically dependent who have some protection in the event of cessation of activities); Slovenia (which has a sub-category of self-employment of economically dependent self-employed); Spain (the same as Slovenia); France (which recognises that some categories of individuals are subject to mixed regimes, and so may have a mixed range of labour law and social security entitlements), and the United Kingdom (in the 'worker' category used under s230(3) of the Employment Rights Act 1996).

As a consequence of this considerable conceptual divergence, very different rules are applied to economically dependent workers, depending on whether they have been allocated to the regime for employed persons, that for self-employed persons, whether they are allocated to a specific regime, or are subject to a mixed regime approach. All of this divergence is in the context of national workers, so if we consider the situation of EU national parasubordinates, the situation escalates in complexity. While many respondents indicate that EU nationals and home state nationals would be assessed in the same way, without any greater degree of harmony of basic concepts, let alone rules, it would be very difficult in most cases to predict the status of an EU migrant parasubordinate, and thus to predict their right to reside.

4.11. Other fringe work

The issue of *Bettray*[112] work – rehabilitative or sheltered work – continues to give rise to strikingly different definitions of work, unilaterally modified by Member States. One group of States (AT, FR, SE, NL) treat such work as distinct from employment, so presumably not capable of being work for the purposes of Article 45 TFEU; what is more, they appear to do so automatically, without regard to the nature of the work done, the productivity of the worker, the profits made, the hours worked, the degree of subordination *etc*. In this way, *Bettray* seems to have allowed several Member States to avoid engaging with the *Lawrie Blum* criteria, notwithstanding that judgment's supposedly narrow ratio. In other States (HR, CZ, FI, EL, IT, NO, PL) they are treated as 'regular' employees. Without a more thorough examination of the fabric and regulation of each of these regimes, it is difficult to comment further. This issue may well merit a more substantial investigation, to determine whether there is or should be a coherent rationale for some social/rehabilitative employment to be classed as work, and for some not to be, or whether the differences simply reflect different national preferences, in which case they are not justified. In any case, there is a strong argument for a narrow construction of the *Bettray* exception, not as a blanket coverage of rehabilitative/sheltered work generally, but as only covering drug addiction rehabilitation.

The rationale offered by Austria for excluding rehabilitative work is that it is performed in the interest of the worker concerned and not in the interest of the employer. This generalisation seems to be at odds with the nuances in the case law examined in Section 2, where, as we have seen, beside rehabilitative work for addiction, most rehabilitative/social work has been defined as genuine and effective despite the absence of market conditions, the lower remuneration and so on.

The Austrian approach echoes the argument made in the German case, in which it was decided that selling street newspapers could not be classed as work, because purchasers did not buy 'because of an interest in the paper, but to support indigent persons'.[113] Speculation on the motives of purchasers is somewhat unsupported (presumably relying heavily on the Advocate General's Opinion in *Bettray)*[114] and a remote factor on which to determine another person's status. Sweden also rules out the possibility of homeless magazine sellers being considered workers.[115]

Any arbitrary differences in how persons with disabilities are treated, and in their recognition as workers and their ensuing social entitlements, could amount to disability discrimination, and impede the free movement of workers with disabilities.

Students who work are typically treated as any other worker, and subject to the same genuine and effective tests. However, there are notable exceptions. The Dutch system has a separate test for students who work, who must work 56 hours per month in order to be eligible for student financial aid. They would not, however, then be entitled to supplementary social assistance, due to not being available for full-time work, or to receiving an income above the social assistance standard. Student workers have distinct statuses in Belgium and Croatia (and in the latter are explicitly not workers).

The final 'fringe worker' subject, those on workfare programmes, generated extremely different responses, not least because some Member States recognise and practice 'workfare' and others do not. Of those that do have such programmes, only Norway, Greece and Belgium explicitly permit activities performed thereunder to be considered work (providing they meet national definitions of genuine and effective). Most workfare

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[112] Judgment in *Bettray* EU:C:1989:22.

[113] LSG Hessen Social Court of Second Instance, 14 October 2009.

[114] Opinion in *Bettray* EU:C:1989:113.

[115] Gothenberg, case 4223-14.

regimes discount the possibility of activities counting as work. However, as with rehabilitative work, this would bear closer scrutiny of the nature of work performed *etc*, to ensure that States are creating principled, rather than arbitrary, exclusions. The respondent for France notes that an exclusion in French law from the definition of work, of someone working in the *Centre d'aide par le travail* was found by the CJEU[116] to be a worker for the purposes of Article 7 of Directive 2003/88/EC and Article 31 of the Charter of Fundamental Rights of the European Union.

[116] Judgment in *Fenoll* EU:C:2015:200.

5. CONCLUSIONS: CHANGES, CHALLENGES AND PROBLEMS

Working patterns are changing. Part-time and atypical employment are on the rise, and different forms of working relationships are emerging, such as parasubordination. With EU migrants often concentrated in lower paid, less stable positions, and atypical work relationships, the incoherent, inconsistent treatment as between different States of such workers – both during their activities, and during the inevitable gaps between them where contracts are short-term, or 'on-call' – significantly undermines the protections that are otherwise afforded to those in 'typical', stable employment relationships whilst also threatening the effectiveness of the free movement of workers provisions.

It is important to bear in mind the social security legal context in which this is happening. Those EU migrants found not to be workers are increasingly excluded from any form of social protection (even as regards Regulation (EC) No 883/2004), following CJEU decisions in *Brey,*[117] *Dano*[118] and *Alimanovic*,[119] so the definitional boundary between work and not-work is increasingly crucial. As things currently stand, although the CJEU has in the past declared that the term 'worker' has a Union meaning and should not be modified by Member States, there is currently sufficient room to manoeuvre for Member States to effectively create their own definitions, by pushing the definition of 'marginal and ancillary' wider than it would have appeared, under *Levin*, to stretch.

The key problems here identified include:

- The use of hours or earnings thresholds as practically determinative.
- The use of thresholds to create a presumption of marginal and ancillary work, and the reversal of the burden of proof (especially when the reversal happens even when the individual works for a considerable amount of hours per week.
- The diversity in approaches to marginality means that the same work would be considered 'work' in some States and not in others – belying the idea of a 'Union' meaning of worker.
- Lack of guidance on marginality results in contradictory approaches even within the same State.
- Consideration of work duration, whether it is erratic or regular *etc* means that there is a risk that workers on separate, consecutive fixed-term contracts, often for different employers, will not have their work assessed overall, but instead have each job found to be marginal.
- There seems to be some uncertainty over whether workers should have any access to social assistance in the first three months of residence/work.
- Workers on zero-hour contracts are more likely to bear the burden of proof to show their work is not marginal.
- Intermittent workers may be treated as not workers every time there is a gap between calls to work.

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[117] Judgment in *Brey*, C-140/12, EU:C:2013:565

[118] Judgment in *Dano*, C-333/13, EU:C:2014:2358.

[119] Judgment in *Alimanovic*, C-67/14, EU:C:2015:597.

- The practice in some States of finding that a worker's motivation to work is to get benefits is problematic in itself, and the ensuing exclusion of such people from the definition of worker may not be justified under EU law.

- The criterion of physical capacity for retrospectively revoking worker status is not based on EU law.

- Those found to be in marginal work are likely to be treated as jobseekers – so the prevailing uncertainty about jobseeker entitlements affects those in atypical work.

- Treatment as a jobseeker also gives rise to highly differentiated treatment depending on the State. Very different approaches are taken to the *Antonissen* test of a genuine chance of engagement.

- In particular, in some cases those tests are likely more restrictive than is permitted under EU law, so that even those who are working part-time may be found to be neither workers nor jobseekers with a genuine chance of engagement. An actual job offer might even fail to constitute evidence of a chance of engagement if it is for a zero-hour contract.

- Lack of guidance as to the duration of retained worker status has given rise to some divergent practices in implementing Article 7(3) of Directive 2004/38/EC, with limits being set on Article 7(3)(a) of Directive 2004/38/EC, and on Article 7(3)(b) of Directive 2004/38/EC.

- The 'floor' stipulated in Article 7(3)(c) according to which the status of worker must be retained for no less than six months (in cases of workers who have worked for less than one year), is in fact a ceiling in most States, who place a six-month time limit on Article 7(3)(c) of Directive 2004/38/EC.

- Most States do not yet seem to have delineated the *Saint Prix* right to retained worker status during maternity leave.

- Apprenticeships are constructed very differently in different States, falling under different regimes, and having different wage entitlements. Whether an EU national would be treated as a worker under Article 45 TFEU would depend entirely on the State in question.

- There is little examination of volunteering roles in the context of EU migration, either as preparation for work, or as evidence of a prospect of work, and volunteers are not eligble for social rights. The creation of a residence right specifically for EU national long-term volunteers merits further study.

- Bogus self-employment is a widespread concern among Member States, and there is little harmony in efforts to identify it, with different approaches to definition and inclusion, and different procedures and mechanisms of verification.

- There is increasing recognition of a grey area between employment and self-employment, with large numbers of workers having some personal independence but economic dependence on one or a few employers. This is possibly affected by the rise in flexible or on-call forms of work in which workers can refuse shifts. However, the degree to which a 'third' form of employment is even recognised in law varies between States, as does the effect of the classification.

- There are starkly different approaches taken to rehabilitative or sheltered work, and it is not clear whether this is due to genuine differences of structural rationale, or State preferences. Closer study of these programmes – especially where exclusion from Article 45 TFEU is automatic – is needed to determine whether all the exclusions are merited.

- Similarly, automatic exclusions of workfare programmes from the definition of work should be closely scrutinised, since they may mask actual work being done, and so deprive EU citizens of vital entitlements.

6. ANNEX: COUNTRY SHEETS

AUSTRIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The determination of worker status is assessed on a case-to-case basis, personal dependency being the most relevant factor. Thresholds are irrelevant as various factors are taken into account and assessed on a case-to-case basis when determining worker status. Only certain specific labour law entitlements will be subject to specific thresholds. Zero-hour and on-call contracts will *de facto* not be permitted, as a contract must stipulate a set of minimum hours to be a worker. Furthermore, as concerns consecutive contracts, case law has demonstrated that in the absence of a justification warranting such contracts, consecutive contracts will be re-qualified as open-ended and indefinite. Legislation holds that, in the event of interruptions during work assignments, three-month interruptions will not affect the status as a worker. Similar provisions exist in collective labour agreements.
	Treatment of part-time work	Part-time workers are accorded equal treatment (anti-discrimination). Nevertheless, the notice period for employers willing to terminate an employment contract with a white-collar worker is subject to a certain minimum of working hours. These periods are longer (at least six weeks) than they are for blue-collar workers (at least two weeks basically), but only if the respective white-collar worker is regularly employed more than eight hours a week (*cf* § 20 (1) of the *Angestelltengesetz/AngG* – White-collar Workers Act).
	Treatment of zero-hours and on-call contracts	When zero-hour and/or on-call contracts are detected, retroactive wages and contributions or a fictitious amount with respect thereto will need to be paid.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Migrant workers are treated as national workers and will also be subject to a case-to-case assessment when determining worker status. Workers subjected to on-call contracts/zero-hour contracts or casual contracts will furthermore be entitled to welfare benefits, subject to the following nuance. As the employment relationship will nevertheless be treated as a regular contract, low salaries will result in limited benefits and subsequently potential residence issues.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No.
	Treatment of those not found to be workers	Persons not found to be workers under EU law have to prove sufficient means and health insurance to gain a residence right under Austrian law. Furthermore, social assistance is only provided to EU migrants who obtain the status of a worker under EU law. Thus, a migrant not found to be a worker is not entitled to social assistance to prevent that by this means the person would fulfil the condition of sufficient means according to residence law.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is equivalence between social security and taxation legislation, but no equivalence exists with respect to labour legislation.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	An apprenticeship combines practical work and education and is solely available for certain professions. Apprentices are treated as employees, and as such EU national apprentices receive minimum wages and are accorded equal treatment as concerns access to welfare benefits.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Austrian law neither defines thresholds for apprenticeships nor for genuine work with regard to migrant workers.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is distinguished from employment contracts as the interest of the student prevails over the interest of the employer.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are distinguished from employment contracts as the interest of the intern prevails over the interest of the employer.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Both apprenticeships and genuine activities determining worker status under EU law are subject to a *de facto* assessment. However, there are no explicitly defined criteria for this assessment; thus also no equivalence. Nevertheless, the fact that a trainee receives an income is treated by the courts as an indicator that the person concerned is in effect an employee and therefore is subject to social insurance. If a migrant worker receives an income, this is an indicator for genuine activity as well. However, no specific or equivalent amount/threshold is defined by law or by jurisdiction which determines this indicator (see above).
Voluntary work	**Legal framework for defining voluntary work**	Voluntary work is not regulated by law as such and is predominantly dealt with by case law. It is as such not defined, yet it is to be distinguished from employment due to the professional interest, which is distinct from an altruistic instinct.
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Volunteers do not fall within the scope of labour law and social insurance law and it does not provide the volunteer with a direct gateway to employment. Within this context, no distinction is made between national volunteers and EU migrants who volunteer.

	How does volunteering impact the entitlements of EU national jobseekers?	As volunteering is not considered as employment it does not impact the status of a jobseeker.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	The Austrian Supreme Court – via case law – has established the main criteria to distinguish between self-employment and employment. In particular, employment is characterised by the provision of services, based on an employment contract, in a state of personal dependency. The notion of personal dependency entails working personally, subject to directions, under control of the client whilst being integrated in the operational structure of the client's undertaking, bound to fixed working hours and a fixed working place.
		Criteria to distinguish self-employment from unemployment	As soon as an individual is no longer obliged to pay pension insurance contributions, which in case of self-employment is formally at the point where the individual concerned retracts the authorisation to perform a business granted by the Austrian Chamber of Commerce, she or he will be considered unemployed. However, in very specific circumstances, without loss of the aforementioned authorisation, the individual concerned can nevertheless be deemed unemployed.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed individuals do not fall within the personal scope of labour legislation, but are nevertheless subject to social security legislation and are thus obliged to pay contributions in this respect. *In casu* it is only the individual who will be contributing as opposed to the employer and the employee in case of regular employment.
		The status accorded to those found to be in 'bogus' self-employment?	Insofar an individual is found to be in a state of personal dependency and thus a situation of bogus self-employment, she or he will retroactively be deemed as an employee.
		The consequences of 'bogus' self-employment?	Labour legislation and social security legislation will apply retroactively, entailing amongst others that contributions will need to be paid. However, the applicability of certain aspects of the legislation concerned is limited in time. For example, social security contributions need only be paid for a period of five years.
	Routine verification of self-employment	No.	
	What mechanisms of verification of self-employment are adopted	Courts and social security authorities verify whether the individuals concerned are performing the services in personal dependency. If this is not so, the person is considered self-employed. Within this context, the classification of the relationship by the parties of the contract is not decisive at all.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Recall that *economic* – as opposed to personal – dependency is not determinative to distinguish between self-employment and regular employment. The Austrian Supreme Court has established several conditions in order to ascertain whether an individual is economically dependent (no real operational structure, providing services predominantly deploying her or his own workforce, minor capital expenditures, stipulation of non-compete clauses). It appears that in addition to self-employment and regular employment, this form of employment acts as a third form of employment. An economically dependent worker is characterised as personally independent (like self-employed individuals), but providing services to a single/restricted amount of clients only.	

<table>
<tr><td rowspan="2"></td><td colspan="2">The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Labour law provisions are applicable in part to economically dependent persons. As concerns social security provisions, economically dependent persons are treated as regular employees.</td></tr>
<tr><td colspan="2">The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No distinction is made between EU and national economically dependent workers.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td colspan="2">Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Case law acknowledges rehabilitative/sheltered work and distinguishes it from a normal employment contract due to the fact that the former is in the interest of the person, whereas the latter is in the interest of the employer.

No noteworthy sources are available concerning students who work.

Concerning workfare programmes, individuals can be employed by social economic companies or non-profit employment projects to avoid unemployment.</td></tr>
<tr><td colspan="2" rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>A case-to-case analysis is requisite in determining the retention of worker status and no specific time limits are imposed. If the person is rehabilitating, she or he will still be considered a worker.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>No time limit is imposed if the person concerned is registered as unemployed and available for national labour market authorities. It need be noted that the dissolution of the agreement cannot have been based upon mutual agreement of the parties concerned.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No noteworthy sources can be cited.</td></tr>
<tr><td colspan="2">What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">In case of loss of worker status, loss of residence may ensue if the person concerned had not been in Austria for more than five years. However, this does not happen automatically – procedures must be followed and actions taken. As a result the person concerned also loses the right to social assistance under regional schemes.</td></tr>
<tr><td colspan="2">Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

BELGIUM

<table>
<tr><td rowspan="5">Part-time & atypical employment</td><td>Defining work/genuine and effective work/marginal and ancillary work</td><td>In the determination of work in Belgium, working hour thresholds are imposed. As such weekly working time is relevant to determine migrant work, albeit that the duration of employment is irrelevant. De facto short employment is often deemed marginal and ancillary. Within this context, it need be noted that zero hours is not allowed. Concerning separate, consecutive and temporary periods of work it need be noted that de facto a three-month window is required for an individual to be deemed a worker – all forms of employment within this window are taken into consideration. It appears that an individual would lose worker status when the interruption constitutes marginal employment or less, right before a relevant decision is taken. Work shorter than 12 hours per week is quasi-irrefutable evidence of the presumption of the work being marginal and ancillary as opposed to genuine and effective and thus unlikely to lead to worker status. This twelve-hour per week criterion is applied strictly, as confirmed by case law of the Council for Alien Law Litigation.</td></tr>
<tr><td>Treatment of part-time work</td><td>Weekly working time is relevant for the determination of what constitutes part-time work. Recall, however, that work shorter than 12 hours per week is quasi-irrefutable evidence of the presumption of the work being marginal and ancillary as opposed to genuine and effective.</td></tr>
<tr><td>Treatment of zero-hours and on-call contracts</td><td>Zero-hour contracts and similar contracts are not permitted.</td></tr>
<tr><td>What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?</td><td>Belgian social security coverage is largely contributory. All persons bound by a legitimate employment contract are insured. However, this entails that labour law, including its minimum hour thresholds (hours and remuneration), is applicable. Hence, the following categories of individuals are excluded from social security coverage:

• volunteers;
• persons performing occasional work, defined as work for the housekeeping of the employer and her or his family and ceiled at 8 hours a week;
• certain categories of students;
• Individuals working less than 12 hours are covered as long as they fall outside one of the three above categories. Their employment contract must comply with labour law (in principle a minimal duration of 1/3 of normal weekly working time (38h) = 12h40min). Derogations are possible. In principle, minimum 4h/day + each session of work should last at least 3h.</td></tr>
<tr><td>Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?</td><td>No noteworthy sources were found to indicate that these factors are taken into account.</td></tr>
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	Treatment of those not found to be workers	Individuals not found to be workers are regarded as jobseekers or economically inactive citizens. Within this context proof may be required whereby the individual concerned demonstrates that she or he has sufficient resources and a genuine chance of employment. It appears from case law, however, that the latter is restrictively interpreted and marginal employment may not suffice to demonstrate a genuine chance of employment. As concerns welfare entitlements available to EU jobseekers, it need be noted that tide-over allowances are available for young unemployed individuals searching for a first job, albeit limited to those who pursued education in Belgium or who are the child of a migrant worker in Belgium. Entitlement to contributory benefits will depend upon the jobseeker's contribution history. Regulation (EC) No 883/2004 governs classic unemployment benefits. Within this context, marginal employment generally does not suffice to demonstrate (in addition to sufficient resources) a genuine chance of employment.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no formal equivalence as the three domains are entirely separate. Social security law departs from the labour law notion of worker and includes and excludes a number of specific types of work. Income tax is levied on employment income (above a certain tax-free minimum). In practice, however, there are similarities between the various notions, as most part-time workers work 12 hours and 40 minutes per week whilst the threshold for genuine work lies at 12 hours per week.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	An apprentice may fall under different forms of legislation and thus have a different status. A distinction need be made between a pupil-apprentice (a young person in secondary education which encompasses apprenticeship – falls outside of the labour market despite the fact that many labour law provisions apply) and apprenticeship to gain access to liberal professions (advocacy, architecture, audit, doctor, bailiff – these individuals are considered either self-employed or employed, with the exception of a bailiff apprentice, which is neither). Pupil-apprentices do not receive wages. As for other forms of apprenticeship, the amount of remuneration varies from € 480 per month to € 751. Higher amounts are provided in certain sectors. In certain cases lower amounts are paid for students who did not complete the second grade of secondary education (€ 320 per month to € 500 per month depending on the age). Young unemployed jobseekers can apply for an apprentice benefit, which would result – if granted – in a monthly allowance of € 200 as well as a social security allowance of € 26.82 per day. Moreover, apprentices are included in various social security schemes, in particular relating to occupational diseases and accidents at work. Lastly, employers are given a variety of benefits such as social security contributions, bonuses, and fiscal advantages in order to incentivise the use of apprentices. Data with respect to foreign apprentices is lacking, as they are either qualified as workers or, alternatively as students, and the limited number of apprentices that may be in Belgium rarely register with the competent authorities.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	The Belgian authorities focus on weekly working time and the nature of the activity. Wages are disregarded.

	How is training qualified? Is there a difference between paid / unpaid training?	No rigid distinction exists between an apprenticeship, a traineeship and an internship.	
	How are internships qualified? Is there a difference between paid / unpaid internships?	No rigid distinction exists between an apprenticeship, a traineeship and an internship.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No.	
Voluntary work	**Legal framework for defining voluntary work**	The Act of 3 July 2005 defines the rights and duties of volunteers. Volunteering does not contribute to establishing the right to reside, unless the volunteer qualifies for the status of migrant worker.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	The organisation concerned has the obligation to inform the volunteer of her or his rights and grant her or him insurance. The volunteer may be reimbursed for costs, which will not need to be proven insofar they do not exceed a given amount (€ 33 per day and € 1308 per year). There is no indication that volunteering could formally provide a gateway to employment. EU migrants have full access to volunteering. However, recall that this does not help them establish the right to reside unless they are eligible for the EU worker status.	
	How does volunteering impact the entitlements of EU national jobseekers?	Jobseekers receiving unemployment benefits are indeed allowed to engage in volunteering although it must be authorised. Such authorisation may be denied in case of bogus-volunteering or insofar this would hinder the individual concerned in her or his availability for the labour market. According to the Council for Alien Law Litigation, volunteering is not demonstrative of the individual concerned having a genuine chance of being hired.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Legislation has provided for a set of general and specific criteria that are to be applied in distinguishing between employment and self-employment. The general criteria are applicable to all sectors and refer to the will of the parties, the freedom to determine working time, the freedom to organise the activity, and subordination/hierarchical control. It appears that this last factor is instrumental. The specific criteria are applicable in certain sectors where bogus self-employment is prevalent, and encompass a rebuttable presumption of employment. The legislation concerned allows for requalification, and a social ruling by the Administrative Commission for the Settlement of Labour Relations can be requested concerning the nature of an employment relation.

		Criteria to distinguish self-employment from unemployment	No information.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable to self-employed individuals, albeit necessary to note that certain safeguards regarding legal safety and health remain applicable. Self-employed individuals are subject to social security legislation. However, the social security scheme applicable to self-employed individuals is to be distinguished from that for employees in its entirety.
		The status accorded to those found to be in 'bogus' self-employment?	The person concerned will retroactively be considered as an employee and the contract requalified as an employment contract.
		The consequences of 'bogus' self-employment?	Following requalification, retroactive settlement of contributions will take place, albeit limited to three years. The calculation of the contributions is a complex system for which two methods are employed (either fictitious income to determine the contributions, or the income received as a self-employed individual). Generally the individual concerned will be entitled to benefits in full due to having paid contributions as a self-employed individual. However, she or he may lose pension rights for anything exceeding three years. Also, the competent Member State may change in a cross-border scenario.
	Routine verification of self-employment	No.	
	What mechanisms of verification of self-employment are adopted	Verification is achieved on the basis of tax data (inland revenue), which has to be declared mandatorily.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Economic dependency is not a criterion to distinguish between various forms of employment. Instead, legal dependency, also known as subordination, is used. Consequently no status as such exists.	
	The labour law and welfare benefit entitlements of economically dependent workers?	N/A because of what said above about legal versus economic dependency.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	N/A because of what said above.	

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<tr><td rowspan="7">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">No specific sources can be identified with respect to the status and regulation of rehabilitative work and sheltered work.

Student jobs are allowed for a totality of 50 days per year and are subject to a distinct legal regime, whereby lower social security contributions are paid.

Individuals who lack sufficient means of existence are entitled to the right to societal integration, which consists either in a cash benefit and/or employment. Concerning the latter, the Public Centres for Social Assistance act as the employer and can post the individual concerned to a third party. This can be held to constitute migrant work.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>Belgian legislation transposes European legislation. Within this context, no time limits and no conditions are imposed. The Council for Alien Litigation, however, is de facto very stringent.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>Belgian legislation transposes European legislation in this respect. As such no time limits and no conditions are imposed. The Council for Alien Litigation, however, is de facto very stringent.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>The Council for Alien Law Litigation distinguishes cases of marginal work from the St Prix judgment, whereby worker status is not retained if the employment preceding the cessation was marginal of nature.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">The loss of the right to reside is quasi-automatic as a result of having lost worker status. It need be recalled within this context that the respective authorities are fairly strict, which has been investigated by the EC.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
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BULGARIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	No working hour threshold is imposed for the determination of what constitutes work as such, although zero-hour contracts are not permitted. The foregoing entails that *de facto* there must be a minimum working hour threshold that must be met in order to be deemed a worker. As indicated, zero-hour contracts are not allowed. However, Bulgarian legislation does allow for an on-call provision in standard contracts, which generally states that in case of an emergency the individual concerned will need to be available. The duration thereof depends upon the individual and the concrete situation at hand. All periods of employment, insofar insured for all, will be accumulated in order to ensure entitlement. As concerns interruptions of employment, it depends on whether unemployment benefits were being paid during the unemployment. If so, the interruptions of work are considered as relevant work experience. If not, the individual is not considered a worker. It need furthermore be noted that unemployment benefits as such, which are regarded as work experience, can be granted for a period ranging from 4 months to 1 year. For work to be deemed genuine and effective, a number of conditions need be met. Firstly, an employment contract or civil contract for specific services needs to have been concluded. Secondly, social security and statutory taxes on income need to be deducted.
	Treatment of part-time work	In Bulgaria, full-time work amounts to an 8-hour working day and a working week of 5 days per week, which entails a 40-hour working week. This can vary somewhat depending upon the particular employment sector. Anything below these thresholds is considered part-time work.
	Treatment of zero-hours and on-call contracts	Such contracts are not permitted in Bulgaria. However, recall that an on-call provision is permitted in standard contracts, whereby the individual concerned avails her or himself, for which they will receive additional compensation. This is predominantly used for doctors, medical specialists, and electricity workers.

	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	To receive unemployment benefits proof of length of service and of previous salaries is necessary. In case of unemployment beyond the statutorily determined period for receiving unemployment benefits – in order to acquire additional welfare benefits – proof will be required demonstrating that the individual concerned is not receiving benefits elsewhere. If these conditions are not met, individuals may still get social welfare if they have a document demonstrating that they are unemployed but do not receive benefits elsewhere. Access to unemployment benefits is conditional upon the individuals who have made the due contributions to the Unemployment Fund for at least nine months from the last 15 months before the termination of the insurance. Contributions are calculated on the basis of individual gross salary for the month. The minimum social security sum equals the minimum wage for the period. The daily unemployment benefit is 60% from the average daily wage or the average daily income on which they were paid and due insurance contributions made to the Unemployment Fund in the last 24 calendar months preceding the month of the termination of the insurance and cannot be less than the minimum daily amount of the unemployment benefit. The unemployed person becomes eligible for the unemployment benefit before the expiration of the three-year period from the previous right to compensation with unemployment benefits, and receives the minimum amount for a period of 4 months. The period for which the unemployment benefit allowed is paid depends on the length of insurance (for up to 3 years insurance, the period to receive unemployment benefits is 4 months). The maximum duration of 12 months is for those individuals who have 25 years length of insurance and more. The period for receiving unemployment benefits is determined by the length of insurance against unemployment. The minimum period is 4 months, and the maximum 12 months. After this period, those unemployed persons do not receive unemployment benefits, but if the income of the household is lower than the minimum income for the respective period, the individual can apply for social assistance at the municipal social security office according to her or his place of residence. There is no limit regarding the period of unemployed status – actually, as long as the person is unemployed or starts a job, or retires, or no longer maintains her or his registration as unemployed (through a monthly signature at the labour office to verify that she or he still is unemployed and actively seeking work and is available to do so). No information concerning zero-hour contracts.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No sources indicate that these factors are taken into account.

	Treatment of those not found to be workers	Individuals found not to be workers may be registered as jobseekers at the labour office of the place of residence. To do so such individuals must be employable and of working age. Within this context, tests for a genuine chance of employment are not used. Despite the foregoing, the right of residence for jobseekers may be limited in time. There is little evidence and/or practice in this respect however, as not a lot of individuals seek employment via employment agencies. Insofar jobseekers are registered as such at the labour office they are entitled to receive unemployment benefits for a period ranging between 4-12 months. In certain instances they will also be entitled to social assistance.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Legislation provides for vocational training on the job and during unemployment, respectively. Workers can enter such training without being absent from work, and for registered unemployed individuals a number of programmes and courses exist. For the apprentice jobs taken up by unemployed individuals, employers receive a given sum, for a duration which may not exceed 12 months. Throughout the training/apprenticeship the employer must provide training at the respective workplaces. If the employer subsequently retains the individual concerned in a working capacity following the apprenticeship, for at least the same duration, she or he will be provided an additional financial sum, for a duration which cannot exceed 24 months. EU national apprentices are accorded the same status and welfare benefits as Bulgarian citizens.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Wages are set similarly to Bulgarian citizen workers. More specifically they are set with reference to the duration of work and the statutorily and collectively agreed minimum thresholds for payments per hour and per month. Additionally, insofar it concerns unemployed individuals, scholarship fees are paid as well as an allowance for accommodation.
	How is training qualified? Is there a difference between paid / unpaid training?	Training solely refers to continued education during the adult working life. Free training means that the employer or an employment agency pays for the training, which is intended as a condition for finding a job, maintaining a job or enhancing the worker's capacity and efficiency. Training can also take the form of on-the-job training. This type of training on the job can only be concluded once and allows for the employee to acquire specific skills/specialties. With respect to the latter it need be noted that the permitted duration of training cannot exceed 6 months.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are qualified as a means of employment for someone aged 29 or younger who has completed secondary or higher education and has no work/professional experience in the profession concerned. The internship may not be less than six months and may not exceed 12 months. The distinction between a paid and unpaid internship depends on who pays for the time of service. *De facto*, most internships are however paid, whilst for unpaid internships there is no remuneration and no social security contributions are paid.

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<tr><td></td><td colspan="2">In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of ‘genuine activity’ for determining workers status in EU law?</td><td colspan="2">No.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td colspan="2">Legal framework for defining voluntary work</td><td colspan="2">Currently there is a draft law which seeks to define and legally embed the notion of volunteering. The objective of the measure is noted as seeking to promote citizenship and civic participation in the development of social and economic cohesion. The draft law sets out the basic principles and a legal definition.</td></tr>
<tr><td colspan="2">Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">In view of the foregoing, no conclusive answer can be provided thus far.

Under various pieces of legislation, EU migrants are allowed to volunteer in Bulgaria. Moreover, they are allowed to engage in long-term volunteering which may be seen as grounds for obtaining a permanent residence in Bulgaria.</td></tr>
<tr><td colspan="2">How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">As it concerns a draft law, no insights can be given yet.</td></tr>
<tr><td rowspan="4">Bogus self-employment</td><td rowspan="4">Identification and treatment of bogus self-employment</td><td colspan="2">Criteria to distinguish self-employment from employment</td><td>There is no clear legal definition as to what constitutes self-employment – relevant provisions are scattered across various legislative instruments (e.g. registration legislation, social security legislation). De facto it appears that the distinction rests upon the idea that the person must perform the work individually/personally and that she or he works for her or himself as opposed to in a hierarchical relationship.</td></tr>
<tr><td colspan="2">Criteria to distinguish self-employment from unemployment</td><td>Employment status (irrespective of whether it concerns regular or self-employment) is determined by reference to proof attesting to the fact that the person is indeed occupied and receives a form of income for the work she or he does, pays the respective contributions and pays taxes for the income she or he receives. The status of unemployment is attained following registration as such in the competent labour office.</td></tr>
<tr><td colspan="2">The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Generally, self-employed individuals are subject to social security legislation. Labour legislation, in particular concerning unemployment, is not applicable to self-employed individuals. If the conditions for entitlement to welfare benefits are met as stipulated in the Social Assistance Act and the respective Regulations associated thereto, self-employed individuals may be entitled.</td></tr>
<tr><td colspan="2">The status accorded to those found to be in ‘bogus’ self-employment?</td><td>The national legal regulations do not cover a concept of bogus self-employment; however, such situations can be found and are considered an illegal business activity because no taxes and social contributions are paid for such jobs.</td></tr>
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		The consequences of 'bogus' self-employment?	Sanctions and penalties are imposed as provided for by law as a result of a finding of bogus self-employment.
	Routine verification of self-employment	Yes, mainly by the tax authorities.	
	What mechanisms of verification of self-employment are adopted	Inspection checks usually aim to verify whether self-employment is duly registered, whether due taxes and social security contributions are paid.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	In the domestic legislation there is no such concept as it is understood at EU level. In practical terms, it is uncommon, too. In the context of national practice, that term could relate primarily to employees and workers who depend economically on their employer (in terms of wages and social security contributions paid by the employer).	
	The labour law and welfare benefit entitlements of economically dependent workers?	The concept of 'economically dependent workers' or economically dependent activity is not introduced in the domestic law (Labour Code, Social Security Code *etc*). In practice, all employees and self-employed persons are considered as such by default, i.e. working for themselves and at their own expense *etc*, since they depend on the development of businesses and the general economic situation.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	Please see the reply to the question above regarding the absence of an 'economically dependent worker' status in Bulgaria. It also refers to EU citizens working in the country.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	No specific sources can be identified concerning rehabilitative work, sheltered work, students who work and persons on workfare programmes.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	For the duration of disability, including due to illness, pregnancy and raising a child to the age of 3.
		On grounds of involuntary unemployment?	Upon registering at the Labour Office and as long as the registration is regularly maintained.
		On grounds of pregnancy/maternity following the St Prix judgment	A person who no longer is an employee or self-employed, retains her or his status as an employee or self-employed person when: she or he is temporarily unable to work due to illness or accident; is in a state of involuntary unemployment after she or he worked for more than one year and has registered as a jobseeker in the relevant employment office; after she or he has ended a temporary contract with a duration of less than one year or after she or he has become unemployed against her or his will during the first twelve months and has registered as a jobseeker at the relevant employment office; she or he has started vocational training.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	Upon retirement, continuing education in full-time training, acquiring the status of unemployed, becoming a disabled (first category disability) or permanent illness that prevents working.	

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<td></td>
<td>Are there any other types of work on the fringes of the definition of work</td>
<td>1. <u>Employment contracts for work during certain days of the month</u>: it can be agreed for certain days of the month and that time is recognised for service;

2. <u>Employment contract for short-term seasonal agricultural work:</u> it can be signed between a worker and registered farmer on the basis of one day of work; in this case that time is not recognised as work experience. An employer may sign contracts of employment for a total maximum of 90 days in one calendar year. Employment contract is for work in occupations not requiring special training in basic economic activities of 'crop production' – only for processing of crops and harvesting fruits, vegetables, rose blossom and lavender.

Workers who work under these contracts are insured in social security under the terms and conditions set out in the Social Security Code and the Health Insurance Act. These contracts specify duration and distribution of working time, as well as terms of payment of wages.

3. <u>Other</u>:
• contingency work (floods, fires, earthquakes, emergencies etc);
• work done by household members of tobacco producers (minors included, and elderly household members);
• unpaid work in the household.</td>
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CROATIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The term 'work' is not expressly defined in legislation, but the criteria for its definition may be inferred from legislative definitions of the terms 'worker' (employee), 'employer' and 'employment relationship'. The focus is on the employment agreement, which determines the work to be performed under that agreement. A minimum of 1 hour of work is required for the determination of part-time work, and 40 hours per week is required for full-time work. Due to the fact that worktime must be specified in an employment contract, zero-hour contracts are not permitted. Each form of employment requires an individual contract. Specific rules are applicable to temporary and seasonal work. Consecutive fixed-term contracts are subject to a general limit not exceeding three years unless objectively justified. Any interruption in employment results in loss of status as an EU worker in that period. However, any interruptions shorter than two months in case of consecutive fixed-term employment is not deemed a discontinuance of the three-year time limit.
	Treatment of part-time work	As aforementioned, work is determined by the employment agreement itself. It is generally agreed in theory that a minimum of 1 hour per week is required for part-time work, and 40 hours per week for full-time work. Part-time work is defined as any working time shorter than full-time (i.e. 40 hours a week).
	Treatment of zero-hours and on-call contracts	As working time is an essential part of the employment contract, zero-hour contracts are not permitted. If working time is not included in the contract, it will be presumed to be a standard contract. One way to avoid this, however, is by making use of 'performance' contracts for the completion of a specific task/work/project. These types of contracts are regularly sanctioned, however. The time during which the worker is available for work at the place of work or another place determined by the employer is treated as working time (part-time or full-time). The legal definition of working time, however, excludes the so-called stand-by service or availability period (Cro. *pripravnost*; similar to *Rufbereitschaft* from the CJEU case *Jaeger*, C-151/02, EU:C:2003:437), i.e. the period during which a worker should remain reachable by the employer, but does not have to be present either at her or his working place or any other place determined by the employer. The Health Protection Act, for example, makes a distinction between on-call and stand-by employment arrangements, which are commonly applied in health care. On-call is thus treated as part of the working time, whereas stand-by service (defined as the period during which a health worker does not have to be present in the health facility, but should be reachable to perform emergency health services) is not part of the working time. However, these are all working time arrangements: it will not be possible to conclude an employment agreement without at least a minimum of 1 hour of work per week (part-time), as specified above.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Only Croatian citizens and foreigners with permanent residence are entitled to welfare benefits. As an exception thereto, certain individuals may be entitled to one-off payments and temporary accommodation insofar their living situation requires the latter.

	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	Only the motive for taking up employment is taken into consideration, in particular to ensure that employment contracts are not solely concluded for the purpose of acquiring benefits (particularly with respect to maternity benefits). Physical capacity and familiarity with the work are required for certain occupations, under special regulations, but this is not relevant in the context of determining 'genuine and effective work'.
	Treatment of those not found to be workers	The status of citizens of EEA Member States is equal to that of Croatian citizens: they can apply as unemployed persons/jobseekers. General residence requirements under Directive 2004/38/EC (implemented in Croatia through the Foreigners Act of 2013) apply.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes, there is formal equivalence.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	According to Croatian legislation, apprenticeships are concluded as an aspect of vocational training of pupils in secondary school for the purpose of learning certain crafts. As such it is not considered as an employment relationship. Apprentices are entitled to remuneration, which is calculated as a percentage of the average net wage in the relevant economic sector of the preceding year (10% during the first year of vocational training, 20% during the second year and 25% during the third year). The same status applies for EU national apprentices as for Croatian apprentices. Apprenticeship does not confer employment status upon the individual.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	There are no thresholds for defining migrant work.
	How is training qualified? Is there a difference between paid / unpaid training?	Training in Croatia is based upon an employment agreement and is undertaken for an occupation for which the individual concerned was educated. The training period duration is to be limited to one year unless otherwise prescribed and will be followed-up by a professional/occupational exam if so required. Training is, moreover, always remunerated.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are quite similar to training in that legislation may provide that a given profession may require a professional exam/work experience, which can be accomplished by means of occupational training in the form of an internship. These are (unlike training) unpaid and are not considered as an employment relationship. However, the employer is nevertheless required to pay compulsory pension and health insurance contributions for the intern.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes, there is equivalence. Only training is deemed a form of employment, whilst apprenticeships and internships are founded upon other types of contracts and serve other purposes (i.e. vocational/professional training and leading to compulsory vocational/professional exams as a condition for a given profession).

Voluntary work	**Legal framework for defining voluntary work**	Volunteer work is regulated under the Volunteering Act and defined as an activity of interest for the Croatian Republic and includes provision of personal time, effort, knowledge and skills in the performance of services or activities to the benefit of other people or for the common benefit without remuneration. A contract can be concluded on the volunteering, which stipulates the rights and obligations of the parties. Volunteering cannot be established for the performance of work for which, given the nature and type of work, as well as employer's authorities, an employment agreement should be concluded.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Despite the volunteering relationship not being an employment relationship, similar rights can be identified and will be prescribed in the volunteering agreement. The individual concerned is entitled to, amongst others, safe working conditions, recovery of expenses, insurance against occupational disease and insurance against accidents at work. There appears to be no formal link between volunteering and access to employment. Lastly, EU migrants are equally so entitled to volunteer in Croatia, in accordance with the provisions of the Volunteering Act and the Foreigners Act.	
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteering is not considered as an employment relationship or any other form of gainful activity which could affect the status and entitlements of unemployed individuals.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Subordination is the main factor differentiating employment from self-employment. In particular, regard is had for the freedom to determine working time, the organisation of the work, and the instructions to complete the work.
		Criteria to distinguish self-employment from unemployment	6 scenarios are used to determine whether an individual is (self-) employed and thus not unemployed.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour legislation is not applicable to self-employed individuals, whilst the obligation to pay social security contributions remains applicable.
		The status accorded to those found to be in 'bogus' self-employment?	In case of bogus self-employment the employment relationship is requalified as a regular employment relationship.
		The consequences of 'bogus' self-employment?	Requalification
	Routine verification of self-employment	There is no routine verification of self-employment. Self-employed persons are required to file an application to the Croatian Pension Insurance Institute (and automatically to the Croatian Health Insurance Institute) concerning compulsory pension and health insurance on the ground for self-employment, but these applications are not verified (in terms of whether self-employment is actual or bogus).	
	What mechanisms of verification of self-employment are adopted	There are no mechanisms of verification of self-employment.	

Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Economically dependent workers can be described as a third type of employment relationship, encompassing elements of self-employment as well as regular employment. An example thereof are journalists, who in practice work exclusively for one particular publisher. She or he will pay social security contributions and taxes in relation to her or his earnings. There has been case law, albeit rarely, wherein the employment relationship was in fact requalified as regular employment.	
	The labour law and welfare benefit entitlements of economically dependent workers?	Labour law is not applicable to economically dependent persons, whilst social security entitlements are the same as they are for self-employed individuals.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	No distinction is made – EU workers who are economically dependent are accorded equal treatment vis-à-vis national economically dependent workers.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	Conditional employment is available for individuals with a disability in integrative and protective workshops. The individuals concerned retain worker status. As concerns students who work, student centres act as mediators. However, the employed students are not considered 'workers' despite the applicability of similar employment-like elements to the activities they exercise. Finally, if an individual retains full or partial capacity to work, she or he will need to be able to furnish evidence as to why offered jobs or partaking in various trainings/retraining or communal workfare programmes have not been engaged in, at risk of losing the minimum guaranteed income.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	As soon as employment is discontinued the individual loses worker status. However, for the purpose of retaining temporary residence the person is nevertheless considered as a worker if a number of conditions are met. The social security entitlements nevertheless change subsequent to the loss of employment.
		On grounds of involuntary unemployment?	As soon as employment is discontinued the individual loses worker status. However, for the purpose of retaining temporary residence the person is nevertheless considered as a worker if a number of conditions are met. The social security entitlements nevertheless change subsequent to the loss of employment.
		On grounds of pregnancy/maternity following the St Prix judgment	As soon as employment is discontinued the individual loses worker status. However, for the purpose of retaining temporary residence the person is nevertheless considered as a worker insofar a number of conditions are met. The social security entitlements nevertheless change subsequent to the loss of employment.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	As soon as employment is discontinued the individual loses worker status. Residence of EEA citizens is regulated under the Foreigners Act (Articles 153 *et seq*).	
	Are there any other types of work on the fringes of the definition of work	For example, work of students (a special type of service contract, not conferring the worker status); work of managers (members of company boards; they can, but need not have employment agreements).	

CYPRUS

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Generally, work is defined pursuant to a case-to-case assessment. A distinction is made between part-time and full-time work – in order to be deemed a (part-time) worker a specified hour threshold must be met by part-time employees working on a casual basis. Various forms of work, such as consecutive and temporary agreements of employment are equally so assessed on a case-to-case basis.
	Treatment of part-time work	With the exception of part-time employees working on a casual basis (see above), Cypriot legislation does not provide for a specific hour threshold below which the work would be considered part-time. In the Part-Time Employees (Prohibition of Disadvantageous Treatment) Law of 2002 (Law 76(I)/2002) (Ο περί Εργοδοτούμενων με Μερική Απασχόληση (Απαγόρευση Δυσμενούς Μεταχείρισης) Νόμος του 2002, Law 76(I)/2002)), which notably transposes Directive 97/81/EC on part-time work, part-time workers are defined for the purposes of the said statute as those whose hours of work are "less than the normal hours of work of a comparable full-time worker". The individual circumstances from which a part-time employment relationship may be deduced are taken into consideration. To the best of our knowledge, the Cypriot legal system (case-law, statutory law, etc.) has not addressed the question of a minimum hour threshold below which a worker would no longer be a worker for EU purposes.
	Treatment of zero-hours and on-call contracts	*De facto* zero-hour and on-call contracts are permitted to the extent that they are not distinctly regulated. As such they are governed by labour legislation and case law concerning employment whereby work is assessed by reference to the case specific facts, entailing that the approach is extremely flexible and thus subsequently potentially permitting on-call and zero-hour contracts. The most relevant criterion to determine the relationship between the employer and the employee is the control the former has over the latter, which is again demonstrative of the fact that zero-hour contracts are in fact possible.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In order to receive minimum guaranteed income, proof of a work schedule, of monthly income, and of contracts of employment for the past five years are required, albeit that the latter is more so to establish continued stay in Cyprus. Individuals bound by zero-hour contracts appear to have access to certain welfare benefits. Individuals bound by such contracts receive minimum guaranteed income insofar they abide by the criteria in the respective law. This requires proof of income and proof of the value of property assets. Previous employment is also taken into consideration.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these criteria do not appear to be taken into account.

	Treatment of those not found to be workers	The status of jobseeker is possible at any time if the individual concerned is available at any moment for work in the territory under the control of the Republic of Cyprus. Upon expiry of a three-month period the person concerned may lose her or his status as jobseeker. As a result of the foregoing, jobseekers will be entitled to remain in the host country albeit to a limited extent. Jobseekers may furthermore be entitled to certain welfare benefits albeit subject to certain conditions. In particular, access may potentially be provided for minimum guaranteed income and possibly for training opportunities. Other than that, however, no financial benefits are currently available to jobseekers. An over-arching test for a genuine chance of employment has not been identified. Instead status will be determined by a case-to-case assessment.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Whilst the Social Insurance Law defines a worker as being any individual who exercises an insurable activity, taxation law does not define this. Moreover, a genuine activity has not been further elaborated upon by Cypriot case law and legislation. However, it appears that this has not been problematic, as no issues have been detected.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	The legal status of apprentices is dealt with in the Apprentices Law of 1966, as well as the Social Insurance Law of 2010 insofar it concerns insurable activities. Moreover, the notion of apprenticeship is also discussed in the New Contemporary Apprenticeship Law concerning individuals who have abandoned the formal education system in order to render them more employable. Apprentices may be accorded minimum wages, which are determined by reference to collective agreements and will be determined by statutory provisions relevant thereto Lastly, EU national apprentices are accorded equal treatment vis-à-vis national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	As thresholds for defining migrant work have not been set in Cypriot legislation, a comparison cannot be made.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is elaborated upon in the Human Resource Development Law of 1999 and defines training as being the "planned and systematic learning, training and re-training process of persons which leads to the effective execution of work through the acquisition, development and improvement of knowledge or skills or the differentiation of thinking processes and perception aiming at the improvement of economic importance". It is considered to be an insurable activity and hence it is subject to the Social Insurance Law of 2010. There is seemingly no real distinction between paid and unpaid training in the qualification thereof.
	How are internships qualified? Is there a difference between paid / unpaid internships?	There are no individual specific instruments governing internships, nor are there instruments as such making a distinction between paid and unpaid internships. Internships are, however, mentioned in legislation covering specific professions (e.g. lawyers, psychologists).
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Apprenticeships and training are considered insurable activities for social security purposes. For taxation purposes on the other hand, no definition of the notion of worker or apprenticeships or training is found, which entails that no equivalence is established.

Voluntary work	**Legal framework for defining voluntary work**	There are no binding legislative instruments governing the activity of volunteering. Note need be made, however, of the Declaration of Rights and Responsibilities of Volunteers, which defines volunteering as being for non-profit making purposes with the objective of the improvement of society, and which indicates that all volunteers have the right to social protection in the form of healthcare and civil liability insurance.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	With the exception of the aforementioned declaration, which is not legally binding, there are no other sources concerning the rights of volunteers. It appears, as can be derived from the generic non-discrimination clause and more specific equal treatment clauses in the aforementioned Declaration on the Rights of Volunteers, that EU migrants are equally so entitled to equal treatment concerning volunteering in Cyprus.	
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteering is seemingly not likely to impact the entitlements of EU national jobseekers.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	There is no all-encompassing guidance on what constitutes self-employment. It is to be assessed on a case-to-case basis taking into consideration all relevant facts and the concrete situation.
		Criteria to distinguish self-employment from unemployment	As there are no thresholds for determining what constitutes 'genuine' work, unemployment/self-employment will be determined upon a case-to-case basis.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable. Certain welfare benefits, however, such as minimum guaranteed income, insofar the relevant conditions are met, are available to self-employed individuals.
		The status accorded to those found to be in 'bogus' self-employment?	Bogus self-employment is not known in Cypriot legislation and practice, and thus not regulated in any way.
		The consequences of 'bogus' self-employment?	It need be recalled that bogus self-employment is not regulated in Cypriot legislation. However, sanctions may apply to *de facto* bogus self-employment via other legislative instruments (e.g. prohibition of misrepresentation in section 85 of the Social Insurance Law of 2010)
	Routine verification of self-employment	It appears so, yes.	
	What mechanisms of verification of self-employment are adopted	Verification takes place on a case-to-case basis by the competent administration.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No noteworthy sources concerning the status of economically dependent workers.	
	The labour law and welfare benefit entitlements of economically dependent workers?	No distinct legal regime applies to economically dependent workers, and the individuals formally have the status of self-employed persons. As a result, labour legislation is not applicable; whereas they will be entitled to social security benefits insofar the requisite conditions are met.	

<table>
<tr><td></td><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No data suggests a distinction in treatment.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">No noteworthy sources can be identified with respect to the regulation of rehabilitative work, sheltered work, students who work and persons on workfare programmes.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>Worker status is retained without any indication as to time limits or other specific conditions that need be met.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>Worker status is retained if the individual concerned is involuntarily unemployed following 1 year of employment. Furthermore, registration as a jobseeker is required, irrespective of whether the employment was fixed term or permanent, and this for the duration of at least 6 months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>Even though there are other forms of income support in Cyprus, there is currently no income support in the Cypriot legal system comparable to that addressed by St Prix nor, to the best of our knowledge, any statutory or national case law on the question raised by the said CJEU judgment.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">The statute of reference on the matter is the 2007 Law on the Right of Union Citizens and their Family Members to Move and Reside Freely in the Territory of the Republic (Law 7(I)/2007 – Ο περί του Δικαιώματος των Πολιτών της Ένωσης και των Μελών των Οικογενειών τους να Κυκλοφορούν και να Διαμένουν στη Δημοκρατία Νόμος του 2007), which transposes Directive 2004/38/EC. The statute notably deals with the retention of the status of worker, the consequences of non compliance with registration-related formalities, the controls in relation to documentation, and the conditions of the retention of the right to reside in Cyprus. The statute does not expressly spell out the consequences of being found not to have retained worker status and/or how quickly such consequences would take effect. However, there is a provision in the statute which can assist in interpreting this point. According to section 27(2), in case of doubt as to the fulfilment of relevant conditions, the Administration is entitled to check in a non-systematic manner whether the conditions of the right to reside on the grounds of work are fulfilled.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No other types of work on the fringes of the definition of work have been reported or detected in the Cypriot legal order.</td></tr>
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CZECH REPUBLIC

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	In defining what constitutes work, no minimum thresholds need be met. However, as employees are very expensive to the employer, the latter will attempt to limit the amount of employment contracts, particularly those that require limited working hours as these are more likely to be governed by the notion of an agreement on work performed outside the employment relationship. In the Czech Republic the construct of the 'account of working hours' regime has been imposed, which acts as an exception to the rule of full-time employment. This regime is limited in duration. Interruptions between fixed-term employments may not exceed three years. Furthermore, a fixed-term relationship may not be repeated more than twice. In determining what constitutes genuine and effective work, relevant criteria may be drawn from social security legislation referring to the agreed monthly remuneration, reaching at least a certain amount, which is decisive for taking part in insurance.
	Treatment of part-time work	In the Czech Republic there is very limited use of part-time work due to the expenses associated thereto. Furthermore, it is strictly regulated and trade unions are also not interested in pursuing a more protective status in this regard. However, some forms of part-time work for parents of small children are strictly regulated. In addition, the employer and employee may agree upon other forms of part-time work.
	Treatment of zero-hours and on-call contracts	No noteworthy sources can be identified regarding the regulation of zero-hour contracts and/or on-call contracts.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In order to gain entitlement to welfare benefits, the individual concerned must provide proof of contracts or proof of an agreement on work performed outside of an employment relationship. Access to welfare benefits for individuals bound by zero-hour contracts will depend predominantly upon previously received remuneration, as the amount of remuneration is determinative for the insurance entitled to.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No.
	Treatment of those not found to be workers	Individuals not found to be workers may be accorded jobseeker status, without reference made to a durational limitation. Furthermore, no test for a genuine chance of employment can be identified.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	The scope of workers under social insurance legislation is much broader than that under labour law.

Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	No specific legislation can be identified which governs apprenticeships. Solely Act No 561/2004 deals with apprenticeship within the context of pre-school, basic, secondary, tertiary, professional and other education. Other than the foregoing, no noteworthy sources can be identified.	
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Training is qualified as a systematic preparation for future employment. Irrespective of whether it is paid or unpaid, the possibility to be covered by social security however remains.	
	How is training qualified? Is there a difference between paid / unpaid training?	Training is not governed by specific legislation and thus not qualified as such.	
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are not governed by specific legislation and thus not qualified as such.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Apprenticeships, training and internships are rarely subject to social security, as they are usually not paid. There is therefore hardly any equivalence with the definition of genuine activity.	
Voluntary work	**Legal framework for defining voluntary work**	The legal framework for voluntary service is Act No 198/2002 Coll.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Section 5 of Act No 198/2002 Coll. regulates the agreement on volunteering, established between the 'posting organisation' and the volunteer. This agreement is, as regards content, similar to an employment contract, albeit that there is no entitlement to remuneration. Furthermore, said Act makes reference to the labour legislation. The volunteer is protected as regards working time and the right to holiday, although less with respect to the termination of voluntary service, for example. It does not appear that volunteering functions as a direct gateway to employment. Lastly, said Act stipulates that a volunteer can be any physical person and does not mention any conditions of nationality or citizenship.	
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteers may be covered by health insurance and pension insurance if the activity exceeds 20 hours per week. The insurance contributions are to be paid by the volunteer organisation/posting organisation (i.e. the organisation which gathers volunteers and sends them to other entities in need of volunteers).	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	It appears that the determinative factor to distinguish between regular employment and self-employment is dependency.

		Criteria to distinguish self-employment from unemployment	There are no specific criteria. Self-employment is a gainful, self-employed activity, whereas unemployment is a completely other concept. For purposes of social protection, it is fundamental for an unemployed person to be registered in the register of jobseekers. A person who actively performs a self-employed activity does not fulfil conditions for being registered as a jobseeker under the Czech national law (Sec. 25 (1) a of Act No 435/2004 Coll. on employment).
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable to self-employed individuals. Social security benefits are applicable to self-employed individuals, albeit in a manner distinct from employees. Certain benefits require voluntary contributions whilst others require obligatory contributions – i.e. the social security entitlements for self-employed individuals are more limited than those accorded to regular employees.
		The status accorded to those found to be in 'bogus' self-employment?	Bogus self-employment is prohibited.
		The consequences of 'bogus' self-employment?	When bogus self-employment is discovered, a fee may be imposed of up to € 74,000.
	Routine verification of self-employment	No.	
	What mechanisms of verification of self-employment are adopted	There is no active mechanism for verification of self-employment. What is decisive for the public administration is the fact that the self-employed person pays taxes and contributions from her or his activity. However, even if the self-employed person does not have any earnings (sleeping self-employment), she or he can still be registered as a self-employed person.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Czech taxation legislation acknowledges the status of a helper, which is a person who helps her or his self-employed family member, in a state of economic dependency. Other self-employed economically dependent individuals are simply accorded the same status as self-employed workers.	
	The labour law and welfare benefit entitlements of economically dependent workers?	No distinct regime is applicable. This entails that labour legislation is applicable, whereas social security entitlement will be available to the individual concerned albeit in a more limited manner than for employees.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	If an EU national worker is considered as an employee under the Czech legislation, she or he is covered by labour law and welfare benefits in the same way as Czech nationals. See the answer above.	

<table>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">For persons with disabilities regulated labour rehabilitation and sheltered workplaces are available, organised by labour offices. The person concerned can, via these means, acquire the status of an employee.

No specific regime applies to students who work, and such individuals are simply subject to general labour legislation. However, if the student concerned is below the age of 18, protective provisions apply whereby regard is had for working hours, overtime, working conditions, and certain prohibited works. Finally, several years ago, access to social assistance benefits was conditioned upon participation in public service/workfare programmes. Although the Constitutional Court, which qualified the foregoing as forced work, abolished this, attempts are being made to re-introduce this, albeit in an amended form.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>Sickness benefits may be retained up to 380 days of illness. Moreover, in case of a grade-3 disability, permanent residence may be granted.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>The individual concerned acquires jobseeker status immediately but remains regarded as socially insured.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>Under the Czech legislation, worker status is not lost with pregnancy or maternity. An employment relationship is kept and rights protected until the child reaches 3 years of age.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Loss of insurance.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">There are no other types of work on the fringes of the definition of work.</td></tr>
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DENMARK

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The Danish immigration service – in determining what constitutes work – imposes a 10-12 hours per week threshold. In addition, from 10 weeks of employment onwards, an individual can be deemed a worker (see *Ninni-Orasche*, C-413/01, EU:C:2003:600). Nevertheless, in Denmark the determination of worker status remains subject to a case-to-case assessment. Furthermore, as a working minimum of 10-12 hours per week is required, it can be derived that zero-hour contracts will not in itself be accepted. The guide to officials mentions case law from the CJEU, including *Genc* (C-14/09, EU:C:2010:57). Zero-hour contracts will be accepted if work has actually been carried out and sufficient hours of work can be documented. A distinction is made between involuntary and voluntary unemployment. If an individual is involuntarily unemployed and registered as a jobseeker, she or he will still be considered as employed and thus regarded as a worker. Case law confirms that if an individual quits her or his job due to unsatisfactory salary after sixteen weeks she or he will be considered as not eligible for social assistance; in particular in the case at issue the person in question was not deemed to have legal residence. After quitting the job the person did not register as jobseeker and waited 5 months before claiming social assistance (Danish Appeals Board (*Ankestyrelsen*), *principafgørelse* 103-11, KEN nr 10141 af 30/06/2011). Below the hour threshold, certain criteria need to be met for work to nevertheless be deemed as genuine and effective. These criteria may encompass: entitlement to paid leave, remuneration during illness, duration of employment, and whether a collective agreement is applicable during employment (*Genc*, C-14/09, EU:C:2010:57). In conformity with CJEU case law, work will as a guiding principle be deemed marginal/ancillary if below 10-12 hours per week.
	Treatment of part-time work	The definition of work also applies here. Hence, in assessing part-time work, the guiding principle of the minimum hour threshold is looked at along with the other requirements in the definition of work.
	Treatment of zero-hours and on-call contracts	*De facto* zero-hour contracts are permitted. Recall that a case-to-case assessment ensues in order to determine whether the individual is actually deemed a worker from an EU perspective.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In order to gain entitlement to welfare benefits, proof of the employment contract and payment slips/remuneration may be requested. Access to welfare benefits for individuals engaged by zero-hour contracts will generally be permitted, if there has been a social event, such as involuntary unemployment. This will be assessed on a case-to-case basis. This is to be reported to the state administration, which will then determine whether the individual concerned has become an unreasonable burden upon the social assistance system of the State concerned. The State Administration does not perceive persons with worker status to be an unreasonable burden. Unreasonableness is assessed according to the duration of the receipt of social assistance. See the box below for the administration of retained worker status.

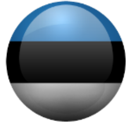
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	In order to assess work as genuine and effective, the only criteria normally taken into account are pay slips. The State Administration can subsequently compare pay slips with information from the Danish tax agency (*SKAT*). If the effectiveness and genuineness of the pay slips proves to be doubtful (e.g. lack of taxation), other details of the work are taken into account in order to establish certainty of the work: the worker's ability to document her or his work (e.g. salary bank transfers), the work schedule, contact with customers, the location of the work, the character of the work, who instructs the worker *etc*. Additionally, the Immigration Service can ask for consent to contact the company in question to make them verify the employment. If the work has been undertaken under unlawful conditions but proves to be genuine and effective, the residence permit is contained due to the Court's definition of work as genuine and effective. Hence, following the Court, Danish authorities consider actual effective work as sufficient grounds for granting a residence permit even though the employment has been unlawful.
	Treatment of those not found to be workers	Worker status is available insofar the individual concerned previously worked in Denmark and subsequently lost her or his employment. This will furthermore be reported to state authorities, which will assess whether the person has become an unreasonable burden upon the system. This will be assessed with reference to the duration of residence. In case of prolonged dependency, the individual concerned will be deemed an unreasonable burden. Persons who have worked for less than a year are granted social assistance for at least 6 months if the possibility of finding work is genuine. For individuals who have worked in Denmark for at least 12 months, there is no durational limitation insofar such individuals are looking for employment in a genuine and effective manner. Persons with worker status are entitled to the same benefits as nationals if they are involuntarily unemployed and registered at the local job centre. An individual and concrete assessment is required, of which the outcome will be decided upon by the state municipality. This will again be notified to the state authority, which will subsequently assess whether the individual concerned does not pose an unreasonable burden upon the social system. To conclude, no overarching test for a genuine chance of employment exists, as an individual and concrete assessment takes place by the state administration. In addition, an assessment is made of whether the individual concerned speaks a language of relevance for the Danish workplace.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes, there is equivalence, and in any event it is up to the state administration whether an individual acquires/retains the right to a residence permit. Recall that the municipality takes the first steps in the assessment, but it remains up to the state administration to determine whether an individual has become an unreasonable burden to the State. See the box above for the administration of retained worker status.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	An apprenticeship can be defined as work in accordance with the criteria enshrined in *Lawrie Blum*. However, a case-to-case approach remains the rule. In the event that the apprenticeship is effectively perceived as work in accordance with the *Lawrie Blum* case, the individual concerned will be entitled to welfare benefits, as are other workers. Minimum wages are determined by collective agreements and in case of apprentices are generally lower than the minimum wages accorded to regular workers. It appears that there is equal treatment of EU national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	As is the case for EU workers, apprenticeship will be considered as work based on a guiding principle of a minimum working hour threshold of 10 to 12 hours per week in addition to the work being both genuine and effective.

<table>
<tr><td rowspan="3"></td><td>How is training qualified? Is there a difference between paid / unpaid training?</td><td colspan="2">Training will, similarly to an apprenticeship be qualified as work insofar the Lawrie-Blum conditions are more or less met, via documentation in the form of a contract or enrolment at a school. Insofar it is not paid it will have to be remunerated in other manners in order to be regarded as work.</td></tr>
<tr><td>How are internships qualified? Is there a difference between paid / unpaid internships?</td><td colspan="2">Again, in order to be determined as work, documentation will have to be provided in the form of a contract or enrolment at a school. Again, unpaid internships will have to be remunerated in other manners in order to be considered as work.</td></tr>
<tr><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of ‘genuine activity’ for determining workers status in EU law?</td><td colspan="2">Yes, there is equivalence. Recall that it is the central state administration which determines whether an individual has worker status and thus whether she or he has access, on equal terms, to social assistance.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">Voluntary work is not defined or mentioned in the relevant legislation (i.e. the Danish EU Residence Executive Order). Following the Trojani case (C-456/02, EU:C:2004:488), voluntary work is not defined in relation to employment law or employment. On the other hand, if voluntary work is remunerated with e.g. board and lodging it can in practice be characterised as work, as seen in the Trojani case.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">No noteworthy sources have been identified concerning the regulation of volunteering. As such, following the Trojani case (C-456/02, EU:C:2004:488), volunteering is not defined in relation to employment law. If, however, it is remunerated by compensating costs for board and lodging it can be characterised as work.

No noteworthy sources have been identified confirming that volunteering functions as a direct gateway to work. Furthermore, no sources have been identified which confirm or deny equal treatment of EU national volunteers.</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">See the box above.</td></tr>
<tr><td rowspan="4">Bogus self-employment</td><td rowspan="4">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>Regular employment is determined by reference to the Trojani case, and is thus characterised by subordination, instructions, and the receipt of remuneration.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>The self-employed person must be engaged in an economic activity and thus have a turnover. If this is not the case, she or he will be considered as unemployed.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>In a cross-border context, insofar as they are deemed a worker under EU law, the person concerned will be accorded equal treatment.</td></tr>
<tr><td>The status accorded to those found to be in ‘bogus’ self-employment?</td><td>A so-called førsteinstansbehandling (i.e. a court of first instance) will be conducted by the State Administration and they will assess whether the certificate of registry will be withdrawn.</td></tr>
</table>

		The consequences of 'bogus' self-employment?	A so-called *førsteinstansbehandling* (i.e. a court of first instance) will be conducted by the State Administration and they will assess whether the certificate of registry will be withdrawn.
	Routine verification of self-employment	The legal character of self-employment is assessed based upon the ability to document economic activities, registration in the Central Business Registry (*CVR*), in VAT, the Danish tax agency *SKAT* and the tenancy agreement for office space. Subsequently, authorities are not allowed to inspect the status continuously unless they have a reasoned suspicion or by means of on-the-spot checks.	
	What mechanisms of verification of self-employment are adopted	The competent state administration verifies self-employment by means of documentation attesting to the economic activities, the registration, and by means of tenancy agreements for office space.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No noteworthy sources can be identified regarding the regulation of economically dependent workers. The same legislation applies as for regular workers and self-employed workers.	
	The labour law and welfare benefit entitlements of economically dependent workers?	No noteworthy sources can be identified regarding the regulation of economically dependent workers. The same legislation applies as for regular workers and self-employed workers.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	No noteworthy sources can be identified regarding the regulation of economically dependent workers. The same legislation applies as for regular workers and self-employed workers.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	No noteworthy sources have been identified concerning rehabilitative work and sheltered work. Contrary thereto, students who have worked at least 10 weeks for 10-12 hours/week acquire worker status in Denmark. As for persons on workfare programmes no relevant sources have been identified.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	The illness must have occurred during the employment – not after the employment. Seemingly no time limits are imposed in this respect, which indicates that a case-to-case assessment will take place.
		On grounds of involuntary unemployment?	If the person concerned has registered at the competent labour office, is available for the labour market, and has been in employment for at least one year, worker status will be retained, without a distinct time limit. If the person concerned, subject to the same conditions, has been in employment for less than one year in Denmark, she or he will only be allowed to retain worker status for 6 months.
		On grounds of pregnancy/maternity following the St Prix judgment	Contrary to involuntary unemployment, worker status will be retained despite not being available for work.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	If the individual concerned has lost the residence permit or the application for a residence permit is rejected, she or he will be held to leave the country 30 days following the decision (with the exception of Nordic citizens).	

	Are there any other types of work on the fringes of the definition of work	There are no other types of work on the fringes of the definition of work.



ESTONIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The principal aspects of entry to and residence in Estonia of citizens of the European Union and their family members are regulated in the Citizen of the European Union Act (passed by Parliament (Riigikogu in Estonian) hereinafter "Act").[120] Article 6 of the Act stipulates that for the purposes of the Act, employment shall mean the provision of services based on a contract of employment or a contract for services for which remuneration is received. In other words not only the traditional employment contract is considered as "qualifying" in the sense of Article 6, but also all other contracts where some remuneration is gained. For instance, the usual contract of services (regulated in Law of Obligations Act) also counts, irrespective of how small the remuneration is. Estonia is very liberal and flexible in defining the notion of "worker". Estonia currently does not ask whether the EU citizen is working in Estonia or any proof of it, they register all EU citizens as (temporary) residents insofar as the EU citizen applies for it and indicate that said individuals are employed. Furthermore there is no other special guidance given neither to the local municipalities nor to the Police and Boarder Guard Board. This practice may be subject to change in the event that the number of EU citizens applying for residence increases significantly. This is to be attributed to the fact that no significant problems have arisen concerning EU citizens. Furthermore it may be noted that this liberal approach may be attributed to the fact that the welfare system of Estonia is not the kind which attracts lots of EU citizens and for that reason it could be said that there is very little welfare tourism here.
	Treatment of part-time work	There is no special regulation in Estonian law on part-time work. The Labour Contracts Act § 43 merely specifies what part-time work means (work less than 40 hours a week). Part-time workers are treated as workers. There is no minimum threshold requirement present. See also the box above – Estonia currently does not ask any proof of an employment contract or equivalent.
	Treatment of zero-hours and on-call contracts	There is no special regulation in Estonian law on zero-hour and on-call contracts. It could be said that the Labour Contracts Act allows persons to agree on these contracts, by regulating working time (§ 5 – Notification of employee of working conditions). According to my knowledge there is no Estonian court practice whether working under these contracts is considered the same as working according to EU law. The practice is missing as so far Estonia has had a very liberal attitude towards the notion 'worker', so these cases have not arisen (see also the first box above).
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In principle everyone who has the right of residence in Estonia, has the right to most welfare benefits. This is to be attributed to the fact that Estonia has a residence based social (security) system. The same conditions apply to migrants as to Estonian citizens in case the migrant worker has registered his residence here. It should be mentioned that in case employment history needs to be proven for welfare benefits, then in some cases (for example in case of unemployment allowance), data is extracted from the Employment Register. It needs also to be noted that, given the fact that in Estonia there are approximately 220 local municipalities, it may be that in some municipalities additional requirements apply.

[120] https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/529062015004/consolide.

	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No noteworthy sources have been identified. See answer from the first cell about the liberal attitude towards EU citizens.
	Treatment of those not found to be workers	No noteworthy sources have been identified.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	As described above, despite the fact that article 6 of the Act gives the definition of 'employment' in the context of the Act, de facto no specific meaning is given to the notion of 'worker' and what constitutes 'genuine activity'. Employment as defined in the Act, is construed in a broader manner than the notion of 'worker' in Estonian labour law, as the former also includes, amongst others, work under service contracts (*see Employment Contracts Act, § 1: "On the basis of an employment contract a natural person (employee) does work for another person (employer) in subordination to the management and control of the employer. The employer pays to the employee remuneration for such work"*). At the same time, employment as defined formally in the Act could be interpreted, when the need arises, the same way as employment in the context of § 25 of the Taxation Act. § 25 of this Act obliges persons who provide work to register their workers in the Employment Register (used by different Estonian authorities (Tax and Customs Board, Health Insurance Board *etc*). In that context 'employment' which has to be registered is working under an employment contract or a contract under the law of obligations, civil service as defined in § 5 of the Civil Service Act or working on a voluntary basis without receiving any remuneration for work.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	No noteworthy sources can be identified in Estonian law and practise with respect to apprenticeships, training and internships. To some extent two categories are defined in law. Firstly, work practice that constitutes a part of vocational education curricula. Such work practice can take place either at simulated work sites or actual workplaces. Conditions are regulated in the Vocational Educational Institutions Act, in § 30, which stipulates that work practice is part of a curriculum in the course of which a pupil performs work and study assignments with specific study objectives in the working environment under the supervision of an instructor. It also states that upon organisation of the work practice of pupils, the relations between the school, the pupil or her or his legal representative and the person or institution who conducts the work practice shall be regulated by a contract entered into by them before commencement of the work practice, setting out the specific organisation of work practice and the rights and obligations of the parties to the work practice contract. It does not however stipulate whether such engagement has to be considered as employment or not. At this point it could be noted that Employment Contracts Act § 1 (2) states: if a person does work for another person which, under the circumstances, can be expected to be done only for remuneration, it is presumed to be an employment contract. Secondly, work practice as a labour market service is defined in the *Labour Market Services and Benefits Act*. Work practice is aimed at gaining practical experience provided to unemployed persons by employers with the aim to improve the knowledge and skills needed for the employment of the unemployed persons. In order to arrange work practice, the PES shall enter into a contract under public law with the employer. No employment contract is concluded for the period of work practice and labour legislation shall not apply, except for some provisions related to minors and working time and some health and safety clauses. The duration of the work practice shall be up to four months. Persons participating in a work practice scheme receive a small allowance, but they retain their status as unemployed and also their entitlement to related benefits. Although there is no practice which determines whether internships and/or apprentices are to be considered as work, in all likelihood, paid activities as such, taking into account the general liberal attitude towards EU citizens, will result in the qualification as work.

	How do apprenticeship wages compare with any thresholds set for defining migrant work?	No noteworthy sources can be identified.
	How is training qualified? Is there a difference between paid / unpaid training?	No noteworthy sources can be identified.
	How are internships qualified? Is there a difference between paid / unpaid internships?	No noteworthy sources can be identified.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No noteworthy sources can be identified.
Voluntary work	**Legal framework for defining voluntary work**	There are no specific guidelines in Estonia concerning how to define voluntary work in the context of EU law or in the context of Estonian law. Nevertheless, there has been much debate concerning the notion of 'voluntary work' due to the fact that from 2014 onwards companies are obliged to register volunteers in the Employment Register for tax purposes.
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	No noteworthy sources can be identified.
	How does volunteering impact the entitlements of EU national jobseekers?	No noteworthy sources can be identified.

Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	No criteria have been established in Estonia on how to define self-employment within the context of EU law. The Citizen of the European Union Act states that to gain the right of residence of the family member the EU citizen has to be working in Estonia *or* be a sole proprietor in Estonia. As the Act does not define this further, reference needs to be made to Estonian law specifically concerning this matter. Self-employed persons in Estonia are considered to be undertakings. According to § 1 of the Commercial Code, an undertaking for the purposes of this Code is a natural person who offers goods or services for charge in her or his own name and for whom the sale of goods or provision of services is the permanent activity. The commercial code uses the term 'sole proprietor'. As such, the individuals concerned have to register themselves in the Commercial Register. When an individual is registered as a sole proprietor, she or he cannot be deemed unemployed in the context of Labour Market Services and Benefits Act and will not be entitled to unemployment benefits. It need be noted that an individual can still enter into an employment contract if she or he is registered as a sole proprietor. The main difference between employees and sole proprietors is that self-employed individuals will be liable for her or his obligations and will be free to decide how and when to perform her or his work, whereas the employee works under the subordination of the employer with more or less defined hours.
		Criteria to distinguish self-employment from unemployment	See foregoing.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	There is no effect on welfare benefits (in the strict sense). Labour law principles in general do not apply to self-employed persons, except some regulation from the Occupational Health and Safety Act.
		The status accorded to those found to be in 'bogus' self-employment?	The main discussions regarding self-employed persons concern taxi drivers, postmen and trainers. Very often children trainers work as self-employed persons, although their relationship is more or less employee-like. The difference is mainly in tax aspects and also in relation to how their health insurance benefits are calculated. According to general contract law principles it could be said that 'bogus' self-employed persons could claim that they work under an employment contract, if the activity actually has employment contract characteristics. Sometimes the Tax and Customs Board tries to re-qualify their work. In the context of EU law, when a person is considered a sole proprietor in Estonia, she or he certainly is considered as a worker in the EU law context; the same goes for a 'bogus self-employed person.

		The consequences of 'bogus' self-employment?	No noteworthy sources can be identified.
	Routine verification of self-employment	As said above self-employed persons must be registered in the Commercial Register. Usually the Tax and Customs Board analyses whether a person is effectively self-employed or, rather, should be considered as being an employee.	
	What mechanisms of verification of self-employment are adopted	See foregoing – the determination of self-employment is dependent upon registration as such in the Commercial Register.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No noteworthy sources can be identified.	
	The labour law and welfare benefit entitlements of economically dependent workers?	No noteworthy sources can be identified.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	No noteworthy sources can be identified.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	No noteworthy sources can be identified. However, it need be recalled that Estonian practice promotes a liberal approach in the determination of what constitutes employment. As such, it may be so that these activities may effectively be determined as being employment.	

	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	Article 21 of the Citizen of European Union Act regulates the conditions and time limits for the retention of worker status and can be generalised to other situations. Nevertheless, practice is not abundant in this respect, thereby rendering all-encompassing conclusions rather difficult. Said Article provides that: A citizen of the European Union who enjoys a temporary right of residence in Estonia shall continue to be deemed employed in Estonia or operating in Estonia as a sole proprietor: 1) during the citizen's temporary incapacity for work, when she or he is temporarily unable to work due to an illness or accident (a person can get health insurance benefits up to a maximum of 250 days a year, and a maximum of 180 consecutive days;. 2) during the time the citizen is registered as unemployed, provided she or he has been registered as unemployed pursuant to the procedure provided in the Labour Market Services and Support Act after having been employed in Estonia for more than one year; 3) within 6 months after the citizen's registration as unemployed provided she or he has been registered as unemployed pursuant to the procedure provided in the Labour Market Services and Support Act after having completed a contract of employment with a term of less than one year or having lost employment during the first twelve months, or 4) during periods of continuing education if the citizen is not unemployed and the course relates to her or his previous employment or activity.
		On grounds of involuntary unemployment?	See previous box.
		On grounds of pregnancy/maternity following the St Prix judgment	See the extract from Article 21 of the Citizen of European Union Act (cited above).
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	Currently there are no concrete guidelines concerning the consequences of not having retained worker status. Such matters are dealt with on a case-to-case basis and usually interventions in this respect are limited to situations where the individual has done something significant which may be perceived as a threat to Estonian society or individuals. In other words, the competent authorities limit their respective interventions to situations concerning public policy, security and health.	
	Are there any other types of work on the fringes of the definition of work	No noteworthy sources can be identified.	

FINLAND

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The concept of worker in the meaning of Article 45 TFEU may vary a bit depending on the rights concerned. The right to equal treatment in the field of labour law normally starts immediately, when starting to work in Finland. EU citizens have the same labour law rights as Finnish citizens working in Finland, and so do trainees. All EU citizens have the right to seek all kinds of employment, even zero-hour contracts, which are also allowed in Finland. In the field of labour law the concept of a worker is defined in the Employment Contracts Act. An employment contract is entered into by an employee, or jointly by several employees as a team, agreeing personally to perform work for an employer under the employer's direction and supervision in return for pay or some other remuneration. When it comes to eligibility to social security benefits on the basis of employment, work is determined based on a working hour threshold of 18 hours per week or, alternatively, 80 hours in four weeks (with hours completed in all four weeks) as well as an earnings threshold of € 1,173 per month. Discretion is applied when assessing a work situation. However, employment pension insurance is crucial in applying Regulation (EC) No 883/2004 – if the person is insured she or he is considered a worker irrespective of the minimum hour threshold. Seemingly, in view of the working hour and earnings thresholds required for an activity to be considered as work, zero-hour contracts will be difficult to conclude. This decision is founded on the Act on the Implementation of the Social Security Legislation (1573/1993). This does not apply to workers who are considered to move to Finland permanently.
	Treatment of part-time work	The definition above means that also part-time workers and other atypical workers are considered as workers according to labour law.
	Treatment of zero-hours and on-call contracts	As soon as the abovementioned criteria for work under labour law are fulfilled, also zero-hour and on-call workers are considered workers.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In order to effectuate entitlement to welfare benefits, migrant workers must provide an employment contract and a salary slip or corresponding specification. Usually a salary slip covering two months is required. For some branches of social security benefits migrant workers do not need to supply any evidence. The employer is obliged to take up an insurance covering the worker.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these criteria are not deemed relevant for the determination of what constitutes work.

	Treatment of those not found to be workers	According to § 160 of Aliens Act 301/2004 persons who are no longer employed or self-employed are considered employed persons even if: 1) they are temporarily unable to work as the result of an illness or accident; 2) after having been employed for more than one year they become unemployed involuntarily and are registered as jobseekers with the relevant employment office; 3) after completing a fixed-term employment contract of less than a year or during the first twelve months of employment they become unemployed involuntarily and are registered as jobseekers with the relevant employment office; in this case they retain their status as employees for six months; or 4) they embark on vocational training that is related to their previous employment or, if they are involuntarily unemployed, on other vocational training.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	With regard to social security there is no difference according to labour law. As soon as a person is considered insured in Finland, she or he is treated equally. A person is usually considered insured based on permanent residence or on work or something else. The overall situation is taken into account in the consideration, which is affected by factors such as return migration to Finland, an employment contract for work in Finland as well as marriage or another close family relationship to a person who is permanently resident in Finland.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprenticeships may be paid or unpaid in Finland, the former being particularly true for university students. For paid apprenticeships the salary is usually lower than the salaries for regular employees (70%-90%). Usually these payments meet the minimum threshold for the apprentices to be considered as workers. However, they are not treated identically to workers, as for what concerns social security, they are treated as students. Access to welfare benefits will need to be assessed on a case-to-case basis, as some apprenticeships are paid and some are not. Within this context and insofar remunerated, apprentices may meet the minimum wage threshold to be considered as workers rendering provisions concerning working hours and holidays applicable. No noteworthy sources have been identified to confirm or negate equal treatment of EU national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Paid apprenticeships more often than not meet the minimum wage threshold to be considered as work.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is treated as an apprenticeship (see above), entailing that it may qualify as work if remunerated.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are treated as apprenticeships (see above) and can thus be qualified as work if remunerated.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No, providing one is considered insured in Finland. Those already insured are entitled to most of the social security benefits because of residence.
Voluntary work	**Legal framework for defining voluntary work**	Voluntary work is not treated as work and is not remunerated. No other noteworthy sources have been identified with respect to volunteering.

	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	As volunteering is not treated as work, no similar rights are accorded. Moreover, volunteering does not provide for a direct gateway to employment. Finally, no sources can be identified concerning the conditions of access to volunteering for EU migrants.	
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteer work has no impact upon the social advantages and entitlements of EU workers.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	According to labour law a self-employed person works independently, without any direction from an employer. Self-employed persons are also distinguished from employees based on the entrepreneurs' pension insurance. Each entrepreneur/self-employed individual should have this pension insurance if she or he is between the ages of 18 and 68, lives in Finland, has been self-employed for at least 4 months and earns at least € 7,502.14 per year.
		Criteria to distinguish self-employment from unemployment	Unemployed persons registered in an employment office are entitled to an Unemployment Allowance or Labour Market Subsidy. However, recipients of unemployment benefits may earn up to € 300 without suffering a reduction in one's unemployment benefit. Self-employed persons earning this or less can be considered unemployed at the same time.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Prior to being insured for social advantages in Finland, a self-employed person must be covered by pension insurance and the activity exercised by this person must have lasted 4 months. The Finnish Centre for Pensions monitors the entrepreneurs through information gathered from the tax authority. If an entrepreneur has had an income exceeding € 7.502,14 without pension insurance, the Centre will contact the entrepreneur. A self-employed person already covered is entitled to most social security benefits. However, e.g. some earnings-related pensions as well as earnings-related unemployment or sickness benefits are available.
		The status accorded to those found to be in 'bogus' self-employment?	As this is seldom a problem in Finland, no noteworthy sources can be identified which govern the phenomenon of bogus self-employment. According to labour law even if the employer and employee define the relationship as one of self-employment, the relationship is considered as employment if it fulfils the criteria of employment as defined above; in such a case the employer must pay the insurance fees and other costs of the employee.
		The consequences of 'bogus' self-employment?	According to § 165 of the Alien Act, registration of the right of residence can be cancelled, if it was obtained by knowingly providing false information about the relevant facts, or by concealing such information.
	Routine verification of self-employment	The Finnish Centre for Pensions monitors the entrepreneurs through information gathered from the tax authority.	

<table>
<tr><td></td><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">See above.</td></tr>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">Economically dependent workers are considered self-employed.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">As self-employed persons, economically dependent workers must themselves take care of pension insurance as explained above. As residents in Finland they are entitled to most of the social security benefits.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">See above.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Rehabilitative work and sheltered work may be qualified as regular work, albeit with some differentiation concerning the applicable rights and obligations. Furthermore, as concerns students who work – insofar the criteria for work are met in terms of working hours and earning thresholds, they will be insured as workers in Finland. Finally, workfare programmes as such do not exist in Finland. However, research is underway in this regard, in order to assess the feasibility thereof.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>According to § 160 of the Alien Act employed or self-employed persons will retain their status as employed or self-employed persons even if they are temporarily unable to work as the result of an illness or accident.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>According to § 160 of the Alien Act employed or self-employed persons will retain their worker status if, after having been employed for more than one year, they become unemployed involuntarily and are registered as jobseekers with the relevant employment office, or if, after completing a fixed-term employment contract of less than a year or during the first twelve months of employment, they become unemployed involuntarily and are registered as jobseekers with the relevant employment office. In this case they retain their status as employees for six months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>Women maintain worker status during maternity and parental leave – so do men during paternity and parental leave. Worker status is also maintained during home care leave, to which parents are entitled while the child is under 3 years of age.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Insofar as the individual concerned does not retain worker status, she or he will lose all relevant insurance associated thereto.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

FRANCE

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Although no distinct working hour and/or earnings thresholds have been enacted for the purpose of defining work in France, and a case-to-case assessment is requisite in this respect, for certain parts of labour and social security law, non-binding guidelines have been issued, suggesting more restrictive parameters – by means of hour thresholds – in order to determine whether a person is effectively a worker and thus entitled to family benefits. However, it need be reiterated that these guidelines are limited to family benefits and are non-binding. The guidelines are as follows: • remuneration corresponding to at least 60 times the minimum wage (per hour) for a month; • 60 hours of work during the same period; • or remuneration corresponding to at least 120 times the minimum wage (per hour) for a period of 3 months; • or 120 hours of work during the same period of 3 months; • or remuneration corresponding to at least 2030 times the minimum wage (per hour) for a calendar year; • or 1200 hours of work during the calendar year. Furthermore, note need be made of the fact that zero hours are not permitted – even limited working hours are to be governed by employment contracts.
	Treatment of part-time work	As concerns part-time work, France directly applies CJEU case law. Accordingly, part-time work is permitted but a case-to-case analysis is requisite to determine whether the work is genuine and effective. Concerning certain parts of labour/social security law, non-binding guidelines have been issued, suggesting more restrictive parameters – by means of hour thresholds – in order to determine whether a person is effectively a worker and thus entitled to family benefits (see *supra*).
	Treatment of zero-hours and on-call contracts	If the requisite conditions to be considered as work in accordance with EU legislation have not been met, such contracts are considered standard employment contracts.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Migrant workers must provide proof of health insurance, or, if only having just started employment, proof of the contract concerned, or, alternatively, the salary slip. Lastly, the individual concerned has to prove that the minimum working threshold has been met in accordance with EU law. Within this vein, zero-hour contracts are permitted in theory. *De facto* however, it may be hard for zero-contract workers as they have to meet the aforementioned conditions, particularly in view of the hours threshold.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, the following criteria are not taken into account.

	Treatment of those not found to be workers	As concerns the treatment of individuals not considered to be workers, a distinction is made between first-time jobseekers and jobseekers that have been active in France. If the jobseeker has remained in the country for less than 12 months, the right to reside is limited to 6 months. If the individual concerned has been in France for a longer duration, no durational limitation is imposed. First-time jobseekers who arrived in France with the specific objective of seeking employment are allowed to stay if they are looking for a job in a genuine and effective manner. Individuals who have worked in France are entitled to welfare benefits. Equally so, jobseekers looking for employment in a genuine and effective manner are entitled to welfare benefits.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no exact formal equivalence.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprenticeships in France are available to individuals aged between 16 and 25, binding the individual concerned to an employer by a specific employment contract. The employer is thereby bound to provide remuneration and vocational training. This can be established for a fixed or indefinite duration. Apprentices benefit from labour law and are effectively entitled to a minimum wage, which consists of a percentage of the minimum wage accorded to regular workers. This percentage can range from 25% to 78% of the regular minimum wage, depending on the age of the apprentice and her or his evolution in the vocational training. As the apprenticeship system in France is not conditioned upon nationality, EU apprentices can, equally so, enjoy the same benefits as French apprentices. Not inconceivably, however, this requires that the apprentice be effectively registered in a centre for vocational training of apprentices, which has received certification by public authorities.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Migrant work in France is determined on a case-to-case basis, with reference to a genuine and effective activity. Recall that only with respect to certain family benefits non-binding guidelines have been issued with respect to working hour thresholds. Consequently, the asked assessment cannot be made.
	How is training qualified? Is there a difference between paid / unpaid training?	Under the French framework, time spent on training is considered working time. No additional noteworthy sources can be identified which govern or elaborate upon the notion of training.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Interns in France are not considered workers. Interns must be registered as students in a higher education programme and an agreement must be signed between the intern, the company and the educational facility. They are not to work, but rather must be trained by means of performing certain activities in a company. Lastly, they have a right to allowance, which is not to be equated with a salary in legal terms, if the duration of the internship exceeds 2 months. Consequently, interns do not meet the criteria of a genuine and effective activity under EU law.

<table>
<tr><td></td><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?</td><td colspan="2">As a distinction is to be made between apprentices and trainees vis-à-vis interns, there will only be equivalence with respect to apprentices, as interns cannot be qualified as performing a genuine and effective activity under EU law.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">Volunteer work in France is extremely narrowly defined, as minimal thresholds suffice to establish that work has been conducted. A legislative act concerning volunteering has been applicable since 1986 but was recently reformed in March 2010. The amendment introduced the "service-civique", which refers to voluntary commitment for a continuous period ranging between 6-12 months for persons aged 16-25. In addition, the concept of "voluntariat de service civiqueé" has been enacted, for periods ranging from 6-24 months and for persons older than 25 who seek to volunteer at a registered company. These contracts must be written, and do not encompass an element of subordination. Labour law is not applicable despite the fact that volunteers do benefit from certain social security rights (retirement rights) and an ad hoc allowance.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">Recall that volunteers enjoy certain social security benefits (such as retirement benefits) and an ad hoc allowance. Other than that labour law does not apply and there is no element of subordination. Furthermore, volunteering has not been identified as providing a direct gateway to regular employment.

Lastly, EU migrants can – equally so – be volunteers in France.</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">EU national jobseekers are allowed to retain jobseeker status whilst engaging in volunteer work, albeit subject to the nuance that volunteers may not be immediately available for employment. As a result, volunteers may be excluded from the right to reside inherent to the jobseeker status, as availability for work is required.</td></tr>
<tr><td rowspan="5">Bogus self-employment</td><td rowspan="5">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>The key factor in distinguishing between employment and self-employment is subordination.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>No thresholds are imposed to distinguish between unemployment and self-employment. However, in order to prove that one is self-employed, she or he must provide proof of having paid the requisite contributions as well as proof of affiliation to old-age insurance.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Labour law is not applicable to self-employed individuals with the exception of certain safety and health provisions. Welfare benefits are applicable to all insofar the required conditions are met.</td></tr>
<tr><td>The status accorded to those found to be in 'bogus' self-employment?</td><td>In case of bogus self-employment, the employment relationship gets re-qualified as a regular employment relationship.</td></tr>
<tr><td>The consequences of 'bogus' self-employment?</td><td>Sanctions are only imposed upon the employer. These sanctions can be of a criminal and/or civil nature.</td></tr>
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<tr><td rowspan="2"></td><td>Routine verification of self-employment</td><td colspan="2">Verifications do not occur routinely and are mostly effectuated by individual actions by the parties concerned.</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">Verification occurs with reference to the actual conditions of employment.</td></tr>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">Parasubordination as such does not exist in France. However, the legislature has identified various forms of employment relationships which do not fall entirely within the category of self-employment or regular employment, including, amongst others, journalists, models, home workers, artists and other categories. These categories of individuals will be subject, in certain instances, to an employment contract and thus enjoy labour law protection, whilst some will be subject to mixed regimes. As a result of such mixed regimes, various labour law provisions may be applicable, in addition to the social security entitlements, which will also be available.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">The applicable labour law provisions and social security entitlements will depend upon whether the regime applicable is the regime applicable to regular employees or, alternatively, a mixed regime, which can differ content-wise depending upon the profession and the particular circumstances.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">The solution is the same solution applying to national workers</td></tr>
<tr><td rowspan="4">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Rehabilitation centres have been set up to facilitate access to work for disabled individuals. Such rehabilitative centres are governed by specific legislation. Individuals employed via such rehabilitation centres are not considered as employees under French law.

Students who work are engaged either as workers (see above), or apprentices/interns (see above).

As concerns workfare programmes, it need be noted that contracts to facilitate employment are regular employment contracts. However, a specific contract (i.e. CIVIS/social integration contract) is meant to enable young individuals aged 16 to 25 to find employment insofar they are facing difficulties doing so. The contracts concerned are concluded with local employment offices and are renewable. As a result, welfare benefits become available after the age of 18 to cover periods of unemployment.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No limitations are imposed as concerns time in retaining the right to reside pursuant to incapacity to work or illness.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>If the involuntary unemployment follows a period of employment of 12 or more months, no temporal limitations are imposed. If the preceding employment was effectuated for a duration less than 12 months, the right to reside will be retained for a maximum of 6 months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>The individual retains the right to reside without additional reference to time limits.</td></tr>
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	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	Insofar the foregoing conditions are not met, the person concerned will lose the right to reside.
	Are there any other types of work on the fringes of the definition of work	There are no other types of work on the fringes of the definition of work.

GERMANY

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Generally, Germany legislation does not provide for a general definition of what constitutes work. Moreover, courts do not impose a given hour or wage threshold to determine whether a person qualifies as a worker. Rather, all elements are considered when making a determination as such (hours, earnings, continuity, regularity, duties, applicability of collective agreements *etc*). Hence, worker status is determined on a case-by-case basis taking into account all relevant facts, albeit with a specific focus on earnings. Furthermore, zero-hour contracts are not permitted in Germany. For on-call work on the other hand, the employment contract must stipulate a period of time to be worked on a daily and weekly basis. If this is not done, a working time of ten hours must be deemed to have been agreed upon. On-call contracts may be qualified as genuine and effective work. In various court cases, 'genuine and effective' has been determined by reference to the minimum subsistence level. For example, a court recently ruled that an income less than 25% of the minimum subsistence level is to be equated to marginal and ancillary activities and thus does not constitute genuine and effective work (*cf* LSG Berlin-Brandenburg (Social Court of Second Instance), 4 June 2015 – L 29 AS 1128/15 B ER, paragraph 28). As aforementioned, all this is determined on a case-by-case basis, but reference to the minimum subsistence level is a means frequently used to determine whether work is marginal and ancillary or genuine and effective.
	Treatment of part-time work	Legislation identifies part-time work as being employment by an individual who works fewer hours per week in comparison with a comparable full-time worker. She or he may not be discriminated against on account of the part-time work, and is entitled to equal pay. No distinction is made based upon nationality. A subcategory of part-time workers are workers exercising minor activities. To be qualified as such, the regular income per month must amount to € 450 or less per month, or she or he must be working for no more than three months/70 working days or less a year. Such workers may voluntarily pay into the social security system, which, if done, will result in the qualification as a worker.
	Treatment of zero-hours and on-call contracts	Zero-hour contracts are not permitted in Germany. For on-call work on the other hand, the employment contract must stipulate a period of time to be worked on a daily and weekly basis. If this is not done, a working time of ten hours must be deemed to have been agreed upon. On-call contracts may be qualified as genuine and effective work.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	There is no general rule in this respect. However, proof concerning time of employment, continuance, place and working sites are types of proof that could and should be supplied. Again, as aforementioned, zero-hour contracts are not allowed, but as on-call contracts may qualify as genuine and effective work, it would appear that such workers are indeed entitled to benefits. Again, however, this will require a case-to-case analysis.

	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	Familiarity with work and the motive for taking up a given job have been taken into account when assessing the genuine and effective nature of a job. Physical capacity, however, is not a factor taken into consideration when assessing whether an individual is engaged in genuine and effective work.
	Treatment of those not found to be workers	Individuals not found to be workers may be accorded jobseeker status, albeit subject to the nuance that this does not happen automatically. The individuals concerned must prove that they are looking for work and where necessary, fulfil additional requirements. In addition to providing proof that they are continuing to seek employment and that they have a genuine chance of being employed, individuals have the right to remain in Germany for a duration of 6 months. It appears that the individuals concerned solely have access to the *Collins* benefits, which are identified as being benefits facilitating access to the labour market. Access to social assistance is denied, however, albeit that this is subject to much controversy. Finally, as indicated, a case-to-case assessment ensues and evidence of intent to seek employment must be verifiable and discernible from an external point of view.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no equivalence; the concepts are determined separately with different tests.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Insofar an apprentice is remunerated, she or he will be accorded the status of worker in respect to residence rights (*cf* Section 2, paragraph 2 No 1 of the German Law on Freedom of Movement of Union Citizens (FreizügG/EU)). Notwithstanding the foregoing, minimum wages do not apply to apprentices. As concerns study grants it need be noted that only those individuals with residence in Germany will have access to such grants. Finally, it does not appear that a distinction is made vis-à-vis EU national apprentices, with the exception that student grants are reserved for those with residence in Germany.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Minimum wages are not applicable to apprenticeships. However, *de facto* the wages sufficiently meet standards not to be deemed marginal and ancillary, and rather facilitate the qualification of work.
	How is training qualified? Is there a difference between paid / unpaid training?	There is no distinction between apprenticeship and training in Germany, entailing that insofar it is remunerated, it is qualified as work.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Similarly to apprenticeships and training, internships will be qualified as work insofar they are remunerated. In addition, a number of specific internships have been identified as not qualifying as work.

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<tr><td></td><td colspan="2">In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of ‘genuine activity’ for determining workers status in EU law?</td><td>Similar to what is mentioned above, there is no equivalence.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td colspan="2">Legal framework for defining voluntary work</td><td>German legislation acknowledges three forms of volunteering, i.e. Federal Volunteer Service, Youth Volunteer Service and Pro Bono Work.</td></tr>
<tr><td colspan="2">Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td>Volunteers are not considered as workers and as such do not enjoy respective safeguards, with the exception of provisions concerning health and safety at work. Moreover no formal link can be identified between volunteering and access to regular employment. Lastly, there is equal access to volunteering for EU migrants albeit that this is not considered as work. To ensure that volunteer work does not become the main means of financing for EU volunteers, a time limit upon volunteer work has been imposed.</td></tr>
<tr><td colspan="2">How does volunteering impact the entitlements of EU national jobseekers?</td><td>EU jobseekers are not considered as workers, and as such this has no impact upon their entitlements. They do not have access to social assistance. They can, however, voluntarily contribute to the social security system.</td></tr>
<tr><td rowspan="7">Bogus self-employment</td><td rowspan="5">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>Personal and economic dependence are key to distinguishing self-employment from regular employment.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>The same criteria applied to determine the status of a worker are used to distinguish between self-employment and unemployment. Recall in this regard that in Germany a case-to-case assessment is applied in order to determine the status of working individuals, taking into consideration all relevant elements and facts.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Labour law generally is not applicable and no obligation exists for self-employed individuals to contribute to social security schemes with the exception of health insurance.</td></tr>
<tr><td>The status accorded to those found to be in ‘bogus’ self-employment?</td><td>-</td></tr>
<tr><td>The consequences of ‘bogus’ self-employment?</td><td>Retroactive payment of contributions to the social security system for the period during which the individual concerned falsely claimed to be self-employed. Moreover, criminal sanctions may ensue.</td></tr>
<tr><td colspan="2">Routine verification of self-employment</td><td>No noteworthy sources can be identified which elaborate on the prevalence of verification of self-employment.</td></tr>
<tr><td colspan="2">What mechanisms of verification of self-employment are adopted</td><td>Individual certification is a means of verification employed in Germany.</td></tr>
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<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">A third category of economically active individuals is recognised in German legislation (in addition to self-employment and regular employment). This third category is described as encompassing individuals who are economically dependent yet are not bound by instructions and therefore not personally dependent. A mixed regime of rights and obligations applies to such individuals, as they are often qualified as self-employed yet in need of additional labour law safeguards.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">In case of economically dependent workers a mixed regime of rights and obligations applies.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No distinction is made with respect to EU national workers vis-à-vis national citizens.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">As concerns rehabilitative work as well as sheltered work, no relevant sources can be identified which regulate these forms of work. Students who work on the other hand – insofar remunerated – are treated as normal employees. Finally, workfare programmes as such do not exist in Germany. However, note need be made of the One Euro Jobs programme, which allows for participants that are entitled to social assistance. Participation in the programme is not determinative for the receipt of social assistance, but it may indirectly impact the social assistance received. This does not qualify as work and the individuals concerned are not qualified as employees.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>In case of involuntary unemployment following a term of previous employment of one year or more, it appears that no time limits or additional conditions are imposed in retaining worker status. However, insofar the previous employment did not last for the duration of at least one year, worker status will be retained for a maximum of six months. Recall that in both scenarios, registration is requisite.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">A consequence as a result of losing worker status may be the loss of residence. However, insofar the individual concerned has sufficient resources, she or he may nevertheless be permitted to stay.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">The most important types of work on the fringes of the definition of work have already been reported above. However, there are other quite specific types of work such as ‘dual studies’, i.e. students enrolled at universities but at the same time employed as trainees, but no specific treatment can be identified.</td></tr>
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GREECE

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	In order to be deemed a worker in Greece, a given minimum wage threshold floor must be met, in conjunction with a specific minimum earnings threshold for specific industries, specific professions and occupations, as well as geographical locations as stipulated in the collective agreements concerned. As no mention is made of working hour thresholds, however, it appears that zero-hour contracts are *de facto* permitted. Furthermore, separate, consecutive and temporary periods of employment are permitted, albeit subject to temporal limitations (36 months in total). As concerns interruptions in periods of employment, a presumption in favour of the individual can be identified whereby – subject to cumulative conditions – the work will be deemed to be governed by an indefinite contract. The conditions are: • the total duration of the contracts exceed 3 years; • their renewal has already taken place almost 4 times; • there is no interruption between the contracts which exceeds 45 days.
	Treatment of part-time work	An agreement of part-time work must be in writing and must be notified to the labour inspectorate offices within 8 days. If these conditions are not met, the contract is presumed as being a full-time contract.
	Treatment of zero-hours and on-call contracts	Zero-hour contracts are permitted and particularly appreciated by employers as it provides them sufficient flexibility with respect to employment sectors such as tourism and hospitality. Moreover, it appears that in fact many of those employed by zero-hour contracts are in fact employed.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In order to be an entitled recipient of welfare benefits proof will be required of previous employment for a given duration, of the type of contract, of the previously paid salary and proof that the required contributions have been paid to the relevant institutions. As zero-hour contracts are permitted in Greece, workers bound by such contracts will also be entitled to welfare benefits.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	Whilst the first two criteria are not taken into account, the latter – concerning physical abilities – is taken into account in order to assess whether work is genuine and effective.
	Treatment of those not found to be workers	Individuals not found to be workers are given the status of jobseekers or volunteers. Such individuals are entitled to remain in Greece for approximately 3 months. There is no test to investigate whether the individual concerned has a genuine and effective change of employment. Jobseekers are furthermore allowed to partake in subsidised programmes co-financed by employers which facilitate access to the labour market. The duration of such programmes and the entitlement to partake therein is subject to a durational limitation of one year.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes, there is equivalence.

Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	The predominant goal of an apprenticeship, by means of a contract with the employer, is to acquire vocational specialisation or learn a skill, as opposed to receiving remuneration, which is the main goal of an employment relationship. The substance of the relationship thus defines the qualification thereof and can be re-assessed by a judge. Pursuant to a number of legislative instruments, 51 Vocational Education Schools have been established for the purpose of educating students by means of the apprenticeship system. It combines in-class education with remunerated traineeships in public and private entities, thus facilitating entry into the labour market of the individuals concerned. On a yearly basis an estimated 10,000 students who comply with a number of criteria – one of which being that the individual must be aged between 16 and 23 – attend these institutions. The remunerated traineeship takes place between 4-6 days per week, in a public or private entity, which is subsidised for participating in the programme. Remuneration of the trainee consists of approximately 70% of the daily minimum wage as determined by a national collective agreement. EU national apprentices are entitled to the same status and welfare benefit entitlements as national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	As there are no specific thresholds for defining migrant work, this matter cannot be addressed.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is treated as an apprenticeship, entailing that if it is remunerated, it is qualified as work.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Seemingly internships are treated similarly to training as the duration thereof has been increased from 2 months to 12 months.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes there is equivalence between how apprentices are treated for social security and taxation purposes and the definition of a genuine activity for determining worker status in EU law.
Voluntary work	**Legal framework for defining voluntary work**	No sources have been identified concerning volunteering in Greece.
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	As there are no relevant legislation or legislative instruments, volunteers do not enjoy or benefit from particular protection. In the absence of specific legislation, however, general regulations concerning employment, residency, social benefits, health benefits and mobility apply. Issues pertaining to volunteer rights as such are dealt with on a case-to-case basis. As a result of lacking regulation, however, various (serious) problems have arisen. Furthermore, volunteering does not function as a gateway to employment and employment-related access to benefits depends upon whether the individual is combining volunteer work with another legal status. Insofar the relevant legislation concerning free movement is complied with, it appears that EU migrants are allowed to volunteer in Greece.
	How does volunteering impact the entitlements of EU national jobseekers?	There is no impact.

Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Lawful subordination is the key factor in distinguishing between employment and self-employment. Again, this is not to be equated with economic subordination – only in case of overwhelming evidence will economic subordination be deemed relevant. All those who are not deemed to be an employee are regarded as self-employed.
		Criteria to distinguish self-employment from unemployment	According to the current legislative framework, there is no minimum threshold of economic activity. For example, according to the Statute of the social security institution for self-employed (*OAEE*), the obligation for the social security affiliation starts from the first Euro of the economic activity.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed workers enjoy limited welfare benefits vis-à-vis employees.
		The status accorded to those found to be in 'bogus' self-employment?	Pursuant to a finding of bogus self-employment, requalification will take place.
		The consequences of 'bogus' self-employment?	The consequences of a finding of bogus self-employment are the imposition of fines to be in accordance with required social security contributions and supplementary fines.
	Routine verification of self-employment	Yes.	
	What mechanisms of verification of self-employment are adopted	Verification occurs by the Administration of *OAEE* or is imposed by audit bodies from *IKA*, which often organise audit controls, in order to 'capture' ambiguous cases of employment.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Economically dependent work as a self-employed person as such is unknown in Greek legislation. However, specific legislation has been adopted for work which cannot strictly be qualified as either self-employment or regular employment. For the categories of work encompassed in said legislative instrument, a presumption of an employment contract applies with all subsequent consequences. For other forms of employment which fall within this grey zone, the applicable rules on self-employment will apply.	
	The labour law and welfare benefit entitlements of economically dependent workers?	Applicable labour law provisions and social security entitlements will depend entirely upon the specific category of work. Generally, economically dependent workers who are self-employed will in all likelihood fall under the regime of self-employed workers. Usually these workers do not enjoy the protection of labour law provisions.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	No distinction is made between national economically dependent workers and EU economically dependent workers.	

Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	Individuals who have a disability of 50% or more are entitled to work in sheltered workshops and enjoy employee status. Furthermore, students who work are considered as regular employees. Finally, individuals employed via workfare programmes are also considered as employees.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	If the individual concerned is not disabled beyond 50%, she or he will not lose her or his worker status.
		On grounds of involuntary unemployment?	Worker status will be retained for an approximated 12 months.
		On grounds of pregnancy/maternity following the St Prix judgment	Worker status will be retained following the pregnancy and during the maternity leave for a period of 18 months.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	The consequences of the loss of worker status are mainly related to labour law (dismissals) and/or tax law (tax evasion). Specifically, the labour relation is retroactively considered as void, as well as any related employment contract (the nullity of the contract is raised before the competent civil courts) and the employer can announce to the employee the termination of his or her employment agreement, as loss of worker status is regarded as a crucial reason for doing so, according to the Greek labour law. Moreover, the employer, who continues employing an employee, who does no longer have the right of access to the labour market, is subject to a monetary penalty of € 1,500 (per unauthorised employee). Regarding the enforcement for tax law, the loss of worker status leads to the foundation of the offense of tax evasion, due to the fact that there is no longer any legal ground for the worker to be regarded as a salaried or independent professional. Thus, his or her income gained by the employment cannot be justified, as it does not fall within any tax category provided. The above consequences usually take effect in an immediate way depending upon the simplicity or the complexity of the circumstances of each case.	
	Are there any other types of work on the fringes of the definition of work	According to Article 25 of Law 3846/2010, accommodation owners (personal business) with an accommodation capacity of up to 10 rooms are a form of minor ownership, which is currently subject to the obligatory social security affiliation to the *OGA* (Institution of Farmers) and not the OAEE (Institution for Independent Professionals). This provision concerning this obligatory social security affiliation leads to the indirect conclusion that even minor owners of accommodation are considered workers for the purposes of Article 45 TFEU. The controversy whether or not this minor ownership should be treated as a type of work is mainly raised in legal theory, based on the argumentation that an abusive interpretation of the notion of employment may take place in particular cases. It must be noted that the *IKA* (Social Security Institute for Salaried Workers) furthermore deems, in pension cases, that the ownership of agricultural regions also constitutes a type of employment, falling under the provisions of Article 45 TFEU.	

HUNGARY

<table>
<tr><td rowspan="5">Part-time & atypical employment</td><td>Defining work/genuine and effective work/marginal and ancillary work</td><td>No noteworthy sources can be identified elaborating upon the notions of work and relevant concepts associated thereto.

The legal status of migrants is laid down in immigration law which sets forth gainful employment with a broader meaning of work applied in EU law. The notion of gainful employment is based on the criteria for defining ‘work’ under EU law. However, the definition does not contain either ‘genuine’ and ‘effective’ or ‘marginal and ancillary work’. Acquiring rights and obligations are linked with the legal status of the migrant.

Labour inspectorates and courts apply a joint directive on the determination of employment from self-employment in their practice, in spite of the fact that it is not in force. However, no reference is made to the EU migrant worker or any elements of the notion of work in this either.</td></tr>
<tr><td>Treatment of part-time work</td><td>Part-time work is not prevalent in Hungary. It can be refused except when it concerns a request for part-time work in order to take care of a child, until the child reaches the age of 3, as well as in case of three children or more. From the perspective of social security and taxation there is no difference between full-time and part-time employees. There is no threshold for part-time work.</td></tr>
<tr><td>Treatment of zero-hours and on-call contracts</td><td>Hungary does not recognise zero-hour contracts. On-call work is approached as overtime. The on-call duty may not exceed 24 hours. A maximum of 250 hours of overtime work can be required in a given calendar year.

The duration of overtime work shall be included in the employee’s weekly working time and may amount to a maximum of 48 hours.

The maximum duration of the reference period is 4 months or 16 weeks. The maximum duration of the reference period fixed in the collective agreement is 12 months or 52 weeks if justified by technical reasons or reasons related to work organisation.</td></tr>
<tr><td>What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?</td><td>Entitlement to benefits and insurance as such is determined by the legal relationship as opposed to the actual hours worked. For some welfare benefits proof will need to be given of residence in Hungary (e.g. family benefits). On-call workers are treated as insured individuals and hence are entitled to all social security benefits. Occasional workers on the other hand do not have overall all-encompassing entitlement to social security benefits – solely emergency health care services and limited pension claims.</td></tr>
<tr><td>Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?</td><td>As the parameters concerning what constitutes genuine and effective work are not determined by Hungarian legislation, these factors are equally so not taken into consideration.</td></tr>
</table>

	Treatment of those not found to be workers	Whilst jobseeker status is available to those not found to be workers, this status is solely granted, however, to those who have been in part-time of full-time employment (but not those employed via service contracts). Insofar certain individuals do not have worker status, the individual concerned may still be able to register her or himself as a person requesting labour market services (encompasses services such as the provision of information concerning the labour market and employment, work, career, job seeking, rehabilitation and local employment guidance; local job counselling and placement – although placement is only available to individuals registered as jobseekers). Generally however, those found to be in part-time employment but not considered as workers are not considered as jobseekers, as under Hungarian law they are still in a form of gainful employment. Furthermore, as indicated, no test for a genuine chance of employment is imposed in Hungarian practice. Generally, there is a right of residence and stay in Hungary for a period exceeding three months if the individual concerned is in some form of gainful employment including self-employment and including part-time workers who are not qualified as workers as such. Furthermore, there is a continued right of residence if the individual concerned has sufficient resources and is not a burden upon the system. In case of loss of employment she or he retains the right to remain in Hungary subject to certain conditions and in certain circumstances (see below). If the gainful employment exceeded 1 year no time limit is imposed, whereas if the previous employment was for a duration of less than 1 year, the migrant worker is entitled to stay for 6 months. Generally jobseekers have access to welfare benefits. However, those part-time employed individuals found not to be workers do not have equivalent access thereto as they are still considered under Hungarian law to be in gainful employment. Hence they will have access to a number of services excluding jobseeker allowances and subsidies. Self-employed individuals may have access to welfare benefits insofar they have paid the relevant contributions. Those under a civil law contract/services contract will not receive jobseeker benefits.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	For social security matters the scope is much broader. For taxation purposes a distinction is made between resident and non-resident private individuals. The former is subject to all-inclusive tax liability, whilst the latter will only be taxed upon income originating in Hungary.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	The legal status of vocational educational apprentices is a sort of mix, as they are partially treated as workers (e.g. health and safety rules at work), and/or as 'worker-like' persons, while the legal relationship (training contract) is regulated both in Act CLXXXVII of 2011 on Vocational Education and Training – where the provisions are very similar to the Labour Code – and in the Civil Code. Apprentices are insured. Employment under a training contract is treated as an insurance period also from the perspective of pension. No special treatment of EU national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Apprenticeship wages defined by law follow a scale, moving gradually according to the rate of the training in the curriculum, e.g. if the training reaches 70% of the schooling, the wage amounts to 1.3 times 15% of the minimum wage, in case of 20% of schooling, the wage amounts to 0.7 times 15% of the minimum wage. No special threshold is set for defining migrant work.

	How is training qualified? Is there a difference between paid / unpaid training?	A vocational apprenticeship is part of the curriculum. No unpaid form exists. A study contract for training, a kind of fringe benefit, can be concluded between the employer and the employee according to the Labour Code. There is no difference between paid/unpaid training from the point of obligations of the employer and the employee. The employer is free to decide the advantages to be given to the employee. She or he may always provide more and other benefits or support to the employee than is laid down in the Labour Code (e.g. later employment according to the new diploma, a certificate, reimbursement of costs, study fee support etc).	
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internship means any legal relationship defined by law to provide work experience for the purpose of acquiring professional skills, and, in this framework, to carry out tasks defined in the individual professional programme. Rights and obligations are defined partly by the Labour Code and a special act. No unpaid internship exits in this form.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is equivalence as to how the apprenticeships, trainings and internships are treated for domestic social security/taxation purposes, because there is no special provision for determining the EU national worker status.	
Voluntary work	**Legal framework for defining voluntary work**	There are many forms of voluntary work, but only one of them has a legal framework, i.e. voluntary activities with a public aim. Accordingly, work carried out within a host organisation without compensation is treated as such.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Voluntary work is a legal relationship falling under the Civil Code. However, due to the nature of voluntary work and the age of the volunteers very similar employment rights set forth in the Labour Code are applicable. There are no special provisions on the gateway to employment. The same conditions of access to volunteering apply to EU migrants, although as opposed to Hungarians, the act does not cover the voluntary work carried out outside Hungary by EU migrants for Hungarian host institutions.	
	How does volunteering impact the entitlements of EU national jobseekers?	No impact on the entitlements of EU national jobseekers.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	No distinct legal regime exists governing self-employment.
		Criteria to distinguish self-employment from unemployment	In the light of the fact that there is no distinct legal regime for self-employment there is no distinguishing criterion; however, unemployment may be checked in the Unemployment Registry.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	There is no effect of being declared self-employed with regard to labour law. If the insurance contributions are paid, persons declared self-employed are insured and equally enjoy social security benefits; other welfare benefits are linked to residence.

		The status accorded to those found to be in 'bogus' self-employment?	Qualifying the relationship, the labour inspectorate takes a decision stating the existence of the employment relationship, defining its starting date with retrospective effect.
		The consequences of 'bogus' self-employment?	Contributions and taxes become payable with interest and penalties. The decision of the labour inspectorate obliges the employer to treat the case as an employment relationship, to accordingly notify the authorities of the employment relationship (e.g. for the purpose of social security insurance, taxation), and to provide all employment rights.
	Routine verification of self-employment	Based on the public registry.	
	What mechanisms of verification of self-employment are adopted	Self-employment is verified by means of a non-mandatory self-employment card or certificate attesting to the registration thereof in the Public Self-Employed Registry. Additionally, self-employment is verified either via the system run by the tax authority or the Public Self-Employed Registry.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No distinct legal regime exists for self-employment, including economically dependent self-employment. However, all employees, irrespective of the qualification, are entitled to a set of minimum rights concerning matters such as health and safety, and equal treatment.	
	The labour law and welfare benefit entitlements of economically dependent workers?	Labour law provisions are currently not applicable to economically dependent workers.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	Labour law provisions are currently not applicable to economically dependent EU national workers.	

<table>
<tr>
<td rowspan="6">Other fringe work</td>
<td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td>
<td colspan="2">The legal regime classifies workers in rehabilitative or sheltered work to fall under the Labour Code.

Different forms of work are available for students. The pupils/students are allowed to carry out work in the following forms:
• in an employment relationship under an employment contract,
• in another form of legal relationship, e.g. under a service contract,
• in simplified employment,
• as an employee in a household, e.g. a babysitter.

Worker status is granted in an employment relationship under an employment contract and in simplified employment.

The additional forms of employment which are exclusively linked to the status of pupil/student are:
• as a member of a school cooperative under an employment relationship,
• under a student contract,
• under a student training contract and cooperation agreement.

All of these grant worker status.

In the framework of public work schemes any natural person can take up a job who can be a worker according to the Labour Code excluding those who are under the age of 16. Worker status is granted.</td>
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<tr>
<td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td>
<td>On grounds of incapacity or illness</td>
<td>No sources can be identified.</td>
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<tr>
<td>On grounds of involuntary unemployment?</td>
<td>No sources can be identified.</td>
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<tr>
<td>On grounds of pregnancy/maternity following the St Prix judgment</td>
<td>No sources can be identified.</td>
</tr>
<tr>
<td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td>
<td colspan="2">No sources can be identified.</td>
</tr>
<tr>
<td>Are there any other types of work on the fringes of the definition of work</td>
<td colspan="2">There are no other types of work on the fringes of the definition of work.</td>
</tr>
</table>

ICELAND

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	No minimum working hour thresholds need be met in determining what constitutes work. As a result, zero-hour contracts are *de facto* allowed. Furthermore, Icelandic legislation does not impose an earnings threshold. However, upon registration in the Population Register at Register Iceland, EEA nationals, including EEA workers that are staying in Iceland for longer than three months must submit proof of minimum means of subsistence as determined by the guidelines of the respective municipalities for three months following registration. The National Register will reject application of registration in the Population Register from workers that are not able to submit evidence of minimum means of subsistence for at least three months following registration from paid work and/or from other sources of financing. Failing to submit this initial proof they will not be entered in the Population Register and not get residence rights. The purpose of the Population Register is only to process the initial request for registration in the Population Register and, as the case may be, a change in legal residence upon removal within Iceland. If the EEA worker at a later stage falls below minimum means of subsistence this does not seem to affect the right of residence or benefits. If an EEA worker has to rely on public support, according to the Foreigners Act this may not automatically lead to expulsion.
	Treatment of part-time work	No sources can be identified.
	Treatment of zero-hours and on-call contracts	No sources can be identified.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Access to welfare benefits is determined by the respective municipalities, which in turn will depend upon legal residence. With respect to part-time employees it need be noted that such workers will need to seek full-time employment. In order to receive financial assistance, proof will need to be provided that the person concerned is effectively seeking employment unless they can justify not doing so. The determination of whether someone is effectively looking for a job requires 4 job applications per month. In case of refusal of a job offer, justification will need to be provided, if not, support will be reduced by 50% for the month concerned as well as the following month. Those who are unfit for employment will moreover need to partake in a specific programme aimed at increasing capacity of work fully or partially (again unless there are justified reasons for not abiding by this condition). These provision apply to all inhabitants in the respective municipality, both EEA and Icelandic nationals. As zero-hour contracts/casual contracts may not constitute full-time employment, individuals governed by such contracts may not receive welfare benefits. All others are entitled. (There is no express prohibition of zero-hour/casual contracts. As stated above these are *de facto* allowed.)
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these criteria are not taken into account for the purpose of defining what constitutes genuine and effective work.

	Treatment of those not found to be workers	It appears that those individuals in part-time employment looking for an additional job or another job will be given the status of a jobseeker. It needs to be mentioned, however, that in addition, much focus is placed upon whether the individual concerned has sufficient means to provide for her or himself and does not place a burden upon the system. Jobseekers may remain on the territory for 6 months and longer even, if they demonstrate that they have private means of support fulfilling at the very least the minimum level of subsistence. She or he must submit evidence that she or he is actively looking for employment, a matter which is to be assessed on a case-to-case basis. There is, however, little case law available in this respect. Benefits are reserved to individuals with legal residence in Iceland, which in turn is inextricably entwined with either gainful employment and/or having sufficient means to provide for her or himself. No specific benefits are provided for jobseekers. There are, however, certain services which can be requested (assistance in job search, including guidance by job councillors and assessment and assistance with the drafting of a CV; employment-related rehabilitation groups; vocational remedies; drafting employment search schedules). If the individual concerned has already worked in Iceland, however, certain benefits do become available. Furthermore, no tests for a genuine and effective chance of employment are imposed upon jobseekers. Lastly, there is no formal equivalence as no thresholds apply for social security and tax purposes. Moreover it appears that the definition under social security law and tax law is broader than the EU notion of a worker.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No formal equivalence exists, as no thresholds apply for social security and tax purposes. There is (following an amendment of 10 July 2015) no definition of wage earner in the Social Security Act. However, this Act refers to the definition of 'income' in the Income Tax Act. The latter definition appears equivalent to the substantial notion of EEA worker, except for the formal income requirement made by Register Iceland upon initial registration that EEA workers must submit proof of means of support for at least 3 months following registration.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Work-based learning is conducted in conformity with an agreement which is drawn up and which encompasses the rights and obligations of the employer, the school and the student concerned. The student must have reached the age of at least 16. General labour legislation and collective agreements are applicable to apprenticeship and for those younger than 18 specific protective provisions concerning health and safety are applicable. If the apprenticeship is not related to upper secondary education, it will be considered as workplace learning and be subject to general labour legislation and collective agreements, including minimum wages. If the apprenticeship concerns workplace learning, as aforementioned, collective labour agreements will apply. In other cases specific tariffs will apply, which will be dependent upon specific collective agreements. Welfare benefits, such as minimum subsistence, are generally conditioned upon legal residence. Hence, if the apprentice is effectively resident in Iceland, she or he will have access to benefits in the same manner, as do Icelandic apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Work-based apprenticeships are governed by collective agreements, which have universal application and thus impose minimum wages that must be adhered to (approximately € 1,427). Concerning education-based apprenticeships, governed by the Upper Secondary Education Act No 92/2008, specific minimum rates are set ranging between € 1,237 to € 1,388. These pay rates may additionally vary depending on the respective unions.

	How is training qualified? Is there a difference between paid / unpaid training?	No specific legislation applies with respect to training. In practice training is generally qualified as measures intended to enhance the capacity of a person to perform a specific job. Collective agreements in general require that the employer provides the worker concerned with the necessary training while on the job in order for her or him to perform the work required. Therefore, the employer may not qualify such training as 'unpaid'. Training in the workplace that is part of labour market measures organised by the Directorate of Labour is considered work, and remuneration in accordance with applicable collective agreements must be paid for contribution of work.	
	How are internships qualified? Is there a difference between paid / unpaid internships?	No sources governing the construct of internships can be identified. The nature of the work would have to be examined on a case-by-case basis.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	It can be held that there is semi-equivalence. Apprenticeships and training would normally be subject to remuneration in accordance with collective agreements and therefore be treated as work for domestic social security and tax purposes. These would therefore be likely to be subject to remuneration that could exceed the minimum subsistence threshold previously referred to as set per municipality. The nature of an internship is more uncertain and would have to be examined on a case-by-case basis.	
Voluntary work	**Legal framework for defining voluntary work**	With due reference to the rights of entry and stay for three months and beyond three months, it appears that volunteering is possible and serves as a ground for residence insofar certain conditions have been met. In particular, the volunteer must be between the ages of 18-30, and must volunteer for an agency recognised by the European Voluntary Service. Moreover, a contract must be signed which provides for volunteering of at least 3 months and must contain certain obligatory elements (such as duration of the contract, benefits, daily working hours, daily and weekly rest periods, the right to pursue studies and provisions on health and sickness insurance). In other entities proof would be required concerning health insurance and means of support.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Limited information is available as concerns the treatment of volunteers and it does not appear as though many rights would be accorded unless this is stipulated in the agreement itself. Although the individual concerned may retain unemployment status whilst engaging in volunteering, it does not appear as though this provides a formal gateway to employment. All EU migrants have access and are allowed to volunteer in Iceland.	
	How does volunteering impact the entitlements of EU national jobseekers?	When engaging in volunteer work, the individual must inform the Directorate of Labour. Failure to do so may result in the loss of unemployment benefits.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	A single definition of self-employment is not readily available in Icelandic legislation. Rather, elements of the definition of what constitutes self-employment can be found in various pieces of legislation, of which taxation legislation is the most decisive. Self-employment is determined on a case-to-case basis taking into consideration a number of characteristics such as content and nature of the contract, who is responsible, and who is providing accommodation and tools. It does not appear, however, as though there is one single decisive factor – various criteria count.
		Criteria to distinguish self-employment from unemployment	As there is no all-encompassing definition of what is self-employment, it is not surprising that there is a general approach to distinguishing between self-employment and unemployment. It is to be determined on a case-to-case basis taking into consideration all elements.

		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed workers are not covered by labour law provisions, but do enjoy approximately the same social security benefits as regular employees.
		The status accorded to those found to be in 'bogus' self-employment?	It appears that a requalification can take place following legal proceedings.
		The consequences of 'bogus' self-employment?	The consequences of bogus self-employment are financial and result in financial retroactive contributions, salary payments and taxes following requalification.
	Routine verification of self-employment	Yes, routine verifications do take place.	
	What mechanisms of verification of self-employment are adopted	The mechanism under the VAT register applies to all applicants for VAT registration. Individuals or legal persons supplying goods or services must register with the tax authorities, unless the sale is estimated to be less than ISK 1 million (approximately € 6,670) for a 12-month period. Applicants must inform whether they submit their services to one, a few or more entities. If they work for one or a few they must fill out a form submitting further information regarding the contract/employment relationship, e.g. regarding financial responsibility for the project, independence/control, workplace, sickness and holiday benefits. The tax authorities may also reassess tax payments both for the employer and the employee if they consider that an individual is not self-employed but a wage earner.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Economically dependent self-employed persons are not subject to a distinct legal regime and thus are subject to the same statute as other self-employed individuals. Insofar the facts warrant it, a particular situation may indicate that a contract is to be considered an employment contract instead, in which case the rules on bogus self-employment are applicable.	
	The labour law and welfare benefit entitlements of economically dependent workers?	The same rules apply as for self-employed individuals generally, entailing that labour law does not apply and that social security entitlements remain available in approximately the same manner as for regular employees albeit that they are liable for the contributions themselves.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	The same rules apply as for self-employed individuals generally, entailing that labour law does not apply and that social security entitlements remain available in approximately the same manner as for regular employees albeit that they are liable for the contributions themselves. According to practise of the tax authorities economically dependent workers may be more likely than other self-employed to be considered workers in bogus self-employment.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	Protected work in employment is available and regulated for persons with disabilities, as is employment in a sheltered workplace. Such forms of employment include required training and provide the possibility of long-term employment access. The status of students is the same as employees. Finally, as concerns individuals in workfare programmes, no relevant sources have been identified.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	No time limits and/or additional conditions have been imposed.
		On grounds of involuntary unemployment?	Worker status will be retained insofar the individual is verifiably actively looking for employment. No time limits are imposed in this respect. If preceding employment was for a duration not shorter than a year, a time limit of 6 months is imposed, however.

		On grounds of pregnancy/maternity following the St Prix judgment	No sources exist in this respect, albeit that in such a case an individual can rely on the notion of illness.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	Loss of worker status may result in expulsion of the individual concerned. However, the foregoing is not bound by a given time frame.	
	Are there any other types of work on the fringes of the definition of work	In law or practice there do not appear to be other types of work that are considered on the fringes of the definition of work.	

IRELAND

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	No thresholds are imposed in order to determine what constitutes work. Rather, worker status is determined by reference to various factors (e.g. period of employment, hours worked, level of earning). Zero-hour contracts as such are allowed, albeit subject to the nuance that individuals governed by such contracts are protected. If a given amount of hours have not been worked, the person concerned will nevertheless remain entitled to minimum payments.
	Treatment of part-time work	Part-time work entails that the person concerned will work less hours per week than a full-time worker in the same position. Special protective provisions apply for part-time workers. The Protection of Employees (Part-Time Work) Act 2001 removed the requirement that, in order to be treated as a part-time worker, the worker should be in the continuous hourly employment of the employer for not less than 13 weeks and should normally be expected to work not less than 8 hours per week.
	Treatment of zero-hours and on-call contracts	Two legislative instruments govern zero-hour contracts and casual (part-time) contracts. Zero-hour contracts are defined as those contracts where the person concerned works less than 25% than the work originally planned. However, *de facto* zero-hour contracts are not permitted, as people engaged by such contracts in such circumstances are entitled to several minimum payments.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	The required evidence warranting entitlement to certain benefits will depend upon the benefit concerned. As concerns zero-hour contracts, entitlement to various benefits will be determined subsequent to a case-to-case assessment. It need nevertheless be noted, however, that generally unemployment benefits may be difficult to attain.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	*De facto* these elements may be taken into consideration.
	Treatment of those not found to be workers	The treatment of individuals not found to be workers will depend upon the circumstances. Note, however, that part-time work is broadly defined and protected, entailing that an individual is likely to be accorded worker status. Following registration, jobseeker status will be retained for the duration of 6 months if the individual concerned had previously been employed for less than one year. If the latter had previously been employed for the duration of 1 year or more, no time limits will be imposed. In any event, a case-to-case assessment will take place. Finally, three types of welfare benefits exist for individuals who find themselves in a jobseeker status: (1) jobseekers benefit (which is contributory), (2) jobseekers allowance (non-contributory), (3) supplementary welfare allowance. Entitlement to these benefits will be determined following a case-to-case assessment. In order to receive a jobseekers benefit or a jobseekers allowance, several conditions need be met. Firstly, the individual concerned must be unemployed at least four days out of seven in the relevant week, be capable and available and seeking employment. For the jobseekers allowance a habitual residence test is imposed as well as a means test.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	The definition of 'worker' for domestic social security/taxation purposes applies in the same way to national workers and workers from other parts of the EU/EEA. This concept is defined by reference to the relevant EU law. In particular, the Department of Social Protection's Guidelines for Deciding Officers on the Determination of Habitual Residence ('the Guidelines') are relied on in making the determinations for domestic social security purposes (and are also influential in the taxation context).
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	While contracts of apprenticeships have traditionally not been considered as contracts of employment, under modern Irish employment legislation, most employment rights also extend to apprentices, with the notable exception of the Protection of Employees (Fixed-Term Work) Act 2001. Thus, for all practical purposes, apprentices who are paid and retained under a contract of apprenticeship are considered as employees. The main legislative measures governing apprenticeships in Irish law are the Industrial Training Act 1967, the Labour Services Act 1987 and the Apprenticeship Rules adopted thereunder by way of Statutory Instrument 168/1997. The 1967 Act established a statutory body, ANCO (whose functions are now exercised by SOLAS), with powers to provide for vocational training such as apprenticeships, to establish a register of apprentices and to make rules governing such apprenticeships. This system of apprenticeships is limited to specific industrial activities and excludes professional occupations and primary production in agriculture, horticulture and fishing. In practice, it is primarily concerned with apprentices in craft trades. Section 16 of the National Minimum Age Act 2000 permits employers to pay employees undergoing approved courses of study or training at a reduced rate. In some cases, SOLAS, rather than the employer, pays the apprentice for off-the-job training. If the apprentice is made redundant during the apprenticeship, SOLAS will provide assistance to the apprentice to complete the apprenticeship. If the apprentice departs early from the apprenticeship or the apprenticeship terminates, the apprentice may be entitled to the normal social welfare benefits subject to satisfying the applicable conditions. In this regard, the legislative framework draws no distinction between Irish and other EU/EEA national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	As there are no specific thresholds set for defining work, it is not possible to undertake any direct comparison.
	How is training qualified? Is there a difference between paid / unpaid training?	As no specific legislative framework can be identified, a case-to-case analysis is applied. The qualification will subsequently depend on the contents and nature of the agreement. Remuneration may be deemed indicative of employment. Furthermore, protective provisions may be imposed.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Again, a case-to-case analysis will determine the qualification of internships and the rights and obligations associated thereto.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes, there is equivalence.
Voluntary work	**Legal framework for defining voluntary work**	Voluntary work is governed and regulated by National Framework Law No 266 of 1991.

	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Generally no rights are associated to volunteer work with the exception of safety and health provisions. Access to additional benefits will depend on the concrete circumstances. Moreover, volunteering does not function as a formal gateway to regular employment. Finally, no additional sources have been identified which confirm or negate access to volunteering for EU migrants.	
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteering may be considered as evidence of a genuine search or chance of employment.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Well-developed case law and a comprehensive Code of Practice established by various governmental authorities have established a number of criteria that need be taken into consideration when distinguishing self-employment from regular employment. Firstly, it will be established whether the individual concerned completed the work for her or himself or for someone else. In addition, regard will also be had for the degree of control, the ability to subcontract work, the nature of the remuneration, the extent to which materials are provided and the schedule of work.
		Criteria to distinguish self-employment from unemployment	As there is no overall definition and no thresholds to determine what constitutes genuine work, the distinction is made on a case-to-case basis with due reference to the aforementioned Code of Practice.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed individuals are entitled to social security benefits albeit that these benefits are far more limited than entitlements accorded to regular employees.
		The status accorded to those found to be in 'bogus' self-employment?	Following a finding of bogus self-employment, reclassification will occur.
		The consequences of 'bogus' self-employment?	A finding of bogus self-employment will result in reclassification, which in turn will result in broader entitlement for the person concerned. As for the employer, she or he will be held liable to pay contributions, penalties and fines retroactively.
	Routine verification of self-employment	Yes.	
	What mechanisms of verification of self-employment are adopted	Following a self-employed person's registration with the Revenue Commissioners, self-employed persons must confirm their status on the submission of tax returns. The Revenue Commissioners carry out non-audit compliance interventions, audits and investigations (including unannounced visits) to verify declarations of self-employment. In some cases, the Revenue Commissioners will carry out joint operations or inspections with other bodies, such as the Department of Social Protection, the National Employment Rights Agency or the national police force, An Garda Síochána.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No distinct legal regime is applicable to self-employed economically dependent individuals. Recalling that the distinction between self-employment and employment is effectuated on a case-to-case basis, the labour and social security provisions applicable to economically dependent self-employed individuals will depend upon the case assessment.	
	The labour law and welfare benefit entitlements of economically dependent workers?	Labour law provisions and welfare entitlement will depend upon a case analysis.	

<table>
<tr><td></td><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">EU national economically dependent workers are treated as national citizens.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">No distinct legal regime concerning rehabilitative work/sheltered work has been identified. As such there is no certainty as to the status of such workers. Many rehabilitative initiatives are established via independent organisations. As for students who work, it need be noted that employment of individuals below the age of 16 is prohibited. Employment of students older than 16 is subject to the normal labour laws. Finally, as concerns persons in workfare programmes, in Ireland the JobBridge Scheme is available, which enables 6-9 month internships with a host organisation to facilitate access to employment. Participants retain social welfare payments as well as an additional € 50 per week. These individuals are not considered as employees. In addition, the First Steps Programme, as part of the EU Youth Guarantee is in the process of being set up.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limit and/or specific conditions have been imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>Registration as a jobseeker is required or participation in vocational training in order to retain worker status. If the preceding employment was less than 1 year; the right to retain worker status is limited to 6 months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No noteworthy sources have been identified.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">The consequences following the loss of worker status will depend upon the individual circumstances, and the length of residence in Ireland. In terms of residence and access to benefits, Directive 2004/38/EC governs the implications.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

ITALY

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	In the determination of what constitutes work, it appears that no *de iure* thresholds have been imposed. However, it seems that *de facto* – in order to distinguish actual work from an activity that is marginal and ancillary – a threshold has nevertheless been imposed whereby you must earn less than € 7,000 per year, and less than € 2,000 per employer. Despite the absence of hour thresholds, it need furthermore be noted that per sector certain minimum hours are in fact imposed. However, these relate solely to the legality of the employment contract and do not negate worker status as such. Hence, insofar these minimum hours are not adhered to, an individual can still be deemed a worker albeit that the legal employment relationship will be re-qualified after having been deemed illegal. Zero-hour contracts are not known in Italy. Rather, legislation acknowledges two similar (if not identical) contracts, i.e.: (1) an ordinary part-time contract with an elastic clause and (2) and an intermittent employment contract. In both cases no minimum hour thresholds are imposed. However, yet again, depending upon the sector of employment, minimum hour thresholds may be imposed for the relationship to be lawful. Overall, a fixed-term relationship between one and the same employer and one and the same employee may not exceed 36 months, at risk of being re-qualified as an open-ended contract. The same fixed-term contract may furthermore only be renewed 5 times. If a fixed-term contract lasted for 6 months, a 10-day pause must be guaranteed between that contract and a new fixed-term contract. If the preceding fixed-term contract exceeded 6 months, a 20-day pause must be guaranteed. As aforementioned, two conditions need be met for work to be deemed marginal and ancillary: (1) the individual concerned must earn less than € 7,000 per year, and (2) the individual concerned must earn less than € 2,000 per employer.
	Treatment of part-time work	Even part-time work with extremely reduced working time will result in worker status. Recall, however, that a minimum earnings threshold need be met in order to not have the work be qualified as being marginal and ancillary, thereby losing worker status as such.
	Treatment of zero-hours and on-call contracts	Due to the imposed working hours for a contract to be deemed lawful (which does not affect worker status but rather the legality of the employment relationship) zero-hour contracts and similar contracts are used on highly limited occasions. On-call contracts/intermittent contracts (see above) are regulated and subdivided into two types. One type of on-call contract obliges the individual concerned to be available, whilst a second type does not oblige the worker to be available. Worker status for the second type of contract is only acknowledged when the person concerned is effectively working. Moreover, remuneration is only permitted for the first type of on-call work.

	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	To enjoy entitlement to welfare benefits, workers merely need to demonstrate that they are in employment. The welfare benefits for intermittent workers, on the other hand, are not defined by law. They have been subject to various administrative interpretations in order to reduce uncertainties. However, these are not conclusive either. Generally, intermittent workers with the obligation to be available are more protected vis-à-vis intermittent workers who are not obliged to be available. It would appear that whilst generally family allowances are not due, maternity and sickness allowances are due for those contracts where the person concerned is obliged to be available, and finally unemployment allowances are available to those individuals with no obligation to be available during their waiting period.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these criteria are not taken into account.
	Treatment of those not found to be workers	A distinction is to be made between intermittent workers, ancillary workers and seasonal workers. Intermittent workers who are obliged to be available are deemed workers, whilst the other subcategory may be qualified as jobseekers in waiting periods between on-call work. Ancillary workers on the other hand can never be considered as workers and can therefore be qualified as jobseekers. This same reasoning is applicable to seasonal workers. A distinction need furthermore be made between those entering Italy in search of employment and those who are already in Italy and looking for employment. The first category must register and are granted 6 months to find employment. The latter category must register, be available and have 1 year to find employment. As concerns access to welfare benefits, a distinction need yet again be made between those entering Italy for employment and those who were already in Italy. The former have no access to financial benefits of any kind, whereas the latter do. Finally, it need be noted that no tests are imposed to assess a genuine chance of employment.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no equivalence.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprentices are considered workers. Apprentice contracts last for a minimum duration of 6 months and most labour law legislation applies with the exception of legislation on unfair dismissals. In addition, apprentices may be paid less than the average minimum wage for regular employees. Within this vein, it need be noted that minimum wages are guaranteed, albeit subject to the nuance that they may be lower than the general minimum wage for regular employees. Apprentices are regarded as 'subordinate employees'. They enjoy all the same entitlements as regular employees, with the exception of wages and dismissals. Particularly concerning dismissals, during the training period apprentices are protected, whilst beyond these periods the contract may be terminated at will.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	As no thresholds have been imposed, no comparison is possible. Recalling the *de facto* wages threshold, however, it need be noted that remuneration of apprentices seemingly is never below these thresholds.

	How is training qualified? Is there a difference between paid / unpaid training?	Training is considered as an *aspect of* the apprenticeship relationship. Outside the framework of apprenticeship, training is not acknowledged as a form of employment.	
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships in Italy are considered as a *stage* for which no remuneration is received and during which individuals are not considered as workers.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No.	
Voluntary work	**Legal framework for defining voluntary work**	Article 2 of Law No 266/1991 defines Voluntary work as: "an activity without any compensation which is performed in a personal and spontaneous way with a goal of solidarity and in favour of the non-profit organisation of which the volunteer is member."	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Voluntary work is explicitly regarded as incompatible with any form of employment. Voluntary workers are solely protected through insurance for accidents and sickness during the activity. Volunteering does not function as a direct gateway to regular employment and no noteworthy sources have been identified which elaborate upon the conditions of access to volunteering for EU migrants.	
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteering does not impact the entitlements of EU national jobseekers.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Subordination is the main criterion to distinguish between regular and self-employment – all others are not relevant.
		Criteria to distinguish self-employment from unemployment	There are no actual factors to distinguish regular employment from self-employment. Nevertheless, a *de facto* indicator can be identified in the form of a wage threshold. If in marginal self-employment and earning € 4,800 or less annually, the person concerned will be entitled to unemployment benefits.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Excluded from both labour law and welfare benefits.
		The status accorded to those found to be in 'bogus' self-employment?	Parasubordination is the status accorded to individuals who find themselves in the grey zone between self-employment and regular employment, with less rights vis-à-vis regular employees.
		The consequences of 'bogus' self-employment?	Bogus self-employment will result in requalification of the working relationship, with the exception of workers in those sectors where they are qualified as para-subordinates.

<table>
<tr><td rowspan="2"></td><td>Routine verification of self-employment</td><td colspan="2">There is no specific mechanism settled to cope with the quite spread phenomenon of bogus self-employment. The usual methods are used in order to react to abuses of labour regulation. Thus a situation of bogus self-employment emerges as a result of an individual judicial claim, or (less frequently) as a consequence of a check by the labour inspectorate. Usually, when a judicial claim is brought in court by a bogus self-employed person claiming to be a subordinate worker, the National Institute of Social Security takes part in the judicial proceeding because it has an interest in receiving the social contribution fees to be paid in case of subordinate work.</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">Verification of self-employment is achieved by means of voluntary certification, which – in turn – is achieved via Certification Commissions. These findings are not binding upon courts. However, courts do have a tendency to follow the classification if the facts of the case have not changed substantially.</td></tr>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">Economically dependent workers are qualified as para-subordinate workers as stipulated by the 2015 Jobs Act. Such working relationship must be continuous and coordinated and entail personal work for a single private undertaking or public administration.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Concerning social security rights of economically dependent workers, progressive entitlement to a number of social security benefits was established via legislation. Consequently, these individuals now have access to rights such as limited maternity rights, family allowances, parental leave, accident and disease on work insurance. Similarly, albeit via case law instead of legislation, a third category of workers has emerged as concerns labour law, whereby certain labour law provisions have been extended to para-subordinates.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No distinction applies.</td></tr>
<tr><td rowspan="5">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Individuals employed in a rehabilitative scheme or via sheltered work are considered as regular employees. The sole difference is that additional protective provisions may apply to facilitate their continued education. Pertaining to students who work, no noteworthy sources can be identified which elaborate thereupon. Finally, workfare programmes are frequently developed at a local level albeit that individuals engaged by such programmes are generally not considered employees.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or specific conditions have been imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>No time limits and/or specific conditions have been imposed.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No specific follow-up of the St. Prix judgment has occurred within the national legal system. However, the same national rules provided for the conservation of the unemployment status of Italian nationals should apply in case of an EU national jobseeker who does suspend searching for employment due to pregnancy or maternity. Such rules provide that unemployment status is not lost if the worker’s refusal to respond to the employment center’s proposal and/or offers to attend training courses, is justified by pregnancy or maternity for the duration recognised by law for maternity leave (i.e. five months).</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Pursuant to the loss of worker status, the individual concerned will also lose her or his residence, albeit subject to the nuance that this will be less likely in the event where the person concerned was already living and/or had worked in Italy as opposed to those individuals merely looking for employment in Italy for the first time.</td></tr>
</table>

	Are there any other types of work on the fringes of the definition of work	Another kind of fringe work concerns the *Prestazione Occasionale* (occasional work), which is defined by the law as para-subordinate collaboration for a duration of no more than 30 days per year with the same employer and providing the worker with a wage less than € 5,000 euro per year. In such cases, occasional workers do not have access to the welfare benefits provided for para-subordinate workers.

LATVIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Latvian employment law provides for generally applicable concepts such as 'employment' or 'employment contract' (sections 2178 and 2179 of the Civil Law), 'employee' and 'employer' (Sections 3 and 4 of the Labour Law) but does not define what is genuine and effective or marginal and ancillary work for the purposes of Article 45 TFEU. It appears there are no relevant thresholds or criteria for an activity to be defined as work. In order to be deemed an EU worker, an individual merely needs to present an employment contract, or, in case of inactivity, needs to demonstrate self-sufficiency/dependency. As there are no minimum hour thresholds imposed, it appears that zero-hour contracts are *de facto* permitted. Furthermore, interruptions in work will not result in loss of worker status insofar the individual demonstrates a willingness to work. In any event, a case-to-case assessment will determine the qualification of an activity as work.
	Treatment of part-time work	Latvian labour law provides for definitions of part-time employment and protections for part-time workers (Labour law section 134). No distinction between Latvian national workers and EU national workers has been identified; there is no guidance on how to decide whether part time work is genuine and effective for the purposes of Article 45 TFEU.
	Treatment of zero-hours and on-call contracts	Zero-hour contracts are not regulated by the legislation of Latvia but Section 44 of the Labour Law requires that an employment contract shall be entered into in writing prior to commencement of work and it shall, among other things, include the agreed daily or weekly working time, hence such zero-hour contracts would be considered as a breach of the said Law. Even so, *de facto* zero-hour contracts exist, especially in retail.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	All employed individuals are entitled to welfare benefits, whereby the employer is required to effectuate the relevant contributions. Aside from health services, which are state paid, employees can request additional welfare benefits from the municipalities. Evidence to be provided, is proof of self-sufficiency in order to determine entitlement to minimum subsistence. For those who become unemployed, a minimum period of contributions is required to get unemployment benefits. There is no evidence that if those contributions are present, other evidence as to the nature/duration/earnings of past work is required.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No.
	Treatment of those not found to be workers	No noteworthy sources have been identified which elaborate upon individuals not found to be workers.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no guidance on defining 'genuine activity' for worker status for the purposes of Article 45 TFEU. The definition of employee for social security purposes is included in the Law on State Social Insurance: a person who, on the basis of a contract of employment for an agreed remuneration, performs specific work under the management of an employer, except the employee of a micro enterprise.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	In Latvia the concept of work-based learning is used (not apprenticeships) and it is part of the formal education system, trainees are not remunerated and a specific tripartite contract is signed between the company, educational institution and the trainee. In cases where employers decide to pay the trainees, an additional employment contract has to be signed (the Labour Law provides that a fixed-term employment contract may be entered into in order to perform short-term work, such as (among others), work of a student of a vocational or academic educational institution, if it is related to preparation for activity in a certain occupation or study course) and the general minimum wage provisions have to be observed in this case. Any forms of internships, apprenticeships or traineeships outside the education system or without an employment agreement are regarded as undeclared work. The single exception is the Law on Crafts with specific provisions for apprentices in the crafts sector.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	See foregoing.
	How is training qualified? Is there a difference between paid / unpaid training?	See foregoing.
	How are internships qualified? Is there a difference between paid / unpaid internships?	See foregoing.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	See foregoing.
Voluntary work	**Legal framework for defining voluntary work**	The new Law on Voluntary Work came into force on 1 January 2016. The Law aims to promote volunteering and encourage participation in voluntary work by regulating the legal relationship between volunteers and the volunteering organiser. Before, voluntary work was regulated by two legislative enactments, i.e. the Associations and Foundations Law and the Youth Law, which were, however, incomplete.

	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Since 1 January 2016, a contract on volunteering may also be concluded in a written form if one of the parties requests so; the organiser covers the expenses related to the voluntary work or if the volunteer is a minor. The volunteering organiser is obliged to ensure safe and healthy working conditions and instruct volunteers about safe working methods. At the volunteer's request, the organiser has to issue a statement regarding the voluntary work carried out and its duration. The volunteering organiser may also insure the volunteer for health and life against accidents that may occur in the workplace. Health and life insurance is mandatory in some cases (in particular jobs). EU migrants have the same rights/access to voluntary work as nationals.	
	How does volunteering impact the entitlements of EU national jobseekers?	There is no evidence of an impact upon entitlements. However, volunteering does not help build entitlements, as no social insurance contributions are made if the voluntary work is unpaid. If payments are made by the employer these have to comply with general employment and minimum wage legislation.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Taxation legislation provides for various specific criteria which can be used to distinguish regular employment from self-employment. These criteria are self-standing, and refer to amongst others economic (in-)dependence, assumption of a financial risk, integration of the payer into an undertaking, existence of actual holidays and leave for the payer, management or control of other persons, and whether the payer is the owner of the assets.
		Criteria to distinguish self-employment from unemployment	A self-employed individual is a person whose economic activity is registered and whose income is within the amount of a monthly minimum wage or exceeds it. Self-employed individuals do not accrue entitlement to unemployment benefits.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable to self-employed individuals, whereas self-employed individuals are subject to social security contributions and thus entitlements.
		The status accorded to those found to be in 'bogus' self-employment?	Bogus self-employment will result in reclassification and has consequences for the entitlement to social insurance benefits as well as according to the Law "On State Social Insurance", Article 16.[1] *Inter alia* the State Revenue Service shall recover from the employer the mandatory contributions from the amount which corresponds to the information at the disposal of the State Revenue Service, as well as a fine in the amount of three times the mandatory contributions. Article 159 of the Latvian Administrative Violations Code prescribes evasion of taxes and payments imposed.
		The consequences of 'bogus' self-employment?	After bogus self-employment a person is not entitled to several social insurance benefits (e.g. unemployment benefit and insurance indemnity related to an accident at work or occupational disease) and they will be reclassified with the consequence that the employer will be held to pay retroactive contributions as well as taxes.

<table>
<tr><td rowspan="2"></td><td>Routine verification of self-employment</td><td colspan="2">There is limited verification due to the fact that there is limited practice of bogus self-employment among migrant workers.</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">In practice a self-employed person has to submit a filled-in application form (containing personal data, family status, the reasons and duration of the stay) which requires in addition the submission of the valid travel documents and the official registration documents attesting that a person has registered either an enterprise at the Enterprise Register or has registered as self-employed at the State Revenue Office or a municipality (according to the type of self-employment).[121]</td></tr>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">The concept of economically dependent self-employment is not known in Latvia. Legislation solely acknowledges self-employment and regular employment. Hence, no sources can be identified in this respect.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">The provisions applicable to self-employed individuals will generally remain applicable to economically dependent workers.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">The labour law is not applicable to self-employed workers. The benefits under the social security schemes are the same as those that apply to the self-employed.</td></tr>
<tr><td rowspan="4">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">No sources have been identified concerning rehabilitative work, sheltered work, students who work and persons in workfare programmes for the purposes of Article 45 TFEU. Generally, as regards workfare related programmes, paid temporary public works are defined as a measure in the Law on Support of Unemployed and Job Seekers with subsequent regulation on the details of this programme. Additionally, the Social Services and Social Assistance Law defines measures for sustaining, renewing and acquiring basic employment and social skills.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or specific conditions have been imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>A pre-condition is registration at the public employment service. No limitations are imposed when previous employment has lasted for at least 1 year. If this was not the case, the worker status will be retained for a maximum duration of 6 months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>Neither national legal provisions nor national courts have dealt with the situation like in the St Prix judgment.</td></tr>
</table>

[121] Telephone interview with the official of the Office of Citizenship and Migration Affairs, Department of Residency Permits, 25 January 2016.

	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	The main consequence attached to the loss of worker status is the loss of state-paid health care. Upon loss of employment, the employer is under an obligation to notify this to the competent National Health Care Centre. Under immigration law, a person can be expelled if she or he does not comply with the Cabinet of Ministers Regulation of 30 August 2011 "Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members". But there has not been a single expulsion decision on these grounds against an EU citizen since Latvia acceded in 2004.
	Are there any other types of work on the fringes of the definition of work	No.

LIECHTENSTEIN

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	There is a working hour threshold of 50% for short stay permits and 80% for long stay permits for an individual to be deemed a worker in Liechtenstein, which is equally so the means to assess the genuine nature and effectiveness of migrant work. The percentage is calculated in reference to a regular work schedule of 42 hours a week; that means that 50% corresponds to around 21 hours and 80% to 33 hours.
	Treatment of part-time work	The competent authorities have much discretion in the assessment and treatment of part-time work.
	Treatment of zero-hours and on-call contracts	There is no prohibition and according to the EEA Agreement the same should apply to EU nationals. To be a migrant worker under EEA law, the person has to have work which fulfils the CJEU criteria, irrespective of whether she or he is working under a zero-hour or a more typical work contract.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	No case law was found, but according to the EEA Agreement, there should be no waiting time. If the person has a 50% job, she or he should be considered as a worker from the first day on.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these factors are not taken into account.
	Treatment of those not found to be workers	No sources have been identified which elaborate upon the treatment of individuals not considered to be workers.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	The main difference is that the definition of the latter follows European law, especially case law of the CJEU, whereas the other is national (in Liechtenstein social security law the qualification and not the amount of the remuneration is the key element). It is therefore possible that a person is considered as a worker in social security matters but not for immigration matters and vice versa.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprentices are assimilated to workers and are consequently treated as employees from age 17 onwards. Furthermore, no distinction is made between national apprentices and EU national apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Apprenticeship wages are not subject to legally defined minima. In general Liechtenstein does not have rules prescribing minimum wages. Wages in Liechtenstein are high per definition.

<table>
<tr><td rowspan="3"></td><td>How is training qualified? Is there a difference between paid / unpaid training?</td><td colspan="2">Training is regarded as an employment activity. This follows from national immigration law, more precisely from a regulation concerning the free movement of persons which was adopted in order to implement the EEA Agreement (Article 3, paragraph 2, c) PFZV – Verordnung über die Freizügigkeit für EWR- und Schweizer Staatsangehörige).</td></tr>
<tr><td>How are internships qualified? Is there a difference between paid / unpaid internships?</td><td colspan="2">Internships are regarded as employment (Article 3, paragraph 2, c) PFZV). Consequently, an EU national would be treated as a migrant worker.</td></tr>
<tr><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of ‘genuine activity’ for determining workers status in EU law?</td><td colspan="2">Yes, there is equivalence. A person doing an apprenticeship, whether she or he is a national or an EU citizen, is treated as a worker, unless in a particular case there are reasons to think that the work is not taken seriously.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">Volunteering is considered as employment. This follows from national immigration law, more precisely from the regulation mentioned above adopted in order to implement the EEA Agreement (Article 3, paragraph 2, c) PFZV.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">Volunteering is regarded as employment and as such, volunteers are considered as employees.
No additional sources can be identified in this respect concerning the treatment of volunteers.</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">The law does not prohibit being a volunteer and seeking for a job at the same time. However, to get unemployment benefits, the claimant must show that she or he is without a job (Article 7 PFZV), that she or he is willing and able to start a paid activity and that she or he has paid contributions for a certain period of time (Article 8 ALVG – Arbeitslosenversicherungsgesetz). Those conditions might be impeded if the person performs volunteer work.</td></tr>
<tr><td rowspan="3">Bogus self-employment</td><td rowspan="3">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>Criteria to distinguish between employment and self-employment are found in social security legislation and refer to the economic and individual situation of the person engaging in the activity, who assumes the (financial) risk and is subject to subordination.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>Social security legislation also distinguishes between self-employment and unemployment via reference to a threshold of income (CHF 234 per year; Article 25 AHVV, which corresponds to a yearly wage of CHF 3,000) that need be met. Below said threshold the individual concerned is held to contribute as though she or he were not engaging in an economic activity.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Labour law is not applicable to self-employed individuals, whereas self-employed individuals are entitled to limited social security benefits (e.g. old-age, survivor, disability).</td></tr>
</table>

<table>
<tr><td rowspan="4"></td><td rowspan="2"></td><td>The status accorded to those found to be in 'bogus' self-employment?</td><td>Pursuant to a finding of bogus self-employment the status of the individual concerned will be reclassified as a regular worker or as a person without an economic activity.</td></tr>
<tr><td>The consequences of 'bogus' self-employment?</td><td>Following a finding of bogus self-employment the employer will be held to retroactively pay social security contributions.</td></tr>
<tr><td>Routine verification of self-employment</td><td colspan="2">The Social Security institutions (AHV-IV-FAK-Anstalten) do routinely check whether a person is employed or self-employed. The legal provisions concerning this control are enforced by criminal and administrative penalties.</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">The Social Security institutions (AHV-IV-FAK-Anstalten) periodically undertake on-the-spot checks of the employers (Article 63 AHVG).</td></tr>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">No specific regime is applicable to economically dependent self-employed workers. Individuals in such situations are either self-employed or regularly employed. Accordingly, the respective labour law provisions and social security entitlements will be available.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Again, depending upon whether the individual concerned is qualified as self-employed or subject to regular employment, she or he will have available to her or him, the respective labour law provisions and social security provisions.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No distinction is made between economically dependent national workers and EU national economically dependent workers.</td></tr>
<tr><td rowspan="5">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">No sources have been identified with respect to rehabilitative work and sheltered work. On the other hand, as soon as students demonstrate that they work at least 50% they may qualify for worker status. The national law (Article 5 PFZV) does not expressly say what 50% signifies. Therefore, an evaluation is likely to be made based on the hours (at least 20 hours per week). No income threshold is expressively defined by the law.

Furthermore, the unemployment insurance organises work programmes for jobseekers, which entails legal residence in Liechtenstein. This permit can, however, be revoked after 6 months.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or specific conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>No time limits and/or specific conditions are imposed.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No time limits and/or specific conditions are imposed.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">In case of loss of worker status the individual concerned will have to prove that she or he has sufficient economic resources. If this is not the case, the residence permit is not granted/revoked immediately.</td></tr>
</table>

	Are there any other types of work on the fringes of the definition of work	There are a number of other forms of work which involve employees, including, amongst others, persons practising sports, members of church, artists, and au pairs. This listing was established in reference to the above mentioned regulation (Article 3, paragraph 2 *PFZV*); the decision about the question whether a person of those categories is a worker for the purpose of Article 45 TFEU has to follow the CJEU case law. Unlike Swiss law, however, no judgment concerning this aspect could be found.

LITHUANIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	In determining what constitutes work in Lithuania, seemingly no thresholds are imposed. However, in addition to the Lawrie Blum criteria upon which worker status is conditioned, the employer is required to report the recruitment of the individual concerned to the State Social Insurance institution. There has been case law concerning what constitutes work from an EU perspective. However, these cases were more so related to the notion of 'fictional work' (e.g. individuals that are self-employed in one State and working limited hours in Lithuania). As no minimum working hour thresholds are imposed, it appears that *de facto* zero-hour contracts are allowed, albeit that such contracts are not regulated. Finally, the genuine and effective nature of work is not evaluated as even short working hours and/or fixed-term employment contracts are treated as regular employment.
	Treatment of part-time work	Part-time work is allowed in the event of a mutual agreement, and in certain scenarios upon request of the individual concerned. Part-time work should be incorporated in the contract as an amendment. No restrictions/limitations are allowed vis-à-vis part-time workers in view of employment conditions and benefits.
	Treatment of zero-hours and on-call contracts	Zero-hour contracts and on-call contracts are not known in legal terms or in practice in Lithuania. Consequently, all types of employment contracts in Lithuania are treated equally in terms of social security guarantees.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Again, it need be reiterated that no criteria have been identified in order to demonstrate the genuine and effective nature of work.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	As reference is not made to the genuine and effective nature of an activity, these additional factors are, equally so, not used in Lithuanian legal and administrative practice.
	Treatment of those not found to be workers	As aforementioned, part-time workers are accorded equal treatment as regular full-time workers. Moreover, as there is no minimum working hour threshold, worker status can be accorded in case of highly limited working hours. Hence, highly limited working hours for part-time workers is still deemed as employment and thus cannot be deemed to result in the status of a jobseeker nor can it result in entitlement to unemployment benefits. Finally, as previously indicated, in view of the fact that part-time workers with extremely limited working hours are indeed considered as workers, they will receive equal treatment in terms of labour law provisions and social security coverage.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	It appears that, due to the fact that the entitlement to benefits (assistance and insurance) is not dependent upon factors inherent to the notion of worker under EU law, there is no equivalence.

Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprenticeships are solely concluded with respect to students and are concluded between three parties (the institution of education, the student, and the host organisation). The period of apprenticeship is unpaid and throughout this period the individual concerned is not deemed a worker. Insofar the organisation does choose to remunerate the individual concerned, an employment contract must be concluded. As apprenticeships are predominantly unpaid, apprentices are not entitled to minimum wage. Furthermore, no distinction is made between EU national apprentices and national apprentices. Rather, it appears that the rules will be the same irrespective thereof.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Recalling that wage thresholds are not applied in Lithuania, it need be noted that in any event, apprentices do not receive remuneration and hence cannot be deemed as workers in that respect, despite the fact that no wage thresholds apply.
	How is training qualified? Is there a difference between paid / unpaid training?	If an individual receives training in order to acquire professional skills, she or he must be remunerated. If this is not the case, the activity will be deemed as illegal work. Training as a form of an activity is not considered to be a form of employment. Support for the acquisition of professional skills (as an equivalence of training) is one of the active measures of labour support for persons taking up their first employment. If the employer wishes to receive a special subsidy for having hired an individual in this respect, she or he must conclude an employment contract with the person concerned. During the period of training the person is treated as a 'normal' worker and all employment guarantees, including wage, must be applied to her or him. According to a draft law, an employment contract for training would have the same status as a fixed-term contract with no restrictions to the status of worker.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships in Lithuania can currently not be elaborated upon, as internships are not yet recognised. However, envisaged legislation would provide that the individual concerned would be deemed a worker.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Apprenticeships, training or internships relations do not fall under the scope of labour relations in Lithuania. Recall in this respect that the concept of internships is not applied at all.
Voluntary work	**Legal framework for defining voluntary work**	Volunteer work in Lithuania is partly regulated, as only a limited number of types of legal persons can use volunteer work. The relationship for volunteer work is flexible, however. The volunteer organiser and a volunteer are not obliged to compose an agreement. The law on volunteering defines in which cases the written agreement should be concluded : 1) if volunteering-related expenses are subject to reimbursement; or 2) if one of the parties requests so. Volunteering is defined as socially useful activities carried out by a volunteer, free of charge, the conditions thereof determined by the parties concerned. Only non-profit organisations (NGOs, public institutions, trade unions, religious communities etc) can organise volunteer work. The two parties are bound by a civil legal relationship. No employment guarantees are applicable to said relationships. As a result, volunteers are not treated as workers for what concerns taxation, social security or other employment rights.

	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	As volunteer work is regarded as a civil relationship, it cannot be governed by collective agreements and, moreover, it cannot result in any employment or related rights. EU migrants can volunteer, but it need be reiterated that it is not seen as work and thus cannot result in related rights. Finally, voluntary work does not give rise to employment rights, nor does it impact future employment rights. Moreover, as during the volunteering an individual is not susceptible to social insurance schemes, no benefits as such can be claimed. Voluntary organisations may organise private insurance.	
	How does volunteering impact the entitlements of EU national jobseekers?	A voluntary work activity does not create any employment rights, and has no impact on future employment rights. However, volunteering may be recognised as practical work and/or learning experience of the volunteer. As during the period of performing the volunteer work the person does not fall under the social insurance system, no social insurance benefits can be claimed.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	No definition of self-employment is found in Lithuanian legislation. To distinguish self-employment from regular employment reference is made to a formal criterion, i.e. an employment contract and a declaration to the social security authorities. More specific features of employment can also be specified: periodical remuneration for work, subordination to an employer (working regime, workplace), materials and working tools are provided by the employer. The existence of these features indicate employment relations. Non-existence would usually indicate that there is a self-employment activity.
		Criteria to distinguish self-employment from unemployment	Persons who are engaged in self-employment cannot acquire the status of jobseeker (unemployed person). According to Lithuanian laws an unemployed person is a person who has no labour relations nor is self-employed or a farmer. In Lithuania there is no concept of partial or 'low' employment. Thus, even if incomes from self-employment are low, a person cannot acquire the status of jobseeker.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employment activities fall under different taxation rules compared to employment. Self-employed persons are covered by social insurance, although to a lesser extent. During the period of self-employment a person pays social security contributions and is insured and has a right to social security benefits (old-age, invalidity and survivors pensions and in some cases sickness and maternity etc).
		The status accorded to those found to be in 'bogus' self-employment?	Bogus self-employment is sometimes used to hide actual employment relations. It arises from the situation that tax and social security contributions for the self-activity are smaller. If it is found that actually the activity has all the features of an employment relation, it may be recognised as illegal work. Administrative sanctions are applicable only to the 'employer' but not to the worker. If a self-employed person is not registered in the State Tax Inspectorate and does not pay income and social security taxes, this person shall be fined.

		The consequences of 'bogus' self-employment?	As a result of bogus self-employment being established, retroactive payments will need to be made and recalculation of income will take place.
	Routine verification of self-employment	Self-employment is not routinely verified.	
	What mechanisms of verification of self-employment are adopted	No mechanisms exist for the verification of self-employment. As indicated, routine checks are also not prevalent in Lithuania. As certain social security benefits can be granted also to specific categories of self-employed persons (e.g. maternity, paternity and parental benefits), persons must provide proof concerning previous incomes (more precisely social security contributions paid from incomes) before the benefit is granted. Hours of self-employment activities (as well as employment relations) are not taken into account.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No specific regime is applicable to economically dependent self-employed workers. An individual is either self-employed or regularly employed. Accordingly, the respective labour law provisions and social security entitlements will be available.	
	The labour law and welfare benefit entitlements of economically dependent workers?	Guarantees of labour law (such as paid annual holidays, severance payment) are attributed only to employed persons. Social welfare benefits can be granted also to self-employed persons, but the number of benefits is lower. Employed persons are covered by pension, sickness, maternity/paternity, unemployment and industrial accidents benefits, while self-employed persons depending on their status are covered by pension benefits and in certain cases maternity/paternity benefits.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	EU national workers enjoy the same treatment as Lithuanian nationals, their labour and welfare rights depending only on their formal status as employed or self-employed persons.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	Concerning rehabilitative work, sheltered work and students who work, no sources have been identified which elaborate thereupon specifically. With respect to workfare programmes on the other hand, Lithuanian legislation and practice prescribe that if the individual concerned has reached a 'workable age' an additional condition is imposed – in order to receive social cash benefits – whereby the individual is to participate in a publicly useful activity. However, this is not equated with regular employment. No specific regulation or practise can be identified for other EU nationals.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	No time limits and/or additional conditions are imposed.
		On grounds of involuntary unemployment?	Worker status is retained if the individual concerned is registered as a jobseeker. In case of preceding employment of a fixed nature, the individual will retain jobseeker status for a duration of 6 months.
		On grounds of pregnancy/maternity following the St Prix judgment	No time limits and/or additional conditions are imposed.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	As a result of losing worker status, the individual concerned may lose the right to reside. However, the procedure after failing to retain worker status is not stringent and individual situations must be assessed. If individual conditions such as actively looking for employment are not met, she or he will be asked to leave the Member State within 30 days, which may be extended in certain cases.	

	Are there any other types of work on the fringes of the definition of work	At this moment in Lithuania there are no specific employment or work forms on the fringes of the definition of work.

LUXEMBOURG

	Defining work/genuine and effective work/marginal and ancillary work	*De iure* no thresholds are imposed and work is determined upon a case-to-case assessment. *De facto* however, it appears that the amount of hours worked and earnings received will be relevant. If working intermittently for short periods of time, it will not be considered as work. The criteria that need be met are either income amounting to 50% of the social assistance standard, which means 50% of the Social Minimum Income (*RMG*) for one adult (€ 1,348 per month since 1 January 2016), which is € 674 per month, or employment amounting to 40% of normal working time, which means 40% of 40 hours per week, which is 16 hours per week (Article L. 211-5 of the Labour Code). *De facto* work below 10 hours will be considered marginal and ancillary. Recall also that short-period intermittent work will not be considered as sufficient for worker status.
	Treatment of part-time work	See the foregoing.
	Treatment of zero-hours and on-call contracts	Luxembourg law does not allow zero-hour contracts and on-call contracts.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Compulsory insurance. No sources concerning zero-hour contracts.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	Motive yes, physical capacity yes; familiarity with work no. In the judgment of the Administrative Court of 25 June 2014, the balance between on the one side wages and pensions and on the other side social assistance benefits has been upheld, which means that the person had to prove the balance between the wages from employment and social assistance benefits. The Court did not take into account the physical incapacity of the person to be employed due to serious illness.
	Treatment of those not found to be workers	Following registration, individuals have access to professional re-integration programmes. Unemployment benefits will be available albeit subject to the conditions that an individual needs to have been employed for a 'qualifying period'. Under the Luxembourg unemployment benefit scheme, this means having been employed for at least 26 weeks (or 6.5 months) out of the last 12 months.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Regarding social security, there are two exemptions from paying contributions for the national sickness insurance and old-age pension insurance: (1) Article 4, paragraph 1 and Article 179 of the Social Security Code state that a person who performs a professional activity only in an ancillary and non-usual way for a period fixed in advance, which must not exceed 3 months per calendar year, is exempted from contributions. (2) Article 5, paragraph 2 and Article 180, paragraph 2 of the Social Security Code state that a person who gains less than 1/3 of the Social Minimum Wage per year, which is € 7,691 per year (or € 640 per month), is exempted from paying contributions. But, this person may request an affiliation to the compulsory insurance. In case (2), the threshold is slightly the same than for genuine and effective work, i.e. € 640 / € 674 per month. Regarding income taxes, there is an annual minimum, named 'minimum vital', which is exempted from payment of taxes. Since 2009, this minimum is € 11,265 per year for a single person or € 22,530 per year for a couple or a single person with a dependent child. The threshold for income taxes is higher than the threshold for social security purposes and for qualifying for 'genuine and effective work'.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Regarding labour law, there is no distinction, if paid. Regarding social security benefits, apprentices qualify for compulsory sickness, long-term care, industrial injury and pensions insurance. At the end of the apprenticeship, the young person is assimilated to a worker who lost her or his job, which means that she or he qualifies for unemployment benefits.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	There are no wages and no minimum wages for apprentices. They are replaced by an apprenticeship allowance. Apprenticeship allowances (*indemnités d'apprentissage*) differ according to three categories. Apprenticeships may lead to: (1) a graduate of technician (*DT*); (2) a graduate of professional qualification (*DAP*); (3) a certificate for professional capacity (*CCP*). In case (1) the allowance varies between € 331 and € 1,922 per month according to the profession. In case (2) allowances differ also according to the profession. The amount per month varies between € 323 and € 2,584 per month. In case (3), allowances differ according to the profession and the year of study. The amount per month varies between € 430 and € 732 for the first year of study, between € 484 and € 947 for the second year of study and between € 592 and € 1,076 for the third year. In conclusion, in three cases the allowance may be lower than the thresholds set for defining migrant workers.

	How is training qualified? Is there a difference between paid / unpaid training?	Training is regarded as an employment activity insofar remunerated. There are two types of training. It is not an employment contract but several labour law provisions nevertheless apply. Concerning social security legislation, a case-to-case approach is required. Equal treatment is guaranteed for paid trainees. Training for unemployed people is qualified as subject to a mixture of unemployment rules and labour law. For people aged 30 and more, practical training alternates with theoretical training. During training, they keep their unemployment allowance. If they are not entitled to an unemployment allowance, they receive an internship allowance from the state. Both allowances are subject to social contributions and income taxes. For young people under the age of 30, there are two contracts offering training, i.e. the *contrat appui-emploi* and the *contrat d'initiation à l'emploi*. They offer employment and training for 40 hours per week and wages equivalent to the legal Social Minimum Wage.
	How are internships qualified? Is there a difference between paid / unpaid internships?	There are two different categories of internship: (1) internship as part of a school programme; (2) voluntary internship in a firm. Both may be paid/unpaid. A wage may be paid at the discretion of the employer. There is no legal minimum or maximum. In case (1) the internship contract, signed by the school, the trainee and the training institute, is not an employment contract. Nevertheless, trainees qualify for industrial injury insurance covered by the school. In case (2) even if internship is unpaid, trainees are assimilated to workers regarding social security. They are compulsorily insured, but there may be exemptions from paying contributions for the national sickness insurance and old-age pension insurance (mentioned above).
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Law 2008 transposing Directive 2004/38/EC states that "apprentices and trainees are given a status equivalent to workers". Internships are not mentioned. There is equivalence regarding social security in the case of apprenticeships, training and voluntary internships. There are special rules for internships as part of a school programme: interns are then assimilated to pupils, including industrial injury insurance. There is equivalence regarding income taxes: annual minimum exempted from taxes.
Voluntary work	**Legal framework for defining voluntary work**	It is regulated and subdivided into two different forms of voluntary work: *benevolat* (limited social security cover, freely chosen agreement), *voluntariat* (young people under 30, well-defined).
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Labour law entitlements are not applicable to volunteers, and have limited social security entitlements. No sources.

<table>
<tr><td></td><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">No impact.</td></tr>
<tr><td rowspan="7">Bogus self-employment</td><td rowspan="5">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>In distinguishing between employment and self-employment, subordination is a key factor in the assessment.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>In distinguishing between unemployment and self-employment, the fact of ceasing all activities is a key factor in the assessment.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Labour law does not apply to self-employed individuals. Insofar self-employed individuals have made the required contributions they will be entitled various benefits. In addition, there is the possibility of voluntary contributions to complement the received benefits.</td></tr>
<tr><td>The status accorded to those found to be in 'bogus' self-employment?</td><td>They will be reclassified as employees.</td></tr>
<tr><td>The consequences of 'bogus' self-employment?</td><td>Application of Labour Law and Social Security for Employees. And possibly sanctions.</td></tr>
<tr><td>Routine verification of self-employment</td><td colspan="2">There is no routine verification of self-employment. A citizen of the Union has to prove self-employment when she or he applies for a registration certificate from the municipality where she or he wants to reside. In this case, she or he has to justify that she or he meets the conditions linked to her or his situation (an activity which is effective and genuine).</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">For the purpose of social security, self-employed workers fall into 3 sub-groups and may have to undergo verification mechanisms:
• self-employed business people;
• self-employed intellectual workers, which are divided into liberal professions requiring a licence to trade under the special Law 1988 (e.g. architects), liberal professions which are subject to other laws (e.g. doctors), and other liberal professions which have no requirement to hold a licence to trade.
• self-employed persons in the agricultural sector.</td></tr>
<tr><td rowspan="2">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">No specific regime is applicable to economically dependent self-employed workers. There is a consensus in Luxembourg on not differentiating between self-employed workers who are employers and those who are not. The government has always been strictly opposed to such a 'grey area'.

The concept of 'economically dependent' is rarely used in case law when a request is made for a business contract to be reclassified as an employment contract.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Either the self-employment regime or the regular employment regime will apply.</td></tr>
</table>

<table>
<tr><td></td><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No difference.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">There is case law concerning the professional re-integration contract within the framework of the minimum income scheme.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>The illness/incapacity must be temporary and there is no limit in time.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>There is a 6-month limit if unemployed following a fixed-term contract/having been employed less than 12 months. Indefinite retention of worker status if registered as a jobseeker and previously worked for more than one year.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No apparent sources.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">The person concerned might not be granted/lose her or his residence status and this may be combined with a decision encompassing an obligation to leave the country with time limits included, unless proof can be given that the person concerned has a genuine chance of finding employment.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

MALTA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Whilst no general thresholds have been imposed in Malta for the purpose of determining what constitutes work, sector-specific thresholds do exist. However, such thresholds seek to establish correct pay as opposed to establishing whether an individual is to be deemed a worker. In the Social Security Act a threshold is imposed of 8 hours per week for an individual to be deemed to be engaged in an insurable activity. Again, however, this is solely in order to determine social security insurability and does not affect the qualification of worker. Consequently, for the determination of what constitutes work, no thresholds have been imposed. Zero-hour contracts are subsequently *de facto* permitted and unregulated. However, insofar the 8-hour threshold is not met as stipulated in the Social Security Act, the employment will not be deemed insurable. Furthermore, no criteria have been set to determine whether work is to be deemed genuine and effective. Recall, however, that the 8-hour threshold exists in social security legislation in order for the activity to be insurable. Similarly, no criteria have been established to determine what work is deemed marginal and ancillary.
	Treatment of part-time work	Part-time workers are to be accorded equal treatment vis-à-vis full-time workers and are accorded pro-rata payments in accordance with the hours worked.
	Treatment of zero-hours and on-call contracts	In view of the lacking regulation thereof, zero-hour and on-call contracts are *de facto* permitted, albeit that such activities may not be deemed insurable if the 8-hour working time threshold per week is not met.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	As previously indicated, EU migrant workers will need to provide proof of insurable employment (i.e. 8 hours per week) in order to be deemed to be insurable under the Maltese social security legislation, albeit that this is not necessarily a criterion to assess the genuine and effective nature of the activities exercised. As concerns individuals governed by zero-hour contracts, entitlement will depend on the specific benefits, and whether they are contributory or not.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these criteria are not taken into account.
	Treatment of those not found to be workers	Individuals not found to be workers may be registered as jobseekers despite engaging in part-time work. This registration is to take place at the Employment Training Corporation, where they must additionally follow a personal action plan and accept offers of employment unless they have a reason warranting the choice not to. The individuals concerned will have access to contributory benefits if they have effectively contributed, are actively seeking employment and are available to take up employment. Registration is required as well as participation in training unless a justification can be given in order to join.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	As such there are no cases on defining genuine and effective EU migrant work. However if the EU migrant worker satisfies the conditions for domestic social security/tax legislation, she or he will be treated equally without discrimination i.e. any conditions imposed on locals will be equally effective on EU migrants and any treatment locals get will also be applicable for EU migrant workers.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprentices are treated as employees and are registered as full-time apprentices in the ETC employment register.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	This depends on the scheme under which the apprentice is registered, but usually the apprentice keeps getting a monthly stipend (maintenance grant) from the educational institution she or he is attached to, which may or may not be topped up by a weekly remuneration by the employer (see e.g. http://www.mcast.edu.mt/Portals/0/apprenticeships/Payment%20and%20Conditions%20-%20MCAST%2013.10.2014.pdf). It also depends on the period of the apprenticeship, i.e. whether the apprentice is in the observatory period, or which year of apprenticeship she or he is in. EU migrant apprentices would be treated under the same terms and conditions mentioned above.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is defined as occupational skill development to facilitate market entry. Trainees are not regarded as employees and may retain their unemployment status. Trainees are remunerated at 80% of the weekly minimum wage. The minimum wage for 2016 is € 158.39/week (under 17), € 161.23/week (17 years) and € 168.01/week (18 years and above).
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are not regulated, but there is a request to notify traineeships to the competent departments. Interns as such are regarded as students and not employees.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Each category of apprenticeship is treated differently as explained above. For example, apprentices are treated as employees whereas trainees and interns are not. For domestic social security/taxation purposes, there is no difference in treatment, and any income earned is subject to social security and taxation, albeit it is probable that for taxation they do not exceed the minimum threshold to be considered taxable, and for social security purposes they would fall within the 'A' category (least payment). In these cases, the amount of remuneration is immaterial, provided that the economic activity is 'genuine and effective' – however, since trainees and interns are not regarded as employees, they will never be accorded a worker status.
Voluntary work	**Legal framework for defining voluntary work**	Volunteer work is regulated in the Voluntary Organisations Act and is defined as unremunerated services to a voluntary organisation.
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	No noteworthy sources have been identified which elaborate upon the treatment of volunteers. It need be noted, however, that indirectly volunteering may affect access to regular employment in a positive manner.
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteering does not impact the entitlements of EU migrants.

Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	The distinction between employment and self-employment hinges upon the notion of subordination and whether the work performed is for the individual concerned or for the employer.
		Criteria to distinguish self-employment from unemployment	To be a self-employed person in Malta a person needs to register with the employment authorities as such, maintain VAT registration, comply with local taxation procedures such as trading, profit and loss accounts etc. Payment of self-employed contributions needs to be based on the earnings derived from the self-employed activity. Earnings means the income derived by the self-employed person from any economic activity (including the exercise of any trade or profession), and is to be taken net of expenses directly incurred in generating that income. The weekly contribution a self-employed person has to pay is based on the income the person declares, being a minimum of € 28.73/week and a maximum of € 51.73/week in 2016. If she or he is registered as self-employed and no earnings are derived or the earnings are less than € 910/year then no social security contributions are due and therefore the person is not insurable under the Social Security Act.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable to self-employed individuals. Employed and self-employed persons in Malta have the exact same social security entitlements with the exception of unemployment benefits (self-employed persons are not entitled) and maternity benefits where employed persons are entitled to 14 weeks at a normal weekly salary and an additional 4 weeks at a minimum wage level, whereas self-employed persons are entitled to 18 weeks at minimum wage level.
		The status accorded to those found to be in 'bogus' self-employment?	In the event of bogus self-employment, the employment relationship will be reclassified as regular employment.
		The consequences of 'bogus' self-employment?	In addition to the retroactive payment of wages, the law stipulates that criminal sanctions can be imposed upon anyone contravening the '*Employment Status National Standard Order SL 452.108*', which was established to counter the use of bogus self-employment.
	Routine verification of self-employment	Yes, there is routine verification of self-employment.	
	What mechanisms of verification of self-employment are adopted	The Labour Inspectorate carries out investigations both *ex officio* and also on the basis of complaints received. The inspectors seek the information necessary which leads them to ascertain whether there is a case of bogus self-employment and whether the law is being complied with. If there appears to be a breach of law, the inspectors consider the arguments of the alleged perpetrator and request that the situation is rectified. If the person concerned persists in breaching the law, the inspectorate is empowered to institute criminal proceedings against the latter and in terms of law.	

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<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">There is no special status in Malta which is accorded to economically dependent workers. In practice the 'Employment Status National Standard Order SL 452.108' offers criteria to determine whether a worker is to be classified as employed or self-employed, and depending on these criteria, an economically dependent worker will be classified accordingly. Article 3 of SL 452.108 states that when considering the employment status of a person who is nominally self-employed and is prima facie not considered as an employee, it must be presumed that there is an employment relationship and that the person for whom the service is provided is the employer if at least five of the criteria mentioned are satisfied. Therefore, this legislation determines whether an economically dependent worker is to be treated as an employee/self-employed person under Maltese legislation.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">To determine the status of the economically dependent worker, at least five of the criteria established under SL 452.108 have to be satisfied. If five (or more) criteria are satisfied the person concerned will be automatically considered as an employee. The labour law applicable to her or him and to the economically dependent EU national worker would be the Employment and Industrial Relations Act (Cap. 452) and all its subsidiary legislation. If four or less criteria are satisfied, then the status of that worker would be considered as self–employed. There is no specific labour law applicable to self-employed persons.

If the economically dependent worker is classified as self-employed as per SL 452,108, the welfare benefit entitlements would be the same as for self-employed persons. If she or he is classified as employed, entitlement would be the same as for employees.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">Same as above – there is no difference of treatment of local and EU national economically dependent workers.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">No relevant sources have been identified which elaborate upon rehabilitative work, sheltered work, students who work and persons on workfare programmes.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits or additional conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>Worker status is retained if the individual concerned is registered as a worker. She or he must, however, be genuinely seeking employment.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>Worker status is retained, in conformity with the CJEU ruling if return to work is effectuated within a reasonable time following the birth. Reasonable time is, however, not defined.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Pursuant to the loss of worker status, the person concerned may lose the right to residence.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

THE NETHERLANDS

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The definition of what constitutes work in the Netherlands varies depending on the legislative instrument concerned. For what concerns residence rights and migrant work, the genuine nature and effectiveness of work will be determined by non-cumulative indicators, namely the individual concerned must either receive income which exceeds 50% of the social assistance standard (approx. € 670 for an individual), or must work at least 40% of the normal full-time working time (which may vary from sector to sector, from profession to profession etc). In subsidiary order, if the foregoing criteria are not met, a case-to-case assessment will ensue taking into consideration all relevant factors. Zero-hour contracts are permitted insofar they meet one of the aforementioned standards concerning the genuine nature of work and effectiveness.
	Treatment of part-time work	Part-time work is permitted and protected if one of the criteria for genuine and effective work is met (50% of the social assistance standard or 40% of normal working time).
	Treatment of zero-hours and on-call contracts	Zero-hour contracts and on-call contracts are permitted insofar the earnings or hours worked amount to the criteria to determine whether the work is genuine and effective. Recall, however, that if these criteria are not met, a case-to-case assessment may still ensue taking into consideration all relevant factors.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	In order to be entitled to welfare benefits, migrant workers have to provide proof concerning the sources of income, including employment contracts and salary slips. For individuals bound by zero-hour contracts, entitlement is linked to residence. Hence, if criteria for lawful residence are met, indeed such individuals will have access to social assistance.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these factors are not taken into account in determining whether work is genuine and effective.
	Treatment of those not found to be workers	Workers not found to be workers may be accorded the status of a jobseeker. In addition to the status as jobseeker they may be given the status of a person of independent means, which requires sufficient resources and health insurance in order not to lose the residence rights. Jobseekers are allowed to remain in the territory for a duration exceeding 3 months insofar they demonstrate that they have a genuine chance of finding employment. Rights of residence may be taken away in a number of scenarios concerning social assistance. It need be noted, however, that individuals not found to be workers will have limited access to social assistance for persons of independent means. No general, overarching tests for a genuine chance of employment are imposed upon individuals who are not found to be workers. Rather, a case-to-case approach will prevail, taking into consideration the personal circumstances of the individuals concerned.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	In essence, the EU definition is used and translated in the aforementioned requirements of receiving income of at least 50% of the social assistance standard or working 40% of the normal working time.	
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Currently there is much debate concerning the status of apprentices. Despite said debate, however, no sources can be identified elaborating upon the treatment of apprentices.	
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	No general 'official' information is available. The allowances that apprentices may receive often seem to be lower than the minimum wage.	
	How is training qualified? Is there a difference between paid / unpaid training?	No sources have been identified which elaborate upon the regulation of training and trainees.	
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are unregulated but much debate exists as to whether it should be regarded as an employment contract. The distinction and debate currently hinges on the distinction between productive work and work with an educational purpose, as well as the notion of remuneration. In order to enhance legal certainty, a circular has been disseminated concerning the required standard payments to interns, as well as labour law-like provisions.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No. There is no separate legal status of 'apprentice'. Apprentices are for social security or tax purposes regarded as workers or residents, if at all.	
Voluntary work	**Legal framework for defining voluntary work**	There is no general legal framework concerning volunteering and limited case law with respect thereto. However, it is not remunerated and as such not considered as employment.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	No sources have been identified which elaborate upon the treatment of volunteers.	
	How does volunteering impact the entitlements of EU national jobseekers?	No sources have been identified which elaborate upon the impact of volunteering on the entitlements of EU national jobseekers.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	The most predominant factors to determine the distinction between self-employment and regular employment are the nature of the relationship and subordination. In addition, case law has enumerated a number of additional criteria, such as the intention of the parties, the organisation of the work performed, and integration in the workplace.

		Criteria to distinguish self-employment from unemployment	Subordination is the final criterion, which is determined (for labour law purposes) by looking at the inclusion in the employer's organisation, the factual possibility to give instructions and the societal position of parties.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed persons fall outside the unemployment benefit scheme; the legal status for welfare is the same as for workers.
		The status accorded to those found to be in 'bogus' self-employment?	In principle, a worker.
		The consequences of 'bogus' self-employment?	The person concerned must be treated as a worker for the purposes of labour law etc. The employer may be subject to the duty to pay premiums. For tax law purposes, the person concerned cannot benefit from tax advantages for the self-employed and can be fined.
	Routine verification of self-employment	Tax authorities have recently intensified verification.	
	What mechanisms of verification of self-employment are adopted	Tax authorities perform checks while assessing tax duties.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	It appears that no distinct legal regime exists for parasubordination, and that *in casu* the legal regime covering bogus self-employment applies. Depending upon the relevant criteria, an employment relation will thus be considered as being either self-employment or regular employment.	
	The labour law and welfare benefit entitlements of economically dependent workers?	The applicability will depend upon whether the person is self-employed or regularly employed (following requalification).	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	The applicability will depend upon whether the person is self-employed or regularly employed (following requalification).	

<table>
<tr><td rowspan="5">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Until 1 January 2015 the Wet Sociale Werkvoorziening (Social Employment Law) provided rules intended to provide work for the purpose of maintaining, restoring or improving the capacity for work of persons who, for an indefinite period, are unable, by reason of circumstances related to their situation to work under normal conditions. For that purpose, Dutch local authorities were to be set up, with financial support from the state, undertakings or work associations, the sole purpose of which is to provide the persons involved with an opportunity to engage in paid work under conditions which correspond as far as possible to the legal rules and practices applicable to paid employment under normal conditions insofar as the physical and mental capacities of the workers do not justify a derogation in that regard. As of 1 January 2015, with the entry into force of the Participation Act, municipalities regulate the social workplaces, as a result of which the possibilities to work in such places may vary from municipality to municipality. Municipalities may offer 'residents' the possibility to work in social employment places. Participation in social employment in itself does not give rise to worker status for the purposes of Article 45 TFEU. Furthermore, students who work 56 hours a month or more are considered workers for the purposes of, and thus become entitled to, student financial aid covering maintenance costs. As 56 or more hours of work a week as a rule comes close to 40% of the normal working time in a given sector, the student-workers concerned will as a rule also be regarded as a worker for the purposes of residence under the Aliens Act, Decree and Circular. Such student-workers are in principle not entitled to (supplementary) social assistance as they are either not fully available for additional work or receive an income exceeding the social assistance standard. Finally, the Law on Provision of Incapacity Benefit to disabled young people (Wet arbeidsongeschiktheidsvoorziening jonggehandicapten – 'the Wajong'), which as of 1 January 2015 has been brought under the umbrella of the Participation Act) provides for the payment of a minimum benefit to young persons who are already suffering from total or partial long-term incapacity for work before joining the labour market. Disabled young people are defined as residents who on their 17th birthday were already incapable of work or who, if they become incapacitated subsequently, have studied for at least 6 months during the year immediately preceding the day when their incapacity for work arose. Employers who hire a person receiving a Wajong benefit may pay less than the minimum wage; the benefit thus to a varying degree replaces the wage that should ordinarily be paid and received.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions have been imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>To retain worker status, registration as a jobseeker is required following involuntary unemployment. No temporal limitations are imposed in this respect, unless previous work amounted to less than 12 months, in which case the person concerned will retain the status of a worker for six months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No sources have been identified in this respect.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Pursuant to the loss of worker status, the individual concerned may lose the right to residence. This can be countered, however, if the individual concerned has sufficient independent means to reside.</td></tr>
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	Are there any other types of work on the fringes of the definition of work	No.

NORWAY

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	In order to be deemed a worker in Norway, an individual must have worked at least one day. Within this context no legal definition is provided with respect to zero-hour contracts and/or on-call contracts. Consecutive and temporary forms of employment are subject to temporal limitations (e.g. there will be an automatic change to a full-time contract if an individual is employed by finite contracts for a consecutive period of 3-4 years).
	Treatment of part-time work	In Norway, increasing protection of part-time workers is ascertainable as well as the desire to fight against unwanted part-time work. Employers are bound to talk with trade unions about part-time work on a yearly basis and projects have been initiated to decrease the amount of part-time work.
	Treatment of zero-hours and on-call contracts	On-call contracts are permitted.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	All individuals who are employed and registered in Norway are entitled to welfare benefits. For unemployment benefits proof must be given of previous employment. Self-employed individuals are not covered by the national unemployment benefits. For sickness benefits proof must be given concerning the impairment rendering employment impossible, proof of having worked at least four weeks (may have taken place in another EEA country), and proof of the fact that they lose pensionable income due to the sickness/disability. Again, self-employed individuals are far more restricted in receipt of sickness benefits. All those individuals who are employed and registered in Norway have access to welfare benefits. Recall, however, that certain conditions must be met for the varying welfare benefits, with a specific distinction concerning sickness benefits and unemployment benefits and particularly relating to self-employed individuals.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No.
	Treatment of those not found to be workers	Individuals in part-time work can be regarded both as workers and as jobseekers. If EU migrants are deemed unemployed they can remain in Norway for approximately 6 months in order to find a job. If they have lived in Norway for at least 1 year they may continue to do so without any durational limitations. The loss of employment, however, must have been involuntary and they must have registered as such.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes.

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<tr><td rowspan="5">Apprenticeships</td><td>Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)</td><td colspan="2">The notion of apprenticeship is regulated via the law on primary and secondary education. The apprentice concerned is bound by an apprentice contract in the company concerned in which she or he is an employee, the rights and obligations of which are determined by the contract concerned and by collective agreements. Access to benefits and minimum wage are regulated via sectoral collective agreements. The apprentice has the right to sickness and holiday benefits in the same manner as ordinary employees. Equally so, apprentices have the right to unemployment benefits. EU apprentices have the same status as Norwegian apprentices.</td></tr>
<tr><td>How do apprenticeship wages compare with any thresholds set for defining migrant work?</td><td colspan="2">There are no wage thresholds for migrant work.</td></tr>
<tr><td>How is training qualified? Is there a difference between paid / unpaid training?</td><td colspan="2">Wage during an apprenticeship covers both productive work and training (the latter of which is seemingly deemed an integral part of an apprenticeship).</td></tr>
<tr><td>How are internships qualified? Is there a difference between paid / unpaid internships?</td><td colspan="2">An unpaid internship is not regarded as employment, whereas a paid internship is regarded as temporary employment.</td></tr>
<tr><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?</td><td colspan="2">Yes, for apprenticeships and paid internships. Unpaid internships will not be regarded as employment.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">There is no legal framework for defining voluntary work.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">No sources have been identified which elaborate upon the treatment of volunteers.</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">Volunteering does not impact the entitlements of EU national jobseekers.</td></tr>
<tr><td rowspan="2">Bogus self-employment</td><td rowspan="2">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>The Norwegian tax authorities issued a comprehensive guide which enumerates criteria to define self-employment. These include, amongst others, whether the person concerned is working at her or his own risk, whether she or he has prospects of profits in the long term, whether there is subordination, and whether the person concerned does or does not provide the tools.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>None identified. Self-employed persons are not covered by the Norwegian unemployment benefit scheme.</td></tr>
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		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed individuals are not covered by national unemployment benefits and are far more restricted in receipt of sickness benefits and maternal/paternal leave benefits than employed workers. If a self-employed person settled in Norway loses the ability to support her or himself through work or savings, she or he can apply for social assistance.
		The status accorded to those found to be in 'bogus' self-employment?	Bogus self-employment may result in reclassification of the employment relationship into a regular employment relationship.
		The consequences of 'bogus' self-employment?	Reclassification of the employment contract will result in the obligation to pay wages according to collective agreements if they are legally binding (which is the case only in a few sectors).
	Routine verification of self-employment	Verification of self-employment does occur, but in certain sectors these controls are not routinely.	
	What mechanisms of verification of self-employment are adopted	The competent administration will take into consideration the various criteria, of which none are self-standing and thus decisive individually. The tax authorities' main criteria for self-employment are: • The activity must be done at the self-employed person's own account and risk. • The activity should have prospects for profits in the longer term. • There must be some activity. • Other indications of self-employment, i.e. that the self-employed person has more than one contract, provides her or his own tools and materials, that the contract has a time limit *etc*. Indications of employment, rather than self-employment are: • The worker cannot use assistants on her or his own account. • The customer is leading and controlling the work. • The customer provides materials and tools. • The customer bears the responsibility for the end result.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Norwegian legislation acknowledges non-employed employees. This refers to individuals who receive a salary/wage without being temporarily or permanently employed (this can thus include freelance work).	
	The labour law and welfare benefit entitlements of economically dependent workers?	These individuals enjoy fewer rights than regular employees and are for the most part assimilated with self-employed individuals.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	No distinction is made.	

<table>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">The Work Environment Act governs rehabilitative and sheltered work and the individuals concerned are regarded as employees. Students who work are equally so governed by the Work Environment Act and are to be regarded as employees, as is also the case for individuals engaged by workfare programmes.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions have been imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>If previous employment lasted for less than a year, worker status is retained for 6 months if the person concerned registered as a jobseeker. If the individual concerned does not pose an unreasonable burden she or he may be permitted to remain for longer than 6 months. No limitations are imposed if the individual concerned had previously worked for 12 months or more.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No evidence that this has been addressed in national law.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Pursuant to the loss of worker status, the individual concerned may be subjected to a decision to leave the country.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

POLAND

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Working time and remuneration are essential elements of the employment relationship. However, there are no official working hour thresholds or earning thresholds to define genuine and effective work for the purposes of Article 45 TFEU. In addition, various additional criteria have been defined by case law which help determine the employment contract. According to Polish law all persons working under an employment contract (even part-time) are workers for the purpose of free movement of persons. Persons working under full-time employment contracts are entitled to remuneration no less than PLN 1850 (according to the Act on Minimal Remuneration, consolidated text, Official Journal 2015, pos. 2008), even when she or he works part-time for a few hours a month. The amount of the remuneration the person receives under the employment contract is not a criterion to be deemed a worker for the purpose of free movement of persons. Persons working under civil contracts are not covered by the above guarantees of minimal remuneration. However, the amount of remuneration earned under the civil contract is not a criterion to be deemed a worker for the purpose of free movement of persons. Person performing work on the basis of a civil contract are deemed to be workers for the purposes of free movement of workers, and no other criteria are expressed in the law (legal basis: Article 2, point 7 of the Act of 14 July 2006 on Entry, Stay and Exit from the Territory of the Republic of Poland by Citizens of European Union Member States and Members of of their Families, Official Journal 2006, No 144, pos. 1043, with later amendments). Self-employed individuals are not seen as workers. Recalling the distinction between the employment contract and a civil law contract, the latter of which is not subject to thresholds as is an employment contract, it seems that zero-hour contracts will fall under the latter category, and thus are *de facto* permitted.
	Treatment of part-time work	No reliable data can be identified concerning the treatment of part-time work for the purposes of Article 45 TFEU. Generally, part-time work is treated analogically to full-time work, i.e. in respect of employee status or discrimination regulations.
	Treatment of zero-hours and on-call contracts	No reliable data can be identified in this respect. Recall, however, the distinction between employment and civil contracts. Civil contracts are hardly regulated, yet entail that the person concerned cannot be considered unemployed despite the flexibility, which ultimately may facilitate the use of zero-hour contracts.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Proof needs to be given of previously completed periods of insurance in Poland, of completed periods of insurance in other countries, in addition to welfare benefit-specific conditions which need be met. Zero-hour contracts and on-call contracts are covered by civil law contracts (see *supra*). These types of contracts are covered for obligatory pension, old-age pension, insurance, disability pension insurance and insurance against accidents at work and occupational diseases. Voluntarily these contracts are covered for sickness and maternity insurance.

	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	These factors are not taken into consideration in assessing the genuine and effective nature of an activity, albeit that these criteria play an ancillary role in determining whether the contract is valid and whether the work has actually been performed. With regard to the motive for the work, the Social Security Institution (*ZUS*) tends to refrain from granting benefits in some suspicious cases and justifies the refusal by reference to the rules of lawful social conduct, although case law confirms that such a refusal is not legally justifiable (*cf* the relevant case law as cited in the Polish registry: *wyrok Sądu Apelacyjnego w Warszawie*, 7.03.2014 r., III APa 63/13, *wyrok Sądu Apelacyjnego w Szczecinie* z dnia 4.02.2014 r., III AUa 642/13, *wyrok Sądu Apelacyjnego w Warszawie z dnia* 8.11.2013 r., III AUa 3548/12).
	Treatment of those not found to be workers	Whilst part-time employees in marginal employment, who are thus not found to be workers, may *de facto* be considered as jobseekers, in essence they are nevertheless considered as workers. As a result, while they are in some form of employment, the individual concerned cannot be given the status of a jobseeker. Lastly, a number of specific scenarios are deemed as excluded from the status of jobseeker (those scenarios – listed in Article 2 (2), points a-m of the Act on the Promotion of Employment and the Insitutions of Labour Market, consolidated text in the Official Journal 2015, pos. 149 with later amendements – apply to Polish nationals as well as to EU nationals). Within this context no durational limitations have been imposed for jobseekers if they are genuinely and effectively continuing to look for employment. Those individuals who have lost employment retain the right to stay on the territory in specific cases for the duration of 3 months, 6 months or longer if they entered Poland with the intention and capacity to demonstrate that they are actively seeking work and have genuine chances of finding employment. All forms of evidence may be submitted within this respect and no one test applies. Again, even without adherence to the foregoing, an individual may be entitled to remain on the territory insofar she or he has sufficient resources to support her or himself and is covered by a social security scheme; or if she or he attends professional training and is covered by the social security scheme or has private health insurance; or if she or he is married to a Polish citizen. In view of the fact that individuals in such a situation are generally considered as workers, it would appear that they are entitled to welfare benefits.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No explicit equivalence can be ascertained.

Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprenticeships/training/internships may be carried out under numerous legal forms. Depending on the form, the individual concerned will be considered a worker or not. Apprenticeship as employment: said individuals are deemed workers. In general, for apprenticeships organised in the form of employment, minimal remuneration is due (the same as for other employees). However, certain exceptions apply, including employees during their first year of employment (they are entitled to 80% of minimal wage; see Act on Minimal Remuneration, consolidated text, Official Journal 2015, pos. 2008) and young employees who are learning a profession (they are entitled to the minimum wage = 4-6% of the average wage depending on the school year; see regulation of 28.05.1996 concerning the professional formation of young workers and their remuneration, Official Journal 2014, pos. 232). Apprenticeship under a civil law contract: no specific regulations have been enacted in this field. In this scenario a case-to-case approach is requisite. Moreover, there are no legal guarantees concerning wages for apprentices working under civil law contracts. Apprenticeships as graduates: said individuals are not considered workers. it is possible to combine this status with a jobseeker status. A limited right to unemployment benefits may be acquired. Moreover, remuneration is not required and thus an apprenticeship in this respect may be paid or unpaid. If paid, however, the remuneration has a ceiling threshold (twice the monthly minimum wage). Diverse forms of apprenticeships that serve to prepare jobseekers and other persons for professional activities specified by the provisions of the Act on the promotion of employment: professional trainings, apprenticeships, vocational and retraining programmes, jobseeking trainings, internships, as well as attendance in occupational therapy workshops *etc*. These forms, as carried out under the provisions of the said Act or the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, are not considered as work and thus persons undertaking such activities are not considered workers. Depending upon the form under which the apprenticeship has been concluded, minimum wages will be safeguarded. Concerning other benefits it appears that for graduates limited unemployment benefits are available. Unemployment benefits are granted to an unemployed person if, within 18 months before the day of submission of an application for allowance, she or he maintained the employment relationship or service relationship, and received remuneration, which is a contribution assessment base for the Social Insurance and Labour Fund equal to at least the minimum remuneration for work during 365 days, and if the relationship was terminated for reasons attributable to the employer. Lastly, it appears that no distinction is made between Polish and EU apprentices.

	How do apprenticeship wages compare with any thresholds set for defining migrant work?	There is no threshold for migrant work. An EU national apprentice may be deemed a worker within the meaning of Article 45 TFEU if she or he works on the basis of a civil contract or employment contract. As stated above, in general, apprentices working on the basis of an employment contract are entitled to minimal remuneration as other employees (exceptions include: employees during their first year of employment, who are entitled to 80% of the minimal wage – see the Act on Minimal Remuneration, consolidated text, Official Journal 2015, pos. 2008; and young employees who are learning a profession, who are entitled to the minimum wage = 4-6% of the average wage depending on the school year – see regulation of 28.05.1996 concerning professional formation of young workers and their remuneration, Official Journal 2014, pos. 232). Minimal wages are not guaranteed if an apprenticeship is organised in the form of a civil law contract.
	How is training qualified? Is there a difference between paid / unpaid training?	Training can be qualified via one of the four mentioned forms (via an employment contract, via a civil law contract, as a graduate, or via the diverse other forms). Depending upon the form used for the training, remuneration will or will not be granted.
	How are internships qualified? Is there a difference between paid / unpaid internships?	As aforementioned, internships can be governed by one of four legal forms, which will be determinative for potential remuneration.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes, there is equivalence.
Voluntary work	**Legal framework for defining voluntary work**	The Act of 24 April 2003 on Public Benefit and Volunteer Work defines volunteers as persons who voluntarily and without remuneration perform work for institutions or organisations of the category defined in the Act and under the rules specified by said Act. They may be engaged by NGOs or other organisations which perform activities for the public benefit, or public administration bodies and their units. Volunteers cannot be engaged in companies whose sole purpose is economic gain.
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	An agreement is concluded between the relevant parties and written if the duration of the volunteer work exceeds 30 days. Furthermore, an agreement must contain a clause allowing for the termination thereof. A number of rights are to be adhered to, such as a safe and hygienic working environment, the coverage of costs of travel and accommodation and potentially food. In addition, the volunteer must be informed of any risks to her or his health stemming from the nature of the volunteer work. The volunteer may be entitled to health benefits as well as benefits stemming from accidents at work. Additional insurance against accidents/misfortunes need be provided for if the volunteer work exceeds 30 days.
	How does volunteering impact the entitlements of EU national jobseekers?	Volunteering does not preclude unemployment status.

<table>
<tr><td rowspan="7">Bogus self-employment</td><td rowspan="5">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>The distinction between self-employment and regular employment hinges upon various criteria of which the most important is subordination. In addition, various additional criteria have been defined by case law which equally so help determine the distinction. These criteria include, amongst others, attendance and presence in the workplace, the sharing of the (financial) risk, and the possibility to engage third persons.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>The distinction between self-employment and unemployment is assessed via the purely formal criteria, irrespective of income thresholds.

A person may be registered as self-employed (under the Act on freedom of economic activity, consolidated text in the Official Journal 2015, pos. 584 with later amendments), or unemployed (under Article 2.2. of the Act on Promotion of Employment and Institutions of Employment Market). It is not possible to join those two statuses, unless self-employment is officially suspended. A person who is registered as an entrepreneur in the public register is recognised as self-employed and is excluded from the status of jobseeker (e.g. judgment of Naczelny Sąd Administracyjny in Warsaw, on 21 November 2014 r., I OSK 1699/13).</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Self-employed individuals are not covered by labour law legislation, with the exception of provisions pertaining to safety and health. Self-employed individuals are entitled to social security benefits, but are obliged to pay the contributions in their entirety. With regard to self-employed contributions for old-age pension insurance, disability pension insurance and insurance against accidents at work and occupational diseases are compulsory, while contribution for sickness and maternity insurance is optional.</td></tr>
<tr><td>The status accorded to those found to be in ‘bogus’ self-employment?</td><td>Reclassification</td></tr>
<tr><td>The consequences of ‘bogus’ self-employment?</td><td>Reclassification following bogus self-employment results in the right to residence in cross-border situations. Moreover, it may have implications for the entitlement to social security benefits, which may be more difficult to attain, despite the fact that contributions were paid.</td></tr>
<tr><td>Routine verification of self-employment</td><td colspan="2">Verification does not occur routinely.</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">Via declarations of self-employment, self-employment is verified at the point when the claims are made for registering permanent stay or confirming permanent stay. For such purposes, the relevant administrative body may require different types of evidence, including contracts, invoices, information about the performed activities, the account of witnesses etc. It may also ask other bodies and institutions for information and verification.</td></tr>
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<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">No specific regime exists concerning economically dependent self-employed workers. They are either self-employed or, following reclassification, regularly employed.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Depending upon whether they are effectively self-employed or reclassified as regularly employed, labour provisions and social security entitlements will differ.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No specific regime exists concerning economically dependent self-employed workers. Their status in terms of labour law and welfare benefits is the same for Polish nationals and other EU nationals.</td></tr>
<tr><td rowspan="7">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Polish legislation recognises the employment by cooperative bodies, which are associations of persons acting and performing economic activities in the interest of its members. Persons employed by such bodies are considered workers under the Polish labour code, and thereby also by the Act on entrance and stay of the EU citizens in Poland. Social cooperative bodies constitute a special form of such bodies and combine features of entrepreneurship and an NGO (social entrepreneurship). The members of such body need to be at least 50% persons at risk of social exclusion. Under the relevant legislation, the purpose of such cooperative body is to enable the persons concerned to return to normal social and economic activity. Persons employed by such bodies are considered workers under the Polish labour code, and thereby also by the Act on entrance and stay of EU citizens in Poland. As concerns students who work, no sources have been identified which elaborate thereupon. Finally, workfare programmes are governed by Portaria 128/2009.

Although employment in sheltered work enterprises and vocational activity establishments that are provided for in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities is strongly aimed on rehabilitation of workers with disabilities, their work is recognised as genuine and effective as they work under regular employment contracts.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>If registered and previously employed for a duration of at least one year, the individual concerned will retain worker status without being subjected to temporal restrictions. If previous employment lasted for less than a year, she or he will retain said status for 6 months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>Pregnancy is covered by the illness and temporary incapacity to work. Whereas maternity and incapacity to work as a result thereof is not covered by the Act concerned, sickness insurance covers the foregoing.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Loss of the right to residence.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2"><u>Unpaid apprenticeship</u>: as long as such work does not fulfil the conditions of an employment relationship, defined in 22 § 1 of the Labour Code, it is regarded as a civil law contract. It is legal to work on the basis of a civil law contract without pay. Such person is not an employee for internal purposes, but is recognised as a worker for the purposes of Article 45 TFEU.</td></tr>
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PORTUGAL

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The Labour Code stipulates mandatory conditions to be met in employment relations. In particular, part-time contracts must be in writing and specify the amount of required work per day and per week. In view of the foregoing, zero-hour contracts, on-call contracts and similar contracts are not permitted. If these conditions are not met, the employment relationship will be presumed to be a full-time contract. It need be noted that part-time contracts are more heavily regulated than full-time contracts. The duty of having in writing the part-time contracts and of their subscription in the Social Security, with the payments proportionally performed by the employer and the employee, suffice to entitle national authorities to control the authenticity of a part-time contract from the point of view of the effectivity of the work.
	Treatment of part-time work	Part-time work is a residual form of regular employment. No noteworthy sources have been identified in this respect.
	Treatment of zero-hours and on-call contracts	Recall that for part-time work, which is more heavily regulated, a minimum hours threshold is required to be incorporated in the employment contract – hence, no zero-hour contracts are allowed. However, there are contracts which are highly similar thereto, i.e. the intermittent employment contract. The intermittent employment contract is not a full-time/permanent contract, nor is it a part-time contract. However, even in this respect there are no decisions by the relevant courts.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Individuals governed by zero-hour contracts are entitled to welfare benefits if they have registered as independent workers, and if they have paid the relevant contributions.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No.
	Treatment of those not found to be workers	They may be considered as jobseekers if they are not registered as independent/self-employed workers. Whilst equal treatment is guaranteed for contributory benefits, jobseekers are not entitled to benefits based on the solidarity system. The Portuguese system does not provide for tide-over allowances; however, young individuals may be entitled to social income for insertion, which fosters integration in the labour market insofar a real link between the person concerned and Portugal can be established, and insofar they are registered in the appropriate employment service for at least 6 months. Beyond 6 months the existence of a real link is beyond doubt. As it suffices to be continuously and genuinely and effectively looking for employment it appears that an assessment thereof takes place on a case-to-case basis.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no equivalence between these definitions, as the definition of worker does not include any mention of migrant workers. For social security and tax purposes a worker is someone that exercises a paid activity at the service of an employer (dependant worker) or someone who exercises a professional activity without being party under a work contract or a similar contract, or who is obliged to deliver to a third party the result of her or his activity and is not covered, for this activity, by a specific social security legal framework for dependant workers (self-employed worker).
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	The Decree-Law 66/2011 of 1 of June establishes the legal framework for apprentices in Portugal (see also Portaria 99/2011 of 28 February, regarding the Professional Internship Program). Any training period has to be preceded by a written training contract (Article 3 (1) of Decree-Law 66/2011). Apprentices that perform professional training for longer than three months are entitled to an allowance that has to be provided for in the contract (Articles 2 (f) and 5 of Decree-Law 66/2011). The allowance cannot be lower than the value for the social welfare index (*indexante de apoios sociais – IAS)* (Article 8 (1) of Decree-Law 66/2011). The absence of pay of an allowance is considered a very serious misdemeanour, punishable with a heavy fine (Article 9 (5) of Decree-Law 66/2011). Apprentices are entitled to insurance and to a meal allowance (Article 9 of Decree-Law 66/2011). Apprentice work is subject to the legal provisions regarding contributions to social security (Article 10 of Decree-Law 66/2011). This means that they are in general entitled to social welfare benefits. However, apprentices who did not work for more than 365 days do not meet the threshold for an application for an unemployment benefit. Apprenticeship courses are different in nature, and establish vocational training courses, which are not considered a form of atypical work.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	There is no threshold for defining migrant work for Article 45 TFEU.
	How is training qualified? Is there a difference between paid / unpaid training?	Training for periods shorter then three months may be unpaid if performed under a 'very short training period' written contract (Article 5 (5) of Decree-Law 66/2011). The contract has to explain the motives for the short duration of the training (Article 5 (4) of Decree-Law 66/2011). Absence of the explanation transforms the contract into a 'normal training' contract (paid). The apprentice and the employer cannot sign more than one 'very short training period' contract (Article 5 (6) of Decree-Law 66/2011). Violation of these provisions is considered a very serious misdemeanour, punishable with a heavy fine (Article 9 (5) of Decree-Law 66/2011).
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are submitted to the same legal framework as workers (Article 6 of Decree-Law 66/2011), with the exception of those under a specific supervision (Article 7 of Decree-Law 66/2011). Violation of this provision is considered a serious misdemeanour, punishable with a fine (Article 7 (4) of Decree-Law 66/2011). There is no difference between paid / unpaid internships.

<table>
<tr><td></td><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?</td><td colspan="2">Apprenticeships, training and internships are subscribed in the Social Security and make their own discounts (Article 24 SSC). They also have to pay taxes over their income (Article 1 of the Tax Code). However, both contributions will only be collected if an effective activity is taking place.</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">The legal framework for voluntary work is established by Law 71/98 and by Decree-Law 389/99, which defines voluntary work as actions of a common and social interest performed without compensation by natural or legal persons within projects, programmes and other forms of intervention for the service of individuals, families and the community.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">Access to social insurance benefits for volunteers is conditional upon the following conditions:above 18 years old; enrolled in a voluntary programme; not benefiting from social security derived from a professional activity, i.e. unemployment benefits; not currently a pensioner (Article 6 of Decree-Law 389/99).

In addition, similar employment rights can be identified, such as the right to hygiene and safety conditions, the establishment of the content, nature and duration of the work and, lastly, reimbursement of expenses made in the development of voluntary services. Furthermore, it does not appear that volunteering functions as a direct gateway to employment in Portugal. Finally, voluntary work is accessible for EU migrants</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">Voluntary work does not impact the entitlements of EU national jobseekers.</td></tr>
<tr><td rowspan="5">Bogus self-employment</td><td rowspan="5">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>Self-employment is distinguished from employment by the notion or subordination as well as various other criteria defined in legislation, including, amongst others, the place where the activity is exercised, the organisation of working time and working tools, the remuneration, and the duties of the person performing the activity.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>Unemployment presupposes a situation of inactivity whilst self-employment implies taxed incomes deriving from the exercise of an independent activity. Self-employment also presupposes a subscription in the Social Security.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Social security benefits are available for self-employed individuals, for which they have to pay the entirety of the contributions.</td></tr>
<tr><td>The status accorded to those found to be in 'bogus' self-employment?</td><td>If bogus self-employment is established by the Authority for Employment Conditions, the parties concerned have 10 days to sign an employment contract. If this is not done, reclassification will occur.</td></tr>
<tr><td>The consequences of 'bogus' self-employment?</td><td>The employer will be liable for fines, and must sign an employment contract within a ten-day time frame.</td></tr>
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<tr><td rowspan="2"></td><td>Routine verification of self-employment</td><td colspan="2">Yes.</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">Inspections by the Authority for Employment Conditions can be initiated against bogus self-employment. The parties concerned will subsequently have 10 days to rectify the working relationship. If not done within the given time frame the Public Prosecutor’s Office will begin a reclassification procedure.</td></tr>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">Portuguese legislation acknowledges economically dependent self-employed workers, and accords them additional protection in case of cessation of their activities. In order to be eligible for the allowance pursuant to this legislation, a number of conditions must be met, including an 80% threshold and residence in Portugal (frontier workers are thus denied an allowance as such).</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Social security entitlements are available to such workers if they have paid the relevant contributions.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">As aforementioned the benefit particularly established for such workers is only available for those residing in Portugal (i.e. not available for frontier workers).</td></tr>
<tr><td rowspan="7">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">The Labour Code, the Act on Employment in Public Functions and other legislation establish a special legal framework for workers with special needs such as the categories of workers concerned.</td></tr>
<tr><td>What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No time limits and/or additional conditions are imposed .</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">If the conditions are no longer met, the individuals concerned may be subject to expulsion decisions.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
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ROMANIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	It does not appear that an earnings threshold need be met for a determination of worker status, other than the minimum wage on economy for a normal working schedule (8 hours/day or 40 hours/week). Moreover, no working hour thresholds have been enacted other than those defined by the Labour Code applicable for all workers. In Romania part-time work is permitted by means of an exception and subject to conditions, i.e. the contract being in writing and, amongst others, including the hours to be worked per day and week. Part-time work, which is more heavily regulated than full-time employment, requires a minimum hours threshold to be incorporated in the employment contract. As a result, no zero-hour contracts are allowed. Furthermore, finite employment contracts may not exceed a limited duration of 24 months unless both parties agree. An extension as such can only happen two consecutive times (i.e. three potential finite contracts between the same parties).
	Treatment of part-time work	No noteworthy sources have been identified which further elaborate upon the notion of part-time work.
	Treatment of zero-hours and on-call contracts	In Romania it appears that zero-hour contracts are nevertheless *de facto* possible, albeit that the person concerned will not be remunerated for the inactivity. On-call contracts on the other hand are more frequently used for employment in the health system and particularly for doctors. Such workers will get – above the basic salary – additional remuneration for the extra hours performed.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Generally proof must be given of a given previous insurance, as well as a waiting period in certain cases (such as maternity, old-age, invalidity, accidents at work and occupational diseases). Moreover, the individual concerned will need to have worked at least 4 hours per day for at least 2 years to be entitled to unemployment benefits.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No.
	Treatment of those not found to be workers	A person not considered as a worker can potentially be registered as a jobseeker if she or he does not have an employment contract, is able to work and is looking for work, whilst not being paid beyond the social indicator of € 111 (500 lei). If the person has an employment contract she or he cannot be regarded as a jobseeker. The individual concerned is entitled to remain as long as the residence permit is valid, which can range between 1-5 years. In order to attain a residence permit an individual must be employed, seconded, or performing trading activities, economic activities, professional activities, voluntary activities, humanitarian activities or religious activities. If an individual is registered as a jobseeker she or he is entitled to professional information and counselling, labour mediation, vocational training. Unemployed individuals who receive unemployment benefits are health insured and covered by old-age insurance. Jobseekers that are not receiving unemployment benefits are not covered for any social security risk.

	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	EU workers are treated the same as Romanian nationals workers for domestic social security/taxation purposes.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprentices are deemed workers and the agreement concerning the apprenticeship is deemed to be an employment contract (Act on Apprenticeship No 279/2005). It is an employment contract concluded for a definite term whereby the employer undertakes to educate and train the apprentice and pay wages, while the apprentice prepares professionally and works for the employer under her or his supervision. The apprentice status gives the apprentice all rights and obligations under labour law. EU apprentices are treated equally as Romanian apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	No thresholds are set for defining migrant work. The minimum wage of an apprentice is the same as the minimum wage on economy.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is related exclusively to education and serves as the practical application of theoretically acquired knowledge by a student/pupil during the studies. The agreement takes place between the secondary or higher educational facility, a company and the trainee.
	How are internships qualified? Is there a difference between paid / unpaid internships?	The objective of an internship is to facilitate the transition from university to the labour market. It consists of a short-term (6-month) employment contract. The intern has a mentor and an evaluation committee, which assesses the work by the intern.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	During apprenticeships and internships persons have worker status. They conclude employment contracts. They are treated as workers for domestic social security/taxation purposes. They are treated the same as Romanian nationals.
Voluntary work	**Legal framework for defining voluntary work**	Law No 78 of 2014 governs volunteering in Romania. It describes the detailed conditions governing the volunteering activity, which is to benefit from the support of the public administration and is deemed by law to be an activity of public interest.
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	The activity is to be carried out based on a contract – the content of which is regulated – between the volunteer and a non-profit organisation. The rules applicable to a volunteer activity are very similar to an employment relationship. Volunteering can, however, be considered as work experience, and it may result in the granting of residency rights in Romania throughout the duration of the volunteering (for EU migrants). Certain types of volunteering such as emergency services are excluded from this regulatory framework. Although volunteering may count as work experience, no formal link can be established between volunteering and regular employment. EU migrants are entitled to volunteer in Romania, and may additionally receive a residence permit for the duration of their stay.

	How does volunteering impact the entitlements of EU national jobseekers?	Volunteers may be jobseekers.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Self-employment is defined as employment which is not dependent employment. Dependent employment on the other hand is defined as employment which is characterised by at least one of 4 criteria, including amongst others *subordination*, the tools used, and the responsibility for *expenses*.
		Criteria to distinguish self-employment from unemployment	Self-employment is defined as employment which is not dependent employment. Unemployed persons are persons who do not have an employment contract, are able to work and are looking for work. Unemployed persons could be self-employed. A self-employed person could be entitled to unemployment benefits if the income/month is lower that the social indicator of € 111 (500 lei).
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	The individuals concerned are entitled to social security benefits if they have paid the respective contributions.
		The status accorded to those found to be in 'bogus' self-employment?	Reclassification.
		The consequences of 'bogus' self-employment?	Taxes and social insurance contributions will be re-calculated, which will subsequently have to be paid retroactively by the employer and the employee.
	Routine verification of self-employment	Yes, there is routine verification.	
	What mechanisms of verification of self-employment are adopted	Verifications take place by the fiscal authorities, which check the tax declaration by the self-employed individuals.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No distinct legal regime has been established for economically dependent self-employed workers. An individual is either employed or self-employed.	
	The labour law and welfare benefit entitlements of economically dependent workers?	The labour law provisions will depend upon whether the individual is self-employed or regularly employed. The social security entitlements depend on the insurance period.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	EU nationals will be treated the same as Romanian nationals.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	No sources have been identified which elaborate upon rehabilitative work, sheltered work, students who work and persons on workfare programmes.	

	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	No time limits and/or additional conditions are imposed.
		On grounds of involuntary unemployment?	No time limits and/or additional conditions are imposed.
		On grounds of pregnancy/maternity following the St Prix judgment	No time limits and/or additional conditions are imposed.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	The residence permit may be lost as a result of the loss of worker status.	
	Are there any other types of work on the fringes of the definition of work	No.	

SLOVAKIA

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	Different types of employment contracts exist with limited hours per week in Slovakia (e.g. the agreement on work activities which allows for a totality of ten hours per week. This form of employment can be for a limited or indefinite duration). Other examples include: work performance agreements (12 hours in a 24-hour period), agreements on work activities (350 hours per calendar year), agreements on temporary jobs for students (20 hours per week)). The Labour Code §1 (2) and also Act No 595/2003 Coll. on income taxes (§ 5) define the concept of employment (*závislá práca*). According to Slovak case law, dependent work (effective and genuine) has the following characteristics (to be fulfilled cumulatively): • labour law relationship (employment, civil service etc); • obligation to fulfil requests from the person who provides the employee with salary – dependency on the employer; • repeated, regular work. There is no strict definition of marginal and ancillary work. In determining what constitutes genuine and effective work, relevant criteria may be drawn from social security legislation referring to the agreed monthly remuneration, reaching at least a certain amount, which is decisive for taking part in insurance.
	Treatment of part-time work	No sources have been identified which elaborate on the treatment of part-time work for the purposes of Article 45 TFEU. Generally, the Labour Code, §49 defines the concept of part-time work (*pracovný pomer na kratší pracovný čas*). Generally all applicable rules of full-time contracts apply also on part-time contracts (with the exception of working hours which are naturally shorter and pay, which is less).
	Treatment of zero-hours and on-call contracts	The treatment of zero-hour and on-call contracts is not allowed.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Migrant workers must supply the contract and evidence from the employer which would proof the amount of their salary.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	As suitable employment (as defined in §15 of Act No 5/2004 Coll. on Employment Services) is determined amongst others by the state of health, qualification and professional skills, the aforementioned criteria do appear to play a role in the determination of what constitutes genuine and effective work. This definition applies to employment offered to jobseekers. There are no special rules for EU nationals. In general, there is no rule in the Labour Code which prohibits concluding an employment contract on the basis of health, skills and qualification. In the case of specific occupations the specific rules can regulate otherwise (e.g. in the case of drivers of public transport – driving licence and eyesight test).

	Treatment of those not found to be workers	The individual concerned may request to be registered as a jobseeker but is not obliged to do so. Registering as a jobseeker, however, requires adherence to certain conditions, of which one is the fact that the person concerned may not be in gainful employment or carry out a gainful activity which exceeds the prescribed amount of € 143.40. The individual concerned carries the burden to provide this evidence. Additionally, one of the conditions to be abided by is that the person concerned cannot be self-employed.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Yes.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Two forms of apprenticeship/vocational training can be identified in Slovak legislation: *work-based training* and *education-related training*. The former allows for the employer to offer training to employees insofar this is required and necessary, and eligible for tax incentives within this respect. In addition, the Vocational Education and Training Act (No 61/2015 Coll.) also allows and identifies education and training of students in amongst others secondary vocational schools, other forms of vocational schools, and practical training.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	As aforementioned, apprentices, trainees and interns are remunerated according to the Minimum Wage Act.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is provided for in a number of scenarios ranging from insufficient professional knowledge and skills to loss of the ability to carry out work in recent employment. The labour office may provide a contribution towards education/training covering the complete cost or a percentage thereof. Furthermore, there are various schemes of training and education, both theoretical and practical, offered during working time, which entitle the employee to compensatory wages and the employer to contributions, both in case of pre-defined justified costs.
	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are better known as graduate practice, and are defined as being the acquisition by a graduate of professional skills and practical experience, under guidance of an employer who is a professional within the graduate's field of completed education. It can be concluded for a maximum duration of 6 months and cannot be extended. It is to be divided in 20 hours per week. It is only for graduates up until the age of 26. Within this vein the Labour Office will grant the graduate, throughout the Graduate Practice, a monthly lump-sum contribution.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Apprentices are subjects to tax law, but for the purposes of social security, they are not considered as workers.
Voluntary work	**Legal framework for defining voluntary work**	The Act on Voluntary Work and the Act on Employment Services regulate voluntary work.

	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	Voluntary work is permitted for 20 hours per week for a duration of 6 calendar months. It may furthermore provide a link to employment and EU citizens may volunteer in Slovakia.	
	How does volunteering impact the entitlements of EU national jobseekers?	N/A.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	There are six legally tolerated forms of self-employment. The Labour Code §1 (2) defines the concept of employment (dependent work – *závislá práca*). Dependent work is work carried out: 1. in a relation where the employer is superior and the employee is subordinate; 2. and in which the employee carries out the work personally for the employer; 3. according to the employer's instructions; 4. in the employer's name; 5. during working time set by the employer; 6. for a wage or remuneration. All these conditions must be fulfilled simultaneously. This criterion (fulfilled simultaneously) distinguishes employment from self-employment. The Labour Code §1 section 3 states that employment can be done only on the basis of one of the forms of an employment contract.
		Criteria to distinguish self-employment from unemployment	(Self-)employment is distinguished from unemployment by reference to the sum of the minimum wage, the advances of health insurance premiums, social insurance premiums as well as of contributions to old-age pension savings. According to Act No 461/2003 Coll., the Act on Social Insurance §5 the 'person engaged in independent gainful activities' (the self-employed person) is the natural person who has reached 18 years of age and has reached income from a business activity in a certain period (calendar year crucial for the emergence or the duration of mandatory sickness insurance and mandatory pension insurance). Section 6(1) of Act No 5/2004 Coll. on employment services defines the unemployed person (the jobseeker), among others, as a person who does not perform the self-employed activity or a gainful activity in an EU Member State. As a jobseeker (unemployed person) can also be seen: a person who performs a gainful activity if the salary or remuneration for carrying out these activities does not exceed 75% of the subsistence minimum for one adult person (Section 6(2)a of Act No 5/2004 Coll.). If the abovementioned criteria are fulfilled, the person would be classified as a self-employed.

		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Self-employed persons are entitled to welfare benefits on the basis of their contributions to the welfare system under Act No 461/2003 Coll. on Social Insurance.
		The status accorded to those found to be in 'bogus' self-employment?	They would not be reclassified.
		The consequences of 'bogus' self-employment?	The employer of such a person can be fined under §19, section 1, a) of statute No 125/2006 Coll. on Labour Inspection.
	Routine verification of self-employment	Yes.	
	What mechanisms of verification of self-employment are adopted	The Taxation Office, the Social Insurance Company and the Labour Office perform verifications of self-employment.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Economically dependent self-employment is not recognised as such. The closest form of employment to such work is described as a contract for work/work activity or work performance. However, this is not the same as economically dependent self-employment as the former concerns one very specific task and does not imply a continuous relationship.	
	The labour law and welfare benefit entitlements of economically dependent workers?	Depending upon whether it is self-employment/regular employment, the respective regime will apply. For contracts for work/work activity/work performance very limited social security coverage will apply.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	EU nationals would be treated in the same way as Slovak nationals, according to the Slovak Labour Code and Act No 461/2003 Coll. on Social Insurance.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	The Act of Employment Services regulates these forms of employment. However, no sources have been identified which elaborate upon the specificity of these types of work.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	A temporal restriction of 42 days is imposed.
		On grounds of involuntary unemployment?	A temporal restriction of 6 months is imposed.
		On grounds of pregnancy/maternity following the St Prix judgment	A temporal restriction of 3 years is imposed.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	If a person did not retain worker status, she or he would lose the coverage of the social insurance system.	

	Are there any other types of work on the fringes of the definition of work	No.

SLOVENIA

<table>
<tr><td rowspan="4">Part-time & atypical employment</td><td>Defining work/genuine and effective work/marginal and ancillary work</td><td>The Slovenian Labour Relations Act (Zakon o delovnih razmerjih, ZDR-1, Official Gazette RS, no. 21/13 and 78/13-corr.) does not set minimum earnings (wage, salary) thresholds for defining work of a worker under ZDR-1. There is also no determination of minimum hour thresholds in order to be considered a worker. There is no threshold according to ZDR-1 and hence, there is no definition of 'genuine and effective' work in Slovenian law or practise. There is also no definition of 'marginal and ancillary' work in Slovenian law or practise. The CJEU case law would have to be applied directly by the Slovenian labour courts in case of workers exercising their freedom of movement.

No thresholds are imposed in Slovenia for the determination of work. Specific regulations have been enacted, however, with respect to student work, temporary and occasional work of pensioners and personal supplementary work. It may be concluded that students, pensioners and other persons performing personal supplementary work, perform work for remuneration. It might also be of such intensity, be it for a short period of time, (e.g. during summer months) that it is qualified more than just 'marginal and ancillary' and becomes 'genuine and effective'. There seems to be no case law by Slovenian labour courts concerning this issue, although definitions by the CJEU might be relevant for moving workers.

Temporary work does not seem to affect the determination of being a worker. Interruptions of employment are only relevant for fixed-term employment, which is an exception to the general rule of indefinite contracts. Insofar and individual is employed via fixed-term contracts the uninterrupted period cannot exceed two years. An interruption of three months (or less) does not suffice as an interruption and hence the contracts are considered successive, although longer chaining of contracts is prohibited. An individual may conclude fixed-term employment for a longer duration than two years subject to a number of conditions, however.</td></tr>
<tr><td>Treatment of part-time work</td><td>There seems to be no particular treatment of part-time work in practice. It is a fact and accepted in practice. It is not a very widespread form of work. Workers performing part-time work in Slovenia enjoy the (proportionately) same labour law protection as workers working full-time.</td></tr>
<tr><td>Treatment of zero-hours and on-call contracts</td><td>Zero-hour and on-call contracts are not known in legal terms or in practice in Slovenia, which does not necessarily entail, however, that they are not allowed.</td></tr>
<tr><td>What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?</td><td>For entitlement to welfare benefits, proof of an employment contract suffices – no additional evidence is required. For what concerns social assistance, it appears that permanent residence is as a rule required, which does not apply to workers. However, ambiguity arises in view of the thin distinction between social assistance and social advantages. As soon as an individual has an employment contract, she or he is treated as a worker and thus can avail her or himself to the social advantages concerned (including social assistance).</td></tr>
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	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	As soon as the employment contract is concluded, no genuine and effective work is tested. Familiarity with work may be deemed somewhat relevant, as the individual concerned must have (for certain employment contracts) the competences associated thereto. Not meeting those requirements is a potential ground for dismissal. The motive for taking up work does not appear relevant. Physical capacity to work may also be a motive for dismissal if the individual concerned is no longer capable of performing the work concerned.
	Treatment of those not found to be workers	All part-time workers who have a part-time employment contract are considered as workers. Part-time workers are not considered unemployed and hence do not enjoy the status of jobseekers. A genuine chance of employment may be tested if unemployment benefits are prolonged from 3 to 6 months. One of the factors that is taken into account in the assessment is whether the reason warranting relocation to Slovenia was due to family reunification or due to genuine better employment opportunities. Benefits and support available for jobseekers are the following: • job mediation; • professional counselling services; • job training and preparation; • contributions; • all benefits from family and social assistance systems.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There seems to be some equivalence between the definition of a worker and genuine activity. Genuine activity is covered by the concept of subordinate work (as regulated by the *ZDR-1*). It might be that 'genuine activity' is broader construed as a notion of worker according to the Slovenian *ZDR-1* (e.g. concerning students, pensioners and supplementary personal work).
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	The notion of apprenticeship was introduced in Slovenia in 1996 and abolished ten years later. Currently, Slovenian legislation solely knows the notion of practical training. This is allowed for a maximum of 24 weeks in 3 years (8 per year) albeit restricted to certain professions. The media indicates that this is not sufficient and pleads for an increase of permitted practical training under the Vocational Education Act. Prior to the abolishment thereof, apprenticeships entitled the individual concerned to a percentage of the average wage, ranging between 10 and 20%. Despite no longer being regulated, EU citizens are accorded equal treatment vis-à-vis Slovenian citizens. As a result, they are equally so entitled to the practical and vocational training as elaborated upon and explicitly mentioned under the Vocational Education Act.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	Apprenticeship is no longer regulated (hence, also no apprenticeship wages exist).
	How is training qualified? Is there a difference between paid / unpaid training?	A worker has the right to and the obligation of on-going education and training in accordance with the requirements of the working process with the purpose of maintaining and/or improving the skills to perform the work under the employment contract, to keep employment and increase her or his employability. The employer consequently has to provide such education and training if the working process requires the latter, and in certain instances the employer will have to bear the costs thereof. Provisions concerning the duration of the training will have to be enshrined in a contract on education and/or collective agreements, and a (limited) right of absence need be granted in order to allow the trainee to take the relevant exams.

	How are internships qualified? Is there a difference between paid / unpaid internships?	Internships are also known as traineeships. In certain professions, insofar educated for the latter, various legislative instruments oblige the individual concerned to commence their first employment in the sector concerned as a trainee. The purpose is to obtain required qualifications in order to e.g. exercise an independent profession. It may not exceed 1 year unless otherwise regulated by legislative instruments. It may also be proportionally extended if the trainee works part-time. Throughout the traineeship the employer must provide the trainee with guidance enabling her or him to exercise the work independently. The characteristics of the traineeship are furthermore to be elaborated upon in specific legislative acts, and are to be concluded by participation in an examination in order to conclude the traineeship. Voluntary traineeship exists when, according to a special legislative act, the traineeship is served without the conclusion of an employment contract. Nevertheless, the provisions of the *ZDR-1* on the length of the traineeship and the implementation of the traineeship programme, the limitation of working time, breaks and rest periods, the reimbursement of work-related expenses, liability for damages, and the provision of safety and health at work apply also to a trainee in voluntary traineeship (in accordance with such special legislative act). Also in this case the contract of voluntary traineeship has to be concluded in written form.	
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	It might be argued that education and training could hardly be qualified as genuine activity in terms of working activities. Conversely, a traineeship might qualify as a 'genuine activity', especially if it is based on an employment contract and paid.	
Voluntary work	**Legal framework for defining voluntary work**	Volunteer work is regulated in the special Volunteering Act of 2011 and defined as being an act in the social interest and an activity without pay of individuals who with their work, knowledge and experience contribute to the improvement of living conditions of individuals and groups of persons and to development of a humane and equal society founded upon the notion of solidarity. It cannot be considered as work, as one of its main features is the absence of remuneration. One cannot conclude a volunteering contract for matters that are to be dealt with via an employment contract.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	An agreement for volunteer work may be concluded and must be mindful of maximum weekly working hours, weekly and daily rest and rest of children younger than 15 years of age. Certain additional labour laws are equally so applicable to voluntary traineeships. No formal link can be established between volunteering and regular employment despite the fact that volunteering may lead to employment. They are mutually exclusive. Finally, volunteering is not conditioned upon nationality or citizenship – hence, EU migrants may volunteer.	
	How does volunteering impact the entitlements of EU national jobseekers?	Unemployment status and benefits are retained whilst engaging in volunteer work. The competent authority must be notified, however, and voluntary work is taken into account when assessing the activities performed by the jobseeker.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Self-employment is defined as performing work which does not encompass all the elements of employment and requires registration. Hence, reference is made to the cumulative conditions of subordination, remuneration, and integration in the workplace. If these elements are not met, self-employment may be established.

		Criteria to distinguish self-employment from unemployment	There are no specific criteria. However, the distinction seems clear. A self-employed person is covered by all social insurance branches (including unemployment insurance). Since 2013 all self-employed persons (apart from those being employed and self-employed at the same time) have to pay full contributions to pension and invalidity insurance (minimum contribution calculation base is 60% of yearly average salary, calculated to a month). This means they have to be active and earn enough to cover this (and other) expenses. Hence, a self-employed person could hardly be marginally active. It would be possible, if she or he employed other workers, but such activity as a whole would not be perceived as marginal. In order for a self-employed person to be entitled to unemployment benefits, similar rules apply as for workers, i.e. a certain insurance period and stopping the activity for objective reasons, like losing a business partner, a longer illness etc.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Social security benefits are available to self-employed individuals if they pay the requisite contributions. Labour legislation on the other hand is generally not available to self-employed individuals (except for those recognised as economically dependent on one source).
		The status accorded to those found to be in 'bogus' self-employment?	Reclassification by a labour court. As the notion indicates, 'bogus' self-employed persons are not self-employed persons. They would be treated as a worker and the entire labour law protection would apply. A factual labour relation (i.e. presumption of existence of an employment relation, if all its elements are present) may be established by the labour court.
		The consequences of 'bogus' self-employment?	A finding of bogus self-employment may result in the prohibition to exercise the activity (by a labour inspector), and entitle the employee to enforce her or his labour law rights/protection.
	Routine verification of self-employment	Controls occur but not routinely. Rather, controls take place on an ad hoc basis.	
	What mechanisms of verification of self-employment are adopted	The taxation authorities have issued a guide which further elaborates upon the notion of bogus self-employment. The taxation authorities can furthermore, in case of a finding of bogus self-employment, claim the same taxes and social security contributions as for workers (and enforce a fine).	

<table>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">The status of economically dependent self-employed persons has been recognised in Slovenian labour legislation.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Limited labour law provisions apply, upon notification of her or his contracting party (on whom she or he is economically dependent) at the end of each calendar or business year. Notifications should entail the conditions under which she or he operates, accompanied by all evidence and information required for the assessment of whether economic dependency exists or not.

As a rule workers and self-employed persons enjoy equal rights to social security (covering also social assistance in the Slovenian legal order). Since 2011, self-employed persons are also mandatorily insured for the risk of unemployment.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">No distinction is made.</td></tr>
<tr><td rowspan="2">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Sheltered and supported employment is regulated in the Vocational Rehabilitation and Employment of Disabled Persons Act (ZZRZI). Sheltered employment of a disabled person takes place in a working place and working environment adjusted to the work capacities and needs of such a person, who is not employable in a regular working place. Sheltered workplaces are determined in an act by the employer or in the risk assessment statement. Sheltered employment is provided by employment centres, as well as by disability companies. Work at home of a disabled person may also be qualified as sheltered employment. It is important to note that a disabled person concludes an employment contract for sheltered employment, which entails that the same rules of the ZDR-1 apply. In addition, the way and scope of professional assistance and guidance of a disabled person and other services have to be determined in an employment contract. The disabled person in sheltered employment has the right to subsidised pay and possibly also other supportive services according to the ZZRZI. Supported employment of a disabled person takes place in a working place in a regular working environment with professional and technical support for the disabled person, her or his employer and working environment. It may range from information, counselling and training, to personal assistance, accompanying at work, development of personal methods of work and evaluating working productivity and technical support. The employer is entitled to information and counselling. A special individualised support plan must be adopted. The disabled person concludes an employment contract with the employer. The ZDR-1 has to be respected. In addition, the way and scope of the professional and technical support to the disabled person, employer and working environment has to be determined.

As concerns workfare programmes, the ZDR-1 regulates a special employment contract for the purpose of executing public works (in its Article 64). An unemployed person who is engaged in public work concludes an employment contract with the employer – a provider of public works. This is concluded for the duration of 1 year and may be extended for an additional year.</td></tr>
<tr><td>What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed, although special rules apply following the termination of a contract of a disabled person who has not fully lost her or his working capacity.</td></tr>
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		On grounds of involuntary unemployment?	No time limits and/or additional conditions are imposed. They are considered as workers as long as they are entitled to unemployment benefits. Afterwards, they might have to accept also unsuitable employment and rely on general social assistance.
		On grounds of pregnancy/maternity following the St Prix judgment	No time limits and/or additional conditions have been imposed. During the period of maternity leave the employment contract is not terminated and the status of a worker is retained.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	Loss of worker status will result in the loss of rights associated to such status.	
	Are there any other types of work on the fringes of the definition of work	Short-term work is regulated by Slovenian legislation and may be performed by marital, extra-marital or same-sex partners, or parents or children (of an owner or her or his spouse/partner), lasting for a maximum of 40 hours per calendar month. It may be performed only in a micro company or institute or self-employed person with a maximum of 10 employees. Such work must, moreover, be without remuneration. Hence, it is not genuine work. Despite not being qualified as genuine work, certain provisions such as those concerning health and safety remain applicable.	

SPAIN

<table>
<tr><td rowspan="4">Part-time & atypical employment</td><td>Defining work/genuine and effective work/marginal and ancillary work</td><td>No legal thresholds are imposed for the determination of worker status in Spain. All work is considered 'genuine and effective work' and every worker is considered as such regarding the free movement of workers. Exclusion from worker status to the extent of social security on account of the activity being marginal and ancillary is very rare. (The government can exclude an employee from the obligation to be insured under the social security system if the employee requests to be exempted and her or his work, considering the working time and the salary, is considered marginal as it is not her or his fundamental means to make a living.[122]) Zero-hour contracts are not allowed, as persons cannot be hired to be available for work. Some part-time contracts could have a similar effect as on-call contracts, as a part-time worker having been hired for 10 or more working hours per week on an annual basis can agree to perform supplementary hours. Regarding free movement of workers, if the individual concerned is actively looking for employment, she or he will retain the status of worker.[123] Regarding invalidity benefits, although no specific criteria exist, case law has indicated that an activity, which is performed only sporadically and provides for a very limited salary, may be deemed marginal and ancillary and therefore be compatible with said invalidity benefit.</td></tr>
<tr><td>Treatment of part-time work</td><td>Part-time work is protected in Spain, and does not pose any controversial issues.</td></tr>
<tr><td>Treatment of zero-hours and on-call contracts</td><td>No sources can be identified as zero-hour contracts are not permitted in Spain.</td></tr>
<tr><td>What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?</td><td>Migrant workers are accorded equal treatment vis-à-vis Spanish nationals. As such they have to present their benefit application before the National Social Security Institute (Instituto de la Seguridad Social, INSS) or before the National Public Employment Service (Servicio Público de Empleo Estatal, SEPE) in the event of unemployment. Both public administrations can verify how long the person concerned has been insured under the Spanish social security system, as the records are available for consultation from the Social Security Fund (Tesorería General de la Seguridad Social, TGSS), the public body in charge of collecting the contributions. As zero-hour contracts are not permitted, no sources have been identified in this respect.</td></tr>
</table>

[122] In 1972 this exception was applied to workers of breeding promotion that performed marginal work in the Madrid Hippodrome, i.e. they only worked some Sundays when there were horse races. However, these workers were still protected against accidents at work and would therefore still be considered workers. In fact they all worked on a regular basis for other companies (Decree 1382/1972). The Employment Ministry has denied any further claims for exceptions, even those regarding this same type of workers. Their last negative decision was considered legal by the Supreme Court as it is a discretionary power of the Ministry. Nowadays all part-time workers have to contribute to social security (judgement of the Supreme Court Administrative 30-5-01, Rec 628/99, EDJ 2001/47633).

[123] Article 7.3 of Royal Decree 240/2007 implements Article 7.3 of Directive 2004/38 (regarding residence above 3 months of EU citizens) in its exact sense.

	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these criteria are not taken into account.
	Treatment of those not found to be workers	No sources have been identified which elaborate upon the status of individuals not found to be workers. Recall in this respect, however, that part-time employment is subject to a very broad interpretation, whereby even very short part-time work will be deemed sufficient to attain worker status.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	In Spain there is no definition of 'genuine activity' to determine worker status under EU law. All work is considered genuine regarding the free movement of workers. There are definitions of worker for social security purposes (mainly for self-employed persons) to determine whether a worker has to be insured under the social security system or is exempted.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprenticeships are available to persons aged 16-25 (this age has been temporarily increased to 30 years, from 13.11.2015, as long as the unemployment rate is under 15% – RDL 2/2015) who lack acknowledged vocational qualifications. As such they are considered as employees by means of temporary work. The work permitted under an apprenticeship is limited to 75% of regular working time during the first year (75% of the maximum working time envisaged by the collective agreement; failing this, in accordance with the law, 30 hours per week) and 85% during the second and third year (85% of the maximum working time envisaged by the collective agreement; failing this, in accordance with the law, 34 hours per week). Consequently, they are entitled to at least the same percentage of the minimum wage (the monthly minimum wage in 2016 is € 655.2 / 14 payroll payments). EU national apprentices are accorded equal treatment in this respect.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	No legal thresholds are set to define migrant work. An EU apprentice will automatically qualify as a migrant worker under Article 45 TFEU.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is directed at university graduates, degree and master degree holders, doctors, workers with advanced vocational training qualifications or workers who are in possession of a professional certificate that have obtained their title within the previous 5 years (this limitation has been temporarily removed for persons under 30 years of age as long as the unemployment rate is under 15%). In addition, they are entitled to a fixed salary percentage vis-à-vis workers in equivalent positions (a minimum of 60% of said wage during the first year and 75% during the second year).
	How are internships qualified? Is there a difference between paid / unpaid internships?	Interns are not considered as employees irrespective of whether they are or are not remunerated. The main objective of an internship is training as opposed to productive work. Interns normally receive an economic compensation for the costs incurred and the time devoted to the internship, but this remuneration is not provided in return for work and is therefore not considered a salary.

<table>
<tr><td></td><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?</td><td colspan="2">In Spain there is no definition of 'genuine activity' to determine worker status under EU law. All work is considered genuine regarding the free movement of workers.

Apprentices and persons under a training contract are considered workers under EU law and under domestic social security and tax law.

Interns are not considered workers under EU law and under domestic labour law.[124] However, certain interns have to be insured under the social security system (university students, professional training students[125] and research fellowships[126]).

The possible economic compensation is considered a income under income tax law (with the exception of research fellowships).</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">Volunteers are not accorded worker status due primarily to the fact that the philosophy behind work vis-à-vis volunteering is different. Within this vein, the parties concerned must sign a solidarity commitment acknowledging the altruistic nature of the agreement.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">As volunteers are not considered as employees, they have only very limited rights available to them. The volunteering organisation, however, must subscribe to liability insurance providing coverage in case of an accident or illness.

There are special rules for volunteers working abroad (cooperantes), who are considered as employees.

No formal link can be identified linking volunteering with regular employment. However, if the agreement is de facto an employment contract (she or he receives a salary on regular basis), the person concerned could contest before a social court the nature of the bogus volunteering agreement and have it re-qualified into an actual employment contract.</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">Volunteering does not impact the entitlements of EU national jobseekers.</td></tr>
<tr><td>Bogus self-employment</td><td>Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>The distinction between self-employment and employment is determined by reference to various criteria as defined in legislation and case law, including, amongst others, risk, organisational dependence, subordination and restrictions to work for other companies.</td></tr>
</table>

[124] Social Supreme Court judgments of 13-6-88, EDJ 5123; 26-6-95, EDJ 4303; 7-7-98, EDJ 17629; 4-4-06, EDJ 53137; and 29-3-07, EDJ 25400.

[125] Resolution of 19 August 2013 of the Social Security Fund (*Tesorería General de la Seguridad Social*, *TGSS*)

[126] Internship for degree holders acting as research personnel in training at a university under a programme for scientific and technical training and specialisation (Royal Decree 63/2006, Law 14/2011 and Royal Decree 99/2011). This type of interns is assimilated to employees regarding social security and they are insured under the general scheme and are entitled to comprehensive protection except for unemployment.

		Criteria to distinguish self-employment from unemployment	There are no legal thresholds to distinguish unemployment from self-employment. *De facto*, being insured as a self-employed person in the social security system makes the distinction. In Spain, there is no such thing as a part-time self-employed person. Thus a self-employed person has to pay the full minimum contribution, i.e. € 264.44/month in 2015. Irrespective of their income, EU nationals insured as self-employed persons in the social security system is considered a worker. In Spain the problem is usually that persons with low incomes do not want to be insured under the social security system, which is possible if the annual income is less than € 9,000 and other requirements are fulfilled.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	If the related contributions have been met, a wide range of social security benefits (related to healthcare, accidents at work and occupational diseases, temporary disability, maternity and paternity, risk during pregnancy and lactation and adoption, permanent disability, retirement, survivors' pension, dependant child and out-of-work) and social services related with re-education, rehabilitation and old-age assistance are available to self-employed individuals.
		The status accorded to those found to be in 'bogus' self-employment?	Reclassification.
		The consequences of 'bogus' self-employment?	Sanctions would be imposed upon the employer and she or he would be liable for retroactive payments of social security contributions.
	Routine verification of self-employment	No, there is no routine verification of self-employment, as there are no criteria for determining whether an insured self-employed person is performing 'genuine' work or not.	
	What mechanisms of verification of self-employment are adopted	No such verification mechanisms exist. Rather, bogus self-employment is unveiled via claims by trade unions and/or claims by the parties concerned themselves.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	Spanish legislation recognises the notion of economically dependent self-employed workers.	
	The labour law and welfare benefit entitlements of economically dependent workers?	She or he enjoys the same rights as a self-employed person and in addition is entitled to redundancy payments as well as paid holidays.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	No distinction is made.	

<table>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Pertaining to rehabilitative and sheltered work, no sources have been identified in Spain which elaborate thereupon. Similarly, as concerns students who work, no sources have been identified beyond apprentices and workers in training contracts mentioned above.

With respect to individuals engaged by workfare programmes on the other hand, the Public Employment Services manage a work experience programme targeted at young people (between 18 and 25 years of age) who, due to their lack of work experience, have difficulties finding employment. This work experience is not considered employment. It is implemented in companies engaged in the programme, and may last between 3 and 9 months. Participants receive a scholarship from the company for an amount of at least 80% of the IPREM (multiplier for the public income index) in force at any given time (€ 532.51/month in 2016).</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">In this regard, the national transposition of Directive 2004/38/EC uses the exact same wording.
Loss of worker status may result in the loss of residence rights if the individuals concerned do not have the right to permanent residence and do not have sufficient resources and a comprehensive medical insurance. An expulsion decision is not automatic, however.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

SWEDEN

<table>
<tr><td rowspan="5">Part-time & atypical employment</td><td>Defining work/genuine and effective work/marginal and ancillary work</td><td>No earnings or hours thresholds have been implemented for the purpose of determining what constitutes employment in Sweden. Whether an individual concerned is to be deemed an EU worker is predominantly dealt with on a case-to-case basis. There are guidelines, drafted by the relevant authorities, which generally stipulate that any definition of who is a worker is to be determined in accordance with CJEU case law. The guidelines give no clear examples of what marks the difference between genuine and effective and marginal and ancillary. This will be determined from case to case. Concerning consecutive and temporary forms of employment as well as interruptions in employment it does not appear as though this is heavily regulated. Recall in this respect that the status of an individual must be assessed in view and conformity with relevant CJEU case law.</td></tr>
<tr><td>Treatment of part-time work</td><td>Part-time workers are generally treated as workers in conformity with EU case law.</td></tr>
<tr><td>Treatment of zero-hours and on-call contracts</td><td>In Sweden zero-hour contracts are permitted insofar such contracts are genuine and effective. Moreover, zero-hour contract employees are entitled to welfare benefits but are, nevertheless, subjected to the difficulty of furnishing evidence of the effectively completed working hours.</td></tr>
<tr><td>What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?</td><td>In gaining access to welfare benefits, the primary proof to be provided is an employment contract. A person claiming worker status must provide a passport/ID-documents and an employment contract. The employment contract must provide information concerning the terms and time frames of the employment and the employer's name and organisation number. It must be signed by the employer. If a person works on hours, the latest pay checks may be used as evidence. Individuals bound by zero-hour contracts will be covered if the work concerned is genuine and effective. However, it is difficult in this respect to effectively provide evidence thereof.</td></tr>
<tr><td>Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?</td><td>No, these criteria are not taken into account.</td></tr>
</table>

	Treatment of those not found to be workers	Part-time work is usually sufficient to be regarded as a worker; hence, it can be derived that they cannot be regarded as jobseekers. There is no explicit time limit as to how long an individual can remain in Sweden if she or he is effectively seeking employment and has a real chance of finding employment, which is determined on a case-to-case basis. Whilst during the first 6 months no real evidence is required, beyond that time frame, the citizen concerned must prove that she or he has a real chance of finding employment by demonstrating that she or he has, amongst others, the right qualifications. No distinction is made between workers and jobseekers as concerns social assistance and access to the labour market. Concerning social security benefits generally, a distinction can be made between work-based insurance and residence-based insurance as the latter can be attained if the person concerned can prove that he or she intends to stay in Sweden for more than a year. One factor proving intent to stay in Sweden is being registered in the population register (*folkbokföring*). An EU citizen has to prove her or his right to stay in Sweden in accordance with Directive 2004/38/EC in order to be registered in the population register. No overarching tests have been established to verify whether an individual has a genuine and effective chance of employment – a case-to-case assessment prevails. However, limited knowledge of Swedish and English and limited work experience will in all likelihood entail that the person concerned will not be deemed to have a real chance of finding employment. A person with a disability who was previously engaged for an internship, however, was deemed to have a real chance of finding employment. Whilst in certain other cases concerning individuals with education and experience, the individuals were considered to have experience – others were not. As indicated a case-to-case assessment prevails.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	There is no formal equivalence. Certain common factors can nevertheless be identified, including that there is no one set definition and the scope of worker status is quite broad in both cases.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	Apprentices/interns are predominantly covered by rules and collective agreements concerning probationary periods/short-term employees. High school apprentices on the other hand are not regarded as workers (according to the Law on Employment Protection). In relation to migrant Union citizens, those who work as apprentices, interns or au pairs are regarded as workers as long as the individuals concerned are remunerated, even if such remuneration is limited to housing costs and food costs. A very low remuneration does not preclude worker status.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	There are no such thresholds; hence, the question cannot be answered.
	How is training qualified? Is there a difference between paid / unpaid training?	See above. Trainees will be considered to be short-term employees, unless the individual concerned is subject to high school education.
	How are internships qualified? Is there a difference between paid / unpaid internships?	See above. Interns will be considered to be short-term employees, unless the individual concerned is subject to high school education.

	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No equivalence although the definitions for social/tax purposes are relatively broad.	
Voluntary work	**Legal framework for defining voluntary work**	Volunteer work is not governed by specific legislation. As there is no remuneration, however, it will be difficult to qualify a volunteer as a worker.	
	Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)	No relevant sources have been identified which elaborate upon the treatment of volunteers.	
	How does volunteering impact the entitlements of EU national jobseekers?	No relevant sources have been identified which elaborate upon the entitlements of EU national jobseekers as a result of volunteering.	
Bogus self-employment	**Identification and treatment of bogus self-employment**	**Criteria to distinguish self-employment from employment**	Various legislative instruments encompass elements to distinguish between self-employment and regular employment, of which the two main indicators are the necessity to have a Business Tax Certificate and the notion of subordination.
		Criteria to distinguish self-employment from unemployment	No thresholds apply. However, in order to be covered by work-based social security benefits the individual concerned will need income at a certain level. In addition – as aforementioned – the self-employed individual will need to be in possession of the Business Tax Certificate.
		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable to self-employed individuals with the exception of provisions concerning health and safety. Social security benefits are additionally generally available to self-employed individuals, if the requisite contributions have been met.
		The status accorded to those found to be in 'bogus' self-employment?	Reclassification.
		The consequences of 'bogus' self-employment?	Reclassification. The employer may be liable for social security contributions and a tax penalty may be imposed.
	Routine verification of self-employment	Yes.	
	What mechanisms of verification of self-employment are adopted	Verification occurs via the declaration of taxes and the acquisition of the Business Tax Certificate. If an individual foregoes the declaration of her or his taxes, the person concerned will lose said certificate.	

<table>
<tr><td rowspan="3">Self-employment with one source/economically dependent workers/parasubordination</td><td>The status of economically dependent workers?</td><td colspan="2">It appears as though there is no distinct legal regime in this respect, and depending upon aforementioned indicators, an individual will either be employed or self-employed. However, a new form of employment has emerged, i.e. the umbrella employee, which is characterised by having no Business Tax Certificate or subordination, hence is neither distinct self-employment nor employment.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent workers?</td><td colspan="2">Depending on whether she or he is employed/self-employed the respective provisions will apply.</td></tr>
<tr><td>The labour law and welfare benefit entitlements of economically dependent EU national workers?</td><td colspan="2">Same as for Swedish nationals in the similar situation.</td></tr>
<tr><td rowspan="6">Other fringe work</td><td>Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes</td><td colspan="2">Participants in rehabilitative/sheltered work (skyddat arbete) are not regarded as workers according to the Law on Employment Protection. They are, however, entitled to salaries, in accordance with collective agreements. In relation to Union citizens, activities aimed at rehabilitating persons back to work are considered to fall outside the concept of worker, according to the National Board of Health and Welfare. Reference in this respect is made to the judgment in Bettray, C-344/07, EU:C:1989:113. Students who work on the other hand, are governed by regular employment provisions. Finally, a person participating in a workfare programme is considered as unemployed, entailing that if she or he is not actively seeking work or is hindering the chances of finding employment, benefits may be withdrawn (Regulation on Activity support).</td></tr>
<tr><td rowspan="3">What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC</td><td>On grounds of incapacity or illness</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>On grounds of involuntary unemployment?</td><td>If the individual concerned had previously been employed for a period of 1 year or a period exceeding 1 year, she or he would not be subject to temporal restrictions in the retention of worker status. However, if the individual concerned was previously employed for a period less than 1 year, she or he will retain worker status for a maximum period of 6 months.</td></tr>
<tr><td>On grounds of pregnancy/maternity following the St Prix judgment</td><td>No time limits and/or additional conditions are imposed.</td></tr>
<tr><td>What are the consequences of being found not to have retained worker status, and how quickly do they take effect?</td><td colspan="2">Loss of worker status impacts the access to social assistance benefits. An overview of the consequences associated thereto, however, is difficult to ascertain in view of the fact that various government authorities are competent for various different consequences.</td></tr>
<tr><td>Are there any other types of work on the fringes of the definition of work</td><td colspan="2">No.</td></tr>
</table>

SWITZERLAND

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The notion of work is defined in various legislative instruments and differs depending upon the various respective instruments. No thresholds have been imposed and a case-to-case approach is applied instead, taking into consideration the entirety of the facts, thus resulting in a global assessment. Case law has indicated that a global view is preferred whereby all relevant work in its entirety is taken into consideration in determining whether worker status has been retained, particularly in cases of consecutive and temporary periods of work. If benefits are continuously received during interruptions of employment, the person concerned will retain worker status. Finally, as previously indicated, no overarching test for the genuine and effective nature of employment exists, as a case-to-case approach prevails.
	Treatment of part-time work	Part-time workers are guaranteed equal treatment as concerns social security and taxation and are protected against discrimination. Moreover, part-time work is treated in conformity with EU law and CJEU case law.
	Treatment of zero-hours and on-call contracts	Zero-hour contracts and on-call contracts are not regulated. However, generally the employer must indicate the amount of hours that have to be served and the duration of the employment. This entails that abuse of zero-hour contracts and on-call contracts will – in all likelihood – be limited.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Individuals bound by zero-hour contracts are entitled to welfare benefits if the work achieved is genuine and effective, which is assessed on a case-to-case basis.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	No, these factors are not taken into account.
	Treatment of those not found to be workers	The status of jobseeker will be accorded to the person concerned if she or he is effectively looking for employment. Moreover, individuals found not to be workers will have access to unemployment benefits and market entry benefits/programmes. As previously indicated, no overarching tests assessing a genuine and effective chance of employment apply, as a case-to-case assessment prevails.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	No.

<table>
<tr><td rowspan="5">Apprenticeships</td><td>Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)</td><td colspan="2">Apprenticeships are regarded as employment, albeit subject to the nuance that specific provisions are conjointly applicable. The individual concerned is treated as an employee and thus has access to benefits as if she or he were a regular employee. Finally, EU apprentices are accorded equal treatment vis-à-vis national workers.</td></tr>
<tr><td>How do apprenticeship wages compare with any thresholds set for defining migrant work?</td><td colspan="2">N/A.</td></tr>
<tr><td>How is training qualified? Is there a difference between paid / unpaid training?</td><td colspan="2">If wages are accorded to a trainee, she or he will be considered as an employee.</td></tr>
<tr><td>How are internships qualified? Is there a difference between paid / unpaid internships?</td><td colspan="2">In determining the status and treatment of internships, a case-to-case approach prevails.</td></tr>
<tr><td>In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of ‘genuine activity’ for determining workers status in EU law?</td><td colspan="2">-</td></tr>
<tr><td rowspan="3">Voluntary work</td><td>Legal framework for defining voluntary work</td><td colspan="2">No relevant sources can be identified which elaborate upon the notion of voluntary work.</td></tr>
<tr><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">As volunteering is not equated to employment in Switzerland, limited benefits will be available to the individuals concerned, and will depend on the relevant legislation. Within the context of social security legislation, limited rights are available. Furthermore, no formal link has been established between volunteering and regular employment. Finally, no sources can be identified which elaborate upon the conditions of access to volunteering of EU migrants.</td></tr>
<tr><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">If they have sufficient resources, the individuals concerned will be permitted to volunteer as are nationals.</td></tr>
<tr><td rowspan="2">Bogus self-employment</td><td rowspan="2">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>Social security legislation and relevant case law in this respect distinguish self-employment from employment by reference to indicators such as subordination, organisational independence, and who assumes the risks of the activity.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>The income gained must reach a minimal threshold for the employment to amount to self-employment. If this is not the case, the individuals concerned are considered as individuals without an economic activity.</td></tr>
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		The effect of being declared self-employed on labour law and welfare benefit entitlements?	Labour law is not applicable to self-employed individuals, whereas social security benefits are available, albeit somewhat more limited. Self-employed individuals may, however, opt for additional complementary coverage.
		The status accorded to those found to be in 'bogus' self-employment?	Pursuant to a finding of bogus self-employment, the individual is merely considered as a person not engaged in an economic activity.
		The consequences of 'bogus' self-employment?	Social contributions will have to be made by the employer retroactively.
	Routine verification of self-employment	Yes.	
	What mechanisms of verification of self-employment are adopted	Independent inspection centres concerning social security perform conduct verifications vis-à-vis the employer. Immigration administrations verify the status on independency while the concerned person is asking for the permit.	
Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	No specific regime applies. An individual is either employed or self-employed.	
	The labour law and welfare benefit entitlements of economically dependent workers?	N/A	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	N/A	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	The Swiss Federal Court refers to EU case law in order to decide how rehabilitative or sheltered work must be qualified. The Court explains that the CJEU does not assimilate such work to an economic activity under Article 45 TFUE and follows this opinion (ATF 131 II 339, paragraph 3.3, referring to the judgment in Bettray, C-344/87, EU:C:1989:113, Rec. 1989, p. 1621). According to Article 24, paragraph 4, annex I ALCP, which is directly applicable, students must show that they have financial resources. As soon as they work, they can qualify as a worker in accordance with the aforementioned case law mentioned above (ATF 141 II 1, paragraph 3.3.). Finally, the Swiss federal unemployment insurance organises work programmes for jobseekers (Article 64a LACI). In criminal law, a sanction can be replaced by workfare (Article 107 of the Code Penal Suisse, RS 311.0). The Cantons are competent to adopt rules about social assistance.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	5 years.
		On grounds of involuntary unemployment?	5 years.

		On grounds of pregnancy/maternity following the St Prix judgment	5 years.
	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	A person who does not qualify as a worker or as a self-employed individual has to prove that she or he has the capacity of living from her or his proper resources. If this condition is not met, the permit is not delivered. Therefore, the consequences take effect immediately. For persons who lose an economic activity, the consequences can theoretically be immediate too. No conclusive information is available, however, as to the timeframe within which the person concerned is to leave the country.	
	Are there any other types of work on the fringes of the definition of work	N/A	

UNITED KINGDOM

Part-time & atypical employment	**Defining work/genuine and effective work/marginal and ancillary work**	The UK follows a case-to-case approach in the determination of work, whereby a number of criteria are considered. Firstly, an earnings threshold is imposed which need be met for a certain period for the individual concerned to be deemed a worker. If this threshold cannot be met, subsidiary criteria may be tested in order to verify whether indeed the activity may still be regarded as work. For this to be the case, however, the activity must be genuine and effective. Genuine and effective is referred to as entailing a minimum of 3 months of earning at the level that individuals start paying national insurance. Despite growing evidence of abuse and exploitation of zero-hour contracts and similar on-call contracts, these are not precluded from being characterised as work, insofar they do effectively meet the criteria of genuine and effective (preceding work for 3 months prior thereto with the earnings reaching the level at which people pay national insurance). In determining what constitutes work in case of various forms of work, including temporary consecutive work, a case-to-case approach is applied, taking into consideration whether the work was regular or intermittent, the period of employment, whether the work was intended to be short-term or long-term at the outset, the number of hours worked and the level of earnings. Similarly, in determining the impact of interruptions of employment, a case-to-case approach will prevail. In addition, there must be a real link between the person concerned and the Member State, whereby the person is either already pursuing an activity in the labour market of the host State or seriously seeks to engage in an activity in said State.
	Treatment of part-time work	A case-to-case approach taking into consideration all factors, including in particular the stipulated factors concerning whether work is marginal and ancillary.
	Treatment of zero-hours and on-call contracts	Zero-hour contracts and on-call contracts are permitted – despite such contracts becoming increasingly controversial – insofar the conditions of genuineness and effectiveness have been met.
	What evidence must migrant workers supply when making a welfare benefit application to demonstrate that they are or have been, in genuine and effective work?	Entitlement to benefits will depend upon the specific benefits themselves. Fluctuating work will result in entitlement upon different grounds and may thus impact the types of benefits received.
	Are any of the following criteria taken into account when determining what counts as genuine and effective work: familiarity with the work; the motive for taking up work; the physical capacity for the work?	Physical capacity to perform work may be relevant to determining whether past activity was work. The motive may be relevant; decision maker guidance is confusing on this point: 'DMs can look at all the circumstances, including the person's primary motivation in taking up employment' … 'if a person is exercising their EU rights, their conduct before and after periods of employment (including their primary motivation) are not relevant when considering whether work is genuine and effective'.

	Treatment of those not found to be workers	Individuals not found to be workers may be accorded jobseeker status. In the event the individual concerned was previously employed for a period of one year or more, she or he will be subject to a genuine prospects of work test after six months, in order to retain worker status thereafter. If she or he had previously been employed for a period less than a year, she or he will be entitled to retain said status for no longer than six months, after which a genuine prospect of work test will be applied to determine the continued right to reside albeit not as a worker. Moreover, a test for the genuineness and effectiveness of a chance of employment has been developed whereby regard must be had for written job offers and/or a change of circumstance (such as completing vocational training), which augments the possibility of finding employment. Again, however, a case-to-case assessment prevails.
	Is there equivalence between the definition of 'worker' for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	UK national lone parents cannot be required by the social security/tax system to work more than 16 hours per week. The Minimum Earnings threshold creates a threshold of 22/3 hours per week for EU nationals, that is not altered according to whether someone is a lone parent. The guidance on tier 2 of the test does not mention taking someone's status as a lone parent into account.
Apprenticeships	**Treatment of apprentices (legal status, labour law/welfare benefit entitlements, status and treatment of EU national apprentices)**	No legal definition or status has been established concerning apprenticeships. An individual assessment of the agreement will have to be done prior to determining the status of the person concerned. Nevertheless, minimum wages can be accorded to apprentices.
	How do apprenticeship wages compare with any thresholds set for defining migrant work?	To meet the threshold for genuine and effective work, apprentices will also have to reach the minimum level of payment for national insurance. This will be difficult for those on the lower apprenticeship wages. They are more likely to be dependent on tier 2 of the test.
	How is training qualified? Is there a difference between paid / unpaid training?	Training is regulated and permitted for 6 months. Training is not remunerated but costs and expenses may be reimbursed. Applications for traineeships are allowed for individuals between the ages of 16-24 who are unemployed and/or have little work experience and are eligible to work in the UK.
	How are internships qualified? Is there a difference between paid / unpaid internships?	The qualification of an internship is yet again dependent upon the employment status of the individual concerned as being a worker, a volunteer or an employee.
	In relation to apprenticeships, training, internships, is there equivalence between how those are treated for domestic social security/taxation purposes; and the definition of 'genuine activity' for determining workers status in EU law?	Depending on the number of hours worked and income, apprentices may be eligible for Working Tax Credit and Child Tax Credit.
Voluntary work	**Legal framework for defining voluntary work**	A volunteer is not considered an employee. The volunteer organisation may conclude a volunteer agreement concerning the level of supervision and support, the training the individuals concerned will receive, to what extent the volunteer will be covered by liability insurance, health and safety issues and the expenses the organisation will cover. However, such agreements are not obligatory.

<table>
<tr><td></td><td>Treatment of volunteers (employment rights, gateway to employment, conditions of access to volunteering for EU migrants)</td><td colspan="2">The volunteer may have a volunteer agreement. However, she or he is not considered an employee and thus has limited to no rights available to her or him. Indirectly, volunteering may have an impact on access to regular employment.</td></tr>
<tr><td></td><td>How does volunteering impact the entitlements of EU national jobseekers?</td><td colspan="2">Volunteering does not impact the entitlements of EU national jobseekers.</td></tr>
<tr><td rowspan="7">Bogus self-employment</td><td rowspan="5">Identification and treatment of bogus self-employment</td><td>Criteria to distinguish self-employment from employment</td><td>No exhaustive list of criteria exists to distinguish between self-employment and regular employment. Rather, the distinction is based upon a case-to-case assessment. However, a guidance document by relevant authorities has identified certain indicators which will lead to a probable classification of self-employment. These indicators include subordination, the capacity to make a profit, organisational dependency, and who assumes the (financial) risk.</td></tr>
<tr><td>Criteria to distinguish self-employment from unemployment</td><td>Although no legal thresholds exist, de facto income thresholds are taken into consideration in distinguishing self-employment vis-à-vis unemployment.</td></tr>
<tr><td>The effect of being declared self-employed on labour law and welfare benefit entitlements?</td><td>Labour law is not applicable to self-employed individuals with the exception of health, safety and anti-discrimination provisions. Self-employed individuals are, however, entitled to a variety of benefits if the relevant contributions have been paid.</td></tr>
<tr><td>The status accorded to those found to be in 'bogus' self-employment?</td><td>Organisations are required to apply HM Revenue and Customs criteria to determine whether a person should be designated as self-employed or an employee. If applying those criteria leads to the conclusion that a person should be an employee rather than self-employed they will be reclassified accordingly. This may have ramifications for tax and National Insurance contributions.</td></tr>
<tr><td>The consequences of 'bogus' self-employment?</td><td>'False self-employment' may be used by some employers to avoid paying taxes/ National Insurance contributions and engage workers without having to comply with employment rights. 'False self-employment' may not be illegal. For example in the construction industry the Construction Industry Scheme (CIS) allows companies to deduct tax at source and avoid employing workers directly.</td></tr>
<tr><td>Routine verification of self-employment</td><td colspan="2">-</td></tr>
<tr><td>What mechanisms of verification of self-employment are adopted</td><td colspan="2">The Finance Bill of 2014, in force as of 6 April 2015, allows for regulations to be made for record keeping, returns and penalties as a means to verify self-employment.</td></tr>
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Self-employment with one source/economically dependent workers/parasubordination	**The status of economically dependent workers?**	A dependent self employed person i.e. in a dependent relationship with just one enterprise would be classified as either an employee or self-employed depending on the circumstances.	
	The labour law and welfare benefit entitlements of economically dependent workers?	If classified as 'self-employed' that person assumes business risks, loses many of the protections of employment law, and is protected by fewer social security entitlements in the event of unemployment. This is because entitlement to contribution-based Jobseeker's Allowance is determined by the payment of Class 1 National Insurance contributions in the two tax years before the benefit year of the claim. As a self-employed person does not pay Class 1 National Insurance contributions she or he will not have an entitlement to contribution-based Jobseeker's Allowance. However, they may be eligible for the means-tested income-based Jobseeker's Allowance.	
	The labour law and welfare benefit entitlements of economically dependent EU national workers?	EU nationals should be treated in the same way as UK nationals.	
Other fringe work	**Status and regulation of rehabilitative or sheltered work/students who work/persons on workfare programmes**	No relevant sources have been identified which elaborate upon the regulation of rehabilitative and sheltered work. Similarly, no sources have been identified with respect to individuals governed by workfare programmes. Students who work on the other hand are subject to the same regulations as non-students who work. However, they are likely to have part-time, temporary (summer jobs) and possibly be engaged by zero-hours contracts.	
	What conditions and time limits are imposed for retaining worker status under Art 7(3) of Directive 2004/38/EC	**On grounds of incapacity or illness**	A person retains worker status throughout the duration of their leave. So, for example, a worker can also retain worker status when they stop working if they are temporarily unable to work due to illness or accident. Some EEA nationals can acquire permanent residence before 5 years have elapsed. This includes workers and self-employed persons who stopped working in the UK because of permanent incapacity, if they had resided in the UK for at least 2 years, or, regardless of their length of residence, if the incapacity was the result of an accident at work or occupational disease.
		On grounds of involuntary unemployment?	A person is considered to be in involuntary unemployment after having been employed in the UK, "*as long as they have registered as a jobseeker with the relevant employment office and - they were employed for a year or more before becoming unemployed - they have been unemployed for no more than six months or - they can provide evidence that they are seeking employment in the UK and have a genuine chance of being engaged or they are involuntarily unemployed and have started vocational training*".
		On grounds of pregnancy/maternity following the St Prix judgment	"*A person remains a 'worker' for as long as they are under a contract of employment, even if they are currently on leave. So, for example, a woman who established worker status does not cease to be a worker if they are not working because of pregnancy or childbirth, if she is on maternity leave (whether paid or unpaid).*"

	What are the consequences of being found not to have retained worker status, and how quickly do they take effect?	A person with a 'right to reside' as a 'retained worker' would lose that status after six months and with it the entitlement to Jobseeker's Allowance (and Housing Benefit, Child Benefit and Child Tax Credit) unless they can provide "compelling evidence" that they have a "genuine prospect of finding work".
	Are there any other types of work on the fringes of the definition of work	The position of agency workers is unclear and complex and has not yet been clarified by case law, possibly leaving the relationship between workers, agencies and employers open to abuse. The Agency Worker Regulations, which came into effect in October 2011, give agency workers the right to no less favourable treatment, albeit that the regulations only come into effect after a period of 12 weeks of employment. This leaves workers supplied to employers for a short time vulnerable and provides incentives for agencies and employers to contract for short periods in order to avoid the additional rights and costs provided for by the regulations.