



FINAL REPORT

Study on Precarious work and social rights

Carried out for the European Commission

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Executive summary

This Precarious Work and Social Rights (PWSR) study was conducted in a period of growing uncertainty. The current economic crisis has increased unemployment while cuts in welfare provision and entitlements have been widespread. Arguably much employment in Europe is more precarious in 2012 than it was in 2007. The speed of the changes imposed as a consequence of crisis have presented the study with a particular challenge in analysing the overall picture, while keeping in mind the rapid advancement of new solutions to existing and emerging problems. Full-time, permanent work remains the dominant form of employment relationship within the 12 Member States of the study - Bulgaria, France, Germany, Greece, Ireland, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and the UK - and still largely structures entitlements to welfare. However, there has been significant growth in a wide range of non-standard forms of employment relationship with the result that significant numbers of Europe's workers are now excluded from welfare benefits and/or employment protections. This has both major and long-term consequences for European labour law, as legislative models have been framed around the concept of the standard contract and has resulted in the exclusion of increasing numbers of Europe's workers because their employment relationship does not fit the standard. As Weiss (2011) comments, there is a need to adapt labour law to the new circumstances of atypical work by making closer links between labour law and social security law. Thus while the focus of this study has been on precarious work, the association between precarious work and the absence of social rights is irrefutable. Individuals in precarious work are more likely to be excluded from social rights, such as to decent housing, medical care, pensions and education, while exclusion from these social rights pushes individuals into precarious work. Work precariousness thus feeds into other situations that cement individuals into precarious lives. Precarious work also incurs the risk of individuals lacking adequate social protection in old age.

This study considers the variety of employment relationships existing in the 12 Member States and the common and nationally distinct perceptions of precarious work. It details measures that have been introduced to address precarious work with a view to its reduction or elimination. The methods used have involved an extensive, international literature review, 153 face-to-face interviews with a range of employment relations actors, a questionnaire survey of 265 employment experts, 36 case studies, and more than 30 small cameo portraits detailing the experiences of workers in precarious work.

Employment relationships in the 12 Member States

Chapter 2 provides an overview of the employment relationships in the 12 Member States. It notes that as the numbers of economically active Europeans have expanded and as labour markets have become more flexible, the numbers who did not have a fixed working week and permanent contracts also grew. There is significant variation in the forms of employment contract in the 12 Member States, with non-standard forms being particularly significant in Spain, Greece and Ireland. One survey suggests that by 2010 only 57 per cent of workers in Greece, 61 per cent in Ireland and 68 per cent in Spain had indefinite length contracts compared to 80 per cent on permanent and 20 per cent on temporary contracts for the whole EU27. Should these shifts be regarded as significant in relation to precarious work? Generally they would suggest a linkage with precarious work, although the study has found that the views of the

different stakeholders, in particular, employers and trade unions differ somewhat, with the former more likely to identify the growth in non-standard work with job creation and the latter more likely to see it as encouraging precariousness.

In most countries, however, there have been specific increases in **fixed-term** and **part-time** work. Although part-time work is not perceived as automatically being precarious, there is evidence of an increase in involuntary part-time work and of workers having to accept reduced working hours to remain in employment. Where this occurs part-time work is then perceived as precarious and in such circumstances part-time work joined the range of employment relationships that were regarded as precarious. **False or bogus self-employment**, **informal work** and **casual work** are however, the relationships most commonly associated with precarity as offering workers least levels of employment and welfare protection. False self-employment was regarded as where there was a relationship of unequal power, where the offer of work was dependent on a relationship with a single source, rather than a range of clients, and where individuals were hired for work only where they were prepared to declare themselves as self-employed. As self-employment generally excludes workers from social insurance and social protection, bogus self-employment was a method of shifting the burden of the risks associated with employment from the employer to the worker. Informal work is generally taken to provide precarious work and, in particular, in Greece, Spain, Italy, Latvia and Bulgaria it appears to be growing. This has led to legislative measures to address the growth of such forms of employment. Seasonal work was also generally regarded as precarious for low-skilled manual labour and particularly in agriculture.

Examples from the case studies

Case study 16 from **Italy** on the collective agreement in the metalwork sector provides a good practice example on the regulation of part-time work by ensuring that it is not involuntary.

Case study 20 on the new law in **Latvia** in 2010 describes one strategy on combating bogus self-employment.

Triangular employment relationships

Employment relationships generally require an identified employer and an identified worker. However, with temporary agency work (TAW), and to a certain extent with sub-contracted and outsourced work, the relationship between the user of labour and the worker become more remote. This distancing can serve to exclude the worker from employment rights in relation to the user-employer, and potentially increase the risk of precarity. Triangular employment relationships were associated with a reduction in employment terms and conditions, particularly in the opinions of trade unions, who viewed them as a way for the user employer to outsource, not just the employment relationship, but the risks that might otherwise be attached to such relationships, such as risks concerning dismissal. In ten of the 12 study countries there had been increases in temporary agency work, with significant increases in Germany, Greece (where the numbers have more than doubled), Poland and Sweden, and with young workers dominant within the agency sector in a number of countries, with estimates of as high as 80 per cent of TAW workers in Greece and Poland being under the age of 30. This concentration of young people in the TAW sector also places them in a position where their employment rights are more restricted, particularly where TAW is also linked to self-employed status or where the responsible body for the purpose of pursuing employment rights is not clearly

established. At the same time TAW is increasingly becoming the sole entry point to employment for growing numbers of Europe's workers.

Examples from the case studies

Case study 27 on the law in **Poland** regulating TAW is regarded as having been a breakthrough in the development of an effective regulatory framework.

Case study 36 in the **UK** on the licencing of gangmasters shows that it has been an effective measure towards the elimination of rogue agencies.

Case study 22 from the **Netherlands** shows how a system of social partner joint regulation can ensure good working conditions for agency workers.

Sectors, categories and precarious work

The sectors perceived as most concerned by precarious work are hospitality, construction, agriculture, retail and cleaning, with some forms of employment relationship more prominent than others, for example, bogus self-employment in construction, seasonal and casual work in agriculture and hospitality, although, in relation to bogus self-employment, sectors including journalism, civil engineering and information technology are also included. These sectors are often dominated by multinational companies and large companies, whose ultimate priority is to their shareholders. The findings in terms of the perceptions of the risks of workers with different demographic profiles working precariously show that third country nationals, young men and young women and migrant workers are considered the most likely to be employed in jobs with the least protection and/or access to welfare entitlements.

Undocumented **migrants** generally were found in the most precarious work and female migrants, specifically are seen as at high risk of being in precarious work, according to the interviews, and the questionnaire survey, as well as labour force survey data. Migrants generally (both Third Country and intra EU27) were perceived as likely to be employed in precarious work as a consequence of their lack of host country languages, awareness of rights and/or relevant skills.

Women workers were also classed as being more at risk of precarious work and the study suggests that their care responsibilities are a factor in exposing them towards a greater risk of precarious work, as it was also often the form of work that allowed women to combine their work and domestic responsibilities. Thus the absence of support mechanisms that would enable women to participate equally in the labour market drives them into precarious forms of work.

Age plays a role in shaping the risks of becoming a precarious worker. For **young people** who were newcomers to employment and who lacked experience and qualifications, precarious work was often the only possibility of finding work. For older workers the risks are also high among the long-term unemployed who lack transferable skills. Young and older workers are increasingly representing the two sides of precarious work at their points of entry and exit from the labour market, and are now occupying those positions of precariousness for longer periods of time. Young people were identified with precarious work where they were newcomers to employment, lacking experience; where they were lacking the qualifications they needed; and also, in contrast, where they were over-qualified for the available jobs. Many of Europe's young workers are also students and in some cases internships during or at the end of studies are a point of entry into employment but where they are

un-regulated young people may just be moving from one internship to the next without improving their chances of more stable work. **Disabled workers** may be perceived as in work that is precarious where their pay levels are particularly low.

Examples from the case studies

Case study 6 on the retail sector in **France** provides an example of a strategy addressing the improvement of the terms and conditions of workers through the co-ordination of industrial and legal action.

Case study 34 from the **UK** demonstrates how the government health and safety body ensures that vulnerable workers are informed and thus protected.

Case study 18 from **Italy** provides an example on the provision of training in the co-operative sector that has also led to measures promoting the stabilisation of employment contracts for older as well as younger workers.

Case study 23 from the **Netherlands** gives an example of how an awareness campaign led to the establishment of improved working conditions for the cleaning sector.

Case study 30 from **Spain** documents special provisions in relation to disabled workers which have resulted in increased access to employment by disabled workers.

Mapping precarious work

Mapping the distribution of precarious work across the 12 Member States found that informal work, bogus self-employment and zero hours' contracts produced the lowest ratings while part-time, fixed-term and full-time indefinite work produced the highest ratings, when scored in relation to nine features of employment protection, taking account both of legal rules and industrial practice. In terms of categories of workers and their ability to access employment rights, it was third country nationals, young men and young women and migrant workers that had the lowest ratings. Women workers, whatever their ages, always achieved lower ratings than male workers. Thus gender discrimination has resisted equal treatment provisions both in law and practice.

Examples from the case studies

Case study 28 highlights a social partner agreement in **Spain** which promotes job stability in the hotel sector, by providing continued employment from one season to the next.

Case study 2 on a **Bulgarian** construction company shows how stable employment is encouraged in a sector noted for instability.

Case study 1 on a **Bulgarian** hotel chain provides an example of how precarious work can be tackled in an area of seasonality.

Case study 17 from **Italy** on a call centre company shows that even in a sector generally associated with precarious work, it is possible to introduce measures to stabilise employment, guaranteeing more secure work.

The nature of precarious work

Chapter 3 demonstrates how the definition of precarious work has been broadened to incorporate contextual and social factors and concerns, such as instability and insecurity that create precarious work situations sometimes combined, but not essentially, with the form of employment relationship. The PWSR survey concluded that the most precarious work involved the inability of individuals to enforce their rights, where social insurance protection is absent, where health and safety is put at risk and where work does not provide sufficient income to enable people to live decently. Insecurity is another key element of precarity. It encompasses work

uncertainty, income insufficiency, lack of protection against dismissal, an unknown length of employment and where there is uncertainty about future employment.

Another factor that promoted precarious work was the issue of the lack of qualifications or a mismatch between the qualifications that workers have and those required where jobs are available. Thus the issue is not just one of under-qualification but increasingly, in a Europe whose citizens are possibly in possession of higher formal qualifications than ever, of over-qualification in relation to the jobs on offer.

Pay, social insurance and precarious work

Low levels of pay are strongly associated with precarious work. However, work could be precarious where payments were made irregularly or where there was non-payment of wages. The latter can trap workers in informal work since they may be unable to enforce their pay rights, even where in principle their pay levels would have been sufficient to guarantee a decent standard of living. The study notes a new application of the legislation in Sweden, effective from January 2012. The new application means that companies in the cleaning, hotel, restaurant, service, construction, staffing, trade, agriculture, forestry and service station industry together with all newly started activities, in connection with work permit applications, have to provide evidence that they have the financial resources to guarantee salaries for all periods of employment.

Social insurance schemes reflecting the model of full-time, permanent work can exclude precarious workers when they are unemployed, sick, disabled or in retirement. Both this exclusion and cuts in social protection may create precariousness, as workers then enter unregulated forms of employment in order to survive.

Examples from the case studies

Case study 33 on starter wages in **Sweden** for young workers describes a measure to encourage the hiring of young workers

Case study 15 on the reform of the wage-fixing mechanism in **Ireland** addresses exemptions from the application of the minimum wage in some low wage sectors.

Case study 35 provides an example from the **UK** of trade unions working successfully with the media to promote legislative change aimed at protecting workers whose working conditions are precarious.

Choice, representation and precariousness

An absence of choice (or only limited options to choose) about where to work and under what conditions is a core characteristic of precariousness. The absence of representation rights (often as a consequence of weak trade unionism), limited legislation providing representation rights, or the absence of collective bargaining are societal factors associated with precariousness in Bulgaria, Greece, Ireland, Latvia, Poland and the UK. Representation can be provided through traditional trade union bodies or additionally by trade unions working with NGOs.

Examples from the case studies

Case study 8 regarding workers posted to **Germany** shows how unions can represent workers in new ways.

Case study 14 from **Ireland** on trade unions working with an NGO towards a new collective agreement for mainly migrant workers in the mushroom industry shows how unions can engage with other civil society organisations. Similar examples from **Greece** are in Case studies 11 and 12

Health and safety and precarious work

The absence of effective health and safety protection is widely viewed as a characteristic of precarious work and some evidence suggests that both physical and psychological health may be harmed by precariousness. A number of studies have found a relationship between lack of health and safety protection and precarious work and the survey questionnaire placed situations affecting health and safety as a high indicator of precarious work, although not generally a sole indicator. This was one of the areas (along with pay) where there was a general consensus between the social partners and a common viewpoint on the need to address poor health and safety, which was recognised as encompassing both physical and psychological risks.

Business rationale and precarious work

The promotion of precarious work does not represent a sustainable business strategy within the formal economy. Most long-term strategies depend on well-trained, committed employees. While the focus of the study was on workers in dependent or para-dependent employment, this is not the only group that has experienced precariousness, and, particularly for small employers, the crisis has increased their perceptions of their own precarious situation and in some cases has driven them into hiring labour in increasingly more precarious arrangements. This attempt to shift precariousness is not usually productive, neither for the employer nor the worker and contributes to a downward spiral in employment conditions and to increasing insecurity within the employment relationship. Employers saw social security costs, high taxation and restrictive or complex legislation as encouraging precariousness by propelling some into offering informal work. Employers also identified legislation as encouraging precariousness where it was either too copious or complex, as in their view this also drove some employers into offering informal work. An initiative in **Spain** in 2011, as an exceptional measure aimed at encouraging employment, offers employers a discount on social insurance contributions where they hire new workers and is an example of the type of initiative that many of the employers surveyed would support. Five routes to precariousness appear from the research: by accumulation of factors; as a sticky glue; at entry to work; in response to the crisis; and through the indirect contribution of increased insecurity.

Policy measures taken by Member States to address precarious employment relationships

Chapter 4 begins by exploring whether a legal definition of precarious work currently exists in any of the 12 study countries and finds that there is none, although some case law does exist in Italy. The absence of a legal definition makes it problematic to identify policy measures taken by Member States, as they are not generally expressed as measures addressing precarious work. Much hard and soft law, however, deals with diverse employment relationships, although there is a problem of enforcement generally and a perceived lack of political will to act decisively, particularly in a period where unemployment and youth unemployment specially, dominated the political agendas. Positive measures that states have taken include the establishment of the National Employment Rights Authority in **Ireland**, a body with specific enforcement powers and the reforms on apprenticeships in **Italy** that provide these under open-ended contracts.

Examples from the case studies

Case study 13 on the National Employment Rights Authority and its impact on the detection of precarious work in Ireland shows how government bodies can work to prevent precarious work.

Areas of national debate on precarious work

Five issues dominate national debates on precariousness in the 12 Member States: temporary agency work, enforcement, market liberalisation, minimum pay and fundamental rights. But within these general areas of discourse, job creation, is the key issue. Its imperative often supplants discussions on fundamental rights, although the balance between the need for job protection and job creation differs between the Member States. Measures that have been introduced include the extension of age limits in relation to the offer of temporary contracts. Indeed the need for job creation was seen as a key issue by three out of four survey respondents and in Spain and Poland this proportion rises to nine in ten, while at the other end of the spectrum, in the Netherlands it was fewer than one in three. In relation to **enforcement** an absence of effective labour inspection or inadequate mechanisms of enforcement are both associated with precarious work and were increasingly problematic in situations where budgets were being reduced for inspection bodies in many of the 12 countries. This issue was addressed in a UK initiative, where compliance auditing was being piloted as an alternative to enforcement, on the basis that this would provide an alternative strategy which was not based on sanctions for wrong-doing but on encouragement towards adopting good practice.

A floor of basic social rights

Chapter 5 sets out the rights identified as generally applicable in the 12 Member States and then goes on to look at social rights that precarious workers are excluded from. It notes that the impact of the economic crisis has been to prioritise economic rights over social rights and that there is a need to re-balance and to strengthen social rights. Workers in irregular and informal work and in bogus self-employment have limited or no access to social rights and it is still an open question whether not social and employment rights would be better embedded if they were recognised as human rights, rather than as rights dependent on the complaint of individual workers. This aim would be to place responsibility on the state itself to ensure that rights are enjoyed, in the same way as they must with other human rights. In identifying what areas might be stipulated as comprising a floor of basic social rights, the study focused on firstly those fundamental rights already established under the Charter and through ILO conventions and recommendations. Drawing from these and taking account of the factors identified with precarious work in the earlier chapters it sets out the components of a proposed floor of basic rights to tackle precarity, including: a right to equal treatment; a right to minimum pay; protection against unjust dismissal; rights to working time protection; rights during periods of probation; rights to health and safety; measures to ensure knowledge of rights and access to justice; and rights to representation. These employment rights, in conjunction with a set of social and welfare rights covering universal access to provisions relating to unemployment, maternity, and pensions provide the basic floor of social rights as identified by the study. In relation to dismissal a number of measures addressing the level of protection against unjust dismissal are currently being debated in a number of Member States under the provision of a single contract and while the study findings do not automatically reject such a proposal they do indicate a need to ensure a genuine path of progress from work that is less stable to stable work.

Examples from the case studies

Case study 9 shows how the **City of Munich** has used its procurement capacity to promote good employment conditions.

Case study 7 shows how the **City of Berlin** has worked to establish an advice centre for migrant workers.

Conclusions and recommendations

The final chapter of the report presents the overall conclusions and the recommendations. The PWSR study finds that while the experience of precariousness in work is becoming more common, there is no single satisfactory way of identifying it and that precariousness arises from a combination of factors that are both specific to the employment relationship and particular to the category of work or to the individual circumstance. Nineteen specific recommendations are set out under three thematic areas:

A. Forms of contract

1. A presumption that all working relationships are concluded and performed on the basis of a contract of employment and are thus dependent contractual relationships, unless the parties clearly and unambiguously state that they are not intending to create a contractual employment relationship and where this can be evidenced through the submission of documentation to the relevant authority and its confirmation according to a set of criteria established by the relevant authority and by the actual conduct of the parties during the performance of the contract or employment relationship itself..
2. The inclusion of all of the self-employed within social insurance systems applicable to those in dependent work unless the parties clearly and unambiguously state that they are not intending to create a contractual employment relationship and where they provide evidence of the alternative appropriate social insurance protection that they have established for themselves.
3. Recasting EU labour law directives so as to render them applicable to all ‘workers’ as defined by the Court of Justice in its established case law on the ‘free movement of workers’.
4. Recasting all EU anti-discrimination directives so as to render them clearly applicable to both subordinate workers and all self-employed persons providing personal work or services.
5. Workers on fixed-term contracts to be guaranteed social insurance and welfare rights, regardless of whether the employment relationship was with one employer or with several employers, even where there are breaks in service between them.
6. Enforce and enlarge the application of existing limitations on succession of fixed-term contracts.
7. Assess and take into account the impact of the regulation of fixed-term contracts on young people and women, especially in the areas of rights to training, family friendly policies and collective rights.
8. Where the harmonisation of a single contract covering permanent and temporary workers is proposed, time periods for entitlement to employment protection should be calculated not on the basis of the specific employment contract but on the length of time that the individual has been in the labour market.
9. Where the introduction of the single contract is proposed, it should be framed in such a way as not to conflict with the fundamental right to ‘Protection in the event of

unjustified dismissal' (Article 30 of the Charter of Fundamental Rights of the EU) and with the obligations deriving from ILO Convention C-158, Termination of Employment Convention 1982 as interpreted by the ILO Committee of Experts on the Application of Conventions and Recommendations.

B. Categories of worker

10. Maternity and parental rights should be regarded as fundamental rights applicable to all workers, regardless of the employment relationship.
11. Family friendly policies in the context of gender mainstreaming should be considered fundamental.
12. Students should be treated as workers both for the purposes of taxation and social insurance contributions and also in relation to the exercise of employment rights.

C. Thematic areas

13. Clear national minimum rates of pay for all workers should be introduced (by government legislation or collective bargaining) to cover all forms of employment relationship, with effective enforcement measures to include state support for those taking claims based on non-payment of the minimum.
14. Provision should be made for the payment of additional allowances by employers to those engaged under fixed-term contracts to enable them to set aside money for periods when out of work.
15. Rights to representation and employee voice to engage in meaningful collective bargaining should apply regardless of workplace size and length of employment and based on those rights applicable under ILO Conventions and Recommendations and the Charter of Fundamental Rights of the European Union
16. Social partner dialogue should be promoted as a primary method of tackling precarious work with Member State support for such dialogue, particularly in relation to the public sector.
17. Taxation could be used to incentivise employers to stabilise contracts, by setting rates of taxation related to the forms of employment relationship present in the workplace.
18. Member States should be encouraged to promote individual competence development accounts as part of the on-going employment contractual relationship. Such accounts would take account of the entire length of the employment relationship, including where individuals are absent from work, for example on parental leave.
19. Enforcement mechanisms have been shown to be a successful means of tackling precarious work and Member States should be persuaded to consider the societal value of effective enforcement and to include this in any cost/benefit calculation.

1. Introduction

The study on Precarious work and social rights was commissioned by DG Employment, Social Affairs and Inclusion - Labour Law - Unit in May 2011 as part of a pilot project with the aims amongst others:

- Gaining a better understanding of the spread of precarious work and its role in the overall functioning of the economy;
- Promoting the analysis of innovative measures recently adopted in Member States to improve the social rights of workers in precarious employment;
- Developing, to the extent possible, a clear concept of precariousness in employment relationships by identifying features and trends common to several Member States;
- Identifying what could constitute a floor of basic social rights that would be common to all workers or to the whole categories of workers in the EU.

The study, which covers twelve Member States – Bulgaria, France, Germany, Greece, Ireland, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and the United Kingdom – was conducted in a period of significant change within Europe and, in particular, in some of those countries. Although not limited to them, the speed of the labour market changes which are taking place in at least five of the study countries: Greece, Ireland, Italy, Latvia and Spain have presented particular challenges to providing an accurate picture of current employment relationships. The available comparative official statistical data, which at best reports on the situation in early to mid-2011, means that the changes which have occurred more recently are not reflected in the data. There are increasingly larger numbers of Europe's workers that are out of work, a particularly problematic situation among young workers and this creates the conditions for wider 'acceptance' of work that is precarious. The large-scale growth of temporary labour contracts, the expansion of the informal sector and the increase in the proportions of workers in bogus self-employment have been highlighted by the study country experts and those interviewed in the course of the project. Even though their observations may be indicative only, the study has utilised their insights as they may capture better the consequences and rapidity of the changes in a way that the official data cannot do.

The study thus had the following agreed objectives:

- Provide a structured mapping of precarious work in each of the 12 EU Member States identified and its significance in the national and European labour market, including its impact upon specific social groups;
- Produce a common concept of precariousness in employment relationships;
- Describe and analyse the measures taken by these states in responding to precarious employment and specifically in improving the rights of precarious workers or equalising the rights of all workers, highlighting innovation;
- Classify the initiatives according to an agreed model of precarious employment, emphasising difference and commonality in terms of their objective, outcome and impact;
- Identify the potential for a floor of basic rights, which would improve the rights of precarious workers and elaborate this in terms of principles and practice at trans-national level; and

- Provide suggestions for further action on a Europe-wide basis.

The objectives have been reached through three key tasks involving the mapping of precarious work; the identification of policy measures; and the exploration of a floor of basic social rights.

A key aim of the study has been to produce a common concept of precariousness in employment relationships and this has been undertaken by examining a wide range of factors that may make such relationships precarious. However, at the same time it must be acknowledged that the term ‘precarious work’ is a deeply contested one. In none of the 12 countries in the study is there a legal definition of precarious work other than in Italy where the term is commonly used in judicial decisions, creating a case-law acceptance of the notion of precarious work. Generally, therefore while the term is well developed in relation to sociological studies it is largely absent from legal studies. This means that the notion of what it is, who is potentially affected by it and consequently what measures are needed to address it, is primarily subjective. Different interest groups have conflicting positions on the existence of the phenomenon, on what it encompasses and consequently on how it needs to be addressed, particularly in relation to law and practice. The study has endeavoured to represent these different viewpoints as without this it is inappropriate to determine on the measures that might address precarious work.

The absence of a legal definition, as is the case in all 12 Member States, as to what precarious work consists of proves challenging in relation to a study of the policy measures introduced by Member States, but taking account of the definitions explored in the report, it is suggested that national policies aimed at addressing precarious work have focused on the imposition of requirements on the length of fixed-term contracts; the regulation of temporary agency contracts; amendments of dismissal law provisions; the promotion of measures to address unemployment; measures to combat informal work; enforcement mechanisms; training for older and younger workers, and pay levels. The important factor to take account of, however, is the rapidly changing scene with regard to employment law reforms in at least some of the 12 countries of the study.

A number of employer or social partner initiatives are also highlighted in the study with measures aimed at stabilising temporary or seasonal work; establishing apprenticeships; combating low pay; and the provision of training. The measures identified are more prevalent in some countries compared to others, with those with well-established methods of social partner engagement providing higher numbers of examples. Nevertheless the data collected for the study shows that social partner initiatives are a useful and effective method of combating precarious work.

2. Employment relationships in 12 Member States

While the European Working Conditions Survey (2010) reports that 79.7 per cent of employment contracts in the EU27 are of indefinite duration, this still leaves one in five contracted workers in a different situation and another highly significant group that were not surveyed carrying out undeclared work. This chapter provides the background context for the investigation into the extent, nature and perception of precarious employment in the twelve Member States which are the subject of this research. It begins by considering the different forms of labour contract that exist in the twelve countries. It evidences what is known about the prevalence of fixed-term or temporary contracts, part-time work and bogus self-employment. It then turns to examine sub-contracting and temporary agency work, followed by informal and irregular work, seasonal work and posted work. In its second section it reports on the industrial sectors most identified with non-standard work contracts and then goes on in section three to consider the workers who are most likely to be affected. Finally the chapter reviews the available statistical evidence of the incidence of employment protection across the Member States being researched and provides brief country-by-country reviews of key issues and perceptions.

2.1 Forms of employment contract

As the numbers of economically active Europeans have expanded, and as labour markets have become more flexible, the numbers who did not have a fixed working week and permanent contract also grew. From the 1980s onwards, the possession of part-time, fixed-term, or temporary agency work employment contracts became the dominant way of understanding ‘precarious’ work. This reflected a clear reality: temporary work increased its share of overall paid employment in the EU (then 15, now 27 countries over the last twenty years from 8.3 per cent to 14.7 per cent. In all temporary work represented 30 per cent of all paid jobs created between 1987 and 2007. For a minority this has been a choice, but for 61.7 per cent of Europe’s temporary workers it was because they could not find permanent jobs (ACTRAV, 2011). In **Greece**, for example, statistical data provided by the Labour Inspection Corps (SEPE) in 2011 stated that more than 41 per cent of new contracts were flexible employment contracts; full-time contracts represented 79 per cent of all new contracts in 2009, 66.9 per cent in 2010 and just 58.9 per cent in 2011.

The importance of considering the impact of ‘new’ employment relationships is emphasised by a survey on flexible contracts in the Italian civil service (Studio Formez, 2009). It showed that fixed-term contracts had increased both because jobs were now being offered as fixed-term but also because the ‘stabilisation programmes’ that had provided for the conversion of fixed-term into permanent work had been withdrawn, leading to rising proportions of fixed term project workers and temporary staff. An Italian NGO respondent from the industrial area of Emilia Romagna in Italy reported an emerging practice in manufacturing there of alternating between fixed-term and agency contracts.

Anderson and Rogaly (2005) identified undeclared work; short-term; temporary or casual contracts; working for an agency or third party rather than being a direct employee; providing a contracted-out service; and working for low wages that prevent the achievement of a decent standard of living, as all being within the definition of precarious work. On the basis of that definition, they estimated that about one in five UK workers were working under what were termed precarious contracts. Similarly,

Broughton et al. (2010) in their development of the concept of 'very atypical' contractual relationships group these around forms of contract, based on notions of 'standard' and 'non-standard' work. While both 'atypical' and 'very atypical' work are categorised as 'non-standard', 'very atypical' work comes into the category of precarious work comprising: very short fixed-term contracts of less than six months' duration; part-time work of fewer than 10 hours a week; non-written contracts; and zero hours or on-call working. Reinert et al. (2007) in their paper on identifying occupational health and safety risks, also associated non-standard work with precariousness, but on the basis that these forms offered low levels of control over work, low levels of income and low social protection. They proposed the following definition:

'By atypical employments we mean limited work contracts, marginal employment, part-time work, sub-contracted labour and temporary work. Atypical employments carry a high uncertainty potential and are often connected with an income which does not safeguard one's living and are clearly poorer paid than identical or work of equal value. In addition many social rights and employees' rights do not apply or apply only in a limited form, e.g. protection against wrongful dismissal, social insurance protection, the right to maternity protection and co-determination rights. Setting-up of a family, building one's own home or planning phases for qualification are mostly unknown concepts for people in atypical employments.'

Munck et al. (2011) note that 'while informalisation of the relations of production and the precarisation of work were once assumed to be the exception, this is no longer the case'. In their on-going study three-country study¹ – PRECARIAT - they examine precarious work and social movements in the context of international migration, labour market restructuring, changing national frameworks of citizenship and emerging human and migrants' rights regimes globally. At the heart of their project lies the theoretical and empirical development of the concept of a '*precariat*' designed to capture the vulnerability of casual or "flexible" labour and a truncated citizenship. Neilson et al. (2008) went even further to question whether indeed it should be Fordism that is seen as the exception and precarity as the norm. Ross (2009) has also questioned whether the dream of a secure job with full benefits and a decent salary is no longer realisable, at least for growing numbers of workers, using the concept of 'precarious livelihoods' to describe new patterns of work and life. His work points to an emerging pattern of labour instability and uneven development on a massive scale.

Employment relationships continue to be defined against the standard notion of a permanent, full-time contract providing a 'job for life' and a sufficient income to ensure reproduction of the labour force for a traditionally male 'breadwinner'. Thus, even in relation to EU level law, the differentiation is between standard and all other forms of contract. Part-time work in Directive 97/81/EC is defined simply as work that is not full-time. Similarly fixed-term work is defined as work that is not indefinite. Atypical contracts thus become what a German academic respondent described as a 'leftover category, embracing all types of employment which cannot enter into the regime of a typical contract'.

The assumption that the principal norms regulating work are those of full-time permanency has never reflected the full variety of working relationships present in

¹ The study covers Sweden, South Africa and Turkey

industrial economies. Work has always been performed both outside and inside the home in a variety of forms of contractual relationships, only some of which have come to be identified as what are now referred to as standard or 'typical'. This variety of forms needs to be explored.

2.1.1 Fixed term (temporary) contracts

A fixed-term (or temporary) worker is defined under Directive 99/70/EC as 'a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event'.

Having declined in 2008 and 2009, the share of employees with a contract of limited duration (fixed-term employment) increased to 13.9 per cent in the EU-27 in 2010. As one in four employees had a temporary contract in Poland and Spain in 2010 and there is a considerable range in the propensity to use limited duration contracts between Member States.

These differences between Member States largely reflect national employment cultures and practices, the supply of and demand for labour and the ease with which employers can hire or fire. National cultures in which the importance of indefinite employment contracts is most strongly embedded are most likely to perceive temporary contracts as precarious. This was the most common reference among our interviewees. More than a third specifically discussed fixed duration contracts in relation to precarious work and in all there were 578 references to temporary work in the course of the interviews.

While temporary contracts are not necessarily precarious many respondents did associate them with minimum labour conditions and with low pay. Examples were provided of cases where individuals were hired on temporary contracts, laid off for a period and then re-hired as a way of avoiding the obligation to provide them with the same conditions as appertained to permanent workers. From this perspective temporary work appeared to some respondents as a way of shifting entrepreneurial risk on to workers.

Some respondents described temporary work contracts as a recent phenomenon. One employer in Poland described temporary work there as 'developing and evolving' and not deserving of the negative images often associated with it. A legal expert from Spain similarly made the point that 'temporary work does not have to be identified totally with precarious work in its sociological and economic sense'. One government respondent in Greece suggested that employers were exploring to a greater extent the boundaries of the law to search for ways to keep employees for longer periods on temporary contracts and that this had contributed to its growth. Other respondents also pointed to the rising volume of temporary work arising out of problems in the existing legal systems which did not regulate labour contracts adequately. One academic interviewee from the Netherlands pointed out some of the problems with this trend:

An end should be made to the legislation that enables the never-ending carousel of fixed-term contracts. It is not only causing precariousness among the workers but also threatens solidarity in society and hampers fair competition. Fortunately more and more influential players are starting to recognise this, but individual employers lag behind. More flexible work arrangements may well lead to a bill that society will have

to pay for later, for instance because a large proportion of the population will not have appropriate savings for pensions.

Anna's story

Anna is 30 and lives in Krakow. She moved there a few years ago when she started her studies. She has a masters' degree in foreign trade and currently works for Polish food production company, in its transport and logistics department. She has a fixed-term employment contract but for the first year she worked on the basis of a civil contract. Anna works more than 40 hours a week and one Saturday per month she has to work for without any additional pay, regardless of whether the shift is for three or 12 hours, which is often the case. It is very hard to make ends meet with her salary. She cannot afford to buy or rent a flat. Therefore, Anna shares a flat with her friends. Anna is now facing a huge challenge in looking for another job. She often works night shifts in a very cold warehouse and recently has had complicated surgery making her current working conditions became very dangerous to her health. Her management does not want to change her work schedule. This situation seriously affects her life and her ability to support herself in the future.

Specific changes to the law which had permitted the hiring of workers under temporary contracts were also cited as having encouraged the growth in these forms of employment relationship, particularly in Italy and in Spain. Thus it was the view that the forms were not the outcome only of a specific industrial relations environment but were also assisted or indeed driven by legislation.

In many cases, however, temporary work is associated with a choice from the workers' side. It can provide workers possessing sought-after skills with greater freedom of choice as to where and when they work. Some respondents also made the point that fixed-term contracts could facilitate the creation of new jobs, although others refuted this. Italian trade union respondents acknowledged that the flexibility of the labour market might create employability and promote transition from one job to another, stimulating policies aimed at matching training and labour market needs. Temporary work was seen as turning itself into precarious work only where it became structural, replacing permanent work definitively, whereas if it was correctly used it could respond to specific productive needs.

Case study 28- Good practices against precariousness in the Spanish hotels sector

Background/context

The sector of hotels and restaurants in Spain is one of the most important in terms of financial turnover as well as for the number of direct and indirect jobs that it generates. Nevertheless, a significant proportion of these jobs are precarious as they are based on uncertain and conjectural variables. This has brought about a proliferation of temporary contracts, most of which are involuntary. The case study involves a major temporary recruitment agency which sourced workers that were predominantly of migrant origin.

Description of the initiative

The federation of commerce, hotels and restaurants and tourism of CCOO

(FECOHT), has promoted a number of collective agreements that reduce the share of temporary posts and better regulates part-time jobs. In this way, minimum labour conditions have been improved. Collective agreements have promoted the implementation of the “discontinuous fixed contract” feature, which makes provision for seasonal workers to continue in the same employment relationship at the start of the next season. Workers also have guarantees as to the minimum working hours they will be offered and are paid at an agreed rate of pay.

Outcome of the initiative

The Hostelry agreement of the Balearic Islands is an example of a “discontinuous fixed contract” agreement and guarantees an annual minimum period of employment based on an employment average of the three previous years. Every season people are recruited and dismissed on the basis of seniority. The agreement contains a stable employment commitment which states that where companies have a workforce of between 11 and 25 workers, at least 65 per cent of them have to have an indefinite contract. In companies with more than 25 workers at least 75 per cent have to have an indefinite contract.

Max’s story

Max has just turned 40 and he lives in Munich, one of Germany’s most expensive and exclusive cities. He works as a university lecturer on a 50% temporary contract, the other 50% is financed by external research funding. Although he successfully completed his PhD in his early 30s, Max has been unable to find a permanent full-time position. Since completing his first degree in the mid-1990s, he has experienced intermittent periods of unemployment. He is also constantly faced by the possibility that his existing contract might not be extended. Together with the fact that the research funding has greatly declined in recent years his prospects look very bleak indeed. Although he has earned relatively well over recent years, his late entry into the labour market as well as the occasional periods of unemployment mean he has very little savings. The prospect of another period of unemployment has led him to consider leaving university education. However, at the age of 40 trying to find another job outside of education could prove difficult. One option he has considered is re-training to become a secondary school teacher. Although this would involve leaving the labour market for two-years it could eventually provide him with the security he has been lacking in since he started work.

Several sectors were particularly identified across nearly all of the countries with the use of temporary contracts. These were agriculture, construction, domestic work in private homes, hotels and tourism. Fixed duration contracts were also reported as being important in craft-based industries where an employer respondent from Italy suggested that between 80 and 90 per cent of new recruits had fixed-term contracts, as well as in education and the public sector more generally, particularly in Italy, France, Spain and in Greece. The groups of workers most likely to be offered fixed-term contracts were identified as young workers, foreign workers, older workers and women workers. Women workers and young workers, in particular, were more likely to have temporary jobs and therefore were more affected by precarious work, a point emphasised by a number of respondents. The temporary jobs on offer were described as mainly routine and low-skilled work.

Specific problems were identified in relation to the growth of temporary work. It did not provide workers with sufficient certainty to plan their lives, sometimes making access to accommodation more difficult and presenting problems in relation to

opening bank accounts and acquiring mortgages. Respondents were concerned that it postponed access to stable employment and to proper training, and that it forced workers to rely more upon welfare benefits, and that it could be a lower cost substitute for providing permanent and more rewarding work.

Case study 31 - Using collective bargaining to limit the spread of fixed-term employment contracts in Sweden

Background/context

There has been a growing trend in Sweden for employers in most sectors to use temporary contracts such as trainee posts, substitute posts and stand-ins as a way of circumventing the Swedish Employment Security Act, LAS. By offering a series of temporary contracts (piled contracts) one following on the other, employers can avoid redundancy pay where there is no longer a requirement for the worker to perform the work. The use of agency workers and intermittent contract work represent other features on the same subject.

Description of the initiative

Trade unions have recently taken steps to try to curb the growth of atypical contracts by acting in the field where they are normally strongest, that is, in collective bargaining. Prior to the 2011-12 bargaining rounds, in late August 2011, the Swedish Trade Union Confederation, LO, decided that the most crucial item for its affiliated trade unions, besides wages, should be to stop the use of the piling of temporary employment contracts. The practice is not evenly spread throughout the sectors and is more common in services and in particular in retail trade, hotels and restaurants, cleaning and all forms of health care, in particular care for elderly. The action is limited to the field of collective bargaining as a fundamental principle of industrial relations in Sweden is that the social partners should be free, to as great an extent as possible, to set their own agendas.

Outcome of initiative

The initiative from the trade unions affiliated to the LO is so recent that it is not possible to foresee the outcome yet. The union also supports changes in labour law which can only be achieved through the parliament and the union initiative has not yet reached the crucial point in this political debate. The collective bargaining rounds have just begun and therefore their outcome is still unknown but there is little doubt that it is the most crucial item on the work agenda in Sweden today.

A number of proposals were advanced that might deal with some of these issues. An employer respondent from Poland made reference to proposals presented by employers that all fixed-term contracts would be automatically turned into permanent contracts after a period of 24 months of employment.

An academic expert from France suggested putting an additional cost on employers in the form of additional pay for workers in precarious jobs or setting different rates of taxation payable by the employer, dependent on the extent of precariousness. References were also made to concepts of single contracts or other methods that guaranteed transition from temporary into permanent work, through subsidies or other forms of incentive such as those in Italy that were referred to as 'stabilisation methods'. A 2007 law in **Italy** was referred to. This enabled employers to stabilise employees into permanent contracts where previously they had been on fixed-term

project contracts in return for the employer paying an amnesty social security contribution and this had promoted stabilisation within the call centre sector (see Case Study 17).

Collective bargaining was also proposed as a method to be used to reduce dependence upon temporary contracts, particularly where sub-contracted labour was being used. Strongly differing positions were taken by our respondents on the debate in **Italy** and in **Spain** about the proposal to effectively replace the separate standard and temporary employment contracts by a single contract with greater freedom to terminate built in for the employer.

2.1.2 Part-time work

A part-time worker is defined in Directive 97/81/EC as ‘an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker’.

Interviewees in eight of the 12 Member States made reference to part-time work, but only a minority overall perceived part-time work as precarious. Part-time work might represent the only paid work that an individual undertook but might also consist of several employment relationships, each representing part-time work but enabling an individual to acquire the equivalent of full-time earnings. Where part-time work was treated equally to full-time work, with the same rate of pay pro-rata to the hours worked and with the same access to benefits such as pensions and sick pay and rights to training and career development, then this was not usually seen as problematic by the study respondents. However, an employer in Bulgaria described this as the main issue for the social partners there, with employers arguing for the liberalisation of restrictions on part-time working and the trade unions supporting the existing limits on part-time work.

Eurostat Labour Force Survey data² show that the proportion of the EU-27 workforce reporting that their main job was part-time increased steadily from 16.2 % in 2000 to 19.2 % by 2010. In the 12 countries of this study the picture is more complex, as shown in Table 1.

Table 1: Incidence of part time work in 12 EU Member States, 2000-2010

	2000	2005	2010
Netherlands	41.5	46.1	48.9
UK	25.1	25.2	26.9
Sweden	19.5	24.7	26.4
Germany	19.4	24.0	26.2
Ireland	16.4	n/a	22.4
EU27	16.2	17.0	19.2
France	16.7	17.2	17.8
Italy	8.4	12.8	15.0
Spain	7.9	12.4	13.3
Latvia	11.3	8.3	9.7

² [http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Persons_working_part-time_or_with_a_second_job_2000-2010_\(%25_of_total_employment\).png&filetimestamp=20111117143058](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Persons_working_part-time_or_with_a_second_job_2000-2010_(%25_of_total_employment).png&filetimestamp=20111117143058)

Poland	10.5	10.8	8.3
Greece	5.5	5.0	6.4
Bulgaria	n/a	2.1	2.4

Source: European Labour Force Survey, 2011

While the average increase in the share of part-time work across the EU-27 workforce was 3 per cent between 2000 and 2010, in the twelve countries studied here it was 3.6 per cent, but less than that or even negative in five of them: in the UK, France and Greece there was a small increase, but in Latvia and Poland the incidence actually fell. On the other hand the increases in the Netherlands, Sweden and Germany of above or near seven per cent in just one decade were very considerable.

Case study 2 - The mobile construction company in Bulgaria: retaining workers

Background/context

The construction sector in Bulgaria had experienced a dynamic development during the last decade but after a period of significant growth from 2002 to 2007, the sector has experienced a decline. Job security represents a serious problem in the sector. The state inspections continue to register high numbers of violations in employment rights and there are lots of cases of workers without contracts at the construction sites.

Description of the initiative

“BulConstruction” is a Bulgarian private company established at the beginning of the 1990s. At its peak it employed around 350 workers but has been badly affected by the current economic crises and employment numbers in the company have been decreasing. In order to limit the precariousness of the work for at least a core workforce different measures have been introduced by the management. The first measure was the introduction of reduced working time for some employees; others were put on paid or unpaid leave. These measures while having negative impact on the remuneration levels contributed to the preservation of the employment. In spite of the reduced remuneration levels, the average pay in the company is still above the level negotiated in the branch collective labour agreement (BCLA).

At the same time the company management is flexible and reacts effectively to the changing environment. By planning in advance its building and construction operations the company provides work to its employees throughout the year. The company has introduced systems and policies that demonstrate that it acts as a socially responsible employer. The company management shows respect to loyal employees by providing benefits and stimulus in the form of awards decided upon by a committee composed of top managers and administrative employees.

Outcome of the initiative

The main measures employed by the company involve flexibility of working time, use of paid/unpaid leave, avoidance of overtime, shortening normal working hours, etc. In the organisation of work the use of subcontractors is limited in order to create employment for directly employed workers. Specialised teams or groups of construction workers with team leaders or foremen are substituted by complex groups or teams comprised by workers who are trained to perform any kind of construction activities and building operations. Thus, multitasking is another outcome of this policy – remaining workers are supposed to execute different types of construction work. These measures make possible the retention of part of the workers. The careful

planning of work activities also allows the company to preserve employment all year.

Part-time work was perceived as being precarious by several interviewees where the wages that it provided were low. Indeed an employer from France differentiated between workers on the basis of whether or not they were 'poor'. For her, poverty was a more relevant index of precarity in those cases where part-time work was associated with very low pay. Several other interviewees also associated part-time work with low pay or with insufficient pay to meet their personal or family needs and with lower insurance coverage. This generally reflected the gendered nature of part-time work and the extent of job segregation, leading part-time workers often to perform different tasks than full-time workers. A legal expert respondent from the Netherlands noted that part-time work was structural and dependent on the way that work was organised, and that it became precarious when it did not generate enough income to provide for the future. A common feature of part-time work is that its incidence differs significantly between men and women. Nearly one third (31.9 %) of women employed in the EU-27 worked on a part-time basis in 2010, a very much higher proportion than the corresponding figure for men (8.7 %). This difference is at its greatest in the Netherlands, where three quarters (76.5 %) of all women employed worked on a part-time basis in 2010. In 2009 the Netherlands introduced 'part-time unemployment' crisis measures to enable workers to accept part-time jobs and have their remaining non-working hours covered by unemployment insurance. In other countries, too, legislation aimed at making it easier to switch to part-time work is being facilitated by legislative changes. In Germany around 70 per cent of workers in the retail sector were in part-time employment, many of whom were employed under the Hartz IV law which places a requirement on individuals in receipt of unemployment benefit to work in return for a benefit plus payment.

Some interviewees suggested that part-time work became precarious where the number of hours to be worked were varied by the employer with little or no notice, or were too few to sustain a reasonable standard of living. Ultra-low (including 'zero hours' contracts) and uncertain working hours fell into this last category including cases where part-time workers had to be 'on call' for most of the day. Precarious work was also considered to exist when workers were forced to work beyond the number of hours stipulated in their contract.

Robert's story

Robert is 31 and works in Warsaw in a sports retail chain. He now has a permanent contract but for 10 years had only fixed-term contracts. His job is not full-time job, and over the period of a month Robert works around 126 hours. He earns enough to survive but not to live decently. He rents a room with other friends because he cannot afford to buy/rent a flat for himself. This situation heavily affects his personal life. Robert cannot start a family. His fiancé is working part-time and studying but they do not have income to enable them to live together. In the past Robert had additional jobs to earn extra money. But now he is actively involved in the trade union movement and has no time to pick up additional work. Robert wants to complete his higher education but it seems that he would have to go abroad in order to improve his financial situation and be able to live with his fiancé and start a family.

Distinctions were also made between voluntary and forced part-time work with a strong criticism of those situations where the lack of work had forced individuals into part-time employment. The Eurostat Labour Force Survey (2007) finds that around one in eight part-time workers would have preferred full-time work but could not get it. The study highlights this as an issue, at least in France and in Ireland (where there was a reference to bogus part-time work); although an employer respondent from the UK denied that there was evidence of forced part-time work, indicating that individuals might also be in part-time work out of choice.

However, the key issue raised by the interviewees concerning part-time work was related to gender. Part-time work was perceived as generally being poorly paid and weakly unionised, but it was also seen as work that was carried out by women mainly, or what a French trade union described as a ‘gendered work organisation’, leading to women part-time workers earning less than male workers. Women were considered as more likely to be in non-standard work than men and in what was described as an ‘imperfect gender-based equality of opportunity’. A German trade union respondent also considered that women returning from maternity leave were sometimes being denied the option of part-time work (where they actually wanted it) or were being offered contracts that did not permit them to manage their work-life balance. Following the economic crisis in **Greece**, women returning from maternity leave, who have been employed under open ended full-time employment contracts, have usually faced an employment status conversion, with employers unilaterally imposing reduced day employment (up to three days a week), which the law now permits. A ‘reduced term rotation’ system for staff where there has been a significant decrease in business activity is permitted for a maximum nine month period. So far, this measure has been proven to have a severe “gendered” aspect, as working mothers, especially those returning from maternity leave, are most likely to be victims of such false “rotation”, which in reality is a unilateral substantial modification of a single employment contract to the detriment of the female employee, even though the latter would be contrary to Greek non-discrimination law.

2.1.3 Bogus (false) self-employment

Bogus (or false) self-employment is a form of employment relationship located somewhere between subordinate and independent work, where the form of the employment relationship is classified as that of an independent, self-employed contractor but where the conduct of the relationship mirrors that of subordinate relationships.

In the 12 Member States in this study the proportion of the labour force in self-employment ranges from 34.9 per cent (Greece) to 9.9 per cent (Sweden). The data is not particularly helpful in relation to degrees of precarity, since in most countries small subsistence farmers are classified as ‘self-employed’, and hence as agriculture declines as a source of employment, there is a built-in tendency for self-employment to decline as well. According to the European Foundation Survey (ECWS 2010) self-employment fell across the EU27 from 17.6 per cent in 2000 to 15.1 per cent in 2010. However, in three of the 12 countries it grew during the decade as shown in Table 2: in the UK by 0.4 per cent, in Sweden by 1 per cent, and in the Netherlands (where it registered the largest increase) by 7.7 per cent.

Table 2: *Employment and self-employment in 12 Member States, 2000-2010*

		2000		2005		2010	
		Employed	Self-employed	Employed	Self-employed	Employed	Self-employed
Greece	Total	57.40%	42.60%	66.70%	32.80%	64.70%	34.90%
Poland	Total	67.10%	31.60%	76.20%	21.20%	73.70%	21.60%
Italy	Total	74.00%	25.80%	68.00%	30.30%	76.50%	20.90%
Ireland	Total	80.70%	18.50%	81.00%	19.00%	81.50%	16.60%
EU27	Total	81.30%	17.60%	81.60%	16.40%	82.20%	15.10%
Netherlands	Total	91.90%	7.10%	89.40%	9.90%	82.50%	14.80%
UK	Total	85.50%	13.30%	84.90%	14.20%	84.50%	13.70%
Latvia	Total	84.40%	15.60%	82.90%	16.30%	86.50%	13.20%
France	Total	85.50%	13.70%	84.90%	11.90%	84.00%	12.90%
Spain	Total	76.40%	23.60%	80.00%	19.30%	85.80%	12.70%
Bulgaria	Total	84.50%	13.90%	84.50%	13.50%	86.40%	11.50%
Germany	Total	85.00%	13.20%	89.50%	9.00%	87.20%	10.80%
Sweden	Total	89.90%	8.90%	91.70%	6.80%	87.80%	9.90%

Source: EWCS 2010 survey

Several interviewees noted increases in forms of bogus self-employment. A UK construction trade unionist argued that ‘false self-employment was increasing, despite a context of the loss of around a quarter of a million jobs in the sector as a consequence of recession’. False self-employment was described as a ‘grey zone’ by one Greek government respondent. The same term was used in an interview with Italian trade union respondents, where one described ‘a growth of a grey zone between subordinate and self-employed work, the so-called “semi-dependent” work’, referring to growth of ‘Co.Co.Co’ collaboration contracts (the so called false “partita IVA” workers”- these are a form of internship contract in the public sector that do not entail basic employment rights) over the last decade. A French trade unionist and a Netherlands government interviewee also both described the emergence of work relationships concerning persons without open-ended contracts and in an unclear legal position and who thus were probably falsely self-employed. Such employment relationships consisted of cases which the Netherlands interviewee described as when: ‘A self-employed person works for one single client without choosing the situation, but being forced to accept it by their circumstances.’

This describes a relationship of unequal power, where the offer of work is dependent on the relationship with a single source rather than with a range of clients, as would be the case in a genuine self-employment and therefore represents in reality economically dependent work. It is also a process where individuals may be hired and then placed under pressure to declare themselves as self-employed. This occurs because, despite the working relationship being the same as for a worker under an employment contract, it is more convenient, involves less administration and provides greater flexibility for the employer, while it is often accepted or sought after by the worker because it can provide short-term benefits through reduced tax or social insurance obligations. An Irish trade unionist reported instances where employers had dismissed workers on redundancy terms only to rehire them as ‘self-employed’ contractors, to cut costs and to avoid fully complying with Irish employment law.

Bogus self-employment was viewed as being widespread by interviewees from Greece, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and the UK. In Britain a trade unionist pointed to evidence of ‘wide-scale tax evasion, with figures for 2008 suggesting that as many as 400,000 individuals are falsely self-employed’.

The sectors where bogus self-employment was identified covered some with many professional workers and some with high concentrations of low-skilled manual

workers. Civil engineering, journalism, care homes, agriculture and construction were all explicitly referred to. Foreign workers were also seen as being forced into bogus self-employment in circumstances where immigration laws did not permit them to work as dependent workers. In these cases self-employment was the only employment relationship available. One trade union respondent from the Netherlands provided an example of a meeting attended by him where tax officials were providing information on self-employment to **Bulgarian** labour migrants who were denied dependent work by the existing legal rules.

The impact of bogus self-employment

Many interviewees argued that those who were in bogus self-employment were more vulnerable than dependent employees due to their exclusion from collective bargaining and the resultant absence of procedures dealing with disciplinary matters. Moreover, as an Italian trade unionist pointed out, they are ‘not covered by social shock absorbers in cases of unemployment’. Governments accept responsibility for the social protection of dependent workers but (with the partial exception in some countries of small farmers) not of those who are formally self-employed, regardless of the reality of the employment relationship. The fact that self-employed workers are excluded from social protection is often consequent on social insurance contribution rules that specifically omit self-employed workers. However, while workers potentially ‘gain’ in the short run from not having deductions made for social insurance, the employer gains absolutely. The employer permanently saves the cost of contributing to social insurance, while the worker loses the future benefits that would accrue in the event of unemployment or illness or retirement. Thus bogus self-employment shifts the burden of the risks associated with breaks in employment entirely on to the worker.

Where self-employed status is imposed on the worker there is the potential for challenging the validity of the employment status. One UK interviewee reported some success before employment tribunals in challenging bogus self-employment relationship. Similarly in Latvia case law has recognised bogus-self-employment and converted it into a dependent employment relationship, as is also the case in Italy. Indeed according to the study legal expert for Latvia, a current study on the restatement of European labour law shows that, in an absolute majority of EU countries, if in substance a relationship corresponds to one of employment, then it is to be considered as employment relationship in the eyes of national labour law. Such challenges, however, are likely to be dependent on the existence of either representation or labour enforcement bodies and the absence of either or both makes it difficult to challenge bogus self-employment. Thus in sectors like agriculture and construction which have been considered more challenging to reach out to, due to the mobility of the workforce, trade union representation was often absent and labour inspectorates were either not present or did not have the powers to impose heavy sanctions for the use of bogus self-employment.

Tackling bogus self-employment

Most interviewees pointed to difficulties in regulating bogus self-employment, but some provided examples of initiatives addressing it. In the **Netherlands** the replacement of open-ended dependent contracts of employment by dependent self-employment relationships has been declared unacceptable and attempts were made to stop this practice, according to a government respondent. It was suggested that it was

the separation of taxation from social insurance that was encouraging bogus self-employment, so that a merger of the two forms of taxation into one income tax would remove the incentive for self-employed status, other than in those cases where it genuinely represented the nature of the employment relationship.

While the study focus was on bogus or false self-employment, it is useful also to take note of genuine self-employment and the extent to which it can put individuals into situations of precariousness. As a number of employer respondents noted, the economic crisis has also impacted on their own stability of employment, with businesses (in particular small businesses) facing bankruptcy or financial difficulties. And, as the data collected from the national experts has demonstrated, those who are self-employed are excluded from much of the social and welfare protection available to those with subordinate contractual arrangements. In responding to the questionnaire survey, an employer notes:

‘One of the main concerns in the Netherlands regarding ‘precarious work’ is ‘the self-employed without employees’. In many ways they do not really differ from classical workers, but they lack any kind of protection under Dutch law. This number of self-employed workers is growing rapidly, which is causing another problem, i.e. contribution to the social security system (all the good risks and big earners are getting self-employed, which leaves the bad risks and low contributors to finance the social security system).

2.1.4 Temporary agency work

A temporary agency worker is defined in Directive 2008/104/EC as ‘a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction’ (Art 3). The latest Eurofound (2009) study suggests that temporary agency work had become a significant form of employment prior to the crisis in most Member States, especially in France, Germany, Italy, the Netherlands and the UK, as shown in Table 3.

Table 3 Temporary agency work employment and revenues in 12 EU Member States, 2007 compared with 2004

	Temporary agency workers	% Change since 2004
Greece	8,172	133.3
Ireland	35,000	40
Sweden	59,400	69.7
Poland	60,000	93.5
Spain	160,000	4.6
Netherlands	233,000	48.4
Italy	594,744	-48
Germany	614,000	53.6
France	637,901	11.9
UK	1,196,000	-8.7

Source: Eurofound (2009) Temporary agency work and collective bargaining in the EU

The European Confederation of Private Employment Agencies (Eurociett) states that there are around 33,000 private employment agencies operating in Europe (Eurociett, 2012). In relation to the 12 countries in this study, 11,500 of these agencies are based in the UK; 6,049 in Germany, 3,260 in the Netherlands, 2,998 in Poland, 1,200 in France, 500 in Sweden, 350 in Spain, 70 in Italy and 9 in Greece. There are no figures for Ireland, Bulgaria and Latvia. Overall, temporary agency work in Europe grew from representing 1 per cent of the labour force in 1996 to 2 per cent by 2007. The Netherlands and the UK employ the highest levels of agency labour to working population, followed by France. The start of the 2008 economic crisis led many firms to use the flexibility agency workers provide to lay them off first, rather than their core workforce, hence contributing to this employment relationship's association with precarity. Both temporary agency work and outsourcing thus reflect different manifestations of displacement of more secure and better remunerated employment.

In some countries agency work appeared to be replacing fixed-term contracts, at least prior to the 2008 crisis. In **Germany** legislation has made the longer term employment of temporary agency workers easier, by increasing the permitted period from 12 to 24 months.

Agreement on contract type

An agreement signed by the social partners in **Italy** covers labour relationships which exist between "Employment leasing Agencies" and "leased workers" who are taken on either on fixed-term or permanent basis. It is the first collective agreement which has been stipulated in order to legitimise protection profiles for atypical workers; it deals with remuneration and also with legislative and social security protection and it achieves the European principles of flexicurity. Finally, it concerns an exemplary collective contract for the model of representation of atypical workers through specific organisations of atypical workers which the unions have set up totally separately and autonomously.

Young people dominate within agency work. According to Eurociett on average 57 per cent of agency workers in Europe are aged less than 30 (Eurociett, 2012). A study by the European Foundation for the Improvement in Living and Working Conditions in 2007 found that 31 per cent of the agency workforce in Germany consisted of those under the age of 25; 34 per cent in Spain; 31 per cent in France; 85 per cent in Greece (under the age of 35); 27 per cent in Italy; 32 per cent in the Netherlands; 80 per cent in Poland; 46 per cent in Sweden (under the age of 31); and 51 per cent in the UK (under the age of 30)³. Young workers were cited as being over-represented in temporary agency work in food processing, logistics, warehousing and transportation. An Italian respondent added that the most common duties for non-qualified workers (manual workers, including warehouse and assembly workers) were being undertaken increasingly through agency employment and that this led to a growing presence of women workers who had taken breaks when their children were born and who were having to re-enter the labour market, at least initially, as agency workers. Migrants were also specifically identified as being over-represented among agency workers and their numbers in agency work as increasing.

³ Eurofound (2009)

Agreement on equal rights for agency workers

In September 2010 the social partners in the North West German steel industry concluded a new agreement which ensures that temporary agency workers in the industry are paid the same as workers on standard contracts. The agreement covers around 3,000 temporary agency workers. They used to be paid according to separate collective agreements that are often below those of the core workforce. Here, the IG Metall trade union insisted that they should be included in the core agreement in the main national wage round. The agreement states that where temporary agency workers are paid less, the companies are liable to pay compensation.

Source: EIRO, March 2011

Agency work is often associated with the concepts of dual labour markets and insider/outsider divisions. It was felt by some interviewees that agency employment could 'entrap workers in the secondary labour market'. Some, but not all interviewees, associated it with precariousness.

A large French employment agency employer believed such work was a substitute, particularly for young workers who were not yet clear as to their future career paths. His agency targeted young male workers specifically because they represented workers who did not have clear career prospects. He differentiated between two types of agency worker, those who had chosen to work through agencies and those who had no other options. While the latter might be seen as precarious, the former were not. An employer from a representative organisation in the UK also considered that agency employment could be a stepping stone in the careers of young workers. He argued that agency work was not precarious in itself but became so because a large proportion to workers in the sector (construction) were already disproportionately disadvantaged in the labour market, either because of their age, skills or gender.

Magda's story

Magda is 32 and lives in Dublin in Ireland. She is from Poland, and has lived in Dublin since 2007. Magda works as a cleaner in private homes, but finds her job unsatisfactory. The first reason for this is that she is employed by an agency that makes unreasonable demands on her. Magda is contacted by the agency at unsocial hours and her place of work often changes at very short notice. Magda also dislikes working in other peoples' homes. Some families fail to treat her with respect, and they sometimes make unreasonable demands on her. Magda would like to find a better paid job with better conditions and more stability. However, she possesses few formal qualifications and has some problems with the English language. She therefore thinks it unlikely that she will be able to find a better job given the current economic climate in Ireland.

For other respondents, however, agency work was associated with precariousness because, as an Irish trade unionist said, it was seen as potentially more exploitative of workers. A UK trade unionist noted that the only route to work in some sectors was through temporary work agencies and that in accessing such work individuals would face insecure and poorly paid work. Elcioglu (2010), who conducted her fieldwork in the office of a temporary staffing agency, suggests that agency work reproduces and maintains vulnerability in the labour market. So that while agencies may provide transitional mobility for jobseekers, in the long run they created a core of permanent temporary workers separate from the periphery of surplus workers.

Case study 22 - Regulation of the temporary work sector in the Netherlands

Background/context

The subject of this case study is the regulation of the temporary work sector in the Netherlands and in particular the NEN-certification. The NEN-certificate is a quality certificate which ensures that a temporary work agency is bona fide. Some unscrupulous temporary work agencies exploit people by not telling them their rights and they do not pay their pension contributions, healthcare contributions and holiday pay. They also house their migrant employees in poor accommodation and charge large sums of money for it. It was to put an end to these kinds of practices that the NEN-certificate was introduced.

Description of the initiative

In 1998 the permit system for temporary work agencies was abolished by the government. In its place the temporary work sector came up with the NEN-certificate. Through self-regulation the sector aimed at putting unscrupulous agencies out of work or making sure they operate according to law. From 2012 not only will the temporary agencies, who are not certified, be fined, but so too will the companies who do business with them. This should make it less attractive for companies to do business with possible unscrupulous agencies and improve the chances of being caught.

This policy was developed in the private sector and came about as a result of publicity about the working conditions of foreign workers in agriculture and horticulture.

Outcome of the initiative

Since the NEN-certification was introduced 2,590 companies have been certified and audited twice a year and in total more than 4,600 companies are now in the sights of the SNA. Every year 725 companies register on a voluntary basis to get a certificate to show their clients they are bona fide (SNCU, SNA; 2011). This means that it will get harder and harder for the fraudulent and unscrupulous temporary work agencies to get a client base because of the fine their clients will get if they do business with them. On a sectoral level this means that the working conditions of the employees are better protected. They will get their pension and healthcare benefits, good housing under normal conditions and at least a minimum wage.

Respondents did provide some examples of initiatives taken to regulate temporary agency work. In the Netherlands an employer reported positively on work by the 'temporary work police' to monitor compliance with sector labour agreements and to remove agencies that did not meet the standards set out in the legislation. Similarly a UK trade unionist noted that the Temporary Agency Work Directive 2008/104/EC did offer some protection to agency workers, although at the same time commented that there appeared to be a consequent shift to casual work and to false self-employment. The shift in precarity from one form to another is an issue which was evident in the course of this study.

2.1.5 Sub-contracted and out-sourced work

Sub-contracting and outsourcing are increasing in many Member States. Sub-contracting occurs when work is temporarily relocated outside the main undertaking's

directly employed workforce, while outsourcing tends to be a more permanent relocation of certain operations outside the organisation's value chain. Very often the two terms are used interchangeably.

Several interviewees saw sub-contracting as influencing employment relationships, with more positive perceptions from employers and more negative ones from trade unionists. A key issue identified was the impact of outsourcing in distancing workers from decision makers. Thus workers in outsourced activities could be affected by the decisions of the main party with whom they do not have a contractual relationship. One French academic described this as 'dissociation between the employer by law who signs the contract of employment and the company which actually has the power over the future of the employment relationship. In fact the real decision power is located in the company which takes strategic decisions over the future of the employment relationship'. For another French academic it was this dependence on the decisions of non-contractual parties that meant such work could be considered precarious:

'A new form of precariousness is created by the fact that the employee is separated from the one who takes advantage and profit from the work. This situation exists mainly due to the growth of subcontracting and assignments in user companies. From a practical and legal point of view the work is precarious even if the worker is employed under a contract of indefinite duration by a third company party to the collective agreement.'

This interpretation puts sub-contracted work into a category of insecure work, leading to its identification with precariousness and indeed, according to one UK trade unionist it even 'encouraged precarious work'. For the trade unions sub-contracting was generally identified with a reduction in employment terms and conditions but it was also associated with privatisation, to which they were ideologically opposed. It was seen as a method by which the State, in particular, had disassociated itself from the responsibility for the terms and conditions of workers who performed a role (albeit indirectly) on behalf of the State. It was also viewed as a way for employers to outsource not just the work but the risks that might be attached to it, particularly where there was what one French trade union respondent described as a 'cascade subcontracting structure' where employment relations became more and more distanced from the centre of power and decision making. Other interviewees pointed to the lack of intervention by trade unions in areas that had been outsourced, suggesting that the unions had maintained a focus on directly employed workers in the main undertakings. In Italy trade unionists pointed to legislation that had followed actions by the social partners to establish 'shock absorbers' so as to provide social protection to workers excluded on the grounds of their sub-contracted employment. In Germany it was noted that the outsourcing of cleaning work in the health sector had been brought back in house, once concerns had been raised as to the terms and conditions that workers were under. Outsourcing had resulted in hospitals being unable to control the quality of the work they were commissioning and generally had left them with poor standards of cleaning.

Employers were more likely to see sub-contracting positively. One Bulgarian employer respondent argued that far from creating precariousness, in fact it led to an increase in employment. In Sweden an employer reported favourably on initiatives in the construction sector which had introduced a form of self-certification which helped ensure that sub-contractors were reliable, and this has resulted in ending the practice

of collecting workers from street corner pick-up points to take them to the available work.

The state was seen by Italian trade unionists as having a specific role in relation to policies on public procurement, while Case Study 9 demonstrates how the City of Munich has used procurement as an effective measure in combating precarious work. If clauses concerning employment conditions were included in procurement contracts they argued that government could ensure that outsourcing work did not increase precarity. Other interviewees suggested that the abandonment of requirements to accept the lowest-price tenders based on low levels of workers' earnings could also limit the growth of precarious work. The extension of corporate social responsibility was proposed by a French academic as a mechanism through which main undertakings could take greater legal responsibility for ensuring that their indirectly employed workers were not at risk of precarity.

2.1.6 Undeclared, informal and irregular work

The European Foundation for the Improvement of Living and Working Conditions Dictionary of Industrial Relations defines undeclared work as 'forms of employment that sidestep the norms of employment regulations. The concept is taken to mean any paid activities that are lawful as regards their nature but not declared to the public authorities, bearing in mind differences in the regulatory system of Member States.'

For several interviewees, however, informal work is largely about high levels of taxation and tax evasion: one Latvian academic defined undeclared work as 'where an employer and a worker verbally agree on the level of salary but taxes are paid irregularly or not paid at all'. An Italian employer stated that undeclared work grew when taxation was increased and a Latvian employer argued that to reduce informal work it was necessary to lower labour costs through reductions in taxation and social security. In Latvia there had recently been an increase in income tax and in social security contributions and this was specifically identified as a driver towards informal work by a government respondent. One Bulgarian employer believed that strong trade union support for the classical forms of employment had pushed more work into unregulated categories. Another considered that seasonal employment was also associated with undeclared work:

'Seasonality causes enormous problems for unemployment compensation and this makes large groups of people go into the grey economy. Because, if you start working officially you risk losing your rights to compensation.'

For some interviewees informal work was not a separate category of employment relationship but one that was at the end of a continuum between formal and informal work. A Bulgarian NGO respondent argued that 'every labour relation that is on the frontier of the formal and the informal economy' was precarious. Irregular work was separated from work that was performed through criminal activities, for example, the production of illegal goods or forced labour, but it was work directly associated with an absence or violation of labour and social rights. Informal work was also associated with health and safety violations. This was 'always an indicator that people are involved in irregular work' according to a Latvian government interviewee. A Latvian employer reported knowing cases where workers in informal work did not report smaller work accidents for fear of losing their jobs.

Undeclared work was often undertaken alongside declared work where either the employee worked both in a declared and in an undeclared job or worked in one job where only part of the income was declared. Where workers could establish social and employment rights through the formal element of their contract this was not perceived as precariousness.

Some interviewees perceived informal or undeclared work as the core feature of precarious work. A Bulgarian employer stated that precariousness was mainly found in the informal sector as all other forms of work were regulated in law. A similar point was stressed by a Latvian government interviewee. In countries where respondents considered that they had high levels of social protection, precariousness tended to be exclusively associated with undeclared work.

Mickey's story

Mickey is Irish and in his mid-50s. He worked for a number of years in the Irish construction sector, but was made redundant in 2008 due to the downturn that affected the sector as a result of the economic crisis. Since being made redundant, Mickey has worked sporadically as a construction worker. Because this work is irregular, Mickey also supplements his income by working as a taxi driver. This source of income is modest however because of poor economic conditions within the Irish taxi sector. Mickey is also highly indebted. He has high levels of mortgage and credit card debt, and also suffers from high levels of anxiety because of this debt. Mickey's anxiety is also worsened by the long and irregular hours he is forced to work as a taxi driver and construction worker. His health has become poor because of work and financial pressures, and he worries it will worsen.

While it is highly difficult for obvious reasons to provide accurate data on the levels of undeclared work, a 2007 survey found that around five per cent of workers admitted having been engaged in some form of informal work. This overall estimate disguises a wide variation in responses, from 15 per cent in Latvia down to two per cent in the UK, as shown in Table 4. It is unclear, however, whether these variations reflect different realities, or merely different national cultural propensities to honestly answer the question.

Table 4: Having carried out informal work in the previous year, per cent, 2007

	% of respondents surveyed
Latvia	15.0
Netherlands	13.0
Sweden	10.0
France	6.0
Bulgaria	5.0
Poland	5.0
EU27	5.0
Ireland	4.0
Germany	3.0
Italy	3.0
Spain	3.0

Greece	3.0
UK	2.0

Source: Eurobarometer (2007) *Undeclared work in Europe*. http://ec.europa.eu/public_opinion/archives/ebs/ebs_284_en.pdf

PWSR survey respondents identified informal or irregular work as growing in several Member States. A Greek trade union respondent estimated that as a result of the crisis, around 55 per cent of workers in Greece were in undeclared work, a figure which differs significantly from that in Table 4 above. A Greek academic lawyer suggested that up to 1.5m workers in the private and public sectors were working informally, around 20 per cent of the labour force. A Spanish NGO respondent suggested that the shadow economy there represented around 20 to 25 per cent of GDP. A Latvian government official suggested that around 37 per cent of the Latvian labour market was in undeclared work.

A reduction in labour inspection was identified by a Greek trade unionist as a factor increasing the volume of undeclared work. This view was shared by an Italian employer who considered the increase in undeclared work had followed the impact of the economic crisis on state institutions and their budgets, in particular those related to inspection. A Latvian employer interviewee argued that undeclared work was not necessarily perceived as of public concern and that the public accepted the normality of not paying taxes: ‘public debates rather support such practices as an ad hoc reaction in response to the economic crisis’.

Natalia’s story

Natalia is a young low-skilled Ecuadorian girl who arrived in Spain five years ago. She did not have a work permit but quickly started to clean houses and to do domestic care work. She had to overcome several hardships because she was pushed to accept very precarious jobs. Finally she found a family willing to regularise her administrative situation and to offer her decent labour conditions. This situation suddenly ended as the woman in the family lost her job and decided to assume the cleaning and caring tasks herself. After some months, Natalia has only found temporary, low paid and demanding jobs in the shadow economy, which means that she does not have enough money to send to her family in Ecuador and to renew her permit. She is currently very disoriented, because she would like to go back to Ecuador, but at the same time she hopes that a job will come up even though a growing number of friends are moving to other European countries.

Not all of the interviewees viewed the growth of informal work as having a negative impact on the economy. As an Italian employer interviewee noted:

‘Each step to curb a shadow economy should be viewed together with an increase in expenditure in the social budget. People engage in precarious work to earn any money they can and it eases pressure on the social budget.’

Similar points were made by a UK employer who believed that workers were happy to get paid ‘in hand’ tax free and by a Latvian government interviewee. The latter pointed out that:

‘The biggest dilemma especially during the economic crisis is that both employers and employees agree on precarious work, to avoid paying the full amount of taxes. Since there are no clear prospects about future pensions, many do not think about the future. Therefore Latvian society in general, according to regular sociological polls, massively supports work in the grey economy.’

However, another UK employer considered that work carried out ‘off the books’ was damaging to society, specifically because it meant that taxes were not collected.

Some sectors of employment were more likely to be identified with irregular work, specifically agriculture and the recycling industry in Bulgaria, construction in Greece and in Latvia and domestic work in the Netherlands. In Spain informal work was identified as mainly present in tourism, agriculture, domestic service and the hotels and restaurants sectors. Work subject to intense fluctuations in demand was also associated with informal or irregular work in Greece. A study by the European employers’ organisation Eurociett and the Boston Consulting Group (2011) found an inverse correlation between the level of informal work and the level of agency work penetration, suggesting that agencies may play a role in regulating the labour market.

When identifying the groups of workers most affected by informal work, respondents were most likely to indicate young people and migrant workers, but there was also recognition that women and older workers were found in informal work. Young people were identified as more likely to accept informal work by some interviewees, and of this establishing mutual interests between employers and workers ‘because young people do not consider the right to social guarantees (statutory insurance) as important. They think they will never be old or sick’. One interviewee from an employers’ association in Latvia suggested that men in the 25 to 50 age group might choose to be paid in cash and therefore place themselves outside systems of social protection. But in the view of this respondent, and echoing the position of other respondents interviewed, this did not mean that they were in a socially vulnerable group, since the decision to be paid cash in hand was their own.

Although undeclared work was perceived as the main source of precariousness by interviewees in Greece, Spain, Italy, Latvia and Bulgaria and to a lesser extent in the UK, this was not the case with interviewees from Sweden, the Netherlands, Germany, Ireland, France and Poland.

The absence and variability of employment contracts

In half of the Member States interviewees referred to the absence of a written contract as an indicator of both informality and precariousness. Several defined precariousness as ‘jobs without written contracts’ and while the relationship between the form of contract and precarious work is more complex and many atypical contracts are in writing, nevertheless the non-existence of a written document was one indicator of a potentially precarious work situation. A Netherlands employer described this situation as ‘unidentified working relationships’. A Bulgarian employer considered every employee should have a labour contract and know to whom to address any labour violations and concluded that its absence indicated precariousness.

Some interviewees differentiated between the total absence of contracts or where they had not been written down. There was a strong view that if the employment contract was provided in writing then the employment relationship would not be defined as precarity. A Latvian NGO respondent noted:

‘A written contract would guarantee the minimum rights to all workers but the ubiquitous problem is that agreements are not signed to avoid paying taxes. In these cases the parties, an employer and an employee, mutually agree that a worker will be excluded from social benefits. Such mutual agreements can still

include some social rights and benefits but they are insecure and are exclusively related to mutual trust which can be breached.'

A Bulgarian trade unionist indicated that action could be taken to address the absence of a written contract through a new system of registration of labour contracts. This was described as 'a step forward' towards better clarity as to the employment relationships in operation. In this case whilst Directive 91/533/EEC requires that employers inform employees of the conditions applicable to the contract or employment relationship, the comment is another indication of the employment practice not corresponding with the requirements of the legislation.

An issue raised by a UK academic lawyer concerned the ability of the employer to unilaterally vary the contract. Clauses giving the employer the right to change contracts without needing employee agreement had been inserted into the employment contracts of a growing number of workers and when challenged in the courts, the right to unilaterally vary them had been accepted, based on the presence of such a clause. This had the effect, according to the interviewee, of creating a new type of precariousness, that of a worker in a standard and formal employment relationship, but with no guarantee as to the terms under which the relationship would be performed.

Cyrus' story

Cyrus is 45 years old and lives in the North of the Paris region. Following graduation in engineering, he migrated to France 20 years ago. After his arrival and despite this diploma, he had to work in the informal market, doing various odd jobs (distribution of advertising literature, newspapers), facing low-wages, low conditions of work and also living conditions. Then, he started to work as a night watchman (part-time and undeclared jobs), in a small hotel, with the hope of studying and becoming a graduate in France. Given university fees and the difficulties of studying during the day and working at night, he abandoned his project. Then, he was hired in various small hotels, mainly with part-time contracts (very-part-time job, fixed-term or long-term). In order to have more money, he worked off the books for employers who forced him to work illegally. Now, he is still on a part-time contract. This uncertainty has impacted his family-life, his health and will also impact his future: e.g., for unemployment benefits, retirement pension.

Tackling informal work

Interviewees provided examples of measures which had been taken to address informal work. The issue was not straightforward. In Greece one interviewee considered that limits to the legal rights of workers, especially in relation to pay, in the formal economy had encouraged greater numbers to enter into informal employment relationships. However, this view was opposed by a Greek employer who believed that the most recent legal changes were 'in the right direction' and that they expanded the opportunities for employers to hire workers on temporary formal contracts and therefore decreased the incidence of informal work. A Greek government respondent also argued for 'flexible adaptation' to unify the rights of 'insiders' and 'outsiders' on the principle that moderating strict employment protection legislation was more likely to be beneficial for those in atypical jobs than strengthening employment rights which would drive more into informality. It has been claimed that the high percentage of employees without social insurance (30% of the labour force in 2011) cannot be reduced and undeclared work cannot be tackled as long as the gap between legal wages (set by collective agreements and arbitration decisions) and wages paid in practice remains wide (Alpha Bank, Weekly Bulletin of

Economic Developments, 9/2/2012). Without a longer term study of the consequences of the changes it is difficult to come to an opinion on the issue but it is clear that there are contending positions.

Case study 20- Measures to address irregular work in shadow economy in Latvia

Background/context

Undocumented employment is generally seen as the most severe problem in relation to social rights and precarious work in Latvia. This shadow economy reduces significantly the amount of tax paid into the state's budget. The construction and building, wood processing, food processing industries, transport, agriculture, and cleaning services -- all have relatively high levels of informal labour and potentially exploitative situations. However, elements of the shadow economy can be found in almost all economic sectors. Workers, who do not have a written work agreement and thus are excluded from any social guarantees in cases of work accident, would be typically seen as precarious workers.

Description of the initiative

In 2010 the Latvian government adopted the Action plan to diminish non-registered employment. The initiative came as a response to the deep financial and economic crisis in the country, high unemployment rates, consolidation of the state budget, a need to collect as much tax as possible and to protect vulnerable employees (those employed in the shadow economy). The Action envisaged a more active policy for the State Labour inspectorate to fine employers who employ workers without a formal work agreement and who do not pay taxes. The Action plan stipulated that employers, who are found to be employing irregular workers, should pay taxes for three months for each irregularly employed worker, regardless actual length of irregular employment.

Government institutions, representatives of trade unions and employers' associations were all involved in the initiative with common goals aimed at curbing the shadow economy while at the same time increasing the amount of taxes paid to the state. Another aim of the employers was to ensure fair competition among companies, because those companies that avoid paying full taxes for their workers could provide their goods and services at a lower price and thus have advantage in public tendering processes. In cases, when people are self-employed but still have to carry out tasks instructed by employers, the Latvian legislation stipulates that these employers should provide work agreements and they should pay no less than a minimum wage.

Outcome of the initiative

The State Employment agency together with the State Labour inspectorate has carried out various campaigns, targeted towards workers in a shadow economy and encouraged workers to inform anonymously on their employment situation, if they were employed without contracts. However, in practice, there have not been any court rulings on the new law because the informal sector is large and the country is small. There are thus limited opportunities for finding alternative employment if an irregular worker submits a complaint to the court against his or her employer. In addition, the litigation process can take several years. Assessments of activities to combat irregular employment are continuing.

There was a strong view that the simplification of the law and legal measures could be used to combat informality, with a Bulgarian employer arguing that this could be in tandem with increased controls and even sanctions on those who encouraged informal employment relationships. An Irish employer also called for greater regulation of the informal sector ‘given the potential that the sector has to undermine firms who abide by the law’. While the focus of this study was not on undocumented migrants (a specific category of workers more likely to be found in informal work), there was a view that improving the rights of undocumented migrants, by giving them access to social and/or employment rights, as applies in some Member States but not others, would result in a decrease in informal work.

Legislative measures to combat informal work

In 2010 in **Latvia** an amendment adopted under Article 41(3) of the Labour Law provides that in case of the non-existence of written form of employment contract such unwritten contract has the same legal force as if written. In cases where an employer does not provide a written contract and an employee cannot prove the length of the factual employment relationship as well as working time and pay, it must be presumed that an employee has been employed for three months with normal working-time and minimum statutory pay

Taxation and informal work

One subject addressed by a number of interviewees was the extent to which informal work was itself the outcome of taxation regimes. According to those who argued this position, reducing taxes would have the effect of encouraging employers and workers to declare their employment relationships and to bring work into the formal economy. Government, trade union and NGO interviewees were more likely to suggest that high taxes encouraged informal work while employers such as this one from Italy were more likely to argue in favour of lower taxes generally and that lower taxes would encourage employers to hire more workers under standard employment relationships:

‘If clear government action to cut labour costs takes place enterprises will stabilise more temporary workers with open-ended contracts, because part of precarious work is a direct consequence of labour costs that are too high.’

A Latvian employer argued that this could be verified through what had happened on those occasions when taxes had been reduced:

‘Prior to the crisis many restaurant owners and employers legalised their work and started paying full taxes. They found it much easier and prestigious to abandon so called double accountancy and to live in fear of the inspections from the state revenue service. Employers are not proud of the fact that they hide their income but the general level of taxes payable during the crisis is seen as overwhelming. Therefore changes in tax rates have contributed to higher levels of precarious employment.’

This position was shared by a range of respondents who spoke of worker collaboration in the non-payment of tax and indeed of a wider societal acceptance of tax avoidance.

The impact of state measures regarding tax or welfare on precarious work is illustrated in **Latvia** where a change to the law in 2009 meant it was no longer permissible for people to work and receive their pensions at the same time. The result was that more people moved into working informally and eventually this was recognised as anti-constitutional by the Constitutional Court of Latvia in 2010. The view was also expressed that cuts in welfare benefits and in pension entitlement could

lead individuals to believe they had no real stake in the outcome of tax and social security contributions as they were unlikely to ever benefit. A Latvian government respondent suggested that since there were no clear prospects for future pensions ‘many of Latvia’s inhabitant rely on short-term strategies namely they want to receive money today and do not think about the future’.

In the UK some interviewees suggested that employment could be stabilised if a law stating that all workers were directly employed under a contract of service unless certain criteria were demonstrated was implemented. In **Greece** before the current crisis legal measures provided for the issue of pre-paid vouchers, incorporating social security contributions, with which individuals could pay their domestic staff. When workers cashed the vouchers the relevant contributions would be passed on to the state. This was identified as a positive measure to reduce tax evasion, combat uninsured labour and to improve the working conditions of a highly precarious group of workers.

2.1.7 Seasonal work

Seasonal working relationships were widely identified with precariousness. Interviewees specified that seasonal work itself was not precarious but that the conditions under which it was performed could often be defined as precarious. Seasonal work was seen by an NGO respondent in Bulgaria as being used as a way of hiring an employee for a short period of time during which it would be hoped that there would be no labour inspection, so that the rights of the seasonal worker could be limited.

Specific forms of seasonal work were referred to as being precarious: low skilled, agricultural manual labour, harvesting crops of a seasonal nature, like pulling asparagus and picking mushrooms. As well in as agriculture, seasonal work was identified as prevalent in hotels and in construction. A link was identified in both construction and in tourism between seasonal work and informal work. Trade unionists in Bulgaria and Greece pointed out that welfare systems often did not cope well with the seasonality of workers’ employment since workers would often avoid declaring themselves in work during ‘the season’ to avoid having their welfare benefits cancelled, simply because it was too complex or time consuming to have them re-instated.

Emilia’s story

Emilia is 58 years old. She lives in a small village in the mountains in South-Central Bulgaria helping in a family bed and breakfast. She has no employment contract and receives her monthly pay in cash on the basis of the hours worked from the B&B owner, whom she knows well. Her workload is heavier at weekends or in holiday periods when the B&B is full. There are also empty periods without too much work. Emilia has a university diploma in economics and before 1989 used to work in a state enterprise. After the massive lay-offs at the beginning of the 1990s, she lost her job and then worked as an economist in an agricultural cooperative, then as an insurance agent in a branch of foreign company. Three years ago with her husband, already a pensioner, they moved to the village where they have a small house because life is cheaper, than living their flat in the town near their children. Emilia still does not have the right to retire (the new legislation in Bulgaria has increased the retirement age for women to 63 years) but even in retirement she will be obliged to work in order to add to the household income.

Interviewees referred to the seasonal migrant workers' Directive as a possible arena in which steps could be taken to remove seasonal work from the threat of precarity.

Case study 1- The hotel international chain in Bulgaria: transparent employment conditions and lengthening the season

Background/context

The tourism sector in Bulgaria is one of the most important employers in the country. At the same time its seasonality makes it a very precarious sector. The development of the Bulgarian sea resorts in the last 10- 12 years has contributed to a spectacular rise in the amount of accommodation offered. Employers have difficulties in hiring personnel ready to work intensively during a period of three to five months per year.

Description of the initiative

The hotel in this case study was built by Bulgarian owners about a decade ago, but from the very beginning has been managed by large international chain. Employment is seasonal as it is everywhere in the sector. However the management and the owners of the hotel have invested in ways of making the season longer through negotiation with foreign tour operators, the development of congress tourism, etc. In this way employees can be given contracts that last at least six months or even longer. A proportion of employees (about 15 per cent) is engaged in maintenance activities and has permanent contracts. The other important policy in place as a way of retaining employees is related to the wages that are better than in the other hotels in the case study resort. Workers are provided with options to increase their qualifications which give them better job opportunities.

Outcome of the initiative

The initiatives have resulted in limiting precariousness created by seasonality and address the prevalence of informal practices within tourism employment relations. With the management coming from an international chain, the hotel has introduced transparent management and employment relations. Employees have labour contracts and pay is transparent. Overtime is recorded and paid. Employees have secure employment over a longer period than is usual in the sector and also have established rights to training, wages, overtime and additional payments.

2.1.8 Posted work

Directive 96/71/EC defines as a posted worker a 'worker who, for a limited period of time, carries out his (or her) work in the territory of an EU Member State other than the State in which he (or she) normally works'. The definition of a posted worker does not apply to individuals who decide of their own accord to seek employment in another Member State, seagoing personnel in the merchant navy or the self-employed. A recent study conducted by the University of Amsterdam, on the legal aspects of posting of workers Directive, could be referred to in this respect⁴.

A few interviewees raised the issue of the posting of workers and suggested that this might, in some cases indicate precariousness. Most interviewees made no reference to posting, either as a consequence of their lack of knowledge of it, or because it was not an issue for them. Interviewees from Germany, Sweden and the Netherlands were more likely to raise the issue in relation to employment on their territory, whereas

⁴ Aukje van Hoek & Mijke Houwerzijl (2011) *Comparative study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, Financed by the European Commission

respondents from Poland and Latvia, who addressed the issue, did so from a perspective of sending states.

Case study 26 - NGOs' actions in Poland and in the Netherlands in supporting posted workers

Background/context

Accession to the EU in 2004 provided Polish citizens with new opportunities for free movement and the possibilities of working work abroad opened up. Unfortunately, working abroad has not always meant better lives and issues of migrant workers exploitation, social dumping or even forced labour emerged. The case study presented below reflects most common characteristic of foreign labour exploitation not only in the context of freedom of movement but also freedom of services. It also presents an example as to how transnational and joint action can be effectively conducted to improve the situation of precarious workers. The situation described below took place in 2007 on the Dutch ship the Rotterdam, where the rights of Polish workers had been heavily abused.

Description of initiative

In 2006 the Polish media released information that the Dutch ship the Rotterdam would be renovated in one of Poland's shipyards. However, due to a series of events, including the discovery of asbestos on the ship, a decision was taken to carry out the renovation in Rotterdam and to post the workforce that would have undertaken the work from Poland to the Netherlands. Workers from Poland, Germany and the Netherlands worked side by side, but Polish workers were paid less and had worse terms and conditions, including inferior protective clothing and were at risk of asbestos exposure. The pay that they received was less than had been agreed. Workers eventually decided to ask for help when the consequences of exposure to asbestos toxicity become visible and some workers started to bleed. Due to language barriers and lack of language skills, they first made contact with an association of migrant workers in Poland. The association organised joint action together with local representatives of the German trade union IG Metall. In order to exert stronger pressure on Dutch company the media was involved in this action, as well as the Polish consulate.

Outcome of the initiative

Overall, as a result of the initiative it is possible to assert that the protection of workers was raised. According to the manager of the NGO association, this was one of the very rare cases where the situation of precarious workers had been improved during the completion of the contract. In most cases the association is asked for help and interventions usually when workers leave or have lost their jobs, or it is obvious that they will not continue precarious employment.

An employer from the Netherlands pointed out that the context of work had changed due to advanced systems of transport and that consequently 'distances are getting smaller. A Polish person steps on a plane at Eindhoven Airport and within an hour he is back in Poland.' This had consequences for labour markets and some of these were perceived negatively, in particular in relation to those with low levels of skills and qualifications who were 'pushed down' by those with higher skills who were prepared

to do work at a lower skill level due to the economic crisis. The issue of the recognition of qualifications was also raised as where equivalence had been established there was a lower risk of this downward shift in skills.

Case study 8 - Empowering posted workers in Germany

Background/context

In response to the arrival of migrant workers from Eastern Europe the trade union IG Bau has systematically attempted to inform construction workers of their rights in Germany. This included setting up an information office in Warsaw as well as founding a union federation for migrant construction workers, the EVW. However, the strategy produced its own problems.

Description of the initiative

The “aufsuchende Bildungsarbeit“ campaign was constructed as a means of not only informing workers of their rights but equally of offering them arguments on how they should deal with employers that are not conforming with legislation, i.e. empowerment. In particular, this strategy was perceived as being more sustainable, it did not involve a one-off action, but rather a concern with the possibility of ensuring that employees became active union members. The union has employed individuals that speak Polish and Rumanian, two languages that are dominant on German construction sites and has focused the campaign on areas with a high percentage of Rumanian and Polish workers. The outreach workers visit construction sites and explain who they are and invite workers to events where they can explain to them their rights as posted workers.

The campaign has also been designed to offer training to works councils on the issue of precarious employment practices amongst posted workers so as to make works councils more sensitive to the problems faced by such employees as well as addressing some negative views towards posted workers.

Outcome of the initiative

The campaign’s main success is undoubtedly the fact that an increasing number of posted employees are now more aware of their rights in terms of minimum wages and working conditions. Furthermore, they are now aware of what action they should take in the cases of industrial accidents. The campaign is viewed by the unions and the financiers to have been a success and a decision has been taken to extend the initial pilot project. Furthermore, the presence of campaign managers on construction sites has also resulted in a management reluctance to take advantage of employees’ lack of knowledge relating to employee rights. Finally, the project has helped provide unions with important information relating to the problems faced by posted workers; information that has been used to produce brochures on how to optimise their rights whilst working in German.

A Netherlands trade unionist referred to the impact of posting on the harvesting of crops where this was being undertaken by Polish workers working under Polish terms and conditions for a Polish based company which then sold the produce they harvested back to a Dutch company. For her the consequences had been deterioration in employment conditions. An employer raised a similar point that workers were posted to work under foreign standards, described as minimal in relation to those established in the Netherlands. In the UK an NGO interviewee identified the posting of workers as something that needed ‘a radical re-think’ particularly in relation to the

construction and engineering sectors. In the Netherlands the industries mentioned were agriculture, construction, meatpacking and food processing.

From the perspective of ‘sending’ countries concerns were also raised. A Latvian trade unionist described a problem faced where companies established two legally independent undertakings, one in Latvia and the other in the destination country. The Latvian company was responsible for the posting of the workers but the reality was that the contractual relationship was established with the company in the destination country. In cases of non-payment of wages it had been established that it was not possible to bring claims in the Latvian courts because the contracts were performed in another country, but for the workers concerned who, once their posting had ended, had returned to Latvia, pursuing legal claims in the destination country was problematic due to their lack of resources and also frequently of evidence of the contractual relationship.

2.2 Sectors associated with precarious work

Precariousness is associated with particular sectors and types of work. Research has shown that the media and cultural work are sectors where temporary contracts and sub-contracted work are highly present (Rosalind and Pratt, 2008; Hesmondhalgh, 2009; Ross, 2009). There are also long-term perceptions of high levels of precarious work within sectors like construction (bogus self-employment), agriculture and hospitality (seasonal work) and food processing (fixed-term work). These sectors are often dominated by multinational companies and large companies whose ultimate priority is to their shareholders.

Nikolas’s story

Nikolas is 43 years and he is living with his wife and his two children in an area close to the airport of Athens in his own house. He has been a construction worker for most of his life. He remembers well the period of the 2004 Olympics, when he made good money working as an independent contractor in several projects. His work was tough, risky and temporary in nature, but it was at least well paid and rewarding. Since 2008 though it has become very difficult to support his family, as the construction industry has collapsed and there are few jobs. At the moment he is planning to emigrate in Australia on his own, as he has serious debts to pay. He is not very happy at all about it, but he is determined even if his English is not great and he might have to work without papers for a considerable time. He could not have imagined such a scenario a few years ago, when the industry was booming. A significant part of the money he got in the past was dedicated to renovating his house, as well as buying a new car. He is very disappointed and confused with the current situation and he does not sleep and eat well. His parents support him financially and psychologically

The national experts provided data for the study and this is summarised below in Section 2.6 which indicates considerable similarities between the 12 Member States in terms of the sectors identified with precarious work. Table 5 draws on this data to provide an overview of precariousness by sector.

Table 5: Sectors identified with precarious work by the national experts

	Bulgaria	France	Germany	Greece	Ireland	Italy	Latvia	Netherlands	Poland	Spain	Sweden	UK
Hotel & catering	X	X	X		X	X	X	X	X		X	X
Construction	X	X		X	X	X	X	X	X		X	X
Health & care		X	X		X	X		X	X	X	X	
Agriculture	X				X			X	X	X		X
Cleaning			X	X	X		X	X			X	
Retail	X	X			X						X	X

Security				X	X		X		X			
Tourism	X	X		X						X		
Services	X								X	X		
Food					X			X				X
Universities			X			X						
Public sector				X		X						
Media			X									X
IT			X									
Forestry							X					
Taxis							X					
Commerce									X			

Source: PWSR data provided by national experts

In the data provide by the national experts hotel and catering followed by construction, and then health and social care are the most commonly associated with precariousness. Analysing our interviews, we found the construction sector was most likely to be associated with precarious work. Both construction and catering were also associated with a higher incidence of risks to health and safety, key factors that are also associated with the perception of precarious work.

In the hotel and catering and retail sectors, the impact of the economic crisis on the sustainability of small scale enterprises, combined with the high incidence of part-time work, strengthened the perception of precariousness. Where workers' earnings were irregular, being based entirely or partly dependent on tips or on sales, this also creates a precariousness that increased with the economic crisis. An Irish trade unionist referred to 75 per cent of the union's retail members in retail being in part-time work, of whom half were actually looking for full-time work. Reductions in working hours in the sector were said to be used as a method of disciplining workers who misbehaved or who had organised trade union campaigns.

Georgia's story

Georgia is a 28 year old artist living with her partner and a friend, in the city centre of Athens having moved there from Patras six years ago to study at the Fine Arts School of Athens. She is currently working at a call centre sometimes late in the evening and for two days per week she works at a cafeteria close to her home. The money she earns is not enough, but it helps a lot that she shares the house rent with her partner and that she avoids unnecessary expenses, such as buying a new motorbike or moving to a bigger flat. She has not had a holiday for five years although would love to have one. She is not at all happy with her job and whenever she can she paints. She would really like to exhibit her work but to do this would need the networks that her income does not permit her to join. She is very angry at the current economic situation in Greece and she follows the activities a leftist group that she finds supportive. She is also in a good relationship with her partner and that helps but she knows that they will face tough times ahead as he was recently made redundant in the bookshop he used to work. She would like to have children but it is not possible in the current circumstances.

Sectors such as cleaning, where large groups were doing manual and repetitive tasks, were also associated with precarious work. Sectors where a high proportion of firms themselves were in a difficult financial situation were also identified as more likely to employ workers in precarious work.

Case study 23: Organising workers in the cleaning sector in the Netherlands

Background/context

This case study focuses on the organising of cleaning workers. This initiative came about due to an awareness campaign led by the Trade Union Federation (FNV Bondgenoten). In 2007 the Trade Union Federation began to campaign around the poor working conditions of cleaning workers. This is not unique for a trade union, but it represented a different approach to campaigning which resulted in the longest strike in the Netherlands since 1933. The trade union used a grass roots organising approach, which means that it directly approached the cleaning workers, including non-members, and asked what their demands were before it started negotiating about the collective labour agreements.

Description of the initiative

The initiative consisted awareness-raising among the general public and the clients of the cleaning companies about the precarious situation of the cleaning workers. This was done by handing out flyers to the general public and sending letters to the employees and clients of the cleaning companies. Among the clients of the cleaning companies were very big organisations like the Railroad Company (NS), the National Airport (Schiphol), a big hospital (Erasmus MC) and several others. Including these organisations in the campaign was due to an awareness of their influence on the price of labour. The demands were a net wage of €10 per hour, access to the work place for the trade unions, better facilities for representation of the workers at the work place, better places to rest and sanitary facilities and work-pressure measurements every six months.

Outcome of the initiative

As a result of a nine-week strike the working conditions of the cleaning workers improved. They now get paid more and over a two year period their salary will increase 3.5 per cent. A lot of cleaning workers were of migrant origin and had not learnt the Dutch language. This had made them more vulnerable on the labour market and difficult to organise. They are now able take Dutch language lessons and receive a €750 bonus if they successfully complete the course. Another success achieved by the trade union is the creation of a fund for building the membership among the cleaning workers. This fund is sponsored by the employers. The last important gain is the shared responsibility for working conditions by the cleaning companies and their clients and as a result of this shared responsibility the cleaning companies do not have to compete anymore on the basis of the working conditions of their employees.

However, many references were made by interviewees to the public sector as becoming a location of precarious work, particularly in Greece, Italy and Spain, countries where the public sector had previously been identified as an area that was highly regulated and not subject to precarious work.

Some references were made to the information technology sector as one where precarious work was emerging. It was commented that those in the IT sector were vulnerable to job loss due to the temporary nature of their work. Technicians specialising in hardware rather than software and who had joined the industry from its beginnings were seen as entering what one Swedish trade union respondent described

as ‘a dangerous zone’ where they were now middle-aged and working in a sector where their specialised knowledge was becoming out of date. These findings from the interviews and the data provided by the national experts correspond fairly closely with the results obtained from the PWSR survey, as shown in Table 6.

Table 6: Sectors in 12 Member States and perceptions of their degree of precariousness, 2011 (% of survey responses)

	Not precarious	Precarious	More precarious	Highly precarious
Cleaning	4	15	34	43
Construction	3	20	35	40
Agriculture	4	17	41	36
Hotels, catering and tourism	3	18	45	31
Private security services	9	26	38	23
Retail	7	39	41	9
Transport	11	45	35	5
Not for profit sector	13	39	31	7
Private health care	22	41	27	5
Logistics	17	52	23	4
Public sector education	40	37	16	2
Public sector health	39	39	15	2
Information technology	42	44	9	1
Public sector administration	58	27	9	1

Source: PWSR survey

Cleaning work is perceived in this survey as having the most precarious reputation, with 43 per cent of all respondents indicating this. In Greece 83 per cent of respondents categorised cleaning in this way, as did 65 per cent of respondents in Poland, 62 per cent in France and 54 per cent in the UK, as shown in Table 7 below.

Table 7: Sectors identified as having high levels of precarious work, by country responses, 2011 (% of survey responses)

	Bulgaria	France	Germany	Greece	Ireland	Italy	Latvia	Netherlands	Poland	Spain	Sweden	UK
Construction	55	25	21	57	45	43	50	30	47	46	4	54
Hotels, catering and	25	37	38	30	64	11	21	18	41	23	36	61
Agriculture	45	12	21	26	36	32	36	47	59	42	11	62
Transport	0	0	4	9	9	3	4	24	12	0	4	0
Logistics	5	0	12	0	0	8	4	6	0	0	0	4
Retail	5	0	0	9	18	16	11	0	35	4	4	4
Information technology	5	0	0	0	0	0	0	0	6	0	3	0
Private health care	5	12	4	0	9	0	0	6	6	0	14	12
Public sector health	0	0	0	0	0	3	0	0	12	4	4	0
Public sector	5	0	0	5	0	0	0	0	0	0	0	0
Public sector education	0	0	0	4	0	8	0	0	0	4	0	0
Cleaning	25	62	37	83	36	43	22	47	65	34	26	54
Private security services	25	37	25	70	18	3	22	0	53	8	8	38
Not for profit sector	0	13	0	4	9	30	8	0	6	4	0	4

Source: Study questionnaire survey

2.3 Groups associated with precarious work

The literature presents specific groups as more likely to be working in precarious conditions. The most frequently mentioned are young workers (Bradley and van Hoof, 2005; Kretsos, 2010; Pizzuti, 2009), women workers (Fudge and Owens, 2006; Jonsson and Nyberg, 2010; Scarponi, 2010; Sheen, 2010), agency workers (Elcioglu, 2010), older workers (D'Amours, 2010) and migrants (Bhalla and McCormick, 2009; Porthé et al., 2009). Thus the 2011-12 work programme of the European Sector Social Dialogue Committee on Temporary Agency Work focuses on women, migrants, low skilled and older people 'as representing those who, in the temporary agency work sector, might be in a precarious situation'.

Among those we interviewed, the following groups were perceived as being more likely to be found in precarious work:

- Women workers;
- Young workers;
- Older workers over the age of 50;
- Minority ethnic workers and Roma peoples;
- Disabled workers; and
- Students, apprentices and internees.

A detailed choice was offered in our PWSR survey. In this the 'most precarious' category were undocumented migrants: more than four out of five respondents cited them. More than half also identified third country female migrants as in the same category and a significantly higher proportion selected female migrants above third country migrants in general. After migrants the perception was that young workers was the next 'most precarious' group. Older women workers were more likely to be associated with the 'more' or 'most' categories, as shown in Table 8.

Table 8. Groups of workers perceived as being at risk of precarious work (% of survey responses)

	Not precarious	Precarious	More precarious	Highly precarious
Undocumented migrants	2	2	6	83
Third country migrant women workers	2	7	33	55
Third country migrants	2	11	43	40
Young workers	7	19	33	37
Older women workers	12	22	37	24
Trainees	10	26	36	24
Interns	14	27	32	22
Apprentices	15	41	25	14
Working students	14	40	27	14
Women workers	13	32	37	13
Older workers	15	31	38	11
Economically dependent autonomous workers	11	32	40	11
Women who are pregnant or returning from maternity leave	20	32	34	9
Workers with caring responsibilities	13	38	35	8

Public sector workers	52	28	7	2
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Source: Study questionnaire survey

There were significant differences in perceptions as to the extent to which different groups were affected between the 12 Member States. Survey respondents everywhere except in Latvia perceived undocumented migrants as being most closely associated with precarious work. These perceptions were strongest in Poland and Spain and much less strong in Germany. Women were most strongly perceived as linked to precarious work in Ireland, while older workers were most likely to be associated with precarious work by our Greek respondents. Greek and UK respondents were equally likely to perceive third country migrants as being most closely associated with precarious work, as shown in Table 9.

Table 9. Groups of workers perceived as being most at risk of precarious work, by country, 2011 (% of national survey responses)

	Bulgaria	France	Germany	Greece	Ireland	Italy	Latvia	Netherlands	Poland	Spain	Sweden	UK
Young workers	25	37	4	44	46	35	25	35	65	58	43	38
Women workers	20	0	4	22	37	14	4	6	23	27	0	12
Older workers	20	12	4	30	18	3	18	0	12	11	7	8
Older women workers	30	37	8	44	36	16	29	6	24	27	14	31
Trainees	5	13	38	22	9	49	7	0	47	27	28	15
Apprentices	0	0	0	39	0	11	18	0	35	27	14	11
Working students	10	0	0	26	27	13	11	0	29	35	4	15
Interns	0	0	33	26	9	67	18	0	23	11	0	27
Third country migrants	45	25	21	61	46	30	32	23	59	42	36	62
Third country migrant women workers	55	37	33	65	64	46	82	35	65	53	43	73
Undocumented migrants	85	100	84	92	91	97	21	82	94	85	96	88
Pregnancy or returning from maternity leave	10	0	4	30	9	5	10	12	0	19	0	4
Workers with caring responsibilities	10	0	4	17	0	5	7	0	18	15	4	4
Economically dependent autonomous workers	10	0	12	18	9	5	4	0	12	31	14	4
Public sector workers	0	0	0	13	0	0	0	0	0	4	0	0

Source: PWSR survey

2.3.1 Gender and precarious work

Sheen's (2010) study of economically disadvantaged women workers found that what made their economic situation worse and drove them into precariousness was the lack of security and poor quality of the jobs they worked in. For Sheen, a low paid job 'could be satisfactory if it offered long term security' as well as some pathways for advancement as a genuine entry level job or at particular stages in an individual's life where there are choices and pathways out. At the same time she argued that labour market flexibility had:

'Served to entrap certain groups in an invidious web of precarious employment from which there are limited exits. The result is a social system in which some groups, such

as the women in the studies reported here, have very high exposure to insecurity and risk, as well as low wages and difficult work conditions, compared to others. This most certainly undermines social solidarity.'

Precarious work has been particularly associated with female employment and women remain over-represented among precarious workers, as the 2010 report to the European Parliament on [Precarious women workers](#) demonstrates (European Parliament, 2010). Women across Europe are more likely to work part-time than are men, but are also more likely to be working as involuntary part-time workers. Menendez et al. (2006) suggest women workers may have their health disproportionately damaged by precarious employment. A study by Oxfam International and the European Women's Lobby (2011) documents evidence of precarious working conditions for women; of increasing discrimination in the labour market with a subsequent shift to informal work; of rising levels of poverty; of reduced access to services; and of rising levels of domestic violence, accompanied by cuts in vital support services. The economic crisis appears to be having a significant negative effect on the lives of women, not only in relation to the labour market, but also, crucially, beyond it.

Luz's story

Luz is a 45 year-old married woman with two unemployed sons living at home. Since her youth she has worked in several precarious jobs like picking olives, cleaning houses, street selling, cooking in restaurants and in almost all of them, within the shadow economy. She also spent periods at home when she had to raise the children and when her husband, a stonemason, was able to earn enough to feed the family. This is no longer the case since her husband has been unemployed since 2009 and has already exhausted his unemployment benefits; this situation has pushed Luz to desperately look for any source of income. Finally she got a job as a cook in a restaurant, also without any formal contract and paid cash-in-hand at the end of each month (and then often paid late). Her salary does not allow the family to survive adequately and for the first time she had to receive social assistance from the Spanish Red Cross and religious organisations. Luz is very pessimistic about work options in Spain, as lots of people better qualified and younger than her are also unemployed. She feels too to migrate but given her excessively precarious situation, too, also worries about whether she can hold on. She is also very worried about the situation when she is elderly, as she will get a very poor pension and will be old before she is entitled even to it.

Most of this study's interviewees identified gender as a predictor of precariousness. One of the academic experts estimated that the relative risk of being in precarious work was twice as high for women as for men. As a government interviewee from France made clear, precariousness is clearly a 'gendered issue' despite 'a social denial of inequalities between men and women and the forms of precarious work which particularly affect women in the labour market'. Two Italian trade unionists spoke as follows:

'In the last five, six or even ten years precarious work has hit women more than men and increasingly affects them. Moreover female workers usually obtain a subordinate, open-ended contract later than male ones, waiting to be stabilised even three or four years more than men. Even among youngsters, the most precarious

categories of workers, generally a male worker is preferably recruited to a female one and above all he obtains a permanent contract sooner. Maternity is still considered a problem by the employer and can create big trouble to young female workers who often postpone maternity until their late 30s waiting for a stable job. Conciliating work and family is still considered more or less a female issue. As a matter of fact most entrepreneurs and human resource managers consider women as troublemaking workers because of their gender. Women workers are believed to be more expensive because of the maternity leave, even though this benefit is paid by the welfare state.'

Nonetheless, a few trade union interviewees from France, Poland and Sweden indicated that they did not want to have to think in terms of particular groups of workers being more at risk of precariousness. Some employers from Bulgaria, Poland, and Sweden also expressed this view, as did government representatives from Bulgaria and Latvia. But the majority of interviewees overwhelmingly insisted it was women who were associated with precarious work, in contrast to the experience of most male workers, with some women workers, such as young women, Roma women and minority ethnic women being considered particularly at risk.

Amélie's story

Amélie is a French 24-year-old highly-qualified woman living in the south of the Paris region. She graduated in computer science, a mostly male-oriented field of study and profession. After attaining her master's degree, she started to look for a job in the ICT sector. After two years, she was quite disappointed: although she had her diploma, she had only access to very low-quality jobs, often unpaid or with low wages (e.g. trainee position), short-term missions and also unemployment. As a woman, she also thinks that she faced gender discrimination during recruitment procedures. For instance, unlike almost all of her former classmates, professional recruiters and some employers asked if she wanted to have children, when and how many. Now, she is very concerned about her financial situation: she is dependent on her boyfriend for financial support. A year ago, because the situation was dragging on without any visible change, she decided to change profession and to become a public school teacher. Now, she is studying and hoping for a job in the public sector but she is still concerned, given the recent cuts, as to whether there will be jobs in this sector.

The identification of women with precarious work was associated with particular characteristics:

- Women with children, particularly in the case of single parents;
- Part-time work;
- Low levels of skills;
- Low pay; and
- Working in female-dominated sectors.

Women as parents and workers

The fact that women bear principal responsibility for childcare was identified by a number of interviewees as associated with women's precariousness in the workplace. This was particularly true where women were solely responsible for the care of children, as in the case of single parents, according to respondents from France, Germany, Ireland, Italy and Latvia. A woman Netherlands trade unionist, referring specifically to the position of single parents, argued:

'Working single mothers is a subject which is not discussed but should be. This is a group attached to the bottom of society without the support of a husband or parents, but they have to take care of young kids and work. This is a group that is very susceptible to the poverty trap. They cannot gain work experience during the

time they have children of five years or younger. Raising children in this age group is too intensive to have a job on the side.'

However, even where women were not single parents, their dual role as workers and carers made it more likely that they would be in precarious work. A female Latvian employer described the situation as follows:

'Despite the fact that the legislation protects young mothers from discrimination in the labour market, unofficially this group is still very vulnerable. And it is difficult for them to return to the labour market. Under such circumstances a person can decide to undertake a precarious work position. Also young women at fertility age are also in a vulnerable position. An employer is not allowed to ask directly about family plans but indirectly it can be the case that an employer could discriminate against or refuses to give a full contract to a pregnant women just several months before maternity leave.'

Concern about the inability of national legislation based on Directive 2006/54 to deal with the issue of discrimination against women who were pregnant or of child-bearing age was also raised by interviewees from Poland, the UK, Ireland, Italy and the Netherlands.

Ilze's story

Ilze is a 20-yearold. After completion of secondary school she lacked money to pursue higher education. Ilze started working as a childminder when called several times a week. Sometimes she had to work late nights and clean the house for no extra payment. All money was paid in cash. Then she started working as a waitress in a café for a minimum salary, 200 lats (€280) monthly. She was promised a better salary after a probation period but was dismissed after three months with no explanation. In another café the salary was partly paid in cash and taxes were paid only from the minimum salary. The café went bankrupt during economic crisis. Ilze found another childminding job for five days a week. She is paid according to a mutually agreed hourly rate. However, she does not have a written agreement, no taxes, sick leave, holidays or overtime are paid. She is insecure about her work because the family could dismiss her at any time.

Women and part-time work

Women are more likely to be working part-time than men. Since part-time work is also associated with precariousness it was inevitable that the study would identify women working in part-time jobs as more likely to be in precarious work. Some interviewees made a distinction between voluntary and forced part-time work (where full-time work was not available) and argued that many women were indeed in this position because the 'choices' that they made over the form of work they could accept were determined by other factors, such as the level of childcare and support for their domestic duties. As women are more likely to take on caring responsibilities and subsequently to work in part-time positions a Netherlands academic noted:

'A large majority of women work part-time and are not therefore at present able to independently provide for themselves through their own income. This becomes a problem when they find themselves single, either with or without children, by divorce or by death. Survivor pensions and alimony standards have decreased over the last decade or so. Women are often not well-equipped to increase their performance in the labour market because employers are not inclined to increase the hours of work and because family responsibilities are still not easily compatible with work responsibilities.'

Gender discrimination and precarity

Discrimination at work was referred to primarily in relation to women and pregnancy. Many interviewees suggested that women continued to face discrimination at work or in accessing work, due to the fact that they were or could be pregnant. Several argued that gender equality could be promoted through facilitating access to parental leave for male workers, ‘as an effective means of reducing the discrimination of women at work and the division of household duties’.

The exclusion of workers on non-standard contracts, such as those in bogus self-employment, from rights associated with maternity and parental rights, impacted negatively on women workers and reproduced precarity. In some countries employment rights are linked to service and workers without the necessary length of service are excluded. Women tend to have shorter lengths of service than men so this also impacted negatively on women workers. While one Greek government respondent considered that Directive 2010/18/EU on parental leave represented ‘an important step’ he recognised there was ‘still a long way to go for it to be fully implemented in practice’. It was also argued that discrimination against women was actually increasing since rising unemployment had provided employers with a cohort of men to recruit who did not present any risk of pregnancy. Workers who exercised their rights to parental leave also faced greater insecurity at work because they were more likely to be identified as those who would continue to exercise rights to maternity and parental leave.

Women-dominated sectors and precariousness

There is a clear association between the sectors where women are more likely to work and the prevalence of precarious work. The retail industry is one such sector, described as 70 per cent female in Germany. Agriculture is another sector where women are more likely to be inserted in work that is seasonal or uncertain, such as in the mushroom industry in Ireland. Domestic labour, cleaning, personal care and hospitality are all sectors with high levels of informal undeclared work and where fixed-term and part-time contracts predominate.

Interviewees identified several ways of overcoming the disadvantages faced by women and of countering their exclusion from standard work. These tended to involve resources from the state in the form of affordable childcare and the development of forms of flexible work that genuinely permit women to combine their work and other responsibilities. The solution appeared to lie in series of social benefits that involve the reconciliation of private and professional life.

2.3.2 Age and precarious work

Most interviewees believed age was one of the elements placing people in precarious work. Most also saw both younger and older workers as two key faces of precarious work, although they placed more emphasis on the former compared to the latter. Others believed that one group had pushed the other into precarity. In Greece it was argued that changes to the law had made it cheaper to employ new entrants to the labour market and to dismiss older workers.

Interviewees also noted that within the general category of age not all had equal opportunities of entering work and with respect to women, the disabled and minority ethnic workers it was a combination of their age and other characteristics that made it much more likely that they would be in precarious work. As an NGO respondent from

Italy noted, while young workers had been hit by precarious work, the burden of this was taken by young women, as employers by preference recruited men, rather than women and furthermore, the former were more likely to be offered permanent work earlier. Similarly young women of child-bearing age were also identified as vulnerable by an employer respondent from the Netherlands.

Young workers

The precariousness of young workers has been addressed in a number of studies (Simms, 2011⁵, Kretsos, 2010). Thus the demand for a ‘youth guarantee’, made by the European Youth Forum and supported by the Commission on Youth and Precariousness (2011) calls on Member States to guarantee to all young people a job or a place in further education, be it general or professional, within four months of leaving school. In response the Commission has called on Member States to ‘consider implementing reforms to improve the quality of education and vocational training systems, as well as increasing recognition of other non-traditional forms of education’.

Case study 33 - The debate on the issue of starter wages in Sweden as a way of promoting youth employment

Background/context

The issue of ‘starter wages’ in Sweden is seen as a problem of precariousness by both the social partners although from different perspectives with the trade unions stressing the need for high wages for newly employed workers to avoid wage dumping while the employer representative bodies believe that it is necessary to lower wages to provide jobs for younger people. These two strategies mean that the social partners favour different initiatives in relation to the employment of young workers.

Description of initiative

Although both employers’ associations and trade unions have addressed the question of starter wages in the on-going bargaining round their different perspectives point to different strategies. For employers the argument is that even the most ‘precarious’ forms of work are better than no work at all, particularly for young people. The trade union position is that this strategy is aimed at lowering wages for all workers and they have rejected the concept of starter jobs as stepping stones to better paid work.

Outcome of initiative

At present the measure of which of the two strategies will success is unclear. Swedish pattern bargaining has meant the 2012 round has begun with the agreements for the export industries in manufacturing, which generally then function as the norms for the rest of the bargaining round. So far the engineering sector has concluded its collective agreement but for it lower initial wages was never likely to be a serious item on the

⁵ Simms, M. (2011) *Helping young workers during the crisis: contributions by social partners and public authorities*, European Foundation for the Improvement in Living and Working Conditions; Kretsos, L. (2010) ‘The persistent pandemic of precariousness: young people at work’ in J. Tremmel (ed.): *A Young Generation Under Pressure?* March, New York: Springer.

industry's bargaining agenda. Whether this position remains for the rest of the sectoral bargaining round is less certain given first that some of the sectors, like services, retail, agriculture, tourism and catering are less well organised.

Interviewees gave a wide range of definitions of who they saw as 'young' workers, from those for whom young people were all those under the age of 20 to others for whom youth was anyone up to the age of 30. For some interviewees the future for younger generations seemed, in the words of an NGO respondent from Greece, 'very bleak, gloomy and dark under the current economic conditions and policies followed'.

Young workers were described as the most vulnerable group by an employer in Latvia, where 27 per cent of all unemployed were in the 15 to 27 age group. Data identified by an Italian academic showed that almost half of all temporary workers in Germany, Spain France and Italy were under the age of 25 and that the trend for young people to occupy temporary jobs had accelerated over the last 30 years. Thus the percentage of young people in temporary jobs in Italy had increased from nine per cent in 1985 to 44 per cent in 2009, while for adult workers the corresponding figures were four per cent to 11 per cent over the same period. Eighty per cent of those under between the ages of 15 and 19 in Germany and in France are in fixed-term contracts, mostly training agreements. In Italy collaboration contracts were mostly held by young people, with such contracts generally not lasting for more than a year.

In Ireland by the second quarter of 2010 the unemployment rate among young persons aged 15-19 was 40.6 per cent and for those aged 20-24 was 25 per cent, almost twice the national unemployment rate (EIRO CARS 2011). While precarious work does not disappear with ageing, the relative risk of precarious work does decrease, with an Italian academic expert putting this at a three per cent reduction for every additional year of the worker's age that is taken into account. In **Greece** an immediate realignment of the minimum wage level determined by the national general collective agreement, by 32 per cent for young workers under the age of 25 (10% higher than for the rest of employees) together with its freezing until the end of the financial adjustment program period (2015) will apply generally without any restrictive conditions.

Federica's story

Federica is 28 years old and she lives, in the North of Italy. She gained a master degree three years ago and since then she obtained only traineeship positions and atypical contracts. At the beginning she was happy to have the opportunity to work in a big publishing house even though she was not paid at all: actually she did not have a proper labour contract, just a traineeship position. After six month, the publishing house proposed another traineeship, and this time she received a small amount of money, €500 euro, as reimbursement. At the end of the year Federica was not employed with a stable contract, as promised by the publishing house the year before. Federica was neither the first nor the last young graduate employed by the publishing house without a proper labour contract. Federica was obliged to return to Genoa, her hometown, since her parents could not support her living in Milan any longer. In Genoa she found only "very temporary" jobs as waitress in bars or shop assistant during the Christmas period. When the last shop did not renew her contract arguing with the economic crisis, Federica fell down in depression and stopped looking for a job believing that there was no possibility to find a job.

Young people were identified by our interviewees with precarious work in three situations - where they were:

1. Newcomers to work and lacked any experience;
2. Lacking in qualifications relevant to work; and
3. Qualified, for example with a university degree, but where this had not prepared them for the work that was available.

Of the three it was a lack of work experience that was most likely to be raised by the interviewees as the reason why young people were in precarious work. Young people with very limited employment experience found it hard to find non-precarious work and were thus more likely to be working in non-standard employment relationships, in fixed-term or in temporary agency work. The second highest category was young people who were unqualified. The lack of qualifications meant that the only work available to them was precarious. The category seen as over-qualified or inappropriately qualified was less likely to be in precarious work but nevertheless the drivers towards such work included the lack of appropriate qualifications; the debts that they had occurred during periods of study; and the fact that they were older and at a point in their lives when they needed economic independence.

Italian agreement to re-launch apprenticeships

The October 2010 agreement between the regions, central government and the social partners in **Italy** aims to make apprenticeships the main route into employment for young people. The agreement, signed by more than 30 representative organisations clarifies the legal and institutional aspects of apprenticeships, guaranteeing professional training in enterprises and greater social partner involvement. . As a result of this agreement, the government issued a statute law “legislative decree of 14 September 2011, n. 167” (testo unico) that reorders the entire matter of apprenticeship. In the current phase of social concertation with the new technical government, stimulating the use of the contract of apprenticeship is considered a response to job insecurity of young people: so the apprenticeship contract is still at the centre of the agenda of labour reform.

Source: EIRO, March 2011

Young workers were also seen as putting off decisions about their future work and career. There was a view that government policies needed to address specifically the exclusion of young workers from the labour market and their dominance within precarious work. An Italian social partner agreement provided for apprenticeship schemes that offered internships and other routes into the labour market while at the same time ensuring that these were properly regulated and did not represent merely a replacement for permanent work.

It was also suggested that young people might be more amenable to accepting precarious work as they tended to be less concerned about long-term stability and issues like social welfare and pensions, and hence were more likely to agree to work informally. Youth rates of pay were also seen as distorting the labour market, impacting on older workers and pushing young workers into forms of precarious work. For young workers without opportunities there were two alternatives. One was to accept a precarious job, the other was to migrate and interviewees from Latvia, Poland and Spain referred to the departure of young people in search of work.

Student workers and internees

Within the general category of young people some interviewees referred specifically to the position of students who combined further/higher education with work and to internees and placements and other forms of traineeship that often either occurred during or after studies. The issues they raised included:

- Whether students could ever be considered as in precarious work?
- What the drivers were for work during a period of studies?
- Whether students performed different types of work during their studies than those they were likely to undertake after them? and
- Whether internships could in any case be differentiated from precarious work?

For some interviewees students are increasingly being threatened with precarious work, particularly where there is insufficient state support for them during their studies, requiring them to study and work. For others precarious work could only be associated with an activity that provided the basic livelihood and therefore did not cover students who worked during their course of studies. For a Swedish interviewee while students might be found in casual forms of employment, such as call centres, this did not mean that they were in precarious work, provided that the work was regulated and covered by the Swedish social security system. Indeed it represented:

‘A win-win situation for all parties. The regular work force does not have to work at night and out of office hours, while the employers get the manpower they need. Young people and students are not bothered about working out of office hours, since it enables them to combine studies with work and might also represent a stepping stone into the labour market.’ (Male, trade unionist, Sweden)

This view was also supported by a Swedish employers’ association interviewee:

‘For those who lack experience or are unemployed temporary jobs, part time jobs and jobs in employment agencies are often a springboard into employment. This option is usually not a fixed full-time job without having a job full time’

Maria’s story

Maria is 30 years old and lives in the west suburbs of Athens with her parents in a small house. She graduated from the University of Athens seven years ago will complete her PhD thesis in HRM next year. She can speak and write fluently in English, French and German and has a sound understanding of Spanish. For the last five years she has been volunteering for an NGO supporting people with mental health problems. She had a student placement four years ago. She is currently unemployed and depressed by the fact that almost all employers reject her as overqualified. She has been trying to get any kind of job including a part-time or temporary job in a pub or a restaurant, but even this is not feasible. She had been earning €1,500 a year from the university as a teaching assistant but these funds will not be available next year. Her self-confidence is now very low and this impacts on her personal life and on the tension that exists with her parents especially since the crisis has meant that her father’s salary has been cut.

Different views also emerged on the significance of training contracts as a driver for precarious work. For example, while several of the Italian respondents spoke of the impact of co-ordination contracts (Co.Co.Co) as drivers in precarious work, one employer suggested that their importance was over-rated, with just 1.6m such

contracts out of a labour force of more than 22m. In **Germany** and in **France** (see box below) changes had or were being introduced on the better regulation of internships and training. On the subject of the connection between legal interventions, standard and non-standard work and employment outcomes, an academic legal expert from Italy indicated that while the empirical evidence was difficult to interpret in relation to precarious work, research was being undertaken that appeared to show that having a job, with any type of work contract, increased the probability of being employed in the future, but that the most likely employment outcome was one of continuing with the same type of work contract. In other words, workers with fixed-term contracts appeared to have an advantage over the unemployed with regards to transitions or contract renewal within the same company, but not in the employment market in general.

Law strengthening the legal framework regulating internships

In **France** the Cherpion Law of July 2011 introduced measures strengthening the legal framework regulating internships. Under the new law internships:

- Cannot consist of tasks that could be undertaken by a worker in a permanent position in the organisation;
- Must be established through a tripartite contract between the employer, the intern and their educational establishment; and
- Must offer training to individuals to be integrated into their degree or other training.

The law also states that internships must not last longer than six months per academic year except in some specific cases. There is no right to pay but there is a right to a bonus stated in the contract. Where interns are subsequently hired their period of internship may be included in the probationary period.

Source: EIRO, December 2011

Other drivers that pushed students into precarious work included the existence of segmented labour markets and the limited professional experience held by students, combined with their personal situation, their need to earn and their perceived lack of interest in stability and in social guarantees. Internships in particular, sometimes were associated with lowering labour costs, contributing to the creation of precarious work. Some respondents referred also to increasing links between universities and enterprises allowing students to combine studies with work. But at the same time there were also examples of where the aim had been to limit student numbers working, where these were seen as blocking access to work for other workers.

Student placements in the hotel sector

In **Greece** an agreement between the Ministry of employment and the social partners in tourism, regarding student placements in hotels, has been introduced to place a limit of 17 per cent of the total workforce, with the declared aim of preventing the substitution of permanent staff by students, particularly those from abroad.

Older workers

D'Amours (2010) found that for a minority of older workers (retirees with a good retirement income) taking non-standard work did not result in job precariousness, but that for those who had left work after 50 and then taken a precarious job, it did. They

experienced both job insecurity and a lack of social protection. She speculated that state policies encouraging the postponement of retirement age or extending the period of contributions required for entitlement to a full pension, ‘could have disastrous consequences for these precarious older workers’.

Case study 21 - Targeting the pre-pension age group in Latvia

Background/context

According to the unemployment statistics in 2011, pre-pension age persons and young people are the largest groups among the unemployed and there is a presumption that they are more likely to be engaged in precarious work. One third of all unemployed people in Latvia are 50-54 year-old.

Description of the initiative

To curb long-term unemployment and increase social security networks during the economic crisis, which started in 2009, Latvia’s State Employment agency implements a specific programme of training for long-term unemployed people so as to acquire and maintain work skills where the employer is a municipality and where work experience is co-financed by the European Social Fund within the framework of the strategy for Social Security Network. In total 101,458 agreements with the unemployed who have participated in the programme, have been signed since 2009. According to data of the State Employment agency, the largest group of persons involved in this programme were 45 to 54 years old, often with outdated education and skills (e.g., vocational training in Soviet times for specific factories).

Outcome of initiative

The Ministry of Welfare, the State Employment agency together with the municipalities in Latvia and the European Social Fund have carried out evaluation of the programme *Training in order to acquire and maintain work skills if the employer is municipality* and concluded that it helps the most vulnerable people to overcome the economic crisis. In addition a new provision regarding investments into a person’s pension fund was added after an evaluation of the programme. Although the amount of money invested into a person’s pension fund, is very small, it is a step forward to increase the social security of vulnerable older-age people.

Older workers, generally described as those over the age of 50, are commonly perceived as being more likely to be in precarious work. Here too there was a wide range of interpretation as to the age of older workers, ranging from those over 45 years of age to those over 60.

Irina’s story

A former teacher of arts Irina is 58 years old, will reach pensionable age in four years. Irina used to work in a school but when her children grew up, in the early 2000s, she changed her occupation and became a self-employed designer. Her taxes were partly paid. She also did small handicraft work and sold these items through her acquaintance’s shop. The handicraft business ceased due to the economic crisis. During the past few years Irina’s health has deteriorated and she could no longer work full-time. She also thinks that she is too old to search for work and lacks computer and foreign language skills. Now and then she makes some handicrafts, e.g., greeting cards for some clients. Irina fears that her pension will be very small and that she will not be able to make ends meet. She hopes that she will be able to move to the countryside and live with her relatives to minimise the costs of living. Despite her claims that it is humiliating, she hopes that her children will support her financially.

Some interviewees located precariousness among those older workers who had retired but who had pensions which were insufficient to live on and who had therefore accepted precarious work simply due to an absence of social welfare. One German trade unionist knew of post-retirement elderly workers working in the cleaning industry in what was ‘their last chance to get a job’. In cases where individuals were faced with poverty in old age, an employer in Germany argued that this was not a labour market problem and did not reflect precariousness but rather ‘a failure of the social state to ensure that those affected are protected’. However, others perceived those under retirement age as being in precarious work, primarily where they had lost their jobs, were poorly qualified, or were unable to adapt to new technologies and thus had few choices as to the available work. They had experienced unwanted early retirement and an entitlement to low pensions, with what were described as ‘gloomy prospects’ for re-employment. Workers who had formerly been in public sector employment were included in this group and specific reference to them was made by respondents from Germany and Greece, where public sector restructuring had put many workers close to retirement age at risk.

In some cases workers were supplementing pensions by working to improve their standards of living. A Bulgarian employer noted that in his experience workers who had the right to claim their pensions earlier would retire even at the age of 45 or 48 and then needed to find work, ‘but what kind of job? Yes, a low paid job, often as a security guard, but at the same time they received their high pensions ensured by the legislation’. A Latvian trade unionist believed employers were more willing employ older workers, in particular those who had already retired:

‘An employer can be in a beneficial situation if she/he can occasionally employ a loyal pensioner. Firstly, old age people are the least likely to move abroad and secondly in many cases they have very limited or no other choices at all to find a job to supplement their small pensions. Therefore the loyalty of a pensioner can be exploited in precarious work, providing shorter working hours, lower pay and occasional auxiliary work on request.’

The issue of pensions and pension provision in relation to the rights of older workers was high on the agendas of a number of the Member States in the study. In **Sweden** a government enquiry is considering the introduction to changes in retirement ages, extending protection against age discrimination. In the UK the government has already introduced changes to pension provision for workers in the public sector and has abolished the retirement age. In **Spain**, **Greece** and **Italy** significant changes in pension ages and in pension entitlements have recently been introduced.

2.3.3 Migrants and minority ethnic workers in precarious work

Undocumented migrants tend to be perceived as most likely to be involved in precarious work (Bhalla and McCormick, 2009). Porthé et al. (2009) in their study of undocumented workers in four Spanish towns found that undocumented migrants perceived their work as including ‘high job instability; disempowerment due to lack of legal protection; high vulnerability exacerbated by their legal and immigrant status; perceived insufficient wages and lower wages than co-workers; limited social benefits and difficulty in exercising their rights; and finally, long hours and fast-paced work’. Dorantes and Rica (2007) found differences in the employment assimilation of various immigrant groups with an occupational attainment gap between other non-EU15, African and Latino immigrants and their native counterparts, providing evidence of discrimination on the grounds of ethnic origin.

Janis's story

Janis is 22-year-old man from a regional town in Latvia. He went to a local vocational training school and studied carpentry, not because he was interested in the subject but mainly due to the fact that it was close to home. He did not find his studies interesting: in his opinion the school had outdated programmes and materials and it did not provide useful practical skills. During the last year of vocational training he left his studies and joined his friends, who were already working in seasonal agriculture work abroad. He worked abroad for three months and after his return to Latvia undertook several irregular jobs in construction. Later on he went to Great Britain for nine months, where he worked in a café and in construction. In the past three years in Latvia Janis has worked from time to time in construction, receiving his salary in cash, he does not have any insurance; no taxes are paid from his salary. In future Janis wants to find a stable employment position in Nordic countries.

A migration history was the most common characteristic identified by our interviewees as associated with precarious work. Most made this association automatically, but some respondents made the point that whether or not a migrant was precarious was dependent on a variety of factors. An NGO respondent noted that migrant workers can be in more stable situations, for example, where they are employed under work permits which provide specific legal guarantees. An employer from the UK made the point that a migrant could only be considered in a situation of precariousness when she/he was unable to return to country of origin. Otherwise the 'choice' to remain removed precarity. Some 'elite' migrants – those who were highly skilled and internationally mobile - were also not subject to precarity since they could mobilise their skills and resources to challenge precariousness.

A Spanish trade unionist suggested that migrants were also more likely to be affected by unemployment, particularly as a consequence of the economic crisis:

'Immigrant people's unemployment rate is higher than for the autochthonous, even though their activity rate is higher than the average, as the purpose of immigration is mainly linked with work. The crisis has affected above all the sectors in which they were working and when they become unemployed their economic vulnerability is higher than that of the autochthonous because they cannot rely on family networks in the host country.'

However, others pointed to the fact that while migrants might not be able to rely on traditional networks of support they could tap into networks 'of those who had done it before' and that they tended to be younger and better able to work to improve their situation.

Some interviewees also spoke of the wider environment in which migrants worked, of poor accommodation and living conditions; a German trade unionist gave the example of Turkish origin circus workers who had been sleeping under the wagons where the animals were housed. Migrants were often also located in major cities with associated high living costs.

Who are perceived as 'migrants'

Interviewees saw migrants not just as third country nationals from beyond the EU27. Migrants could be both EU and non-EU citizens and in terms of where and how they worked there was little differentiation between the two groups, other than in relation to where one group might have a legal right of residency and of work, while another did not. Thus not all third country nationals were perceived as at greater risk of

precariousness than intra-EU migrants, but those without rights of residency and of work were recognised as particularly vulnerable. References were made to labour from Central and Eastern Europe by respondents from Germany, Ireland, the Netherlands, Spain and the UK and to foreigners more generally (Latvia, the Netherlands, Spain, and the UK).

A minority of interviewees from Bulgaria, Latvia, Ireland and Spain also referred to Roma and travelling people as groups who were also more likely to be in precarious work. This perception was usually associated with people without qualifications or who were low skilled and the result of their own specific attributes, rather than as the outcome of discrimination. Indeed the concept of discrimination was generally absent from most of the 151 interviews.

What are the drivers of precarious work for migrants?

Interviewees from Germany, Ireland, Italy, Latvia, the Netherlands, Poland, Sweden and the UK specified one or more of the following drivers in relation to precarious work in the case of migrants:

- lack of knowledge of host country language;
- lack of awareness of rights;
- lack of skills; and
- the impact of legislation.

Of these not knowing host country language was twice as likely to be identified as the other two elements with lack of awareness of rights being the least likely to be raised.

Interviewees associated both tight controls on immigration and on the issue of work permits as relevant in terms of promoting precarious work and the general absence of legislation on enforcement in relation to some terms and conditions. A requirement to renew work permits meant that individuals would accept any work, regardless of the conditions attached to it.

Reflecting on how to challenge the association of precarious work with migration, interviewees spoke of the need to ensure freedom of movement under equal conditions and to strengthen social policies in relation to migrant workers, particularly under conditions of large-scale unemployment. The other side of this problematic was expressed by an employer who pointed to the pressure on Spanish workers to migrate in search of work and its consequences for Spanish society.

Lucia's story

Lucia is nearly 30 years old and came from Philippines. She works for a social cooperative which operates in the cleaning sector. Lucia is not an employee, but she formally works as an associate. Her contract is very flexible as regards working hours and place of work. She needs to move from one place to another every day and some weeks she works 40 hours, other weeks only 20 hours. She does not have any say with regard to the management of the cooperative, when she finds the job she is obliged to associate to the cooperative in order to be hired. At the beginning of the economic crisis her working hours were cut, and she now works 20 hours per week at most and she is neither able to survive on her own nor to send money to the Philippines, as she used to do before. She feels very unsafe and she thinks she will have to go back to Philippines, but at the moment she does not have enough money to do so.

New application of rules for work permit applications

The Swedish Migration Board is sharpening the rules for work permit in some branches of trade in order to stop the exploitation of people on the labour market. The new application of the rules requires companies in the cleaning, hotel, restaurant, service, construction, staffing, trade, agriculture, forestry and service station industry together with all new start activities in connection with work permit applications, to guarantee salaries during any period when an employment offer is in effect. Such companies, which have hired people from countries outside the EU, have to document salary payments. In cases where people are employed by a foreign company (outside the EU) with a business in **Sweden**, the company has to have a local branch registered in Sweden. The company has to show that information has been given to the employees about the employment conditions. The application came into force on January 16, 2012.

2.3.4 Disabled workers and precarious work

Disability was easier for interviewees to discuss than some other areas of discrimination. The project industrial relations expert for France noted that one employer she interviewed was noticeably more at ease in talking about disability than in addressing other areas, partly because this employer had been developing policies related to disability for more than 15 years.

For some interviewees disabled workers were not per se precarious workers, as this was dependent on the extent of legal regulation, the groups that they were in, the jobs that were open to the disabled and their earnings. Other interviewees pointed to the nearly complete exclusion of disabled workers from the labour market which meant that they were should not be defined as in precarious work because they were not at work. Neither can disabled workers with highly sought after skills be analysed as in a precarious situation.

One interviewee considered that disabled workers were in precarious work where their earning capacity was a third of the average. Another spoke of workers in receipt

Case study 30 - The law on the social integration of disabled people and labour market integration in Spain

Background/context

A 1982 law in Spain created Special Employment Centres (CEE, in Spanish) whose main goals are to provide work for the disabled and to integrate them into the labour market. For more than two decades they have represented one of the key pillars of the measures for the employment of people with disabilities⁶

Description of the initiative

The number of CEEs has grown substantially, from 562 centres in 1996 to 24.823 in 2008, providing jobs to more than 50,000 disabled workers. The largest share of the public budget for the labour market integration of disabled people goes to the CEEs. The law states that those companies that do not employ disabled people contribute to the employment of disabled individuals, for instance through the financing of the CEEs⁷. With the economic crisis the CEEs experienced large scale cuts, leading to the dismissal of workers, but in 2010 they once again began to grow.

Outcome of initiative

The principle purpose for the introduction of CEEs has been their capacity to train and empower disabled workers for integrating them into the ordinary market; however this target has not been achieved, if measured by the earnings of disabled workers in CEEs, compared to earnings outside them. Nevertheless, the CEEs have grown in number and their implementation and impact has considerably increased in recent years. This increase is a direct consequence of a social policy that has chosen a model mainly based on segregating and not on normalising. This is evident in the evolution of budget allocations and in the development of measures that have always prioritised the strengthening of the alternative labour market instead of launching programs and measures for access to ordinary employment.

of welfare on account of their disability, who were forced into precarious work because the state benefits that they were entitled too were too low. However, for others, disabled workers were considered as almost always being within the category of those in precarious work as they were always more at risk of being involved in precarious, auxiliary and casual work as they struggled to get any work at all. Young disabled workers were sometimes identified as a group with additional difficulties in accessing decent work, their combination of age and disability doubly impacting on their limited chances of work.

⁶ It has to be stressed that the Spanish legislation considers as disabled all those persons to which a degree of disability equal or greater than 33% is recognised. Starting from this threshold they are entitled to the benefits for promoting the employment of disabled people (Act 51/2003 about equal opportunities, no discrimination and universal accessibility for disabled people).

⁷ This is the case of companies with more than 49 employees, in which disabled people have to cover at least 2% of the workforce. If the employer does not find suitable profiles among disabled people he/she can employ non-disabled workers, but then he/she has the choice (among others) to finance the CEEs. The M.C.V.L. is a collection of individual but anonymous micro data, taken from Social Security records. The Social Security information is completed by that provided by Tax Agency (AEAT in Spanish) and the Padrón provided by the Spanish Statistics Institute (INE).

Interviewees discussed disability in terms of:

- How disability is conceived – in relation to both physical and mental disabilities;
- The existence and use of quotas;
- The importance of state subsidises and adjustments and adaptations to enable disabled workers to access work.

Most interviewees recognised that disability could not merely be seen as resulting from a physical condition but that mental disability and mental health problems were both to be considered within the overall ambit of disability and created their own difficulties in relation to accessing work. Disability could also impact on access to employment, for example, where disabled workers had restrictions on mobility which mean that they could not access certain workplaces where adjustments had not been made to buildings and so forth.

Case study 11 - Working with the socially excluded – the KLIMAKA NGO in Greece

Background/context

Klimaka is one of the most active Greek NGOs. It was established in 2000 and its overarching objective is to contribute to the fight against social exclusion by providing specific services to people who are in urgent need of help. Part of its commitment is to integrate socially vulnerable people with mental health problems and minorities into the labour market. Klimaka is also active in its participation in EU level projects against social exclusion and poverty. It participates in international mission tasks that aim to tackle humanitarian crises, employing street clinics, medical experts and specialised social workers and has become a very significant actor in the provision of welfare. Last year the Klimaka helpline received more than 2,500 calls from people who were suicidal. Financial issues and urgent economic problems were the main causes.

Description of the initiative

Klimaka has a strong tradition in implementing action plans that aim to combat social exclusion. It is currently active in more than nine projects and engages in numerous activities across the country, receiving international and national recognition and respect. The projects on preventing suicides and homelessness are the most relevant activities of the Organisation in relation to the issue of precarious work. The demand for such services such as provided by Klimaka has lately increased for two main reasons. First, because Greece faces a severe and all-embracing crisis that has resulted in dramatic rises on the levels of unemployment and precarious work. Second, because the traditional provider of social policy in Greece, the family unit, struggles to meet its protective role to its members in the way that it did in the past. The burden of providing support to people who face the risk of social exclusion has gradually been transferred to NGOs like Klimaka and individuals, given the relative policy reforms so as to minimise public spending and the cost of welfare state. Klimaka has established strong collaboration ties with the social services run by local authorities, as well as with public hospitals, radio stations and other media. At the same time Klimaka is active in social networks and operates relevant websites (www.suicide-help.gr, suicidehelp-klimaka.blogspot.com).

Outcome of initiative

The services of Klimaka have provided significant support to homeless people and to people who suffer from serious the symptoms of depression. The dramatic rise in the demand for the services of Klimaka is indicative that it has become an important welfare provider for people trapped in debts and those engaged in precarious employment arrangements and especially those who face both psychological and housing problems. The activities of the organisation have become more crucial given the fact that the national legislation on such matters and especially regarding the problem of homelessness is limited. Further the dynamics of social exclusion in the country have become stronger with the current economic crisis and the deregulatory policies in the labour market. Nevertheless, and despite the gradual rising trends of people living on the streets, there is still no national or local action homelessness plan.

A few interviewees referred to quota models and other forms of integration as a way of ensuring that disabled people had fair access to work. For a representative of a French employers' association, the imposition of a legal obligation to employ disabled persons was a good policy which provided significant leverage to improve the employment of disabled persons. A policy of supplementing social security at sector level was mentioned for the construction sector in the Netherlands to take account of the risks of disability for workers in construction although another interviewee spoke of a reduction in subsidised jobs for disabled workers in the Netherlands. For others, however, the public reintegration model was considered insufficient to lift disabled workers out of their precarious position.

Law on subsidised workplaces

In the **Netherlands** the cabinet that currently is in office has introduced a plan to change the policy on protected labour, i.e. government-run or – subsidised workplaces for those workers (severely and structurally physically, psychologically, or mentally disabled) whose productivity does not meet the minimum wage value. The intended policy is to allow payment at below the minimum wage, which will be complemented by government contributions up to the minimum level.

2.4 Employment protection law indicators

The OECD's employment protection indicators (EPL) identify and compare levels of employment protection. Of the 12 countries studied there are EPL indices for ten of them. In relation to the formal strictness of employment protection, the most recent OECD update⁸ finds that the UK, Ireland and Sweden are below the OECD average, while the Netherlands is exactly at the average and Poland, Italy, Germany, France, Greece and Spain are all above average⁹. The latest indicators are for 2010 which means that they have not captured those more recent legislative changes, particularly in Greece, that are likely to have affected that country's overall position in the EPL. The indicators while thus a useful method of comparing employment protection across countries may not capture more recent changes. Additionally it should be pointed out that the indicators do not take account of dual labour markets where there is a high level of employment protection avoidance, such as in Italy, Spain and Greece

⁸ Venn, D. (2009) *Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators*. www.oecd.org/els/workingpapers

⁹ Latvia and Bulgaria are not included in the OECD statistics.

with high levels of undeclared work. This means that countries can formally have high EPLs but this does not mean that their employment protection legislation has general coverage.

The EPL indicators for the ten Member States are set out in Table 10 below. They cover protection against individual and collective dismissals and regulation on temporary work. The indicators demonstrate significant differences in terms of the degree of employment protection available, reflecting variations in terms of labour markets, the extent of social and welfare provision and collective bargaining coverage. The UK and Ireland are categorised as having the least restricted labour markets, while Spain, France and Greece are the most restricted. However, within the overall categorisation that makes up the index there are differences in the specific categories. Thus while Spain has the highest overall index position, its score on the protection of permanent workers against individual dismissal is below those of France, Germany, the Netherlands and Sweden, and its index position in relation to the specific requirements of collective dismissal is below those of Greece, Germany, Italy, Poland, and Sweden. At the other end of the scale, the UK has the lowest EPL of the ten, but in relation to collective dismissals is higher than those of Ireland and France.

*Table 10 OECD indicators on Employment Protection in ten OECD countries, 2008**
Scale from 0 (least restrictions) to 6 (most restrictions)

	Protection of permanent workers against (individual) dismissal	Regulation on temporary forms of employment	Specific requirements for collective dismissal	Overall OECD employment protection index
Spain	2.38	3.83	3.13	3.11
France	2.60	3.75	2.13	3.00
Greece	2.28	3.54	3.25	2.97
Germany	2.85	1.96	3.75	2.63
Italy	1.69	2.54	4.88	2.58
Poland	2.01	2.33	3.63	2.41
Netherlands	2.73	1.42	3.00	2.23
Sweden	2.72	0.71	3.75	2.06
Ireland	1.67	0.71	2.38	1.39
United Kingdom	1.17	0.29	2.88	1.09

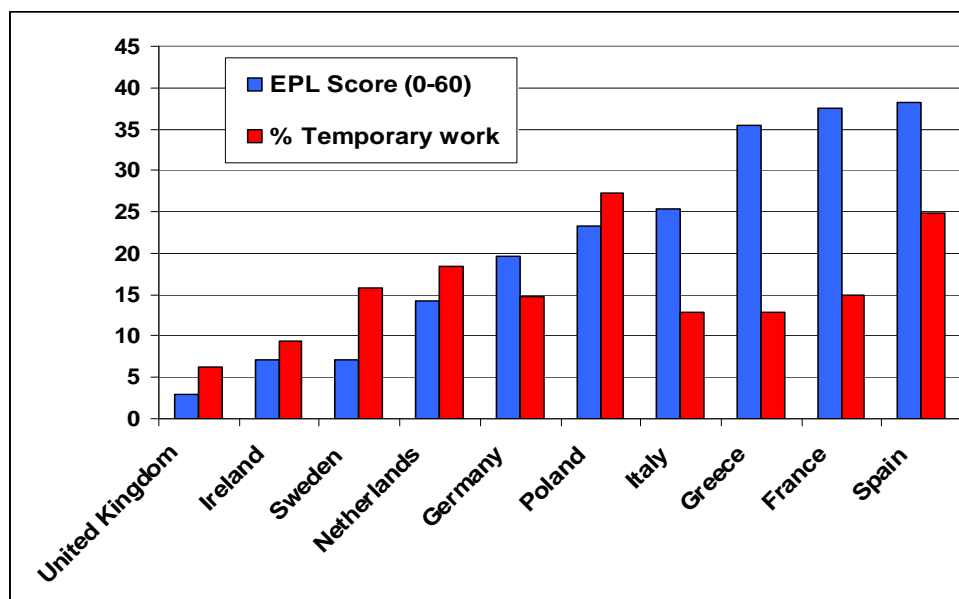
Note:

* For France and Portugal, data refer to 2009. This indicator refers to version 3 as defined in the methodology.

Source: OECD. To find out more about the methodology used to calculate the OECD employment protection indicators, see www.oecd.org/employment/protection.

The OECD data also report on the relationship of legal restrictions covering temporary work and the incidence of temporary work. As graphed in Figure 1, in five of the ten Member States for which data is available, the extent of temporary work is above the EPL score, and in another five it is below. This challenges assumptions that the higher the levels of protection, the lower the proportion of types of non-standard contract and vice versa.

Figure 1: OECD regulation of temporary employment index score and incidence of temporary work contracts in ten countries, 2008



Source: OECD Employment protection indicators (2010)

A summary qualitative assessment by the national PWSR experts on the extent of employment and social security protection and rights offered to workers on certain non-standard employment contracts provides another way of unpicking this data. While depending on the country there may be a higher or lower proportion of workers employed under temporary duration contracts, what this actually means in terms of whether they are included or excluded from ‘normal’ employment and social security protections often varies. Table 11 demonstrates that national legal protective frameworks exist in all twelve countries, but that these vary in their coverage of different categories of workers on non-standard employment contracts.

	Dismissal	Legal rights on working conditions	Social security covering unemployment	Minimum pay (inc where by collective agreement)
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Table 11 Protections for workers on non-standard contracts in 12 EU countries

					or retirement			
	Included	Excluded	Included	Excluded	Included	Excluded	Included	Excluded
Workers on fixed-term contracts	Bulgaria France Germany Greece Italy Latvia Poland Spain Sweden	Ireland ¹⁰ Netherlands UK ¹¹	Bulgaria France Germany Greece Ireland Italy Latvia Netherlands Poland Spain Sweden UK		Bulgaria ¹² Germany Ireland Italy ¹³ Latvia ¹¹ Netherlands Poland Spain ¹⁷ Sweden ¹⁷ UK	France ¹⁴ Greece ¹⁵	Bulgaria France Germany Greece ¹⁶ Ireland Italy Latvia Netherlands Poland Spain Sweden ¹⁷ UK	
Dependent self-employed*		Bulgaria Germany Greece Ireland ¹⁸ Italy Latvia Netherlands Poland Spain Sweden UK	Latvia Sweden	Bulgaria Germany Greece Ireland Italy Netherlands Poland Spain UK	Latvia ¹⁹ Netherlands ²⁰ Poland Spain ¹⁷ Sweden ¹⁷	Bulgaria Germany Greece Ireland Italy UK	Latvia ²¹ Sweden ¹⁵	Bulgaria Germany Greece Ireland Italy Netherlands Poland Spain UK
Temporary agency workers**	Bulgaria France Germany Greece Ireland ²² Italy Latvia Poland Spain Sweden	Netherlands UK ⁹	Bulgaria France Germany Greece Ireland ²³ Italy Latvia Netherlands Poland Spain Sweden UK ¹⁷		Bulgaria Germany Italy ¹¹ Latvia Netherlands Poland Spain ¹⁷ Sweden ¹⁷ UK	France ¹² Greece ¹³ Ireland ²⁴	Bulgaria France Germany Greece ¹⁴ Ireland Latvia Netherlands Poland Spain Sweden ¹⁵ UK ¹⁷	

Source: PWSR national research experts

* In France the category of dependent self-employed does not exist. In Latvia the category of dependent self-employed does not exist but the category of bogus self-employed is acknowledged. Latvia bogus-self-employment would be taken as within the employment relationship.

These rights and protections are provided against the background of the particular national labour markets described in Table 12. These confirm the wide variations in the use of temporary and part-time work between the twelve countries: in **Bulgaria**, the UK, Latvia and Ireland temporary contracts average 6.7 per cent of all

¹⁰ Length of qualifying period represents exclusion

¹¹ Length of qualifying period represents exclusion

¹² Qualifies for unemployment benefit if employed for at least 9 months within preceding 12

¹³ Partial entitlement: Beneficial employer is the deemed employer

¹⁴ May be excluded from supplementary social insurance

¹⁵ Lower level of protection

¹⁶ Dependent on age; in Spain in relation to fixed-term contracts recognised by Social Security legislation

¹⁷ Determined by sector collective agreement

¹⁸ Some limited protection to those who pay contributions but not for unemployment

¹⁹ Self-employed persons not entitled to unemployment benefit under statutory social insurance scheme

²⁰ Limited rights

²¹ Self-employed persons are not covered by minimum pay requirements, unless they are bogus-self-employed, i.e., employees

²² End user employer deemed employer for dismissal

²³ Covered for most employment legislation with the Agency defined as the employer

²⁴ Dependent on status and on payment of contributions

employment contracts, compared to 17.7 per cent in the other eight Member States; while part-time workers make up an average of 7.2 per cent of the workforce in Bulgaria, Poland, Greece and Latvia, compared to an average of 21.6 per cent in the others.

Table 12 Selected employment data for 12 EU Member States, 2010

	Temporary work % of dependent	Part-time work % of total	Unemployment rate % of labour force	Youth unemployment % of youth labour force	Long term unemployment % of total unemployment	Employment rate % of working age population
Bulgaria	4.5	1.7	10.9	23.2	4.8	52.0
France	15.0	13.6	9.3	22.5	40.1	64.0
Germany	14.7	21.7	7.2	9.7	47.4	71.2
Greece	12.8	8.8	12.7	32.9	45.0	59.6
Ireland	9.3	24.8	13.9	28.7	49.0	60.4
Italy	12.8	16.3	8.5	27.9	48.5	56.9
Latvia	6.8	9.7	18.7	34.5	8.4	65.3
Netherlands	18.5	37.1	4.5	8.7	28.6	74.7
Poland	27.3	8.7	9.7	23.7	25.5	59.3
Spain	24.9	12.4	20.2	41.6	45.1	59.4
Sweden	15.8	22.3	8.5	25.2	16.6	72.7
UK	6.2	24.6	7.9	19.1	32.6	70.3

Sources: OECD, Eurostat and National Statistics.

This data help provide the context in which to situate the following section's summary country reviews.

2.5 Country summaries

Bulgaria

Population: 7.6 million
Labour force: 3.4 m (2009)
EU accession: 2007

Prior to and since EU accession Bulgaria has introduced legislation to comply with the directives on part-time work and fixed-term contracts. Legislation on temporary agency work came into force in January 2012. In the literature precarious work relating to undeclared work and work without formal employment contracts is identified as a problematic area (Beleva and Tsanov, 2007 - 2011). Those working in the informal economy are vulnerable as they do not pay some or all of their social security contributions and consequently have inadequate protection in cases of unemployment, retirement and ill health. A labour inspectorate has responsibility for controlling informal work but it has limited resources and hence limited impact. Young workers attempting to enter the labour market and older workers being forced to exit are seen as particular policy challenges.

Groups at high risk of precarious work: young workers, older workers, mothers with young children, disabled people, those with low levels of qualification, minority ethnic people, in particular the Roma.

Sectors associated with precarious work: sectors associated with seasonal work - agriculture, tourism, construction, services; retail, hotels and restaurants; also small and medium-sized firms.

France

Population: 64.3 million
Labour force: 28.2 m (2010)

EU accession: 1958.

Precarious work has been an issue of concern for the government and the social partners and is the subject of much academic scrutiny. Flexible work has been proposed as a response to unemployment. Almost 15 per cent of employees work under atypical contracts (fixed-term contract, agency work) and ten per cent work part-time. In 2010 almost 75 per cent of newly hired workers were offered fixed-term or agency work, while fixed-term has become the most common form of employment contract on first hiring. Precarious work is perceived as work deviating from the norm, involving any form of non-standard work and precariousness is interlocked with the issue of flexibility.

Groups at high risk of precarious work: workers on fixed-term contracts; agency workers; part-time workers; migrants; undeclared work; workers without protection against unjust dismissal; young workers; women.

Sectors associated with precarious work: informal; tourism; retail; hotels and catering; care services; construction

Germany

Population: 82 million

Labour Force: 43.4 million (2010)

EU accession: 1958

A national perception is that Germany has a precarious work issue that has to be addressed. A three per cent decline in standard employment contracts between 1998 and 2008 (Waterman, 2010: 82), and an increase in temporary agency workers, involuntary part-time employment and pseudo self-employment, are perceived as cultivating insecurity even among employees still enjoying the benefits of standard employment contracts. Just under 1m workers are employed through temporary agencies and it is estimated that 7.7 million people are in atypical employment, an increase of 46.2% since 1998 (HansBoecklerStiftung: 2010 b). Legislated severance pay for dismissals for business reasons has been increased. The allowable duration of fixed-term contracts, for employers launching a new business or hiring older unemployed, has also been extended. In Germany, increases in the stringency of regulation in some areas were offset by relaxation of regulations in others.

Groups at high risk of precarious work: young unqualified individuals, female employees returning from maternity leave, employees aged over 40, migrant workers, outsourced or temporary workers, workers on low wages, part-time workers.

Sectors associated with precarious work: health care, cleaning, hotels and catering, more recently, universities, IT and media industries.

Greece

Population: 11.2 million

Labour Force: 5.1 million (2010)

EU accession: 1981

Precarious work is perceived as of very great concern. Labour, budgetary and fiscal reforms (with more than 14 laws in 21 months and 79 laws and ministerial decisions to be adopted by March 2012) together with the imposition of wage cuts (ranging from 25 to 50 per cent in the public sector) as well as extraordinary taxes have contributed to the spread of uncertainty. The Greek labour market was never homogeneous. The official formal labour market was considered hyper-protected and

thus rigid and inflexible, while the unofficial, informal market, accounting for more than 25 per cent of GDP, has always been deregulated and extremely flexible, but without any state control over the forms of flexibility. In 2011 employment without social insurance (undeclared work) reached 30 per cent and social security funds have suffered from losses of €4bn. There was a decrease in standard employment by 21 per cent and 40 per cent of new recruitment took place through non-standard contracts. In 2011 the rate of permanent employment contracts converted into part-time ones increased by 73 per cent while the rate of full-time contracts converted into reduced term rotation contracts (one day, two days or three days' employment a week) increased by 193 per cent, where there was employee agreement and by 631 per cent, when conversion was as a result of the employer's unilateral decision (Labour Inspection Corps, Statistical data, 2011).

Groups at high risk of precarious work: women, young people under the age of 30, migrants working in the informal sector, more recently, men in the 35-50 age group

Sectors associated with precarious work: construction, tourism and services, mainly home delivery, cleaning, catering and private security services, the public sector (public administration, public enterprises and other public entities).

Ireland

Population: 4.5 million

Labour Force: 2.2 million (2010)

EU accession: 1973

The issue of precarious work has been debated substantially in policy and academic circles in Ireland over the last decade, and is quite controversial. A system of Joint Labour Committees, responsible for the setting of terms and conditions in sectors considered weak is currently under significant review. In the 1990s a concern to protect the rights of precarious workers inspired protective legislation, while today, the Irish public authorities see atypical work as an important source of flexibility for firms and the economy.

Groups at high risk of precarious work: women, migrants, young workers

Sectors associated with precarious work: cleaning, catering, security, agriculture, home helps, retail, agriculture, food processing, construction, and the hotel sector, in particular seasonal work

Italy

Population: 60 million

Labour force: 25.1 million (2010)

EU accession: 1958

Since the onset of the 2008 economic crisis, precarious work has become a crucial issue in debates on the labour market although there are very different positions taken on the issue by the key actors. The national statistical institute ISTAT states that the economic crisis entailed an increased risk for so-called atypical workers to be entrapped into precarity, with greater chances of future unemployment. There has been a decrease in standard employment and new recruitment takes place almost exclusively through non-standard labour contracts. A dual labour market model operates.

Groups at high risk of precarious work: women, young people, those aged over 40, those located in the South and the islands, migrants

Sectors associated with precarious work: public sector, (particularly education, university and research, civil service), construction, services (catering, health and trade sector)

Latvia

Population: 2 million

Labour force: 1.2 million (2010)

EU accession: 2004

Precarious work is seen as a major problem, in particular undeclared or partially undeclared work, with some estimates suggesting that it accounts for 30-40 per cent of GDP (Sauka and Putnins, 2011). At a macro level, Latvia's development since joining the EU has been radically uneven with high economic growth rates and low unemployment levels in 2004-2007 and high unemployment and a deep economic and financial crisis from late 2008 onwards. Latvia's legislation allows workers to be dismissed in the first three months of a trial period without a justified and proven reason. Precarious work is identified as a problem when it is used to describe informal work in relatively dangerous working conditions.

Groups at high risk of precarious work: women with children, workers during probation, young workers, older workers, family members in small businesses, ex-criminals, workers in micro tax undertakings.

Sectors associated with precarious work: construction, taxis, restaurants, cleaning, security, retail, forestry.

The Netherlands

Population: 16.4 million

Labour Force: 7.9 million (2010)

EU Accession: 1958.

Relatively high statutory labour law standards, a minimum wage and coverage of over 80% of the dependent work force by collective agreements, minimise the presence of precariousness. The government is in the process of changing its policies on the protection of disabled workers, and has proposed linking the receipt of social benefits to the acceptance of work. Flexible labour contracts, predominantly fixed-term, self-employment, agency work and contract labour, now constitute between 20 and 33 per cent of all contracts.

Groups at high risk of precarious work: temporary agency workers, migrants, low-skilled workers, women, young workers, undocumented workers, posted workers in the sectors below.

Sectors associated with precarious work: agriculture, hotels, restaurants and catering, the cleaning sector, care, food production – particularly meat and fish processing, domestic work.

Poland

Population: 38.1 million

Labour force: 17.3 million (2009)

EU accession: 2004

The legal definition of an employee is derived from the Polish Labour Code 1974, as a person employed on the basis of a contract of employment, an appointment, an election, a nomination or a co-operative contract of employment. An employment relationship is established where an employee is obliged to perform specific work for the benefit of and under the supervision of an employer in return for remuneration. Since the 1990s a growing gap has appeared between workers employed on the basis of employment contracts governed by the Labour Code (and protected by its provisions) and other groups of workers employed on the basis of Civil Law contracts (commission contracts, contracts for services and contracts for specific work being most common) or are (bogus) self-employed, who are deprived of social rights such as working time limits and paid holidays. These contracts may include features of an employment contract, for example in relation to self-employed subcontractors. There is no definition of a 'worker' although the Penal code does refer to 'a person performing paid work' which may be said to include both those working under either contracts of employment or civil contracts. In relation to fixed-term contracts, a maximum limit of two successive fixed-term contracts has been introduced and notification periods for collective dismissals have been reduced by more than half.

Groups at high risk of precarious work: the self-employed, young workers, women, migrants, part-time workers, teleworkers, workers on fixed-term contracts, posted workers, undeclared work, third country nationals, especially those working irregularly.

Sectors associated with precarious work: services, commerce, agriculture, security, hotels and catering, construction, care work,

Spain

Population: 45.8 million

Labour force: 23 million (2010)

EU accession: 1986

In the 1980s temporary contracts began to be progressively seen as an instrument of job creation and in the mid-1990s the provision of work through temporary work agencies was authorised generally. Subsequently, further measures were put in place to reduce the abuse of temporary contracts through collective bargaining. New legislation in 2007 and extended in 2010 provided for lower redundancy costs in cases of dismissal. Labour law reform in 2011 increased the maximum age limit for training contracts to 30 years. In 2012 the new government reduced the level of redundancy pay and cut the time workers can spend on temporary contracts from three years to two. The perception of precarious work is increasingly as concerned with the working poor in a context where the informal economy is said to represent around 20 to 25 per cent of GDP.

Groups at high risk of precarious work: young workers, women, migrants, older workers, agency workers.

Sectors associated with precarious work: domestic work, services, tourism and agriculture, particularly in relation to seasonal jobs.

Sweden

Population: 9.2 million

Labour force: 4.9 million (2010)

EU accession: 1995

The context of strong collective bargaining where agreements are generally enforceable has meant that precariousness in Sweden essentially concerns intermittent jobs and short-term work. Changes in the The Employment Security Law (LAS) made it possible to extend the length of most kinds of fixed-term and temporary work agency contracts and the focus has increasingly been on job creation, rather than on job security.

Groups at high risk of precarious work: workers with fixed-term contracts, involuntary part-time, disabled workers, low-paid workers, women, agency workers, posted workers, migrants, undeclared and undocumented workers, workers not covered by collective agreements, minority ethnic workers

Sectors associated with precarious work: retail, care work, restaurants, hotels and catering, cleaning, construction.

United Kingdom

Population: 61.7 million

Labour force: 31.5m (2010)

EU accession: 1973

Precariousness is not a commonly used concept in the UK. Where it is used it is associated with vulnerability, low-pay, poor working conditions, disproportionately affecting certain segments of society and the labour force. A Commission on Vulnerable Employment (CoVE) established by the Trades Union Congress in 2007 produced a widely debated report that was supported by the then government. Its work was not continued after the 2010 elections. Currently changes in the law on unfair dismissal are due to come into force in 2012 that will extend the period during which there is no general dismissal protection from the one to two years. At the same time changes to the employment tribunals system target reducing the over 130,000 a year claims made to employment tribunals.

Groups at high risk of precarious work: workers on fixed-term contracts, young workers, women, migrants, black and minority ethnic workers, workers on non-standard contracts.

Sectors associated with precarious work: construction, agriculture, food processing, retail, the media industries and catering.

Marek's story

Marek is 50 years old and has been working in the security sector since 1995. He lives with his family in the Mazovia region. In November 2011 Marek finally started working under a permanent employment contract. Previously he had only worked on the basis of fixed-term contracts. Unfortunately, the permanent contract provides a minimum wage which is insufficient to meet his living costs. It is impossible to survive with his level of income and therefore Marek has had to take another civil contract which enables him to support himself and his family. Having two contracts means that Marek is working around 460 hours a month. As he spends most of his life at work, there is no time left for educational activities that would allow him to improve or change his qualifications. Marek does not see any chances for improvement in his life in the near future.

2.5 Degrees of precariousness

In the study's Precarious Work and Social Rights survey (PWSR) across the twelve countries respondents were asked to indicate the extent to which different forms of contract were seen as precarious and the degree of precariousness they associated with them. Table 13 analyses the 265 responses received on this question. It shows that the strongest perceptions of precariousness were associated with informal or undeclared work, followed by bogus self-employment and then casual employment and zero hours contracts. There is a significant gap between the perceptions of these forms of employment and the remaining forms. Part-time work, for example, was very rarely viewed as in the 'most precarious' category and indeed more than a quarter of all respondents categorised it as not precarious, and two out of five viewed it as only 'slightly precarious'. Only 14 per cent of respondents categorised fixed-term work as in the 'most precarious' category, a relatively equal proportion categorised it as 'slightly' or 'more' precarious.

Table 13. Perceptions of precarious forms of employment

	Not precarious	Slightly precarious	More precarious	Most precarious
Informal/Undeclared	1%	3%	11%	83%
Bogus self-employment	1%	4%	28%	63%
Casual	2%	7%	29%	59%
Zero hours	4%	8%	20%	54%
Temporary agency	4%	24%	37%	29%
Seasonal	8%	32%	34%	24%
Fixed term	13%	31%	38%	14%
Posted	16%	31%	36%	12%
Part time	27%	41%	22%	5%

Source: PWSR survey (2011)

Examining the responses by country reveals a range of different perceptions that reflect the different realities in the 12 Member States, as shown in Table 14.

Table 14 National variations in perceptions of the most precarious employment

	BG	FR	GER	GR	IR	IT	LA	NL	PO	SP	SW	UK
Informal/Undeclared	80	75	79	78	82	92	93	76	94	77	79	81
Bogus self-employment	30	63	63	79	46	73	64	77	82	54	46	62
Casual	60	50	50	78	64	70	57	23	41	65	61	62
Zero hours	30	63	67	65	64	78	14	47	41	65	39	69
Temporary agency	20	13	71	48	27	16	11	24	41	31	4	46
Seasonal	25	37	21	22	18	11	7	12	41	27	21	58
Fixed term	5	0	21	26	0	5	7	0	24	23	25	15
Posted	20	0	13	26	18	8	11	12	0	8	14	12
Part time	5	0	0	13	9	11	4	0	6	8	4	0

Source: PWSR survey (2011)

Particularly strong perceptions of the precariousness of certain categories of employment relationships can be seen in different countries:

- Nearly all the respondents in Italy, Latvia and Poland see informal or undeclared work as having the most precarious status.
- Bogus or false self-employment is perceived as strongly precarious by around four out of five respondents in Poland, Greece and the Netherlands

- Casual work is perceived as strongly precarious by four out of five Greek respondents.
- Zero hours contracts were particularly associated with precariousness by nearly four out of five Italian respondents.
- Temporary agency work is most strongly associated with precariousness by nearly three-quarters of German respondents.
- Seasonal work is perceived as being strongly precarious by more than half the UK respondents.
- Fixed term work is seen as highly precarious by a quarter of respondents in Greece, Sweden, Portugal and Spain.
- Posted work is perceived by a quarter of Greek respondents as most precarious.

In the 151 key respondent interviews conducted there were also significant differences between the trade union and employer respondents in their perceptions of the relationship between precariousness and different forms of employment contract. While four out of five trade union, academic and government respondents did associate precariousness with the forms of contract employment described above, only two out of five employers did so. The employers, and to a lesser extent the NGO respondents interviewed, were more likely to define precariousness as resulting from individual's personal characteristics rather than from the nature of the employment contract.

2.6 Mapping precarious work

To complete a map of the distribution of precarious work across the 12 Member States, the 24 national project experts were each asked to score the degree of rights' protection workers had in various forms of employment relationship and between different broad categories of workers²⁵. The ratings the experts gave, averaged in Tables 15 and 16, were based on their expertise in relation to the legal and collective bargaining outcomes in their country. Initially they rated forms of employment relationship between 1 (no employment protection) and 5 (total protection) and the extent of legal protection from the principal risks attached to different groups of workers between 1 (lowest level of rights) and 5 (highest level of rights). In Table 15 we display the average ratings for each category of employment relationship and each set of employment rights. The more protected, above average ratings, are shown shaded.

Table 15: *Employment relationships and rights in 12 Member States, 2011, average ratings between 1 (no rights) and 5 (full rights)*

	<i>Job security</i>	<i>Job conversion</i>	<i>Working time limits</i>	<i>Discrimination protection</i>	<i>Pensions</i>	<i>Welfare</i>	<i>Training</i>	<i>Decent Pay</i>	<i>Representation</i>	<i>Average ratings</i>
<i>Informal</i>	1.1	1.3	1.0	1.4	1.2	1.4	1.1	1.1	1.3	1.2
<i>Bogus self-employed</i>	1.2	1.4	1.3	2.5	2.9	2.4	1.3	1.4	1.2	1.7
<i>Zero hours</i>	1.7	1.5	2.3	3.8	2.9	3.2	1.7	2.6	2.5	2.5
<i>Casual</i>	2.4	1.8	3.0	3.7	2.9	3.4	1.9	2.6	3.0	2.7

²⁵ The legal experts completed their tables based on the existing national legislative protection but make the point that in some instances there is a gap between what the legislation provides for and how it operates in practice.

<i>Teleworkers</i>	2.5	2.1	3.7	4.5	3.9	4.1	2.3	2.8	3.4	3.3
<i>Seasonal</i>	2.4	1.9	3.9	4.4	3.7	4.0	2.3	3.5	3.9	3.3
<i>Agency</i>	3.0	2.0	4.3	4.7	4.0	4.5	2.7	4.0	3.8	3.7
<i>Fixed term</i>	3.1	2.2	4.6	4.7	4.4	4.5	2.6	4.0	4.2	3.8
<i>Part-time indefinite</i>	3.2	2.3	4.5	4.8	4.4	4.6	2.6	3.8	4.3	3.8
<i>Full-time indefinite</i>	3.8	2.3	4.7	4.8	4.4	4.8	2.3	4.4	4.0	3.9
<i>Average ratings</i>	2.6	2.0	3.4	3.9	3.4	3.6	2.0	2.9	3.4	3.0

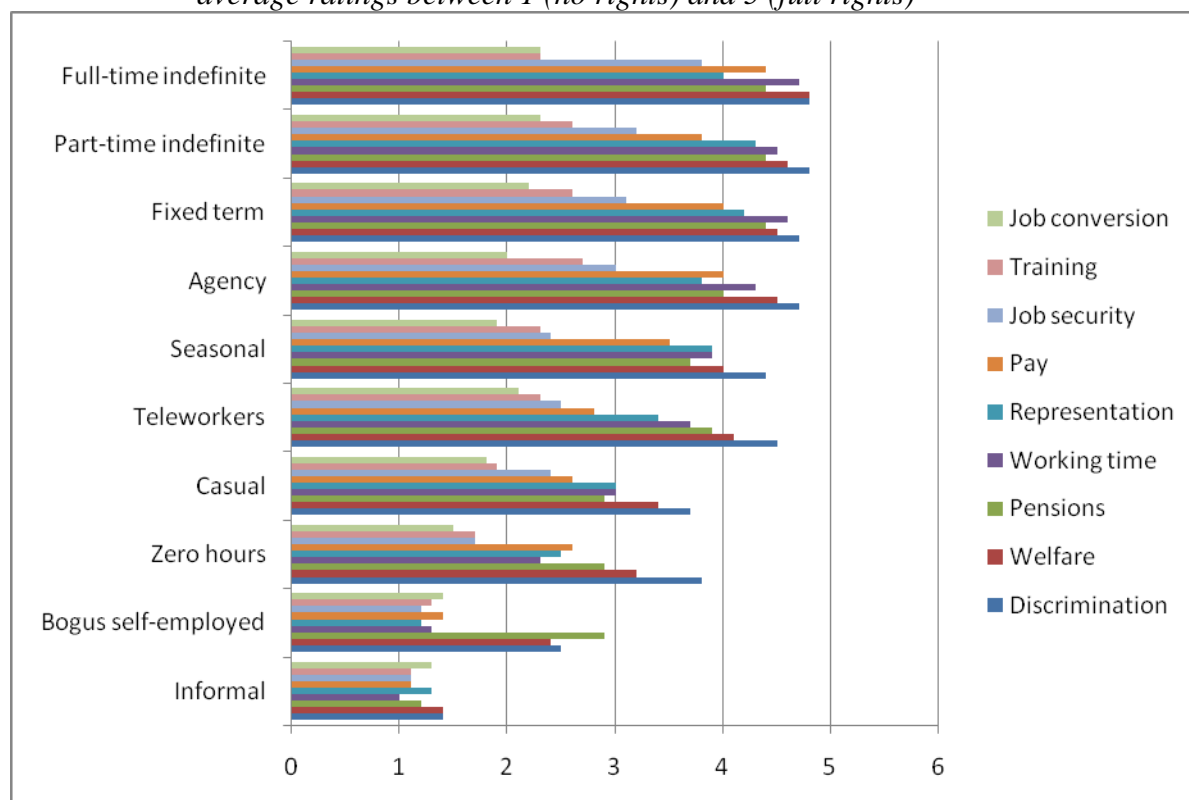
Source: PWSR Ratings (2011)

Note: Above average (more protected) cells are shaded.

A chasm exists in these experts' perceptions between work that is full-time, part-time, fixed term, or even agency, seasonal or telework, and other forms of employment relationship such as casual, zero hours, informal and bogus self-employment. These assessments confirm that workers in the informal economy and in bogus self-employment are perceived as having least access to all nine employment rights provisions.

Figure 2 below graphs the above table in descending order of average ratings to show how some of these areas of legal rights (such as to discrimination protection and welfare) are considered to be more extensive than others (such as rights to job conversion and training). It confirms that while the extent of rights in each of the nine areas varies, they are considered in each area to be virtually non-existent for those in the informal economy and in bogus self-employment

Figure 2: *Employment relationships and rights in 12 Member States, 2011, average ratings between 1 (no rights) and 5 (full rights)*



Source: PWSR Ratings (2011)

The perceptions of the legal rights attached to categories of workers defined by their personal characteristics were more closely bunched together than ratings made in terms of their employment relationship. Clearly it is more difficult to generalise about whole groups of workers than it is about the likely outcomes of the working to a particular form of employment contract. Nonetheless, the results of the rating exercise do add to our understanding of the characteristics of workers in precarious employment.

Table 16 shows the average ratings of different categories of workers classified by their personal characteristics of origin, age and gender. In terms of their likely possession of employment rights, and highlights the situation of third country nationals and young men and young women migrant workers are the three groups each of which is perceived as having lower levels of rights than the average across eight of the nine areas.

Table 16: Individual characteristics and rights in 12 Member States, 2011, average ratings between 1 (no rights) and 5 (full rights)

	Job security	Job conversion	Working time limits	Discrimination protection	Pensions	Welfare	Training	Decent Pay	Representation	Average ratings
Third country	3.1	2.4	4.2	4.6	3.8	3.9	2.7	4.0	3.5	3.6
Young women	3.1	2.1	4.4	4.7	3.8	4.2	2.8	3.4	4.2	3.6
Young men	3.4	2.5	4.4	4.7	3.9	4.3	2.8	3.5	4.2	3.7
Migrants	3.2	2.5	4.7	4.7	4.2	4.0	2.8	4.0	3.9	3.8
Adult women	3.5	2.9	4.4	4.8	4.0	4.1	2.8	3.7	4.1	3.8
Older women	3.3	2.5	4.7	4.6	4.2	4.5	2.9	3.8	4.4	3.9
Adult men	3.6	2.7	4.5	4.8	4.5	4.6	3.0	3.9	4.4	4.0
Older men	3.6	2.8	4.7	4.6	4.4	4.6	2.9	4.1	4.4	4.0
Average	3.3	2.6	4.5	4.7	4.1	4.3	2.8	3.8	4.1	3.8

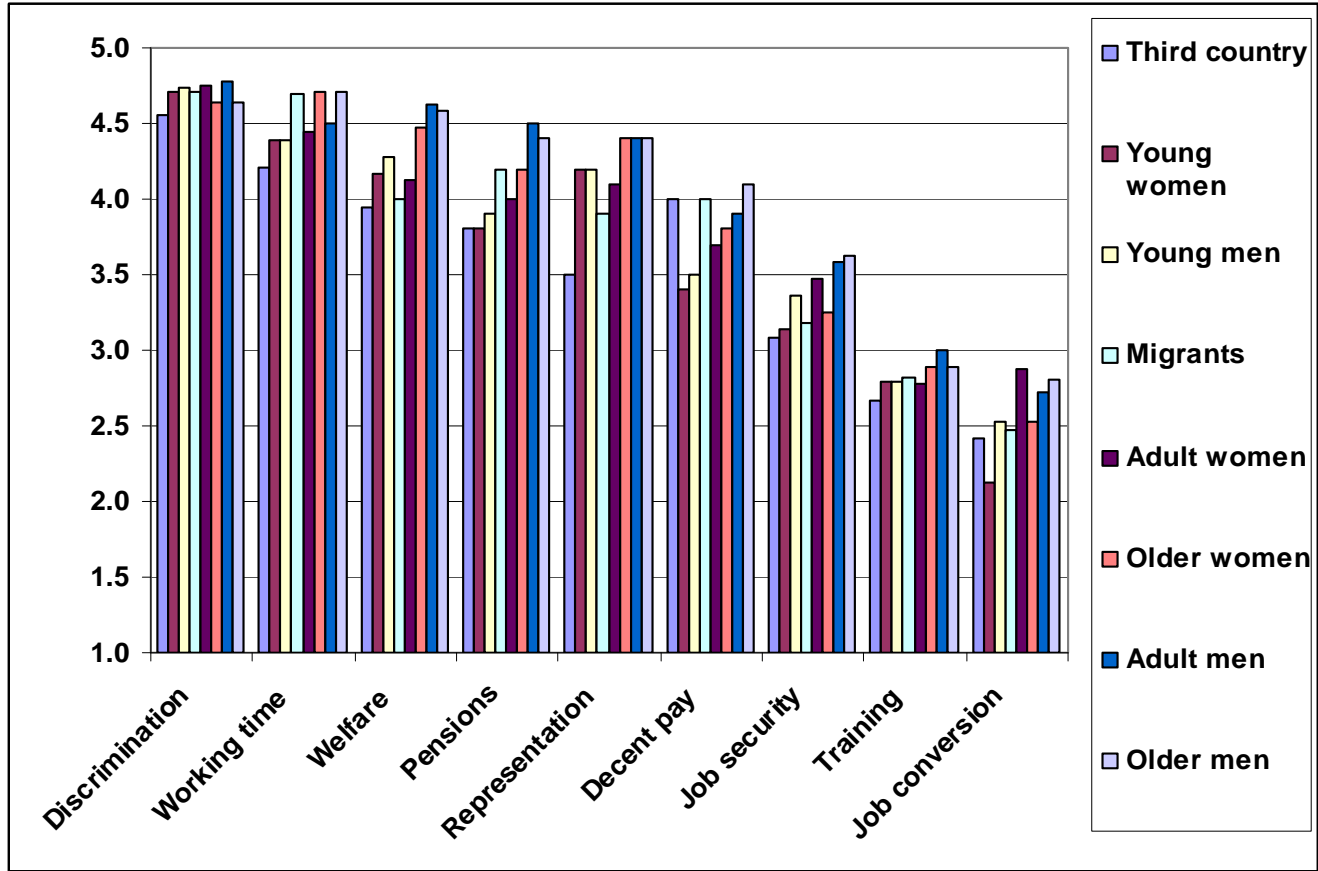
Source: PWSR Ratings (2011)

Note: Above average (more protected) cells are shaded

The groups perceived consistently as having average or above average rights protections were adult and older men. These categories of men were perceived as having greater rights than adult and older women, whose overall levels of protection were rated as average. These women were, however, considered as having overall more rights protections than young women and young men and all third country nationals. This comparative assessment confirms the relevance of age, gender and national origins in relation to employment rights, whether established through legislation or collective bargaining.

Figure 3 graphs these results in descending order of average ratings, also confirming that some of these areas of legal rights (such as to discrimination protection, welfare and working time limits) are considered more extensive than others (such as rights to job conversion and training).

Figure 3: Individual characteristics and rights in 12 Member States, 2011, average ratings between 1 (no rights) and 5 (full rights)



Source: PWSR Ratings (2011)

3. The nature of precarious work

The boundaries of what is and what is not precarious work are fuzzy. European Commission (2011)²⁶ has suggested important indicators of precariousness are job security, access to training, career prospects, pay and productivity. The International Labour Organization (ILO)'s definition focuses on security: precarious employment is a 'work relation where employment security, which is considered one of the principal elements of the labour contract, is lacking. This term encompasses temporary and fixed term labour contracts, work at home and sub-contracting' (ILO, 2011).

An earlier definition by Rodgers and Rodgers (1989), however, goes considerably beyond the terms of the contract or of where work takes place. They saw precariousness as involving 'instability, lack of protection, insecurity and social or economic vulnerability' arguing it was 'some combination of these factors which identifies precarious jobs', and that 'the boundaries around the concept are inevitably to some extent arbitrary'. Kretsos (2010) takes a similar broad brush approach.

Chapter Three therefore begins by considering how the definition of precarious work has been broadened. It first opens up the debate in the literature, and breaks down precarity's core component of job insecurity, bringing together evidence from the European Foundation's 2010 EWCS survey and this research. It shows how the different elements of precarity are perceived differently in different countries. Next, in Section 3.2, it deals with the emphasis placed on different aspects of precarious work in the literature and the PWSR research: on the absence of qualification, on low or variable pay, on the relationship of social protection provision to precarity and on discrimination and precarious work. Its third section deals with the principal absences of precariousness revealed by the interviewees: the absence of choice, the absence of employee representation and voice or of access to training and the presence of increased health and safety risks. Section 3.4 considers elements in the business context that can lead to the implementation of precarious employment contracts. Finally section 3.5 analyses the various processes creating precarity and considers the debates as to whether flexicurity can provide a solution.

3.1 *Precarity beyond the contract*

The last chapter set out the varied forms of employment relationship identified in the study, noting that these were separated into models of standard or typical and non-standard or atypical. The ideal form is the 'standard' employment relationship – permanent, full-time work - with the potential to continue for the whole of the individual's working career. Hence the notion of permanent full-time work dominates the view of what is acceptable decent work.

However, as we indicated briefly in Section 2.1, this assumption is queried by many. Thus Barbier (2011) argues that:

'Putting all "non-permanent" employment relationships in the same category amounts to assuming that the divide "permanent – non-permanent" has a universal meaning; it not only relies on the assumption that the distinction between what is permanent and what is not has any meaning at all, but also upon the assumption that "non-permanent forms" can be seen as homogeneous.'

²⁶ Employment in Europe (2011)

Other studies emphasise the need to look both at forms of employment but also at other factors that combined might identify precarious work. Indeed, increasingly the literature points to a combination of factors, sometimes emphasising one above another, but rarely asserting that precarious work derives from one consideration only.

For Evans and Gibb (2009) precarity involves a mix of forms of contract and job insecurity. They refer to forms of work characterised by atypical employment contracts, by limited or no social benefits or statutory entitlements, by high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease. From the workers' point of view, precarious work was thus related to uncertain, unpredictable and risky employment. Jonsson and Nyberg (2010) took this logic further by asserting that all work has the potential to be precarious and precariousness is merely a gradation from very precarious to weakly precarious. They suggest that work can be divided into three categories:

1. highly precarious work — no rights to the social security system (undocumented workers);
2. moderately precarious work — basic rights to the social security system (housewives entitled only to lower social rights); and
3. least precarious work — full rights to the social security system.

Four principal areas emerge as interconnecting in ways that situate individuals in different degrees of precarity:

- Job insecurity – this can be as a result of time (length of contract) or uncertainty (unpredictability);
- Low pay – below minimum or average pay rates and the lack of opportunity to improve pay;
- Subordinate employment - involving exclusion from full social and welfare rights and from employment protection laws;
- Absence of rights to representation – no effective coverage by collective bargaining and difficulty in accessing legal rights.

For Porthé et al. (2010) an important aspect of precarious work is that those involved are disadvantaged in terms of power relations, with fewer rights than apply to permanent workers with the consequence that employment relations are controlled by uncertainty.

Fullerton et al. (2011) suggest that while precariousness is related to job insecurity, the context in which it occurs is also important. Using data from the 2006 Eurobarometer survey, together with country-level data from a variety of sources, they find that insecurity is higher in those countries with high unemployment, low union density, low levels of part-time and temporary employment, relatively little social spending on unemployment benefits as well as in the post-socialist countries. The presence of these associations led them to suggest that 'flexible employment practices do not necessarily cause workers to feel insecure in their jobs'.

Case study 14 - The impact of the economic crisis on precarious work in Ireland

Background/context

The implications of the economic crisis for levels of unemployment and precarious work in Ireland have also been considerable. By 2011, the rate of unemployment in Ireland was over 14 per cent. The economic crisis has also led to an increase in precarious work in Ireland. There has also been a great influx of migrants to Ireland in the last ten years. Many of these migrants came from the central and eastern European countries that acceded to the EU after 2004. Many of these workers have also been engaged in precarious work, and have been employed in sectors such as construction, hotels, and agriculture that are associated with high levels of precarious work.

Description of the initiative

In response to concerns about high rates of precarious work involving migrant workers Irish trade unions have pursued a number of strategies. Irish trade unions have attempted to organise in sectors where there are high levels of migrant workers. Much work has also been done by the Migrant Rights Centre Ireland (MRCI). Since the start of the economic crisis, MRCI has engaged in a number of specific programmes to help migrant workers engaged in precarious work.

Outcome of the initiative

The trade unions have systematically distributed information about their activities to migrant workers in sectors like agriculture, construction and hotels, and this information is often disseminated in the languages spoken by immigrant workers. Irish trade unions like SIPTU have also employed Polish officials who are responsible for organising Polish workers within Ireland. MRCI has worked closely with the trade unions with one particularly successful campaign in the Irish mushroom growing industry. This targeted mainly older migrant women and succeeded in establishing new agreements with employers on terms and conditions. The campaign led to many employers within the sector adopting better practices, and led to a Registered Employment Agreement within the sector to improve pay and conditions.

Polavieja (2005) found that when flexibility was introduced in Spain in a context of both high unemployment and high dismissal costs, the growth of fixed term contracts generated a process of the polarisation of employment chances within both manual and professional occupations: for some this led to future job security, whereas in others it generated higher levels of job insecurity. A study by Burton, Deviceni and Pacelli (2012) showed that having any type of job on whatever form of contract increased the probability of being employed in the future but that the most likely transition outcome was of continuing with the same type of work contract. In other words an initial temporary employment tended to lead to more fixed term contracts.

3.1.1 Perceptions of insecurity

Bringing the different arguments presented above together, the notion of insecurity appears to reflect a mix of the following:

1. Uncertainty – where work does not enable workers to plan their futures;
2. Income – where income is insufficient to enable workers to live decently;
3. Dismissal – where protection from arbitrary dismissal is absent;

4. Welfare – where the form of employment relationship excludes workers from the security of welfare or social protection.
5. Duration – where workers do not know how long work will last; and
6. Employment – where future employment is uncertain.

EWCS 2010 confirms an increased sense of job insecurity within the EU27 Member States since 2005. In 2010 as shown in Table 17, in response to being asked whether they believed they were likely to lose their jobs within the next six months, in nine of the 12 countries one in six or more of those surveyed agreed with the question. This was two more countries than in 2005, and the greatest change was registered in Ireland where a sense of imminent job insecurity rose from one in ten to one in four. In the UK the proportion almost doubled in the five years, up from 6.8 per cent to 12.9 per cent and in Latvia, whereas one in five people had feared loss of a job in 2005, by 2010 the proportion had risen to one in three.

Table 17. *How much do you agree or disagree with the following statements describing some aspects of your job?*
I might lose my job in the next 6 months

	2005			2010		
	Agree	Neither agree nor disagree	Disagree	Agree	Neither agree nor disagree	Disagree
Bulgaria	22.90%	19.30%	57.80%	29.80%	27.40%	42.80%
Germany	12.80%	17.70%	69.50%	11.50%	11.20%	77.40%
Greece	20.90%	10.50%	68.60%	19.40%	19.40%	61.10%
Spain	14.90%	14.70%	70.40%	24.50%	24.80%	50.70%
France	7.80%	7.00%	85.20%	11.90%	11.80%	76.30%
Ireland	9.50%	5.70%	84.80%	25.60%	14.00%	60.40%
Italy	8.90%	12.20%	78.90%	14.00%	19.60%	66.40%
Latvia	19.00%	14.80%	66.20%	31.40%	20.50%	48.10%
Netherlands	18.00%	5.70%	76.30%	14.10%	8.10%	77.80%
Poland	26.70%	13.40%	59.80%	18.00%	16.90%	65.10%
Sweden	20.40%	5.20%	74.40%	21.80%	11.80%	66.40%
UK	6.80%	7.30%	85.90%	12.90%	13.40%	73.70%
EU27	13.70%	12.40%	73.90%	16.40%	15.90%	67.70%

Source: Q77A, EWCS, 2010

In the PWSR interviews insecurity was also seen as a principal component of precarious work. More than one in three of all respondents mentioned insecurity as a factor of precariousness and a male Italian academic defined precariousness as:

‘An absence of security, an incapacity for the individual of maintaining an adequate standard of living through the labour market or through public or obligatory social protection schemes.’

For some interviewees insecurity is a feature of all employment relationships other than standard, full-time and permanent ones. Yet for others insecurity was identified with specific elements of the non-standard contract. The concept most frequently associated with insecurity was uncertainty about the future - both from a professional and a family perspective as a French trade unionist explained. Insecurity, for a German interviewee, meant that individuals could not plan their lives, giving the example of university lecturers who are employed under fixed-term contracts where they did not know from one year to the next whether their contracts would be extended. They could not obtain bank loans and therefore could not purchase a home in which to live. They were uncertain as to their future careers or indeed as to whether they would obtain further work. Others spoke of general feelings of insecurity, particularly in relation to work in the public sector. Work that had been conceived as

secure in the past is now tainted by insecurity. A UK male NGO interviewee considered that:

‘Security is about the ability to plan and where it is lacking then work is precarious where it continues over several months. The structure of the labour market, even if flexible, is more like an escalator and the issue is whether there are routes out. If the ways out are not there then they are in a bog or quicksand.’

Ivan’s story

Ivan is 24 year old man, working in a construction company in large city in Southern Bulgaria as a low-qualified construction worker. He has a fixed-term contract which makes him worried about losing his job. His wages are calculated on the total hours worked during the month and the job category and the latter has the lowest rate/coefficient as a non-qualified worker. Because of the crisis, work hours have drastically decreased as have his wages and in some months they amount to only to the minimum monthly wage in the Bulgaria (less than €140). He took the job, because he wanted to earn money live on his own and to become independent but also because there are no other alternative jobs as a result of the crisis. Although still young Ivan has already worked in lots of jobs to earn money (he has worked as a bartender, a waiter, in a trucks’ auto service, and as a food products supplier). While his current job is low-skilled, he has had a secondary education and is currently enrolled in a part-time educational programme at the university. He thinks that getting the higher education and diploma would give him security. To enrol at the university his relatives took out a bank loan that he is trying to payoff as he was not allowed to take out a loan in his own name, due to the fixed-term contract he has with the employer. He still lives with his parents, and says that more and more frequently he relies on their financial support.

Insufficient income is another key factor identified with insecurity. For a Bulgarian trade unionist, security came from income and when incomes were very low it was not possible to see work as secure. An Irish government respondent identified job insecurity with poorly paid workers.

The absence of job protection mechanisms that inhibit arbitrary dismissal was also identified as a feature of job insecurity. Where individuals had a high chance of losing their jobs, according to a Netherlands employer respondent, they were highly vulnerable.

Where welfare or social protection was absent, workers were also seen as insecure, although if some protection did exist then respondents were less likely to describe the work as insecurity. This was the view of a Latvian employer who identified socially insecure work only with illegal work arguing that other forms were guaranteed social protection.

One Bulgarian trade unionist perceived precariousness as being the inability to quickly find alternative work following redundancies, while for a French trade unionist the issue was one of continuity of social and professional rights. A German employer believed long probation periods were associated with job insecurity and hence by precariousness. This was both because they were short duration contracts but also because there was often a lack of certainty as to their duration.

Milen's story

Milen is a 34 year old non-qualified construction worker in a construction company in a big regional city, which is located around 30 km from the town he lives in. He travels from home to work and then back every day, around 40 minutes in each direction. He used to rent an apartment in the city where he works, but decided that it was cheaper to travel every day although he covers his travel expenses himself. He had to take the job because there are no jobs available in the town he lives in. He has a vocational education qualification in TV repairs, but was not able to find work in his area of expertise. Before starting work with his current employer, he had a lot of different jobs, in most of them without any formal employment contract (carpentry workshop, another construction company, a mill). Although he has an employment contract with his current employer, he thinks there is nothing secure these days and there is always possibility of losing your job. This is the most precarious aspect of the job in his view – the insecurity. He is pessimistic about the situation of the country in general. According to him, his life has changed a lot in the last year or two; everything has become more expensive; people are getting poorer, and will continue getting poorer. He is not married, lives with his mother and sometimes, although not frequently, he has had to ask her for financial help. He loves traveling and used to travel a lot, but nowadays he limits his traveling because of financial reasons.

Insecurity also concerned the employers' experiences. A Bulgarian NGO interviewee believed that company instability in the crisis would force firms to reduce the proportions of people employed under standard contracts. A Latvian trade unionist felt that in periods of recession, employers' revenues and relationships with customers also became precarious and this led to greater reliance on flexible strategies whereby they can quickly hire and lay off workers according to their business needs. A German employer considered there was a tendency towards more insecurity and more stress and an inability to plan long-term. Whereas ten years ago firms like hers had five-year plans, they had moved to half-yearly and even quarterly plans. This created insecurity for the enterprise as well as the workforce. A male Latvian employer insisted:

'The definition of precarious work should include not only employees. Employers are also often in precarious situations, especially in construction and in the building business as they are heavily dependent on unstable funding from clients, the banks and so on. Precarity also emerges at this level.'

Workers whom interviewees believed were more likely to face insecurity included the Roma, women and in particular single mothers, the elderly who could not survive on state pensions, young people without qualifications and students. German interviewees pointed to the increasing number of pensioners in Germany who were working part-time to subsidise low pensions. Agriculture and construction were the sectors most likely to be identified with high levels of insecurity.

Case study 19- The consequences of dismissal during probationary periods in Latvia

Background/context

The risk of being involved in precarious work is high, when a person starts a new job or changes employer and Latvian Labour law permits the dismissal of workers during the three months of the probation period without justified and proven reasons. No dismissal compensation is provided to a worker, if he or she is dismissed during this period. Lower salaries are typically paid during the probationary period, while the

work load is no different to that carried out by those with permanent contracts. This strategy is used more often by employers during periods of economic crisis, when the total number of workplaces shrinks. Some employers also use the strategy to pay low salaries on a long-term basis. . Furthermore, there is just one month to submit the complaint in cases of possible discrimination.

Description of the initiative

Changes in the law have been won as the result of a campaign and an initiative involving an Action plan has produced changes. A decade ago trade unions in Latvia were involved in discussions with government and other social partners regarding the legal norm of the trial period. The trade unions held a view that employers should provide a detailed reason, as to why work relationships were discontinued during the probation period and this regulation was not included in the Labour law. The current legislation makes it very difficult to promote workers' rights during the probationary period and it means that people are constantly at risk of being dismissed in just a three-day period without any financial compensation.

Outcome of the initiative

The Action plan to diminish non-registered employment (2010) , adopted on 25 March 2010 provides that employers, who are found employing irregular workers, have to pay taxes for three months for each irregularly employed worker, regardless actual length of the irregular employment. Also, employees are urged to anonymously inform the State Labour inspectorate about cases, when an employer does not provide written work contracts before the actual work relations commence.

Making insecure work more secure

Some interviewees pointed to ways of reducing work insecurity. A Bulgarian trade unionist believed that if employment was seen not exclusively through the lens of a single employer and single employee relationship but as including a guarantee of security by the state through financial coverage during periods of unemployment, then a move out of an employment relationship would not automatically imply insecurity. A guarantee of social security rights after a certain length of employment had been accumulated, regardless of whether or not with a single employer, was also suggested. A Netherlands employer spoke positively about flexicurity as a system that could provide both flexible work as demanded by the employer and security and stability as demanded by the worker.

Spreading the risk of job loss through having more than one job was also seen by some as reducing insecurity. However, it was recognised that the changing nature of some work, as where hours of work were not fixed, limited the opportunities for some workers to provide more security for themselves through taking a second job.

For one German trade unionist the way to prevent job insecurity was through the strengthening of trade union rights. Company-level agreements were also referred to in Greece, although the extent to which these were applicable in practice was unclear. For an Italian NGO interviewee measures that stabilised employment after a period of training and thereby provided a route from temporary to permanent work could reduce insecurity.

Other suggestions made to reduce job insecurity included legislating for a minimum level of earnings at no less than 60 per cent of average wages and for equality of employment conditions with the existing workforce for all new entrants to the labour market.

3.1.2 *The different elements of precarity*

Whether individuals are working on atypical contracts and/or can be considered insecure on the criteria discussed above, are thus pointers towards the broader definition of precarity. The PWSR survey provides evidence of the importance of taking such an approach. We asked our respondents to give different weights to ten discrete components of precarious employment that emerged from the literature. We first tabulate the average results across the 12 countries in Table 18, and then provide country-by-country data on the elements considered precarious, more precarious and most precarious.

Table 18. *Weights given to different elements of 'precarious' work in 12 Member States, 2011, responses in %*

	Not precarious	Precarious	More precarious	Most precarious
Work where individuals are unable to enforce their rights	1	5	20	71
Work where social insurance protection is absent	0	6	28	63
Work where health and safety is put at risk	6	9	26	56
Work that does not provide sufficient income to live decently	5	7	30	55
Work that does not allow individuals to plan for their future	4	14	40	40
Work that does not provide stability	4	14	42	35
Work which is temporary (the duration of which is uncertain)	4	19	41	32
Work without equal access to training, whether in relation to employability, job requirements or career developments	10	34	35	16
Work that is 'non-standard' or atypical	11	35	35	13
Work that is economically dependent (self-employment or freelance)	14	38	36	8

Source: PWSR Survey

Survey respondents considered that the 'most precarious' situation was one where individuals are unable to enforce their rights (71 per cent), followed by that where social insurance protection is absent (63 per cent). One Latvian NGO interviewee defined precariousness as 'work without social guarantees, where work was unstable or uncertain; where it was dependent on project funding; where it is not in the profession for which the individual is qualified; and where there is the lack of a written contract'. For a Spanish woman NGO interviewee precarious jobs were:

'All those jobs that as a consequence of their conditions do not guarantee sufficient protection for the worker as well as her/his family, such as contracts

that do not cover situations of disease, unemployment, disability, maternal leave or retirement. In addition, where they do not allow workers to fully enjoy all labour rights.'

The next 'most precarious' situations were where health and safety is put at risk (56 per cent) and where work does not provide sufficient income to live decently (55 per cent). Although the absence of being able to plan, or have stability or to be in uncertain temporary work situations were not considered to be the most precarious, when combined with the 'more precarious' responses, between seven and eight out of ten respondents did, however, see them as significantly precarious. A UK trade unionist defined precarious work as work that was 'lacking in basic employment rights, where it did not cover health and safety, where workers could be dismissed without notice, where their status was one of false self-employment, where they did not know who their employer was and where there was a lack of training'.

However, the PWSR survey reveals significant differences between countries in the perceptions of what makes work most precarious, as shown in Table 19, where the above average responses for each situation are shown shaded.

Table 19. Elements comprising the 'most precarious' work in 12 Member States, 2011, by country (%)

	BU	FR	GE	GR	IE	IT	LA	NE	PO	ES	SE	UK
Unable to enforce rights	80	37	88	74	91	60	68	59	70	89	68	65
Absence of social protection	75	75	63	70	46	61	53	41	59	89	79	42
H&S risk	60	13	79	48	64	43	43	53	53	69	75	53
Insufficient income	55	75	88	65	64	43	21	70	53	77	46	62
Inability to plan	20	50	50	57	27	73	36	12	47	35	21	27
No stability	55	63	29	48	37	46	18	24	59	31	11	31
Temporary work	15	38	25	48	0	41	32	12	35	31	46	31
Unequal access to training	15	12	50	22	18	16	14	6	0	15	11	4
Non standard	20	0	13	57	0	13	3	0	0	15	7	8
Economically dependent	0	0	17	9	0	3	14	6	6	0	14	11

Source: PWSR Survey

Notes: Shaded cells are above the row average.

Significant variations appear here between country perceptions. Thus only one third of the French respondents considered the inability to enforce rights as a key element of precariousness, compared to levels twice that high in nearly every other country. A similar gap appeared in relation to situations where health and safety is put at risk. **France** was again an outlier, compared to three quarters of German and Swedish respondents. Arguably both of these two French 'exceptions' reflect the French respondents' views that social rights and health and safety rights are so strongly embedded in French law and society that the chances of their being disregarded are

very small. Elsewhere there is perhaps greater recognition that these largely unlawful situations do actually exist.

Latvia was the outlier in terms of income levels sufficient for decent living, while its denial was absolutely central for nearly nine out of ten German respondents. This difference may reflect the more common experience of low incomes levels in Latvia, and the rejection of that experience in Germany. The Netherlands respondents were the outlier in terms of identifying precarity with an inability to plan for the future, while this was of major concern to nearly three quarters of the Italian respondents. It is worth noting, too, that while the Greek respondents' perceptions were above the 12-country average in nine of the ten areas (excluding only health and safety risks), Latvia and the Netherlands were only in an above-average situation in one area each (respectively false self-employment and insufficient income for decent living).

3.2 Elements creating precarious work

3.2.1 Qualifications and precariousness

A lack of recognised or appropriate qualifications was considered as associated with precarious work by about one third of the interviewees. They referred to the absence of qualifications and particularly of education as the reason why individuals experienced precarity. The groups described as most at risk as a result included young people without work experience, migrants with low levels of skills, older workers with very basic levels of training, women who have been out of the labour market due to domestic responsibilities and, more generally, Roma people. As one male Latvian employer noted:

'They ask for experience from potential workers, but where will those young people get experience if nobody wants to employ them without experience? That is often also a reason why young people opt to go to somewhere else in Europe and to join the labour market there, starting from the lowest tier in the labour market.'

Some examples were given of where issues of under-qualification had been addressed through additional training, particularly in relation to young workers. In Italy, an employer respondent referred to a recent reform on apprenticeships. Introduced in July 2011 it aimed to help young people enter the labour market in a stable way, as an apprenticeship contract would now be defined as an indefinite contract (see 2.3.1 above).

Social partner agreements on internships were also referred to as a way of countering precarious employment among young people in Italy. In relation to temporary workers, a social partner agreement in the Franche-Comte region of **France**, covering the period 2010-2014, guarantees training courses for temporary workers, envisaging 1,000 courses over the three year period to enable individuals to alternate between periods of temporary work and periods of training, thus safeguarding their training over three years (EIRO, June 2011).

While the lack of education and/or skills was more frequently seen as a problem, some interviewees referred to workers being too skilled for the jobs available and who, unable to secure work in their established professions, were placed in situations that generated precariousness. A Greek NGO interviewee referred to overqualified young workers as being in precarious work as did an NGO interviewee who referred to the problem of the young university graduate who could only find work that 'does not count for anything and does not produce the kind of CVs that employers want.

Thus their education is devalued'. A Latvian interviewee made the same point. Highly skilled workers whose skills were not transferable could fall into precariousness since they were not employable in standard work outside their own occupations.

Ferran's story

Ferran is a 30 year-old Spanish man living in Barcelona. Two years ago he finished a masters' degree on marketing in a reputable business academy. His parents had to make a big effort to pay the enrolment fees and the maintenance costs, nevertheless they were confident that those sacrifices would be worth it and that a good job would give their son a bright future. At the end of the training Ferran started several apprenticeships that provided only a small amount of pay without any concrete possibilities for a permanent job. At the same time his parents are no longer able to support him because they are also paying back a loan for their apartment. For this reason, Ferran has started to downgrade his cv to try and to get work in low skilled jobs like a cashier in a supermarket, while hoping for better times. Even though he had hoped to live independently and move into an apartment with his girlfriend the reality is that he has had to continue living at home with his parents.

3.2.2 Pay levels and precarious work

Low pay is generally included as a characteristic of precarious work. Precarious work is defined by Kolev (2003) as 'low paid, low tenure jobs which do not pay social security contributions and offer little paid annual leave'. Fudge (2009) also highlights a low level of wages, but as one of several characteristics of precarious work, including: a lack of access to benefits; little job control; the absence of regulatory protection, little income and employment security; less than 12 months job tenure; being in and out of work; company uncertainty; no extended medical benefits; no dental benefits; no pension plan; no disability/life insurance; not covered by a union contract; and firm size being less than 20.

The PWSR interviewees defined pay in the context of precariousness as ‘low pay’, ‘less than equal pay’, pay that was ‘very poor’, ‘exploitative’ pay, ‘poorness’ or less

Case study 35 – The UK law on tips and the national minimum wage and the on-going campaign to protect the terms and conditions of workers in the hotel and restaurant sector

Background/context

There are some 165,000 businesses in the hospitality, leisure and services sector, where tipping is common. These businesses employ some 1.3m workers. Restaurants, hotels and bars make up around 80 per cent of the sector. In the restaurant sector, where earnings had often been dependent on customer tips, employers noted that a loophole in the national minimum wage legislation would allow them to include the amount due to workers in tips in making up pay to the national minimum. The initiative which was initiated in 2008 is described in this case study, addressed these issues, and was unique, in that it brought together a trade union and a national newspaper in an effective campaign.

Description of initiative

The campaign was based on a strategy aimed at persuading the then government to introduce new legislation that would review the existing provisions, to make it unlawful to use tips to pay the minimum wage. The campaign called for all employees to get at least the minimum wage, with 100 per cent of tips added on top, as a bonus, with no hidden charges. The campaign focused strategically on a number of locations, in particular on the towns where the party annual conferences were held. It involved a range of activities, including demonstrations, newspaper coverage that called on readers to register their support, as well as stories highlighting the impact of the legislation on low-paid workers in the restaurant trade. Restaurants were approached to sign up to the campaign and their names were included in the newspaper accounts of the campaign progress.

Outcome of the initiative

The initiative had a positive outcome. In May 2009 the then government agreed that it would change the law with effect from 1 October of that year. Tips, gratuities, service charges and cover charges would no longer be included in the calculation of the minimum wage. At the same time the government agreed to the introduction of a voluntary code of practice that would give consumers clarity over where the money that they left in tips was going.

than a ‘living wage’. It was also referred to in the context of the ‘working poor’, being part of a single low-income household, with insufficient pay to meet personal or family needs, or where wages had been unilaterally reduced. Low pay was variously considered to be wages that were at or below the minimum set by legislation, wages below the average or median of permanently placed workers, wages below a specified level (such as €6 or €6.50 an hour or less than €800 a month in Germany), below those set in a collective agreement, wages that did not provide a living wage, or wages that varied without warning.

For a Latvian trade unionist the ‘very poor’ were people who had not been employed for a long time and who, without sufficient income, were ready to undertake any

work, no matter how poorly it paid. Pay removed people from the category of precariousness only 'if it secures people from poverty and ensures that they have a quality of life'. It was accepted by some respondents that pay of itself might not indicate precariousness where levels were low if it was supported by social protection measures or took place where skills and training were being provided that offered a route out of low pay.

Proposal on minimum wages in Italy

In **Italy** a proposal is currently under discussion to provide a minimum hourly rate applicable to all working relationships, including those of a training nature, as identified on the basis of agreement with the social parties and stipulated by the Ministry of Employment and Social Policy. This would guarantee a minimum level of remuneration to all workers, giving them the opportunity to procure for themselves and their families 'a free and dignified existence', as stipulated by Art.36 of the Italian Constitution.

Some interviewees considered the absence of an established minimum wage encouraged precariousness. A German employer favoured a minimum wage for his sector as the only real way to reduce precariousness in cleaning, which has an inefficient system of collective bargaining and a high degree of competition. However, the point was also made that whether a minimum wage was sufficient to remove workers from precarity was linked to their geographical location, since costs were higher in some parts of the country than in others. Others also challenged the imposition of a national minimum, as another German employer argued, that this would 'threaten the autonomy of collective bargaining'.

Some interviewees referred to situations where it was not the rate of pay that created precarity, but the variable deductions that reduced the final pay outcome. Thus where the work required mobility and workers personally incurred high travel costs, if these were not paid by the employer, their pay could fall into the category of low or poor pay. A UK trade unionist spoke of trying to negotiate over pay for travelling time for home care workers.

Pay was a factor in precarity not just concerning its level but also as to whether full wages were actually paid. Several interviewees referred to unpaid or delayed wages, to the non-payment of wages at the promised level or to the inability to enforce national minimums. These problems arose from the weakness of the worker in relation to the employer, or to the nature of the employment relationship, which rendered the contract unenforceable. The lack of a regular or predictable income was also identified as creating precarity. Finally, interviewees pointed to the impact of the economic crisis on pay: generally real pay was either stable or falling, and this was increasing the numbers of those receiving low pay.

Case Study 6: Trade union initiatives in the retail sector in France

Background/context

The initiative has been taking place in the retail sector, especially in large stores and supermarkets since 2008. It first consisted of a national strike, then in a succession of national days of action and demonstrations and also a trial action. The origin of this wave of strikes were three years of pay freeze. Additionally a majority of workers (especially the cashiers) were earning less than the SMIG (the guaranteed minimum industrial wage), an observation seemingly verified by the fines imposed by Labour Inspectorate on employed.

Description of the initiative

The key parties were the three main trade unions and their aims were to address three issues: wages, working conditions (with a focus on Sunday working), and employment. The trade unions' objective in opening negotiations was to anticipate mass job losses, due to the development of new technologies. The second issue concerned working conditions. The unions were opposed to Sunday working and had opposed the extension of Sunday shopping hours as workers already had to work some Sundays and, as low-waged workers they were seen not to be able to choose to refuse to work Sundays. The third key issue was around wages. The aim of the initiative was to prevent and end unlawful employers' practices and to oblige employers to respect labour law, salary increases, the recognition of workers' rights, to improve working and employment conditions. The unions and workers leafleted, conducted petitions, organised street demonstrations and called a series of national days of action.

Outcome of the initiative

Following protracted legal action the case ended up at the Court of Cassation which upheld the workers' claim. The retail group had to pay a penalty of €1.287m for having paid more than 400 employees the minimum hourly wage. This amounted to the heaviest penalty imposed on a supermarket chain. The company also had to pay €3,000 to each of the aggrieved employees and in addition, the group also had to pay damages to the three trade-unions (€75.000) who were the civil party in the trial against the group. The salaries of the cashiers are no longer affected by the inclusion of break times and they now are paid according to the hourly minimum wage

Several interviewees were concerned by the issue of part-time work. In some instances the work involved actually required full-time hours, and they considered that the real hourly rate of pay that resulted could be so low as to impose precarity on the workers involved. Another issue was ultra-low working hours. A French employer linked this directly to uncertain working hours. A French trade union interviewee spoke of the issue of imposed part-time work, particularly in the services sector where it was seen as a structural management policy. This policy was often also gendered, with women workers more likely to be forced into part-time work.

Resolving the problems of low pay was recognised as not being at all easy. One solution suggested was for income to be seen as an amount necessary not just to provide a worker with a decent standard of living while in work, but also to ensure that in the case of 'non-standard' workers, it was possible to put aside sufficient money to cover periods when out of work. This would enable those who were required to work under fixed-term contracts, to ensure the protection of their income levels when out of work. An Italian academic believed this could be defined as providing an income that was not less than 60 per cent of in-work earnings. He considered such a measure 'is coherent with the definition of risk of relative poverty in a community context and allows us to see who the precarious workers are and, by using longer periods of time, allows us to analyse the persistence of the precariousness of workers'.

Julien's story

Julien is 22 years old and lives in France. He continued his studies after high school but did not graduate. After working as a seller or as an undeclared worker he has been hired by a fast-food outlet, on a fixed-term and part-time contract. His fixed-term contract and the low-wage do not allow him to rent a flat and therefore he has to live with his mother. Despite his wish to live with his girlfriend and to buy a car, he can not afford to because of his financial position. He also would like to follow vocational training courses but cannot afford the fees. He is too young for the minimum income allowance (RMI). He hopes to get full-time employment and also a long-term contract but his current employer does not hire people on full-time employment. He is worried about the future and does not know how he can change his situation.

3.2.3 Social protection and precariousness

O'Connor (2010) describes precarity as the absence of the three elements that characterise the traditionally conceived standard employment relationship: job security, income security and social protection. She suggests it is the combination of these elements that makes the problem of precariousness much wider than insecure employment alone. Without both active labour market policies committed to transition security and a social protection system fully responsive to labour market failure the implication is that precarious employment will remain.

Approximately one quarter of the PWSR interviewees identified social protection as an issue relevant in assessing whether or not a worker was precarious. Trade unionists were more likely to make this link than employers. Work was considered precarious where 'it does not provide protection in cases of social risks, in particular, if work does not provide for statutory social security'.

Social insurance systems were seen as modelled on the notion of standard employment relationships and therefore did not generally adapt well to forms of non-standard relationships. This potentially disadvantaged many workers and encouraged precariousness through excluding workers or through giving only minimal levels of support.

In terms of exclusion from access to social insurance, those working in bogus self-employment were at risk, as were part-time workers. The latter were often excluded from social insurance either due to the number of hours that they worked or because of their low pay. There were also examples given of the case of the genuinely self-employed craft worker on who limitations were placed on the extent of the protection offered. A male Latvian trade unionist commented:

'In terms of social insurance, non-standard work is penalised by virtue of the fact that during her/his working life, the non-standard employee will have worked fewer working hours than the amount of insurable employment time needed to qualify for pension benefits. Because of long periods of unemployment and reduced duration of either employment or working hours, this kind of employee will have much more difficulty in meeting the requirements for insurance benefits than a full-time regular employee.'

Cuts in welfare such that it no longer represented a 'genuine safety net' were also considered to promote precarious forms of work as was operating with rules designed to deter individuals from making claims and forcing them into poorly paid work.

Other issues raised by interviewees were occasional employer failure to pay the social security contributions of workers on non-standard contracts, in contexts where inspection regimes were unlikely to detect non-payment. Some interviewees also referred to the ideology of individualism which encouraged workers not to think in terms of societal protection, but rather to assume that the responsibility lay with the

individual. While social protection was based on the principle of solidarity, that there is an obligation for society to take care of the vulnerable, individualism stressed that such obligations did not exist. This encouraged some workers to opt out of social insurance commitments where this was possible, and sometimes through mutual agreement with the employer. A Greek government interviewee argued that:

'The triumph of individualism helped in having large groups of the workforce outside the official system of social protection for many years before the crisis. For example, many people were more interested in having a better car than in having a decent health service.'

Sophisticated systems of social insurance and protection were seen as fundamental in combating precarious work. A Bulgarian trade unionist made clear his support for flexicurity:

'We support one of the elements of flexicurity. These are the modern social security systems where the idea of receiving a decent benefit from the social funds during a period of unemployment is widely developed – the idea is that when you are out of the labour market you should benefit from these social funds, playing the role as buffers in the perspective of your next entrance into the labour market, to be able to receive a decent benefit that will give you the opportunity of being secure during a period of unemployment.'

Social rights were seen both in relation to employment itself (in the form of protection during periods out of the labour market) but were also identified as needing to go beyond this, to cover rights to housing, education, transport and healthcare, if precariousness was to be eliminated. A Greek NGO interviewee pointed out, their organisation had seen an increase of 20 per cent in terms of the rate of homelessness over the last year, as a result of the economic crisis and for him to avoid social exclusion:

'Each serious and civilised state has to provide a set of working and living standards that combat unemployment and the risk of social exclusion and alienation.'

3.2.4 Discrimination and precariousness

While, as shown in Chapter Two, PWSR respondents and national experts indicated that young workers, women, migrant and Third Country originating workers, were more likely to be found in precarity than other groups, only one in ten interviewees perceived discrimination as a characteristic of precariousness. It is noticeable that female respondents were much more likely to raise the issue of discrimination than were men, with one in five of the women interviewed so doing compared to one in 20 of the men interviewed. Thus one woman Greek trade unionist considered:

'Precarious employment encourages discrimination, especially the violation of the principle of equal pay between men and women and the general principle of equal pay for work of equal value.'

Among the employers, trade unionists, academic and legal experts, government representatives and NGO spokespeople interviewed, it was the academic and legal experts who focused most on discrimination. One French academic considered the link between part-time work, gender and discrimination very strong. A Spanish NGO interviewee pointed to the much higher female unemployment rates in Spain arguing women were much more affected by precarity since they were more likely to have

part-time and temporary jobs where they earned less than men. She believed these gender differences were the direct consequence of a lack of gender equality and of the difficulties establishing a proper work-life balance presented to women workers.

A government respondent from Sweden also referred to gender-based discrimination, reporting that women who have exercised rights to parental leave have greater difficulty in getting promoted or obtaining pay increases. Equally, Swedish data show women of child-bearing age or having recently had children have more difficulty in obtaining permanent jobs.

Broadening the focus to touch on social class, one German legal expert pointed to the link between low socio-economic status and an increased risk of discrimination. A Spanish academic added that a full definition of precarious work might revolve around notions of inequality, thereby implying discriminatory treatment of those in precarity. He posited that:

‘The most important challenge [to precarious work] would be the question of fundamental rights and the principles of equality and non-discrimination. Therefore the debate should be focused around the question of how to differentiate between employment relations without discriminating.’

3.3 Areas of shortfall associated with precarious work

3.3.1 Choice and precarity

The absence of choice is a key characteristic of precariousness. In the interviews conducted a small but equal number of employers and trade unions raised the issue. They considered that if an individual was in a position to make a choice about the form of work that they would undertake, they should not be regarded as precarious. Precarity occurred when there was an absence of choice. This was perceived as being endemic in the UK food processing industry in the UK where the only entry points were through agency employment whose workers ‘had no choices, particularly in those localities where other work is not available’.

A French trade unionist argued that the fact an individual is working in a non-standard job does not of itself make her or him precarious, provided a free choice has been made to accept the work, and this might be done in return for training or future career possibilities. A UK NGO interviewee also focused on choice, arguing that there almost always was a choice to be made – for example bogus self-employed workers in construction could choose not to work under that employment relationship. Choice indicated an ability to select, for example, between higher pay or job security and many workers were believed to choose to work in precarious situations.

Lack of choice was perceived as existing particularly for part-time contracts, where no other options were offered. A German trade unionist reported examples of women returning from maternity leave being denied full-time work, while women who desired part-time employment were being refused it. An absence of choice also took place when someone was offered employment but the work to be done was changed without warning or agreement.

Sabine’s story

Sabine is 25 and a single mother. She has two children, one in primary school and one in nursery care. Although she is a trained foreign language secretary, fluent in English and French (German is her mother tongue), she is forced to work part-time at a local law firms because of her family commitments. With the child support she gets from her former husband as well as the undeclared work she undertakes as a language teacher in the evenings her current financial situation is secure. However, Sabine is concerned about how current arrangement will affect her pension contributions. For the foreseeable future the inability to increase her hours could eventually mean she is faced with the prospect of poverty when she retires.

3.3.2 *Representation, voice and precarious work*

The absence of rights to representation and of collective bargaining and the presence of difficulties in accessing legal rights are all other characteristics of precarious work situations. Around one sixth of the PWSR interviewees raised them, although the trade unionists and academics were more likely to make this connection than the other interviewees. Representation concerns were raised in four ways:

1. Lack of representation or employee voice;
2. Weak trade unions, low membership or lack of trade union involvement;
3. Legal rules on representation and thresholds; and
4. Absence of collective bargaining.

The absence of representation or employee voice was most frequently commented upon. This was particularly the case in interviews in Bulgaria, Greece, Ireland, Latvia, Poland, Sweden and the UK. The issues were discussed in terms of workers not having the ability to raise their concerns due to a lack of representation and/or of being excluded from processes of collective bargaining. In some situations where unions did not have a legal right to bargain collectively, as in the UK and in Ireland, there was no effective right to be a member of a trade union. In conditions of precarity it was stated that workers were often afraid to express criticism at work, and were fearful of joining unions and were less likely to be unionised. One Greek interviewee noted that far from having a voice, such workers ‘remain invisible’.

Exclusion was perceived as a two-sided coin. Precarious workers were both less likely to join unions and the unions were less likely to invite them to do so. A minority of interviewees criticised the trade unions as having previously paid little attention to the issue of precarious work, and of opposing flexible work and therefore of not being willing to organise workers involved in non-standard work. These policies, it was argued, contributed to low levels of trade union membership. It was also noted that sometimes these workers were difficult to organise. A Swedish interviewee also raised the issue of the cost of union membership as being prohibitive for workers in non-standard employment.

The special collective agreement in Greece

Company-level collective agreements may now be signed in every company - regardless of size - either with a national trade union or with a local union of employees representing at least 3/5 of the company staff. Company collective agreement clauses may deviate to the detriment to the employees from the relevant clauses of sector collective agreements, provided that they keep in line with national general collective agreements, which are the safety net for all employees throughout Greece.

Thus individual employers affected by economic recession may adjust salaries and other working conditions to the specific needs of their company and in practice are ‘released’ from the sector collective agreements’ binding terms. In Greece 85% of employees are covered by sector collective agreements.

A Spanish NGO interviewee believed unions were slowly losing their capacity to make innovative and attractive proposals on how to eradicate labour precarity. She

argued that as their capacity to represent labour-based interests decreased, so their role would be assumed by social movements and social NGOs that would take steps towards socio-political activism.

Although legal rights to representation existed in several countries, interviewees commented that they were not necessarily well-established in relation to non-standard work. Improving legal rights to represent workers and strengthening the rights and obligations on workers to join unions were discussed as ways of improving representation and employee voice. Thresholds that excluded trade union representation or employee voice mechanisms in the smaller enterprises that employ the most precarious workers were considered as inhibiting voice and representation for many 'non-standard' workers.

3.3.3 Access to training

Around half of the academic interviewees perceived the absence of training as a feature of precarious work, compared to a small minority of employers or trade unionists. The lack of training meant that workers had no opportunity to develop, were trapped in jobs with no career paths and therefore did not have the tools that would make them employable. As a French academic expert noted, 'training is also a decisive aspect in avoiding precarious work'. Interviewees stressed that training should also encompass formal educational qualifications, initial training in the workplace and continuous training, provided either by the employer or the state or a combination of both. Training was discussed within a rights framework, with several specifically referencing a 'right' to training.

However, it was recognised that the form of the employment relationship affected individuals' abilities to access all employment rights, including those to training. In the construction sector the impact of bogus self-employment meant that the high costs of professional training fell on the worker. As a result, according to a Netherlands trade unionist, 'self-employed construction workers take less vocational training, lowering the average quality of the sector'.

Interviewees suggested that a lack of investment in training was symptomatic of an acceptance of precarity. There were references made to employers being reluctant to train, and a Bulgarian NGO interviewee noted that as a result of the economic crisis some employers had cut training budgets. Both a Latvian government interviewee and a Netherlands trade unionist reported that employers who employed workers informally would rarely offer training to those identified as in precarious work.

Respondents identified migrants, the disabled and older people as more likely to be excluded from training. These were also identified as people trapped in precarious work because they were either less well-trained or did not have training relevant to the jobs available.

Particular stress was placed on the position of young people, including those who had experienced a period of formal post-18 education but who nevertheless had been left without the skills necessary to obtain decent jobs. This was described by one French trade unionist as the outcome of a 'skills mismatch where initial formation was not adapted to the supply of jobs, so that a young worker with a vocational training certificate could actually be less exposed to precariousness than a young person with a degree in art history'. A complex strategy to improve the education system and its linkage to the labour market, with activities targeted on youth entering the labour

market was advocated by a Latvian NGO interviewee. Access to training was, however, an area where respondents could point to initiatives taken that had improved the training opportunities of those who might otherwise be excluded.

Case study 18 - Training for new employees: the Fon.Coop initiative in Italy

Background/context

Fon.Coop is the national fund for vocational training in cooperative enterprises established in 2001 by the three main Italian associations of cooperatives and the principal Italian trade unions. About 13.500 cooperative enterprises, employing a total of more than 500.000 workers are Fon.Coop associates. The initiative described here is thus closely related to the regular activities of the fund but at the same time the economic crisis has caused a rise in both unemployment, especially youth unemployment, and precarious work, and this has had a deep impact on cooperative enterprises, above all in construction and services. In both sectors the cutting of contracts and sub-contracts has caused a reduction of working hours and stable work.

Description of the initiative

The Fon.Coop project is aimed at stabilising precarious workers employed in cooperative enterprises through vocational training as a way of reducing precarious work, on the basis that well trained workers are more valuable and are not interchangeable. A public competition open to all the cooperative enterprises associated to Fon.Coop allows them to obtain funding for stabilising precarious workers - such as co.co.co, project workers, traineeships, apprenticeships - through vocational training courses. At the end of the training period, precarious workers must obtain at least a subordinate fixed-term contract of 24 months or possibly even open-ended ones. The initiative was launched thanks to funding from Fon.Coop to the tune of €1.500.000. The provision of long fixed-term contracts also allows cooperatives to benefit from the labour flexibility necessary to manage market-related risks. In general terms, reducing precariousness gives workers the chance to improve their working conditions while cooperative enterprises benefit from the higher qualifications of their workers, an increasingly necessary factor of success. The fund itself benefits from the development of both cooperative enterprises and workers' skills.

Outcome of the initiative

All of those involved, after the period of training established by the project, obtain a subordinate contract of at least a 24 months'. In this way they raise the level of protection they have since they become entitled to benefits such as unemployment insurance, fully paid maternity leave, paid sick leave. This is particularly valuable for partner-workers. There is provision for the initiative to be renewed if a high number of cooperatives ask for funding.

Some felt governments could do more through encouraging the social partners to include provision for training as part of collective agreements. A Netherlands trade unionist argued for government intervention to prohibit the extension of any collective agreements that did not provide for training. The social partners were also identified as key parties in closing the skills mismatch. A Netherlands employer argued that 'the reduction or elimination of precarious work should not be through

legislation but through incentives to improve skills, negotiated between the social partners’.

Training schemes addressing precarious workers in France and in Italy

- The system of validation for workers in low-skilled jobs in **France** (the V.A.E) offers opportunities for workers to have their skills recognised with 400 hours of training for job seekers. In the Ile de France region, Fongecif each year organises 1,200 individual professional re-orientation projects and, even though they only cover a small number of the workers who could potentially benefit from them, they are an important route to training for those who can take the courses.
- The law setting out requirements on temporary work agencies in **Italy** requires that they make a contribution of 4 per cent of wage costs for training. This contribution supplies a fund run by a bi-lateral body Formatemp to finance training projects managed by the agencies in favour of temporary workers. This is considered as a typical flexicurity measure. Furthermore the new collective agreement on agency work has a focus on the development of skills by ensuring that agency workers have access to free training through paid leave to help increase their participation in training programmes.

However, a Spanish trade unionist was more sceptical. He argued that the provision of training should not be seen as a way of placing workers into precarious work – for example, by providing lower wages or by extending periods regarded as ‘training’ during which workers were actually undertaking work equal to that of older workers but not being paid equally.

3.3.4 Health and safety and precarious work

The relationship between precariousness and poor health is addressed by Benach and Muntaner (2007), who suggest that:

‘Temporary workers are often exposed to strenuous and tiring positions, intense noise and repetitive movements, have less freedom to choose when to take personal leave and are seldom represented in health and safety committees. There is also evidence that non-permanent workers have less information about their work environment, enjoy less job autonomy and control over schedules than workers on permanent contracts, are likely to be occupied in less skilled jobs and experience worse health outcomes compared with permanent workers.’

How this relationship could be quantified is considered by Vives et al. (2010). They propose that the health outcomes of precarious work could be measured by the Employment Precariousness Scale (EPRES), a multidimensional questionnaire specifically devised for epidemiological studies among waged and salaried workers, and describe it as ‘a promising tool for the measurement of employment precariousness in public health research’.

Using existing data Kawachi (2008) found that even after taking account of the characteristics that might influence health outcome, non-standard work was likely to be damaging to workers’ health. Kawachi focused on forms of employment relationship, defining non-standard work as part-time, temporary agency-based work, fixed term contingent work and independent contracting. Guest and Isaksson (2010), however, researching among temporary workers found the opposite in relation to

worker psychological well-being: they find that temporary workers report higher 'well-being' than permanent workers. Clarke et al., (2007) used the concept of 'employment strain' to describe the characteristics of different employment relationships and how they impacted on health outcomes. Although they found limited evidence of differential health effects between workers in precarious jobs by age, they did find conditions under which precarious employment did appear to increase stress and tension and concluded that a combination of an individual's desire for more permanent employment, the expectation that it will be found and the support that they receive from various sources are vital in understanding the health effects of precarious work. These studies suggest that there is a complex relationship between forms of work and health and that the expectations that individuals have from work and the realities that they experience that help determine their health impacts.

Precarious work has also been associated with poor mental health, not only through employment insecurity but also through the negative effects on the ability to do one's job and take pride in one's work, as well as through weakening the interpersonal relationships on which successful work depends (Siefert et al., 2007). Hesmondhalgh (2009) looked specifically at young television researchers working on talent shows and noted the poor health consequences of precarious work in that industry. He analysed how the power to provide exposure or not to individuals is 'registered in the form of stress, anxiety and sometimes poor working relations among project teams of young television researchers (a matter of working conditions and experiences)'. He found that 'additional pressures are borne by these workers because of the requirements to undertake emotional labour, involving the handling of strong emotions on the part of talent show contributors, and to maintain good working relations in short-term project work, requirements generated by the need to ensure future employment'.

Porthé et al. (2009) in their research on undocumented workers in Spain found while their informants reported they had no serious health problems they did, nevertheless, describe physical and mental problems associated with their employment conditions and legal situation which, in the view of the researchers, were likely to lead to a worsening health situation for the workers concerned. Kinnunen et al. (2011) in a study of university teachers and researchers at two Finnish universities suggest that it is perceived employability that promotes more favourable health outcomes. In their study of those with permanent, temporary and involuntary temporary contracts it was the latter who exhibited the strongest negative in terms of job exhaustion and psychological symptoms. The 2010 resolution of the European Forum on Precarious Women Workers also pointed to studies showing that precarious employment where minimum health and safety standards are ignored carries higher injury rates and a greater risk of disease and exposure to hazards. It called on the European Commission and the Member States to enhance their monitoring of minimum health and safety requirements in the workplace, paying particular attention to the specific risks of female workers.

Health effects can also be observed in other ways. Pham et al. (2011) in a study of medication errors over the period 2000 and 2005 found that temporary staff were more likely than permanent staff to cause errors that affected the patient and which resulted in either temporary harm or in some cases were life threatening. They concluded that, in relation to emergency departments, medication errors associated with temporary staff were more harmful than those associated with permanent staff.

The PWSR survey reported perceptions that greater health and safety risks were one of the most significant characteristics of precarious work (see Chapter 2) and PWSR interviewees in each of the 12 Member States confirmed this view. A Spanish NGO interviewee defined precarious work as including ‘jobs lacking in or with insufficient safety and hygienic measures’.

Employers were most likely to identify the absence of health and safety protection with precarious work, with more than one in three specifically raising this as an issue. A Latvian employer directly linked precarious work with work safety ‘since connotations in the Latvian language of the term “precarious” are closest to notions of “insecure”, “unstable” or “risky”’. But more generally precarity was considered to exist where the working environment did not correspond to the minimal norms for health and safety, where the work environment was unsafe, where conditions of work were dangerous, where individuals were exposed to risks, where safety and hygiene measures were insufficient, where protective clothing was not supplied, where some workers were excluded from the general protection. Health was generally defined to encompass both physical and psychological risks and a number of respondents made specific reference to stress and bullying as components of a poor health and safety environment. Only one in ten of the trade union interviewees, however, specifically referred to health and safety. One who did, from Latvia, argued that ‘precarious work often could not be separated from work safety issues’. An illustration of this concerned the reporting of accidents by precarious workers. A woman Latvian employer commented:

Case study 34 - Supporting the health and safety of precarious migrant workers – an initiative of the UK Health and Safety Executive

Background/context

In 2004/05 health and safety inspectors working for the government Health and Safety Executive (HSE) began noting large numbers of recent migrant workers in the workplaces they were visiting, either on regular inspections or following incidents at work, and they began to voice concern as to whether these workers might be facing additional health and safety risks. Subsequently, it implemented a range of initiatives to address health and safety issues in relation to migrant workers including an innovative support network of specialists, themselves recruited from migrant worker communities, to assist in the protection of migrant workers. The latter initiative is the subject matter of this case study.

Description of initiative

To support its work in protecting health and safety at work, HSE has employed a team of regional outreach workers who can all speak at least one language that is known to be widely used by the migrant worker population in their region. Their role is to engage with migrant workers. The emphasis has been on the outreach workers engaging directly with migrant workers to advise them of their health and safety rights and responsibilities, and to direct their queries to the right source of advice. Five specialist outreach officers are currently employed, each assigned to one geographical area. Outreach workers work in the areas of operational support, promotional activities and stakeholder engagement, spending a lot of their time engaging with local and regional stakeholders.

The HSE now also publishes guides in 20 languages and its website gives a range of

advice aimed at ensuring that information about the HSE and how it can help workers and employers who want to work safely is easily available. The HSE also supports a helpline which migrant workers can contact for advice and support.

Outcome of initiative

The outreach worker programme is overall regarded as having worked well, providing HSE inspectors with valuable additional cultural and linguistic skills that has ensured that the agency communicates better with migrant workers.

In relation to the helpline, HSE statistics show that on average 25 to 30 migrant workers use it each month to get advice and support. The available data suggests that the majority of those making contact come from Poland and Slovakia, although other national groups utilise it.

'In some cases workers fear to report smaller accidents at work. For example, if someone falls down and hurts her/himself. Sometimes workers tend to hide these small accidents and delay going to the doctor. Sometimes there are cases where employers are accused of not reporting work accidents, but how can we know about that, if a worker does not report to us (to the employers?). It is not the employer at fault.'

Sectors of employment identified with insufficient health and safety protection included domestic care work, the cleaning sector, those working in kitchens, retail and supermarket staff (particularly in relation to psychological stress) and construction. It was considered to particularly affect those in irregular or undeclared work, those working without formal written contracts.

3.4 The business context

The employers interviewed generally accepted that precariousness does exist although mostly they had a narrow definition of the components of precariousness. Flexible forms of work had been implemented to minimise payroll costs and some enterprises took advantage of precarious work to remain competitive. A Netherlands employer reported that it was a new policy of his organization to hire only self-employed workers or workers through temporary work agencies based in another country stating 'The reason the company does this is because they can get rid of bad employees more easily without any lawsuits'. Similarly a UK employer had adopted a model that was almost entirely reliant on the buying-in of specific services as required, with only a very skeleton directly employed workforce.

While employers did not subscribe to the view there was a business rationale for precarious work, when it occurred they considered four main drivers were promoting it:

1. **Legislation** that is too complex or that actually promotes precariousness;
2. **Social and taxation costs** that are too high or welfare systems that were too inflexible;
3. **External pressures** in terms of global competition, the trend towards outsourcing and the economic crisis; and
4. **Structural factors** in certain business models that rely on precarious work.

Many argued that it was legislation itself that encouraged precarious work, in particular in relation to the growth of informal work. Where legal requirements were too onerous they considered it almost inevitable that some employers would operate in the informal sector as a means of avoiding the legislation. One Netherlands employer noted it was the: ‘high obligations attached to permanent contracts’ that encouraged employers to seek alternative ways of hiring labour. Labour market reforms were sometimes seen as both strengthening labour market rigidities and labour law violations in what one male Greek employer described as ‘a lose-lose situation for both workers and employers and the state itself’. A German employer also indicated that the labour market suffered by being too heavily regulated, arguing that there was a need to deregulate so as to provide more jobs, in particular to encourage people back into employment

Legislation that was ineffectively supervised was also viewed as promoting precarity, as the knowledge that there was no effective sanction encouraged employers to offer precarious contracts. Insufficient regulation of informal work was seen, not just as encouraging poor practices, but also as ‘undermining firms who abided by the law according to an Irish male employer. A male Bulgarian employer noted:

‘In our view the main problem in Bulgaria is not the lack of enough legal regulation, but the lack of enough (or any) control over observance of the legislation, as well as a lack of administrative instruments/capacity for effective imposing of sanctions in cases of violation.’

However, just as the absence of sanctions was seen as boosting precarious work, sanctions which were considered too onerous were also said to encourage informal work and even corruption, as another Bulgarian male employer noted:

‘Sanctions for the violations of the labour legislation in Bulgaria are extremely high. So when the sanction is 30 000 leva why not give three thousand to the inspector in order not to put a sanction. In part these sanctions are similar to the turnover of the small companies.’

Their responses suggest that what might be required is a better balance between legislation and effective implementation with a level of sanction that would be sufficient to deter while not being so high as to encourage avoidance mechanisms.

Joseph’s story

Joseph is a 21 year old shop assistant. After having great difficulty finding an apprenticeship, the market for apprenticeships having contracted in recent years, he was finally hired by a High Street supermarket. Although he originally applied for various apprenticeships at banks he soon realized that his lack of a grammar school education meant that he was restricted in the positions he could apply for. Joseph finds himself in a job with very little esteem in Germany, this is reflected in the poor pay and working conditions that prevail. In addition to having to work unsociable hours he earns €9 an hour – this means that he has a take home a salary of around just over €1,000 a month. For this reason he is resigned to having to live with his parents for many years to come although he would like to set up home with his partner and eventually have family. Furthermore, the recent merger with another supermarket chain threatens to signal the beginning of a wave of redundancies as the new company attempts to solidify its position on the market. Joseph, however, hopes that his low salary will save him from the prospect of unemployment.

National experts from Bulgaria, Greece and Spain and many employer interviewees also linked the presence of informal work to high taxation regimes. The argument made was that reducing taxes and labour costs would encourage employers and

workers to declare their employment relationships and bring work into the formal economy as illustrated by this Italian male employer:

'If clear government action to cut labour costs takes place enterprises will stabilise more temporary workers on open-ended contracts, because part of precarious work is a direct consequence of labour costs that are too high.'

A Latvian employer pointed to the positive effects of earlier tax reductions:

'Prior to the crisis many restaurant owners and employers legalised their work and started paying full taxes. They found it much easier and prestigious to abandon so called double accountancy and to live in fear of the inspections from the state revenue service. Employers are not proud of the fact that they hide their income but the general level of taxes payable during the crisis is seen as overwhelming. Therefore changes in tax rates have contributed to higher levels of precarious employment.' (Male employer, Latvia)

Other interviewees pointed to the economic crisis as both increasing more precarious forms of employment relationships within the public sector, and pressurising private sector firms to cut corners in order to drive down costs to win contracts.

It was, however, acknowledged that precariousness could sometimes emerge from structural factors that the enterprise could exercise choice over. Temporary work, for example, could be a means of fulfilling particular production demands but could turn into precarious work if it entirely replaces permanent employment relationships. Other structural factors that might promote precarious work included the presence of few or no training opportunities for deskilled or unskilled workers.

Certain businesses were also identified as inherently precarious. These included those heavily reliant on the general public, and which would be affected by fluctuations in consumer spending, and those dependent on other external factors such as access to finance, the timeliness of client payments, or even the weather.

3.5 Modelling precarious work, flexibility and flexicurity

3.5.1 Five processes leading to precarity

The evidence above suggests that precarious work can be seen not just as a particular form or type of employment but also as the 'cumulative effect' of a process involving different experiences. The UK legal experts describe precarious work as both 'complex and contextual', asserting that a range of different factors come into play to determine whether or not work is precarious, including immigration status, employment status, temporal uncertainty, inadequacy of income and lack of voice over terms and conditions. For them it is the manifestation and interplay of these contexts that indicate precariousness. Thus while they argue that many of these factors could be ascribed to a financial trader on the London Stock Exchange, it would be wrong to identify such a worker as precarious. The Greek industrial relations expert described precariousness as an 'on-going process'.

There appear to be five broad processes at work leading to individuals becoming embedded in precariousness.

Model 1: Accumulation

The cumulative elements of precarity mount up. There is no ‘tipping point’ between the precarious and the not precarious; it is the ‘combination of the various dimensions that is important’ as the Netherlands industrial relations expert states. Thus a professional worker does not become precarious simply because her/his contract is for a fixed-term since otherwise the conditions of non-precarious work are applied. By contrast a low-skilled woman worker on a part-time contract (where she actually desires full-time work) and where the wage rate is low, might be classified as in precarious work, even though her contract is for an indeterminate length of time. A woman worker might not be thought as in precarious work, but her maternity absence and requirements for parental leave could encourage the employer to see her as a more problematic worker and therefore put her at higher risk of precariousness.

Model 2: The sticky glue

Precariousness catches because of its ‘dynamic dimension’ as the French industrial relations expert puts it. The work does not necessarily start off as precarious but becomes so when it traps workers in a cycle of occasional and low quality jobs. This can occur when temporary labour contracts are continuously repeated, creating both work and wage instability. From this perspective workers on low wages with no route into better paid work, get stuck in a pattern of poverty that not only shapes their working lives but also their lives in retirement.

Model 3: At entry

Work is precarious from day one. This occurs because of the nature of the contract or of an imbalance of power or because the risks of precarious work are higher at the point of starting work or changing jobs. This particularly affects young workers and migrants (especially undocumented). This generally reflects employment law regimes where the right to protection against unjust dismissal does not ‘kick in’ at commencement of work, and rates of pay for new entrants are lower.

Model 4: Crisis generated

The economic crisis since 2007 has itself contributed to the creation of precariousness and where government responses have led to modifications to employment and social rights this has exacerbated the situation. The crisis has forced employers to think more in the short-term and in some Member States has led to a much larger number of contracts being offered on a temporary basis. Economic instability also creates the conditions where workers generally considered as not precarious (for example, public sector workers) have become precarious.

Model 5: Indirect insecurity

The fear that workers in non-precarious work have, that they will be pushed into precarity, for example, by losing their permanent jobs, creates an ‘imagined insecurity’ as described by the German industrial relations expert. Workers who are fearful of their futures are susceptible to concession bargaining resulting in the withdrawal of previously won concessions whether they are in the form of wages, conditions or representation rights and employee voice.

3.5.2 Flexibility, flexicurity and precarious work

While precarious work is often associated with flexibility, flexicurity has been promoted as capable of providing the degree of flexibility required by employers with the necessary security desired by workers. The 2007 communication *Towards*

Common Principles of Flexicurity: More and better jobs through flexibility and security (COM (2007) 359 final) established the principle of flexicurity as an integrated approach to reduce labour market segregation. Flexicurity also featured prominently in the Commission's *European Economic Recovery Plan* (2008) and its follow up communication *Driving Economic Recovery* (2009). These recognise flexicurity models will not be uniform and that different countries with different levels of social and welfare support will adopt their own flexicurity strategies.

Flexicurity is generally considered to include three elements:

1. Flexibility in the labour market: few constraints and low costs for companies who need to free themselves of or recruit workers; high mobility of workers in entry and exit from employment; considerable flexibility in daily or weekly work hours.
2. A robust and protective social security system: generous and long-term unemployment benefits that can be accessed by all those who are looking for work; subsidies for all those who are deprived of more generous means and without expiry dates.
3. An effective and efficient system of active labour and training policies: widespread and efficient public services for employment; a wide range of measures for retraining and re-integration back into the labour market of those who have lost their jobs; wide participation of continuous vocational training.

The assumption underlying the model is that greater flexibility leads to higher productivity which in turn sustains higher taxation that is capable of funding the support systems necessary to keep the flexicurity cycle functioning.

Georgs' story

Georgs is 28, lives in Dublin in Ireland, and works for an Irish University as a lecturer. He is from Austria, and has been in Ireland since 2011. Although Georgs enjoys his job, is well paid, and likes living in Ireland, he is unhappy with the length of his current work contract. Georgs is employed on a contract of one year, and it is unclear whether his contract will be extended when it comes to an end. Georgs would like to settle in Ireland permanently and to buy a house in the country, but he finds himself unable to do so due to uncertainty regarding his position. He has looked for other jobs in Ireland, but due to the economic crisis he is unable to find another position. He also suffers from work-related stress due to worries surrounding the security of his job.

Research, however, has not as yet come to clear conclusions. After conducting secondary data analysis on the Fourth European Survey of Working Conditions (2005), Tangian (2008) concluded that employment flexibility has a strong negative association with employability. Comparing Italy with Denmark one study found that the resources dedicated to sustaining the income of the unemployed and aiding them in finding new employment were far more generous in the latter compared to the former. Similarly there was more assistance at reintegrating the unemployed into the labour market and more vocational training courses that favour the transition from one job to another in Denmark than in Italy and (EC Employment Committee, 2009). The virtuous flexicurity cycle is challenged where state support systems are not sufficiently developed. The risks are that a failed flexicurity model might have consequences that fall entirely on the worker. Burrioni and Keune (2011) argue that the concept of flexicurity should either be abandoned or substantially improved. In those countries with existing stringent job protection but lower unemployment benefit protections, however, Gianetti and Madia (2012)²⁷ suggest that flexicurity pathways

²⁷ Gianetti, C. and Madia, M. (2012) *Flexicurity pathways: an experimental analysis of the single contract*, Social Science Research Network, Working Paper Series.

may offer a way of reducing unemployment through giving workers greater access to the labour market and improving their performance in a context where the situations of both workers and firms are improved through employment contracts that articulate an appropriate balance between flexibility and security.

Those PWSR interviewees who referred to flexicurity did so to point out that it could not be promoted today because of the inability of the political, economic and social systems to deliver both flexibility and security. Where interviewees did consider the concept they considered that the 'security' element of flexicurity should be recognised as probably no longer being contained within a single career-length employment relationship. If it were ever to function effectively flexicurity would have to involve measures that not only protected workers between periods of employment, but which also carried protection from one employment relationship to the next.

Case study 24: Promoting flexible work arrangements**Background/context**

The 1999 Law on Flexibility and Security (FlexLaw) was aimed at catering simultaneously to the interests of employers for more labour market flexibility and to the interests of workers for continued, security. Dutch flexicurity promotes the use of atypical, flexible types of employment, in particular fixed-term contracts and temporary agency work. It extends the possibilities of employing workers on successive fixed-term contracts to three years or a three year period. It also simplified dismissal procedures somewhat. At the same time it provides that such flexible types of employment have similar rights concerning working conditions and social security as standard employment.

Description of the initiative

The FlexLaw was aimed at reconciling the interests of employers and workers and of encouraging social partner participation. For all three parties involved the objective was to allow for more flexible employment but in a controlled way and including improvements in the social rights of flexible workers. Hence, flexible employment was not expected to be precarious: contractual insecurity would to some extent be compensated for by better access to unemployment and pension benefits. Also, it was expected that if the law did not fit the expectations of unions or employers, they would redress this through collective agreements. Trade unions felt strong enough to control flexibilisation, especially considering the high coverage rate (around 80 per cent) of collective agreements. The space provided by the law to deviate through collective agreements has been used amply

Outcome of the initiative

During the period that the law has been in force that there has been a steady increase in flexible employment in the Netherlands. Concurrently the likelihood of transitions from fixed-term to open ended contracts declined in the 2000s, reducing the possibilities for flexworkers to achieve stronger contractual security. Also, there is evidence that flexwork in practice has been of a lower quality than open-ended employment. Consequently there has been an increase in precarious employment in the 2000s. A recent study has found that trade union weakness at sectoral level resulted in a lower level of protection, with probationary periods, for example, increasing in length.

4. Policy measures taken by Member States to address precarious employment relationships

This Chapter considers national legislation, regulation or administrative provisions that deal with the specific rights for workers identified as precarious. It reports on innovative measures to facilitate the transformation of employment relationships; and on policies aimed at equalising social rights.

4.1 National legislation

In none of the 12 countries in the study is there a legal definition of precarious work. Terms such as ‘atypical’ or ‘vulnerable’ sometimes appear, as does ‘employees in a disadvantaged position’ but ‘precarious work’ does not. Just as the term is not defined in legislation, it was also not acknowledged as sociological definition in at least some of the study countries, including Poland, Bulgaria, Germany and the UK. The absence of definitions means that the term is often used subjectively to describe the particular experiences or situation of one or more individual workers. Table 20 summarises the comments of the PWSR experts:

Table 20: Precarious work defined in law and in practice

Country	Commentary on definitions of precarious work
Bulgaria	No definition either in law or practice. The term and the concept are not known as such. The term ‘atypical’ is used in the legal literature, as are the concepts ‘employees in a disadvantaged position’ or ‘vulnerable’ employees.
France	No precise or common definition; in practice it is seen as any form of work which is not based on a full-time, open-ended contract
Greece	No national definition either in law or in collective agreements. It does not constitute a legal concept. Academics refer to precarious workers as ‘non-standard’ workers. Prior to the economic crisis the public debates on the so-called ‘precarious generation’ acknowledged a significant group of young workers trapped into low-paid, insecure jobs. Under the impact of the crisis the social meaning of precariousness has expanded to include those over the age of 50 and in particular those close to retirement, public sector employees and women aged 35 to 50.
Germany	No statutory definition or general agreement concerning the definition in political or academic debates. There is agreement that the atypical employment relationship is distinct from the typical employment relationship. Since the ‘atypical’ term has been used to describe the development of non-standardised employment and more recently the notion of precarious work is being more widely used. When used it describes the growing risks involved in employment, whether associated with low pay or constant psychological insecurity.
Ireland	No legislation or definition covers precarity. It tends to be associated with atypical work, although many academics have adopted broader definitions. The Joint Labour Committee (JLC) / Employment Regulation Order (ERO) system of protection for workers in vulnerable sectors is now being reviewed as a result of representations from employers). With the termination of national level Social Partnership, measures agreed between social partners to deal with certain forms of precarity have not been enacted.
Italy	No legal definition. The only legal definitions are those of ‘employee’ and ‘autonomous worker’. However, the term is quite commonly used in the courtroom language, to mean the lack of stability. There is a juridical recognition of a scale of atypical work contract associated with a range of more or less types of precariousness.

Latvia	No legal definition. In practice ‘precarious work’ and ‘irregular employment’ are used almost interchangeably, although ‘precarious’ is seen as a more sophisticated, more ‘European’ term and is less common. The Council of the Creative Unions of Latvia recently organised some discussions on precarity, unstable income and social protection.
The Netherlands	No legal definition although definitions exist of workers whose physical, psychological or mental disability allows them to enter the special programme for ‘protected labour’.
Poland	No legal or jurisprudential definition. Academics often use the term but often refer to a slightly different set of circumstances. The term commonly used is ‘atypical’ work. Another term used is ‘specific forms of employment’ that are not considered precarious and refer to employment by appointment, election, nomination or co-operative employment contracts. Forms of work may become precarious where there is no other source of income and where the quality of employment affects the ability of workers to plan their lives
Spain	No legal or jurisprudential definition. A few court decisions mention precarious work, mainly discrimination cases in relation to temporary and part-time work. The concept tends to be used indiscriminately as a synonym of temporary work, part-time work, or for contracts involving disadvantageous work conditions or contracts with a minimal wage.
Sweden	There are no legal definitions of precarious work, nor any generally accepted one. Discussions of fixed-term contracts come closest to defining precarity. Some discrimination law points to groups who are most exposed to precariousness: besides legal protections against discrimination on the grounds of sex, age, ethnicity, religion, political opinion or sexual preferences, it is also forbidden to discriminate against people on fixed-term contracts or people working shorter working hours. ‘Precariousness’ appears to increase if an individual faces discrimination on any of those grounds.
UK	No legal definition. The term is relatively new to the British policy debate and legal experts and policy makers have instead explored other, perhaps similar but not identical concepts, such as flexible, atypical and vulnerable work/workers. A definition of a vulnerable worker was contained in a government consultation document, issued in 2006 ²⁸ , but this did not lead to its adoption as a legal definition: <i>‘Someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability but that is only significant if an employer exploits that vulnerability’.</i>

Source: Reports from the 24 national experts to the study

*Covers workers who are severely and structurally physically, psychologically or mentally disabled

The absence of legal definitions makes it problematic to identify national laws that address precarious work. Nonetheless, a number of measures have been identified and are listed below.

²⁸ Department of Trade and Industry (now the Department of Business, Innovation and Skills (2006) Success at work, at p.25.

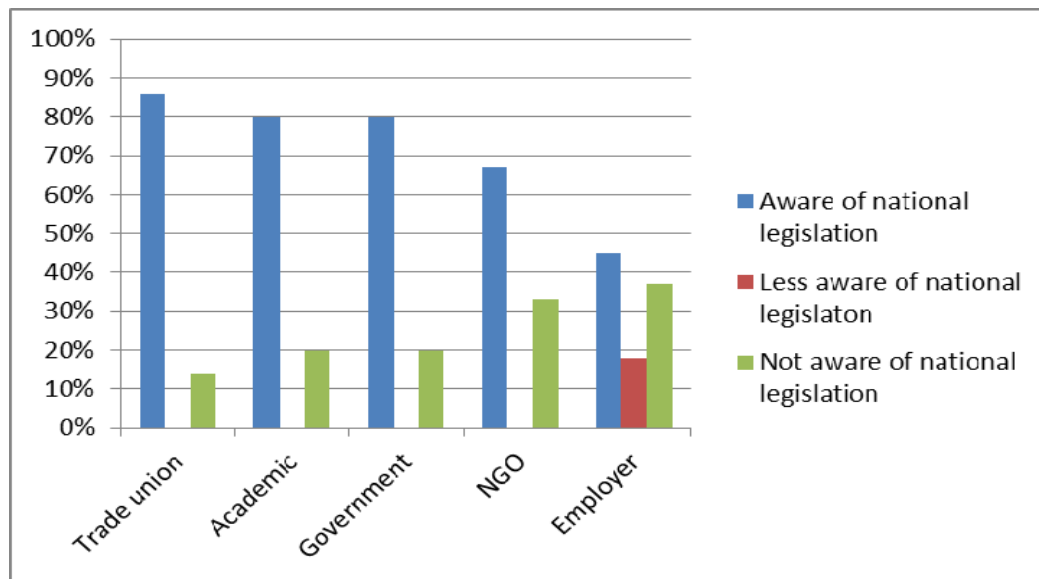
Some measures related to precarious work

- Reduction on limits on fixed-term contracts: **Sweden, Poland, Germany; Italy; and Spain;**
- Regulation of temporary agency contracts: **Netherlands** (case study 22); the **UK** (case study 36); **France and in Poland** (case study 27);
- Extension of welfare benefits to atypical work contracts: **Italy;**
- Changes to dismissal protection: **Italy, Spain;** and **Latvia** (case study 19)
- Measures to promote part-time work as an unemployment measure: **Netherlands** (June 2009 – July 2011);
- The regulation of internships: **France; Greece;**
- Measures aimed at reducing informal work: **Latvia** (case study 20);
- Measures regarding the setting of wages: **Greece; Sweden** (case study 33), and **Ireland** (case study 15);
- Establishing enforcement mechanisms: **Ireland, UK,** and the **Netherlands;**
- Minimum pay targeted on specific sectors: **Sweden;**
- Ban on zero hours contracts: **Ireland;**
- Extending age exemptions in the case of young workers: **Spain, Greece;**
- Training for older workers: **Latvia** (case study 21);
- Social integration of disabled people: **Spain** (case study 30);
- Providing information to vulnerable workers: **UK** (case study 34)

Responsibilities for legal protections

The absence of a legal definition also means that the term is often used subjectively to describe the particular experiences or situation of one or more individual workers. This absence of a legal definition is reflected in the responses of the interview respondents who, in some categories, exhibited a relatively low awareness of the role of the law in this area. Thus the levels of awareness of the role of national legislation in responding to precarious work differed by category of respondent, with trade union respondents being most aware of the role of national legislation and employer respondents being less aware of the role of the law.

Figure 4: Awareness of the role of the law



Source: Study interview data

The guarantee and application of fundamental rights was generally seen by interviewees as falling within the competence of the nation state, rather than those of the EU or another international level. National states were considered the only or the main guarantor of such rights. This position was, however, evolving as a result of the economic crisis. In some countries it was the national state that was seen as incorporating and legitimising precarious employment within the national regulatory frameworks. A Greek female government interviewee stated ‘in the past we used to talk about flexicurity, now there are greater elements of insecure employment in the national labour framework.’ This view and logic was repeated by many trade unionist interviewees. However, the employer interviewees in contrast tended to argue that it was ‘insiders’, workers who were protected, who were keeping the outsiders from entering non-precarious jobs. For some of those interviewed the issue was not that national legislation was deficient to deal with precarious work but that there was an absence of proper enforcement and the political will to tackle omissions in the law or to make the law more effective. This absence of political will was discussed by interviewees from Bulgaria, France, Greece, Latvia, the Netherlands and Poland. Several of them suggested the absence of will reflected a social denial of inequalities and a high level of tolerance of inequality.

Case study 29 - The impact of recent measures taken by the Spanish government on precarious work

Background/context

The 2008 mandate of the Spanish government represented a rupture with the past in the way that decisions would be taken and in the orientation of labour policy. It followed the onset of the economic downturn as well as of external political pressures. It led to a number of legislative interventions which are reported here. They are a response to the increase in precarious work and in particular unemployment young people, low skilled women and long term unemployed.

Description of the initiative

The Royal Decree of Law 10/2011 permits the offer of temporary contracts to young workers up to the age of 30, whereas previously the limit had been set at 25 years. The same decree introduced a new contract, the “training and learning contract”. It addresses young people aged between 17 and 24 years old and consists of a period spent in the company (no more than 75 per cent of the working day) with the rest of the time spent attending vocational training. In May 2011 another law gave employers a three month amnesty to declare workers without paying any fine. After this period, labour inspections were increased as were as the size of the sanctions.

Outcome of initiative

In relation to the plan for eliminating undeclared work, the results have been limited because the window of opportunity for regularising workers was short, only three months. Comparing enrolment data after the amnesty with the previous year, the Ministry of Labour and Social Affairs estimated that around 3,000 undeclared workers had been enrolled in the Social Security system.

Governments may encourage employment and employability through subsidies (income guarantees) aimed at specific groups such as the disabled, women young workers or low paid workers. Different terms are used to describe these measures, for example, ‘shock absorbers’ in some sectors in **Italy**; tax credits in the **UK**; sector level social security supplements, in the construction sector in the **Netherlands**; social aids in **France**. There was some support, in particular from employers, for social allowances only to be provided in return for the obligation to perform either socially useful work or any work. In **Bulgaria** subsidies encouraging the temporary transition to part-time work in companies facing difficulties had been introduced as a way of preventing workers being made fully unemployed. One employer indicated there was no public information as to what type of companies had benefitted. Subsidies had also been used in **Germany** in 2009 where a government subsidy to meet part of the lost wages of those on short-time work was introduced. In the **Netherlands** subsidies were used to encourage employers to hire precarious workers in a project to re-integrate them into the labour market. Several interviewees considered that the debate about employment and employment relationships ebbed and flowed according to the wider economic situation. A male Bulgarian NGO interviewee argued:

‘There is a national debate about precarious work, but it is a specific debate, a cyclical debate. At any moment when the unemployment rate starts to increase the debate shifts towards the need for job creation.’

A big question posed was whether, given the size of the precarious workforce, it was actually possible for states to subsidise precarious employment. One Irish trade unionist described governments providing subsidies to workers in companies that were actually very profitable as ‘immoral’.

Several interviewees insisted that account had to be taken of the national and sectoral peculiarities when drafting national legislation since one solution or one legislative framework alone might be insufficient. They considered that any resultant floor of rights established at EU level should also to be related to national standards of living. Different histories too would need to be taken into account; the Netherlands is markedly different, for example with its well-regulated floor of rights, from the UK at the opposite end of a diverse spectrum. There, as a British government respondent emphasised, the role of the state in employment is primarily to facilitate relationships between employer and worker, and not to intervene.

Very few examples were provided of national laws or regulations that sought to control or eliminate precarious work. One of these was the decision by the Irish Government to ban zero hours’ contracts as part of its implementation of Directive 93/104/EC on working time. Another was the establishment, in 2008, of the Irish National Employment Rights Authority to enforce employment rights, which led to a high level of activity on the issue of precarious work. A recent reform on apprenticeship approved in **Italy** in July 2011 was also identified as tackling precarious employment by providing for apprenticeships with open-ended contracts. In the **UK** the Coalition Government introduced measures from 1 April 2011 to exempt businesses with fewer than ten employees and ‘genuine’ business start-ups from virtually all new domestic legislation for a three year period.

Case Study 3 - EU structural Funds in agriculture: legalising employment practices in Bulgaria

Background/context

Agricultural transformation in Bulgaria began in particularly unfavourable conditions following decades of very poor economic planning, the legacy of an extensive inefficient industrial sector and a systematic neglect of the agricultural sector.

Description of the initiative

EU structural funds were made available to Bulgarian agricultural producers on condition that they formalised their employment relations. As a result changed behaviours emerged in relation to employing external employees and ensuring conditions for self-employment. “BulAgriculture” began as a farm of 3,31 hectares economic unit with a business plan for growth. Unemployment is high in the region, and agriculture is not considered attractive for young people. However, “BulAgriculture” is fairly unique in having involved the whole family in the project and its activities have promoted the employment of the family and other workers. A specific measure supporting young farmers has a focus on those under the age of 40 and helps them to build new farms or manage existing ones, as well as providing assistance in the process of modernization of the agricultural farming. Without such support provided by EU structural funds “BulAgriculture” would not be in a position to invest and develop its activities.

Outcome of initiative

The formalisation of employment through the instruments of structural funds has proved to be an important measure against precarious work. In order to get their subsidies, agricultural producers and farmers have to operate transparent business practices, invest in new machines and provide employment based on formal labour contracts, respecting the labour legislation.

National laws not only impacted directly on precarious work in the area of labour law, they also helped shape the context in which it operates. Many of the interviewees believed that legislation restricting immigration, for example, was another way of driving workers towards precarious work. The main issues on which interviewees considered national legislation was needed were: access to and securing permanent status at work; minimum pay; controls on working days; rest periods; employment pensions; health and safety at work; notice prior to dismissal. Other areas suggested included paying additional pay to workers on temporary contracts to make their use less financially attractive to employers. It was also suggested that limitations on the length of probationary periods should be removed and strict limits on the hours worked by part-time workers introduced.

National regulation did not only have to be through legislative methods. Interviewees referred to collective agreements and CSR (corporate social responsibility) agreements as alternative ways of altering practices, which had the advantage of self-regulation being built into them.

4.2 *The areas of national debate on precarious work*

In addition to the data collected by the national experts, interview respondents were asked to identify the most prevalent current national debates around issues of precarious work. Five issues in particular were highlighted:

- Agency labour, particularly as a consequence of the implementation of Directive 2008/104/EC;
- Enforcement;
- Liberalisation of the market and the impact on legislative regulation;
- Pay and pay levels; and
- The guarantee of fundamental rights.

Case study 9 - Public procurement in the City of Munich

Background/context

Munich's procurement department for cleaning services has the task of advertising and signing contracts with service providers whose task it is to clean all the City's public facilities. Until 1999 it employed its own cleaning staff but due to the financial difficulties the city was faced with in the late 1990s there was a general move to outsourcing such services, as means of addressing the City's financial deficits. Within a few years the procurement department became concerned, initially about the quality of the services being provided as well as with the general employment conditions that workers had to contend with.

Description of the initiative

A decision to ensure that service providers tendering for cleaning contracts did not involve precarious employment was initiated. A cost assessment programme, assessing what prices needed to be paid per square metre if a decent salary was to be guaranteed, was put in place. This involved training the department's staff of 14 staff in how to assess proposed contracts. Employees of the procurement department also call on tenderers to explain how they have reached the price being offered. It was also decided to put in place measures to check whether firms were adhering to the contracts agreed to with the City of Munich, in particular in relation to salaries. Funds were established to allow for the employment of officials to carry out spot checks on the subcontractors

Outcome of the initiative

The programme is regarded as an unmitigated success both economically in terms of quality but equally measured against the salaries and employment conditions of workers. For example, since 2005 the procurement department has registered a 20 per cent increase in the prices being paid to tenderers. Furthermore, such an increase is taken as evidence to highlight how the City of Munich is committed to fighting precarious employment conditions. Another positive spin-off from the program of procurement, in particular the spot check practice, involves the fact that it has helped raise employees' awareness of their rights. In addition, it has helped introduce a good practice into companies.

In addition a number of other issues, usually nationally specific, were raised, including:

- The issue of work permits which were observed as favouring employers, locking employees into contracts of employment with little flexibility (Ireland);
- Lack of collective agreement coverage in relation to those in precarious (defined as non-standard) work (Germany, Ireland);
- The working conditions of migrants (Germany, Ireland);
- The lack of regulation over the employment conditions of au pairs and workers in domestic homes and care work more generally (Ireland);
- Outsourcing and the risk of undermining terms and conditions in the public sector (Ireland);
- Employment opportunities for young people and the extent to which flexible forms of employment assisted in their search for work (Sweden);
- Increases in the numbers of bogus self-employed (UK); and
- Greater flexicurity and its impact on minimum working standards (Latvia).

Similarly, the study questionnaire survey also asked individuals to identify the current key issues in the national debate on employment. The creation of employment opportunities for the unemployed was the single largest key issue, identified by three out of four respondents. This was followed by the exclusion of young people from the labour market (63 per cent). Thus it was issues related to labour market exclusion that were most significant. At the other end of the spectrum there were fewer responses pointing to outsourcing to third countries and the loss of public sector employment as very key issues.

Table 21: Current Key employment issues (in %)

	Not a key issue	Minor key issue	Mid-range key issue	Very key issue
The creation of employment opportunities for those who are unemployed	1	5	17	75
The exclusion of young people from the labour market	4	10	21	63
Undeclared work	4	21	25	47
Enforcement of employment rights	6	20	34	36
A loss or reduction in access to collective bargaining	10	26	29	30
The lack of opportunities for older workers	3	24	41	29
The growth of atypical work	8	26	34	28
Third party employment relationships	11	30	31	20
Outsourcing of work to third countries	8	36	33	19
The loss of public sector jobs	15	32	30	18

Source: Study questionnaire

By country the survey shows some differences. Overall the creation of job opportunities was identified as a very key issue by 75 per cent of respondents to the

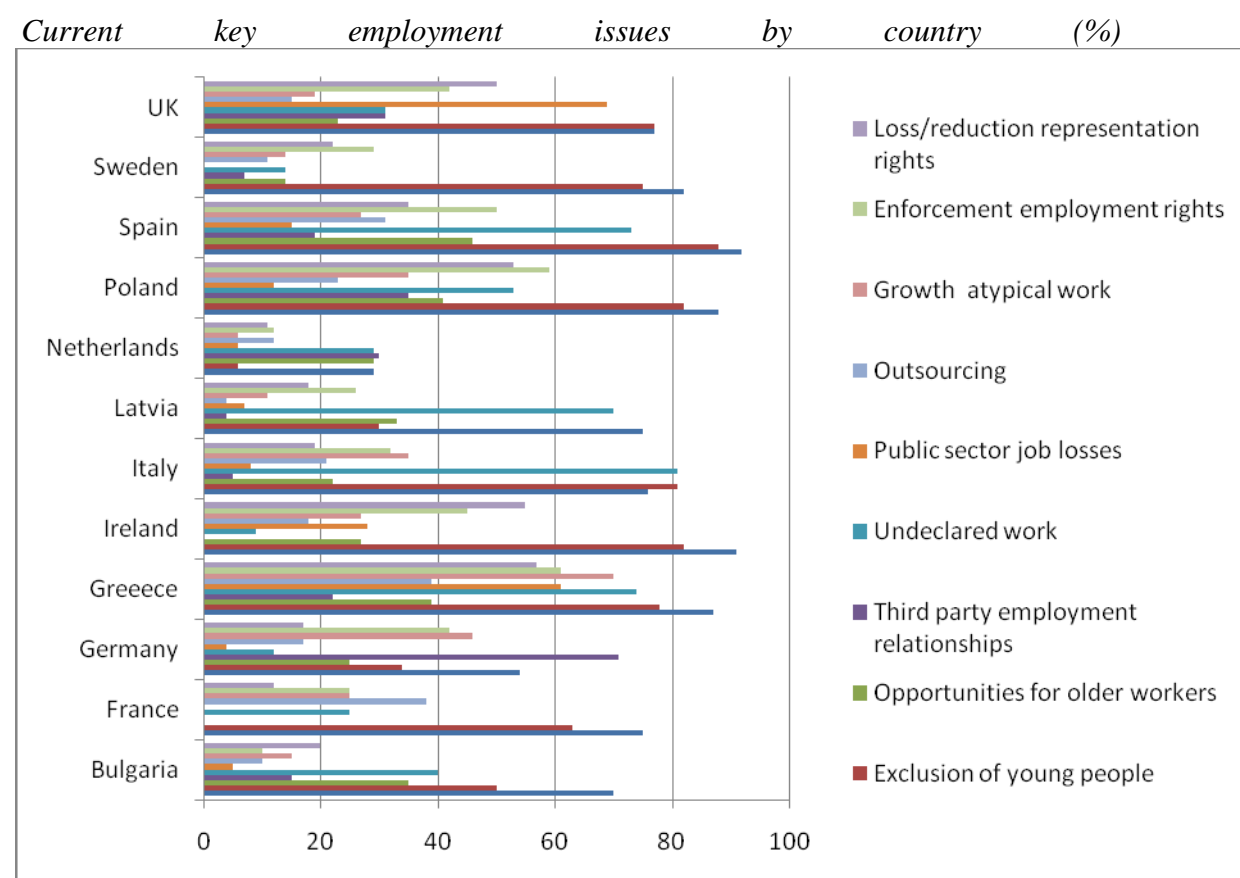
survey, however, in Spain the proportions were 92 per cent and in Poland they amounted to 88 per cent, whereas in the Netherlands the proportion was just 29 per cent. The exclusion of young people from the labour market was a key issue for 88 per cent of those from Spain, 78 per cent from Greece and 82 per cent from Ireland and 81 per cent, again countries affected by the special measures.

Table 22. Current key employment issues by country (%)

	Bulgaria	France	Germany	Greece	Ireland	Italy	Latvia	Netherlands	Poland	Spain	Sweden	UK
Employment	70	75	54	87	91	76	75	29	88	92	82	77
Exclusion of young people	50	63	34	78	82	81	30	6	82	88	75	77
Opportunities for older workers	35	0	25	39	27	22	33	29	41	46	14	23
Third party employment relationships	15	0	71	22	0	5	4	30	35	19	7	31
Undeclared work	40	25	12	74	9	81	70	29	53	73	14	31
Public sector job losses	5	0	4	61	28	8	7	6	12	15	0	69
Outsourcing	10	38	17	39	18	21	4	12	23	31	11	15
Growth atypical work	15	25	46	70	27	35	11	6	35	27	14	19
Enforcement employment rights	10	25	42	61	45	32	26	12	59	50	29	42
Loss/reduction representation rights	20	12	17	57	55	19	18	11	53	35	22	50

Source: Study questionnaire

Figure 5 below graphs these employment issues by country.



Source: Study questionnaire

4.2.1 Agency labour

It was clear that the impact of Directive 2008/104/EC had encouraged national debate on the issue of agency employment. At least some respondents in six of the 12 study countries raised the issue, with trade unions three times more likely to suggest that it formed part of the national debate, compared to employers. In some cases the trade union respondents expressed themselves as opposed to the extension of agency work and were divided as to whether or not the effect of the Directive would be to increase or decrease it. Employer respondents generally expressed themselves as more in favour of the Directive as a way of enabling the use of regulated agency labour. An employer association interviewee from Bulgaria noted:

‘We think that the legal regulation will bring more security for the people that work in this way. But we faced the refusal of the trade unions. And we believe that through the regulation the loyal agencies will be able to act in the formal economy.’

Other interviewees also differentiated between exploitative agencies and those that operated correctly and believed that the Directive would assist in encouraging the former at the expense of the latter. In the **Netherlands** the problem of rogue agencies was being dealt with by the ‘temporary work police force’. This body was established by the trade unions and employers’ organisations and supported by the government and is responsible for monitoring compliance with collective agreements for the sector. The result has been that the rogues have been put out of business and consequently problems generally associated with temporary agency work are not very evident.

Debates on agency work inevitably were entangled with the debates on fixed-term contracts and some respondents were of the view that the regulation of agency work would lead to its retraction in favour of the expansion of fixed-term contracts. An employers’ representative body from Ireland observed that, in its view, if the Directive was to be implemented in ‘a particularly restrictive fashion’, then firms would stop using agency workers and there would be a decrease in employment opportunities for such workers. In Italy too agency work was identified as providing a route for young people who had completed their studies to enter into work. Two trade union respondents noted:

‘Temporary agency work is one of the best labour relationships towards obtaining a permanent job, to find a job that is adequate for the individual and to help her/him to learn about the type of work that is best for them.’

Case study 27 - The regulation of temporary agency work in Poland

Background/context

In Poland, the share of temporary staff in the total workforce, while not as large as in some Member States, continues to grow. In the context of enlargement in 2004 Poland experienced a growth in temporary work agencies and Polish employers, like their other EU counterparts have begun to use temporary workers in order to reduce labour costs and increase their adaptability to the dynamic changes occurring in the global economy.

Description of the initiative

The increase of temporary work in Poland as an instrument of labour market flexibilisation, stimulated the need for a coherent regulatory framework and,

following on from earlier legislation, the Act on the Employment of Temporary Workers was introduced in July 2003. It is considered as a breakthrough in the development of a regulatory framework for temporary work in Poland and applies not just to temporary workers' employment but also covers the rules for referring workers to user-employers as well for as persons that are not considered as employees but who are employed by the agency on a civil contract basis. The law contains the principle of equal treatment, stipulating that the working conditions of temporary agency workers should be equal to those of directly employed workers.

Outcome of the initiative

The introduction of the legislative Act was a very important development time. Results of audits conducted by labour inspection in 2008-2010 revealed that an increasing number of persons posted to work abroad did not receive written employment contracts. As temporary work had been evolving phenomenon it is expected that further developments in legal framework will occur. Changes supported by the social partners were introduced in 2010 that provide for an extension of the maximum period of work from 12 to 18 months and repeal the rules that set out limits on the employment of temporary agency workers in enterprises that in last six months had conducted collective redundancies.

Around agency work in particular the debates centred on the regulation of agencies, with some respondents making it clear that their desire was to curb the activities of agencies that operated in an exploitative way. Thus, as one respondent from Ireland remarked, the temporary agency workers' Directive was 'an example of legislative good practice' while another described it as 'a significant advance for the rights of precarious workers in Ireland'. This did not necessarily mean the removal of all agency work; it depended on the nature of the work and the extent of its regulation. Concerns were raised, in particular by trade union respondents in the UK, over the use of what was described as the 'Swedish' derogation with which it was feared that agencies might circumvent the objective of the Directive to ensure equal treatment, through the direct employment of agency workers by the agency but on inferior terms and conditions. Similarly from Latvia a trade union respondent expressed concern over the potential misuse of employment rights through the application of the national law implementing the Directive. Other issues addressed were the need to guarantee equal treatment to agency workers.

4.2.2 Enforcement and sanctions

Several respondents raised the issue of enforcement and the nature of the sanctions against those who did not apply the legal rules, with almost equal numbers of employers and trade unions addressing the issue. Around one in four of the academic respondents also referred to problems of enforcement and sanctions. Interviewees in a number of the study countries indicated that the problem did not necessarily lie in the absence of relevant law, but rather in the ability of existing mechanisms to ensure compliance. As interviewees from Bulgaria, Greece, the Netherlands and Poland noted, the problem was not the employment protection legislation itself 'but rather the issue of employers' compliance with it'. On the spot checks were a useful method that contributed to reducing or eliminating precarious work and a number of those interviewed referred to their national labour inspectorates as important in the reduction of precarious work. An absence of effective labour inspection or inadequate mechanisms of enforcement were consequently associated with the presence of

precarious work. States, it was argued, needed to put more investment into labour inspection and in a number of the countries in the study budgets of state inspection bodies had been reduced, with examples provided from Latvia and the UK. States also needed to ensure that the sanctions were sufficiently severe to encourage employers to comply and respondents associated periods when inspection systems were robust with periods when precarious work was lower. An employer from the Netherlands suggested that ‘the higher the chance of being caught, the lower the chance that a person will start to exploit people’. A government respondent from Bulgaria similarly stressed that the issue was not the absence of good labour and social legislation, but of applying it ‘that is why we need improvement of the control activities for observation of the legislation and to impose sanctions for its violation’, a position supported by a Bulgarian employer. Even in a country like the Netherlands, whose experts described it as having ‘a well-regulated floor of rights’ which could actually serve as a model for other countries, the problem was not one of the absence of rights but that:

‘The actual enforcement of this set of rules is often problematic because of its complexity and administrative character which can lead to its application lagging behind the actual situation the workers find themselves in.’ (Female employer, the Netherlands)

A minority did not favour more inspection and, as an employer association from the UK stated, were against more inspection, favouring a non-legislative approach beyond a minimum floor of rights. Two specific issues were identified, these related to the effectiveness of the enforcement sanction and the capacity of the relevant bodies to enforce the sanction. Problems were identified in relation to the ability of the enforcement agencies to collect any financial penalties imposed on employers, an example provided by an NGO respondent in Bulgaria was that while there had been a large scale increase in the imposition of sanctions on employers for labour law violations, only around 10 to 15 per cent of the financial penalties were collected. In some cases it was said that employers calculated that they could get away with hiring workers on conditions below the legal minimum, knowing that they would be terminating their contracts before the labour inspectorate got to know of the situation. In others, where the sanction levied was very high, it incentivised employers to attempt to bribe labour inspectors.

Making violations of labour law more public and identifying the employers in the media was one suggestion for reducing the amount of evasion. As employer evasion was often identified with informal work what was needed, in the view of a Bulgarian employers, was a two-sided policy which consisted of sanctions against those who did not comply and incentives for those who did.

Case study 13: The National Employment Rights Authority and its impact on the detection of precarious work in Ireland

Background/context

The National Employment Rights Authority (NERA) was established by the Irish Government in 2007 following a social partnership agreement reached by the Irish social partners. The stated goal of NERA is to ‘achieve a culture of national employment rights compliance’. NERA was created due to a number of concerns that were current in the Irish policy context. Firstly, there was a perception that the increasing number of precarious workers in Ireland necessitated a stronger employment rights enforcement regime. Secondly, there was a general concern that

employment law was not being complied with adequately in Ireland. This sentiment was particularly strong within the Irish trade union movement. Finally, there was a concern on the part of Irish firms that firms not complying with Irish employment law were getting an unfair competitive advantage over Irish firms who complied with employment law.

Description of the initiative

NERA performs four key functions: 1. As a key provider of information on the rights of employees in Ireland; 2. As an inspection body with a team of workplace inspectors who regularly inspect Irish workplaces to ensure that firms are operating in compliance with Irish employment law. 3. As an enforcer of Irish employment law with prosecution powers, maintaining an Enforcement Services Unit and working closely with the Irish Labour Court and Employment Appeals Tribunal. 4. As a protector of young workers, ensuring that firms do not breach the law and employ workers under this age illegally.

Outcome of the initiative

It is generally considered by the Irish social partners that the creation of NERA has had a beneficial effect in attempts to reduce levels of precarious work in Ireland. Irish trade unions are particularly positive about the organisation's role, and have emphasised the role of NERA in helping create a culture of compliance with employment law in Ireland. The work that NERA has done in helping workers engaged in work in private homes has been particularly lauded. NERA's own statistics also demonstrate that the organisation plays an important role in regulating and preventing the spread of precarious work in Ireland. The relatively low rates of compliance with Irish minimum wage legislation amongst inspected firms suggest that the payment of the proper minimum wage is a problem for precarious workers in Ireland. NERA has also been substantially engaged in monitoring compliance with Irish employment regulation across a range of Irish sectors. Many of these sectors, such as agriculture, catering, hotels and construction are typically associated with high rates of employment of precarious workers. In the agriculture and hotels sector, NERA has uncovered and helped correct high rates of non-compliance with Irish employment law. The high rates of non-compliance with Irish employment law and the comparatively high levels of precarious workers in these sectors suggest that precarious workers are particularly vulnerable to exploitation in these sectors.

Case study 36 – The UK Gangmasters’ Licensing Authority – the background to its establishment and the work that it carries out

Background/context

In February 2004 at least 22 workers of Chinese origin, drowned in the sea in the North of England at a town called Morecombe. They had been working through the night collecting cockles (sea products) on the edge of the sea shore but were caught when the tides came in quickly, leaving them stranded in the sea. The tides in the area are notoriously quick but none of the workers had been advised of the risks that they faced. For some time prior to these tragic deaths, MP Jim Sheridan had been campaigning for legislation that would provide for the regulation of the activities of gangmasters after the deaths the law was introduced

Description of initiative

The legislation established the Gangmasters’ Licensing Authority (GLA) which regulates those who supply labour to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. The GLA has the obligation to license labour providers and take action against those operating illegally.

An important element in the work of the GLA is in the enforcement of the National Minimum Wage. The GLA can investigate the terms and conditions of workers employed through labour providers and makes it part of the licensing provisions that proof is provided that workers are being paid at least at the minimum set down by law. The licensing provisions equally ensure that workers have the right to the breaks, maximum working hours and holidays as stipulated by law.

Outcome of initiative

The work of the GLA is acknowledged as a major factor in the reduction of precarious work in the sectors in which it operates. Precarious workers in the sectors covered by the GL Act have clearly benefited from the legislation. They are employed by organisations subject to scrutiny from the regulatory authority and they must be paid at least at the national minimum rates. In an area of employment (agency work) where there was almost a ‘norm’ that the most vulnerable workers got paid under the legal minimum, the legislation has more or less prevented this. One of the most effective measures that the GLA can take is that it publicises a list of all those agencies that it has de-registered and who therefore cannot operate in the sector.

Auditing as an alternative to enforcement

In the UK the government is currently undertaking compliance auditing for small employment agencies. This allows the agencies to submit their terms and conditions to the government department which would audit and advise as to whether they met the requirements of the legislation. This was said to give confidence to employers and provided valuable intelligence to the inspection bodies. Agencies can be given a clean bill of health under the system and are advised on what they need to do to ensure compliance. So far 30 to 40 agencies had had their conditions audited in this way. The model is one of assistance for those who wish to comply and sanction for those who do not. A government respondent from the UK had suggested that the experience was that enforcement provides diminishing returns and that in many cases of non-compliance the actual problems are to do with employer criminality, which is not an

area appropriate for the labour inspection system. In his view employers might have greater confidence in state intervention where it was seen as being fair and accountable. The major issue was not of employers trying to avoid compliance, but often of not being clear on what they needed to do to comply. This had led the government to consider an alternative strategy which was based on responding to the majority that wished to comply by allowing them to submit details of the terms and conditions that they were offering to workers, to have them confirmed as in conformity with the law and without the risk of sanction where they were found not to be in compliance if steps were taken to conform with the law. The advantage of this method was that it increased the contrast between them and employers who chose not to comply; it gave confidence to employers who wanted to remain with the law; and it provided the state with valuable intelligence in relation to non-compliant employers.

A second issue was over the capacity of the enforcement bodies. Respondents from Bulgaria, Greece and the UK sometimes spoke of inspection bodies lacking the resources to pursue those who were not in compliance with labour law. What was needed, in the opinions of some respondents, was not more complex legislation but simple laws that facilitated the operation of the inspection agencies.

Inspections as a method of enforcement

The establishment of the National Employment Rights Authority (NERA) in **Ireland** marked an important development in the regulation of precarious work, according to the trade unions. NERA performs an important function in carrying out inspections of employers although inevitably it was argued that it needed more resources. NERA was established under the Irish social partnership agreement and has been responsible for monitoring compliance with labour law. There had also been a focus on the eradication of bogus forms of self-employment, in co-operation with the revenue authorities. However the present Irish Government intends reforming the existing Dispute Resolution Mechanisms and this may impact on the role of NERA. It is expected that this change could be in train during the currency of this year. (See also Case study 13)

For most respondents the view expressed was that sanctions should fall on the employer, however in a few cases respondents argued for sanctions on both the employer and the employee, for example in cases of tax or social security evasion and it was reported that a debate on this issue was taking place in the **Bulgarian** parliament, based on a report by the Bulgarian Industrial Association, produced in September 2011. This also contained a proviso that where workers reported their employers to the control bodies the threat of sanction on the worker was lifted. There was also a position that too much enforcement was counter-effective.

4.2.3 Liberalisation of the market and the impact on legislative regulation

Respondents in all 12 countries raised the issue of the debates on the liberalisation of the market and of labour law, particularly in the context of the current crisis. Five main circumstances were described that had encouraged this debate. They were:

- The general political climate;
- The need to encourage employment;

- The view that existing law was either too complex or too rigid or that employment protection was too high;
- The assertion that there was simply too much law; and
- The nature of the economic model and whether it lent itself to high levels of legal protection.

The political context

Respondents referred to a changed context, identified in some cases as a climate of permissiveness for employers which was often promoted by government and the state which had assisted in deregulation over a lengthy period, an example being given was exemption from social security contributions for some non-standard jobs in **France** and of the blocking of the processes which had led to the stabilisation of non-standard jobs in **Italy**. In Greece too the role of government was described by a trade union respondent as ‘very negative’ and that this had led to the expansion of flexible working practices leading to what one respondent described as ‘a full and all-embracing deregulation of the labour market and an economy that is put into deep recession. This had led to the transformation of collective agreements into individual contracts; unpaid wages; collective agreements setting rates below the national minimum; reduced compensation payments; lower wages for young workers; reductions in unemployment benefit for seasonal workers; and an increase in working time. Institutional obstacles to deregulation had been removed. For others respondents these reforms were regarded as due to the fact that change had been delayed in the past but that also they reflected a new political will to introduce change.

In Ireland, as in Italy and Spain, government actions were identified with the liberalisation of the legal system of employment protection and characterised by an ideological conflict between the social actors and the term ‘neo-liberal’ was used to describe this new model. An employer in Latvia commented on the changes being introduced there described them as ‘a wild neoliberalism where every individual had to fight on their own’. For an employer respondent from the Netherlands, however, the law had changed because the industrial relations context had also changed. Changes referred to included, the liberalisation of dismissal law in the Netherlands, **Greece** and the **UK**, as well as changes to elements of national minimum wages where they currently applied. For other respondents however the role of government was more ambiguous. A UK government respondent, for example, argued that it was not the role of the government to have direct involvement in employment relationships beyond assisting in promoting ‘a grown up adult conversation and to intervene to facilitate discussion between the social partners.

Discounting social insurance contributions

In **Spain** the exceptional plan for the transition to stable recruitment enacted in February 2011 was aimed at encouraging more young people and the long-term unemployed into work. It offered enterprises with more than 250 employees a 75 per cent discount on their social insurance contributions (100% reduction for employers of fewer than 250 employees) where they hired workers from either group, provided that they offered contracts amounting to at least 50 to 70 per cent of the working day.

Source: EIRO, May 2011

Promoting employability

The liberalisation of employment law was sometimes associated with the need to increase access to work or to target unemployment and respondents in Bulgaria, Germany, Greece, Ireland, Italy, the Netherlands, Sweden and the UK referred to this either as a general method of increasing jobs or by targeting specific workers like women and young workers. In this context employment protection laws were seen as ‘a barrier to job creation’. The extent to which liberalisation had indeed encouraged employment was contested by some respondents. An employer from Ireland emphasised that any changes to employment protection had to be assessed by the extent to which they facilitated job creation. None of the trade union or NGO respondents concurred with these points of view.

Rigidity, complexity or ‘over-protectiveness’

Many of the respondents spoke of reform being required in the context of existing laws being too rigid, complex or too protective. For an employer from Bulgaria the pressing need was to simplify and flexibilise labour legislation while an employer from Greece spoke of a legislative model which consisted of ‘complicated procedures of implementation and bureaucracy’ while from Bulgaria an academic expert pointed to the very large body of law that was constantly in a process of amendment. It was argued by another employer that what companies wanted were clear rules and definite expectations while for an employer from the Netherlands the issue was of the need to address the growing divide between those with open-ended contracts and those without, thus the dualisation of the labour market could only be addressed through changes to the law by making the core labour market more flexible. Employers from Sweden and the UK also spoke of core workers being ‘over-protected’ and indeed one employer in the UK described employment protection as ‘the greatest constraint on business’. There was also a view, expressed by a government respondent from Greece, that those countries with less legal regulation had provided a greater degree of facilitation from non-standard to standard work.

Over-regulation

In some cases the argument was simply around what was described as ‘too much law’ making it difficult to enforce or creating a group of over-protected workers. In this respect some respondents also referred to the quantity of employment regulation emanating from the EU. What some employers requested was simply no more law. Again none of the trade union respondents held this position.

Economic models and legislative protection

In a minority of cases respondents also referred to the nature of the economic model and the extent to which extensive labour law was not appropriate. This was referred to by a respondent from Bulgaria who described the large number of very small, often family run businesses as inappropriate for employment regulation on the scale of the current system and of encouraging evasion. A government respondent from Greece also made reference to the different structure of the labour market.

Giovanni's story

Giovanni is in his fifties and he lives in Reggio Emilia. He came from Sicily years ago to work in the construction sector. Until 2009 he worked for a big cooperative enterprise and had a stable contract. As a consequence of the economic crisis, and in particular of the lack of orders, he was fired: since then he has not been able to find another stable job. He gets no more than six months work in the year and when he works he has "very temporary" contracts, often part-time. Extra hours are not registered nor legally paid, so they will not be counted for retirement pension. When Giovanni lost his job in 2009, he could not support his family properly anymore and his wife and his child went back to Sicily where their grandparents still live. Giovanni left the house where he lived and rented a room which he shares with a friend. When Giovanni left Sicily, he would have never imagined that he would end up like this: he thought that precarious work only affected young people.

4.2.4 Pay, pay levels and continuity of employment

In some of the 12 countries pay and pay levels formed part of the national debate in relation to the control or elimination of precarious work. Issues of pay were equally relevant within the public and the private sectors and in some cases it was indeed felt that it was the public sector, in the current economic situation, that was the principal driver in the growth of precarious work, through the creation of fixed-term contracts, as for example, in Greece and in Italy. Low pay levels at the same time impacted on the state in another way as it was left to supplement low incomes through social welfare benefits, a point raised by trade union and employer respondents in Ireland, for example, who suggested that 'the state is subsidising precarious work' and while the trade union respondent saw this negatively, the employer respondent viewed it as expressing the role of the state which was to provide financial aid to those who did not earn enough.

Pay levels, particularly in relation to minimum levels of pay in those countries which had these had also been exceptionally affected by the economic crisis or, in the case of Ireland, through legal rulings which had declared against the application of minimum pay rules in agriculture, were seen as at the core of national debates on poverty, the economic crisis and integration. In **Greece** too, the legislation had permitted the signing of collective agreements that set pay at below the minimum. Pay also was present in the national debates around migration, according to employer respondents in the Netherlands where there was a concern that migrant labour could impact on pay levels and that competition at national and European level, based on pay and employment conditions should encourage the need for a national debate on salaries.

Minimum pay rules in Sweden

New rules introduced in Sweden and effective from 16 January 2012, provide that companies in the cleaning, hotel, restaurant, construction and agriculture sectors must have minimum guaranteed salaries payable to migrant workers who must also be provided with written information on employment conditions.

There are also proposals to amend the Foreign Posting of Employees Act that oblige employers who post workers in Sweden to notify the relevant authorities. It is also proposed that workers may challenge the abusive use of fixed-term contracts providing for them to be treated as permanent. The Swedish Migration Board is sharpening the application of the rules for work permits in some branches and the companies must show that they can guarantee salaries for the period the worker is employed.

Case study 15- The reform of the Irish Joint Labour Committees (JLCs)

Background/context

Irish Joint Labour Committees (JLCs) were the traditional institution for establishing minimum pay rates in low wage sectors in Ireland. JLCs covered many sectors with low wage rates such as catering, cleaning, hairdressing, hotels and retail. They submitted their proposals on pay and working conditions to the Irish Labour Court which in turn would declare them enforceable by law. This system co-existed alongside the Irish national minimum wage. This wage-fixing mechanism was believed to be particularly relevant to protecting the rights of precarious workers.

Description of the initiative

Two particularly significant developments affected JLCs in 2011. Firstly, as part of the four-year economic plan announced in November 2010 by the Irish Government that was a condition of the EU-IMF emergency loan granted to Ireland, a review of JLCs was initiated by the Irish Government. This recommended that some JLCs be abolished or amalgamated; that collective agreements should override the powers of any relevant JLC. Furthermore it proposed that where the national minimum wage was adjusted downwards the JLC rate would similarly be adjusted. At around the same time, but separately the Irish High Court ruled held that pay rates set following JLC rulings were unconstitutional.

Outcome of the initiative

The Irish Government has subsequently proposed new legislation which would reduce the number of JLCs and the number of rates of pay that they set. It will also provide for exemption for companies from applying the minimum rates. While the trade unions called for maintenance of the previous system and the employers called for its complete dismantling on the basis that the system impeded job creation. However, evidence collected in the review of the JLCs gives little support to either position, as controlling for factors such as hours, experience, tenure, education, the broad occupation and industry, the review found that the weekly wages of workers in JLC sectors were typically seven per cent lower than other workers not covered by a JLC/REA.

Pay was also seen as relevant to national debates on universal rights, with a respondent from Spain making the point that rights like those to minimum pay should be respected regardless of the employment relationship that the worker had. There was some support for national minimum pay levels and indeed for the establishment of a European minimum rate of pay, however calculated.

Pay levels were also affected where the form of the employment relationship promoted discontinuous employment relationships and in **France**, it was the issue of continuity of employment rights, which had led the trade unions to call for a system for the continuity of rights for all workers around the slogans of ‘new status for salaried employees’ and ‘professional social security’.

4.2.5 The concept of fundamental rights

At the outset it is acknowledged that there are obligations on all member states from EU membership or from membership of the ILO and ratification of ILO conventions to comply with those rights set down as fundamental in international and EU law

although it should also be acknowledged that the history of fundamental rights is of necessity dependent on the judicial application of such rights. This offers an explanation as to why the social partners may articulate a reluctance to associate labour relationships with fundamental rights. Several of the respondents identified precarious work with an absence of fundamental rights, with an employer from France stating that a precarious worker ‘is someone whose fundamental rights are denied, such as housing, food, mobility, and work’ thus the issue was one of how to guarantee the application of fundamental rights. A Italian trade union respondent defined fundamental rights as: the right to a home, a family, to health insurance, to a retirement pension and to be able to take care of their children. Rights to minimum pay and to representation were also defined as fundamental by respondents, as were rights to safety and health at work, to be protected from risk to health, to have the right to strike, to freedom of association, to sickness and unemployment insurance. In some cases fundamental rights were also identified as rights emanating from the EU or from international bodies such as the International Labour Organisation. This reflected attempts being made to bring the issue of worker protection into an arena which was seen as being beyond that established by state for, as noted above, some interviewees identified the state itself as problematic in relation to the promotion of precarious work. For an legal academic in Italy a programme of fundamental rights, should apply to all workers, regardless of their employment relationship, a floor guaranteed by at least a minimum income and health protection. In contrast, the discourse in France on fundamental rights specifically excludes labour rights.

4.2.6 Establishing social rights through social dialogue

Can social dialogue lead to agreements to limit precarious work or increase the level of protection for precarious workers? Table 23 suggests that in nearly all the Member States the social partners either do not have a common definition of precarity, or disagree over what precarious work actually covers. This lack of a common understanding inhibits the social partners from concluding agreements in this area, with the partial exception of the position of the partners in Italy.

Case Study 10 - Establishing an information centre for precarious workers in Greece – the example of KEPEA

Background/context

The Greek Trade Union Congress (ΓΣΕΕ) established the Information Centre of Workers and Unemployed People (Kepea) in the city centre of Athens in 2000. The need for the Centre came in response to constant labour law violations observed in the Greek labour market. In addition, the role of the Centre was considered as crucial by ΓΣΕΕ, in the sense that it could help certain groups of the workforce, such as young and migrant workers to deal with the risk of unemployment and social exclusion.

Description of the initiative

The main objective of Kepea has been to provide up to date and accurate information to workers and unemployed people regarding industrial relations issues, as well as social security rules and future or currently available employment and training schemes. Special attention is paid to providing information and counselling services to foreign migrants that live and work in Greece. Kepea has also established a

Jobcentre for those workers who are already or may be unemployed in the near future. The Jobcentre provides access to job opportunities and job-hunting training, while it disseminates information on available employment and training schemes. Individual employers have also access to the electronic database of job seekers in the Jobcentre of Kepea. The Centre's staff is specialised in providing information and advice on the job market and the regulatory framework that is driven. The Centre has gradually expanded its operations to other regions and areas of the country. It has prepared and disseminated a special targeted publication that is used as a guide for workers' rights.

Outcome of the initiative

Without doubt Kepea represents a successful initiative. Thousands of workers and unemployed people have visited the Centre or been in phone contact with the members of the staff. Furthermore, the unfortunate economic situation across the country has increased the demand for its services in the last 20 months, by groups of the workforce who are in a precarious position in the Greek labour market. It is difficult to estimate the number of individual cases of workers who benefited from the services of Kepea, nevertheless thousands of people have called or visited the Centre and its on-line platforms.

Table 23. Social partner definitions of and agreements on precarious work

Country	Definition
Bulgaria	As there is no generally accepted definition there is no social partner agreement on the term. There are some points of agreement and some disagreements over criteria which might be identified with precarious work (although the term is not used). Both social partners are opposed to undeclared work but otherwise while trade unions focus on 'disadvantaged' work, employers mainly focus on work experience, qualifications and work activities.
France	There is no agreement about the definition.
Greece	There is no universally accepted definition. The social meanings attached to the term precarious work are either related to non-standard young and third country migrant workers or to workers employed under flexible forms of employment. The trade union attitude towards flexibility is usually hostile and sees it as having negative connotations similar to precariousness. Collective agreements at all levels have never referred to the term or contained a definition of precarious work.
Germany	There is no consensus regarding the definition of precarious working conditions. All jobs that deviate from the standard – full-time, indefinite term employment – are classified as atypical forms. Employers generally are unwilling to consider more flexible forms of contract as precarious and agreements generally do not make direct reference to the term.
Ireland	There is no official definition or agreement. Social partner perspectives on precarious work and its definition differ between the two sides of industry. Irish trade unions tend to emphasise the extent to which workers on low incomes and atypical contracts are engaged in a situation of precarity. Employers have tended to argue that these are part of a flexible labour market and do not entail a state of precarity. Prior to the collapse of the National Social Partnership, there had been agreement between the partners on tackling various manifestations of what might now be termed precarity.
Italy	Since precarious work is not a technical legal category, nor a precise social type, there is no stipulated and accepted notion or definition of precariousness among social partners. The social partners agree on two main aspects with regard to precarious work. Firstly they consider precarious work a consequence of the large-scale abuse of flexible/non-standard contracts that occurred in the labour market over the last decade, particularly in the public sector; secondly they recognise the necessity of a reform of the 'shock absorbers' aimed at reorganising levels of protection and guarantees to enable the better inclusion of precarious workers.

Latvia	No, although undeclared work, a very topical issue in Latvia, is considered precarious. In their discussions the social partners focus their attention mainly on the issue of a minimum wage as the basis of protection for workers' rights and as a guarantee of minimum social rights for all workers. But it should also be emphasised that the social partner organisations often represent those bodies and workers who do not have any direct problems with irregular employment and therefore tend to speak more generally about the issue rather than to attempt to negotiate over it.
The Netherlands	No definition, the term is rarely used between the social partners although this does not mean that it is totally disregarded. A number of the subjects that were discussed and that led to publications or other results in the bi-partite Foundation of Labour or the tripartite Social Economic Council implicitly reference precarious work or precarious labour, but at the same time the topic is not at the centre of the social partners' common or mutual attention.
Poland	Social partners do not imply any concrete definitions themselves, given the absence of a legal definition. Some groups of workers tend to be perceived as precarious by both social partners, mainly undeclared workers and migrants. The precarity of certain groups is acknowledged, especially in relation to migrants and undocumented work but the social partners often express divergent views as to the precarious character of such forms of work, like agency and self-employment.
Spain	Trade unions all use very similar definitions of precarious work and identify the category as major vulnerability. However, there is no social partner agreement.
Sweden	There is little agreement between the social partners in particular in relation to the employment contract. However, many industry-wide collective agreements have clauses on the prevention of physically precarious work.
UK	Neither of the two principal social partner organisations have adopted or endorsed the term precarious. It might be argued that the TUC effectively implied that precarious workers should be seen as a sub-category of the broader group of vulnerable workers, without however, defining the former concept stating: 'We have come to define vulnerable employment as precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship'. The CBI officially endorsed the BIS definition (see Table 20) but has not used the term precarious and critically reacted to the TUC definition stating that the list of vulnerable workers, including agency, homeworkers, migrants, informal workers, young, temporary and unpaid family members provide 'wide generalisations [that] are unhelpful and misleading – many of the workers in these categories are not vulnerable and there is nothing inherently vulnerable in, for example, temporary work'.

Source: PWSR data provided by national experts

Despite this not very promising setting, many employers and trade unionists agreed that they could play a role in the setting of a basic floor of social rights. Collective agreements were seen as an effective method of ensuring equal treatment for all workers, whatever their legal status. While it was recognised that Member States should retain a responsibility to elaborate social rights and produce proposals for new measures that addressed issues related to precarious work, interviewees considered that the role of legislation in reducing precariousness should not be overstated, particularly where precarious work is the consequence of powerful economic drivers and there remains a distinct role for the social partners.

From the trade unions there was a view that for social dialogue to be in a position to set basic rights it had to be strengthened and supported at national and EU level. From the employers there was also an argument in favour of providing more space to allow the social partners to conclude their own agreements, to maintain the autonomy of the collective bargaining partners, so that what was wanted was 'not so much legislation but greater partnership at the workplace' (Female employer, Greece). Collective bargaining was seen as being undermined, however, particularly as a consequence of the economic crisis. In **Ireland** pay allowances and overtime premia had been removed from some collective agreements with the effect of removing from workers

in non-standard employment relationships the only collective means of determining their terms and conditions. Where social dialogue was not strong then it enabled governments to make decisions that ignored the views of the social partners but it also often resulted in legislation that in practice was not enforced. A Polish employer argued:

'In the course of legislative decision making government very often does not take into account the practice and opinions of social partners. Decisions are often made authoritatively. This is not a good concept. The legislation should come from practice and social partner opinions, whereas in Poland the process is very often the opposite. It is important to create law than can be exercised, not evaded.'

This is not to say that problems were not identified in relation to social dialogue. Despite a strongly held commitment to social partner dialogue in countries with strong traditions of social partnership like Sweden, the Netherlands and Germany, there was also a widespread recognition of a lack of trust between the parties or an unwillingness to work jointly to resolve problems. A Netherlands employer confirmed:

'The social partners are very important here. However, they are not cooperating very well and there is a lot of distrust on this dossier. Both sides take dogmatic positions and do not want to adjust these. Also they do not trust one another concerning the agreements made on this issue.'

John's story

John is in his mid-20s and lives in the North of England. Although he has been working in the public sector for nearly four years he is still on a fixed-term contract and his current contract ends this year. He is worried about the future, given the number of job cuts that have and are taking place. Adam's personal life is dominated by his poor financial situation. He would like to study for further qualifications but cannot afford the fees. He had been working nights in a bar and doing overtime to earn extra money but the bar closed last year and the overtime pay has ended. His wage is too low to permit him and his fiancé to live together. Last year they had to give up their home and return to live with their respective families. This is not the way he imagined he would be living in his mid-20s but he sees no possibility of change over the next few years.

Case Study 5: Tackling precarious work in the hotels sector in France

Background/context

The initiative covered in this case study took place in the French hotels sector, specifically in hotels. For several decades, radical changes have been affecting this subsector. However, this process enormously accelerated over the past two decades, in relation to terms and conditions of employment as well as in work organisation and working conditions. In a context of global competition and of labour cost cuts, the landscape of the players changed, in favour of leading hotel companies and low-cost hotel chains whereas the number of independent hotels significantly declined.

Description of the initiative

Thirty women, all migrants (from Sub-Saharan Africa), took industrial action and decided to take their case to the tribunal, after having compared their working conditions as subcontracted workers with that of workers of a major hotel group that

they were supplied to. It was the first time in France that the hotel sub sector experienced such a strike. The action lasted for more than a year. Demonstrations and other actions were organised to raise the profile of the dispute. In addition, decisive action was taken by some of the main actors to make direct contact with the hotel group rather than the sub-contractor with a view to negotiation.

Outcome of the initiative

The outcome of the negotiations was an agreement which reduced both the work rates and the workloads; a suspension of the prosecution of some workers through the court system and the lifting of sanctions; an award of a bonus of €215 in 2003 and €305 in 2004 and an indemnity equal to 35 per cent of their salary. In addition, an agreement was signed between the hotel and the trade unions which contained the principle of harmonisation of working conditions between subcontractor and contractor employees; that all the employee's attendance times had to be paid; that there would be access to vocational training; and that there would be improvements in the work environment. In practice the hotel group assumed responsibility for the terms and conditions of sub-contracted workers.

A trade union interviewee from Sweden suggested that relationships at Swedish company level and at large multinationals operated differently, with the latter finding it 'hard to adapt to the social dialogue we have in Sweden'. The issue was also raised as regards to the legitimacy of the social partners, given that they were often not officially represented in those sectors of the labour market where precarious work predominated, as a UK government interviewee stated:

'None of the established social partners can speak for vulnerable workers and this means that no matter how well-intentioned they have zero impact on those employer who do offer precarious work. The social partners are committed to combating precarious work – the employers' side because they do not want to be undercut; the TUC because it has a commitment to protecting the vulnerable.'

Case study 16 - Limiting precarious work through a collective labour agreement in craft metalwork in Italy

Background/context

The recent collective labour agreement of craft metalwork, signed the 16th of June 2011 introduced new rules regarding part-time contracts, fixed-term contracts, and contracts of inclusion and apprenticeship. The motivation has been the high increase in the number of precarious workers during the economic crisis that pushed trade unions into seek new rules able to better control the use of atypical contracts

Description of the initiative

This agreement is applicable to around 600.000 workers in thousands of craft enterprises belonging mainly to the metalwork but also to the goldsmith, silversmith, dental technician, and installation sectors. It establishes well-defined rules for fixed-term contracts, part-time, contracts of inclusion and apprenticeship, strictly regulating their use. Firstly, the timetable of a part-time job must be clearly defined in writing, with regard to day, week, month, and year. Also, if enterprises want to make changes to the agreed timetable, they have to give five days' notice. Secondly, a fixed-term contract can be renewed for a maximum of 36 months, including the vacancy period between the different contracts and workers who have been employed for at least six months have the right to preferential hiring. Those given permanent contracts have their temporary service taken into account.

Outcome of the initiative

The recent collective labour agreement in craft metalwork can reduce the amount of precarious workers employed in this sector, thanks to the introduction of rigid rules which disciplines the use of "atypical" contracts. In particular, the possible abuse of fixed-term contracts is considerably reduced. The agreement was signed in June 2011 and it will be applicable for the next three years, and at the end of that period it will be possible to assess the real impact of this agreement for the reduction of precarious work in craft metalwork.

Social dialogue was also described as being side-lined as a consequence of the economic crisis. The existing social partner agreements were thought of as having been compromised in Spain, Ireland and Greece. Nevertheless interviewees pointed to a wide range of initiatives on precarious work that had been promoted through social partner dialogue:

- The collective agreement established in 2007 for the cleaning and construction industries in **Germany** on the minimum wage;
- The collective agreement covering the mushroom industry in **Ireland** which provided for a minimum working week of 30 hours and a minimum rate of pay. This had also led to the consolidation of some smaller firms and to an increase in the average size of firm. Trade unions, employers, NGOs and the government inspection agencies had all played a part in ensuring the better protection of workers;

- The collective agreement for the bread-making sector in **Italy** which has introduced measures for the reconciliation of work/life balance, particularly aimed at women workers;
- A collective agreement in **Italy** covering temporary agency workers, giving rights to training is considered as a best practice agreement against precarious work in the sector;
- A proposal by the employers' association in **Italy** for all employment to count towards pension calculation, regardless of the form of the employment relationship;
- Collective agreements in the **Netherlands** providing for national health insurance coverage. While not made primarily with precarious workers in mind the result has been to ensure that such workers do have healthcare cover; and
- The salary agreement for the IT sector in **Sweden**, setting minimum levels of pay.

The social partners can play an important role in eliminating precarious work or in improving the protection of those in precarious work. One example is of the employers 'alliance against precarious work, an organisation which was first established in the Poitou-Charente region of **France** but which has now spread into a number of other member states (See case study 4 below). This involves employers actively committing themselves to eliminating precarious work. Similarly several of the trade union interviewees emphasised their commitment to tackling precarious work through collective bargaining, lobbying governments and/or legal strategies. An analysis of collective agreements in the Netherlands shows that most contain labour market provisions and that between 2008 and 2010 the prime target groups were some of those otherwise most likely to be recruited to precarious work, the long-term unemployed, followed by the young unemployed (EIRO, CARS, 2011).

Case Study 4: The Employers' Alliance against precarious work

Background/context

The origins of the employers alliances were in the 1980s in a rural area where seasonal work was the norm for salaried workers. Some employers had created a non-profit organisation to mutualise employment (job sharing). The actions spread from the agriculture sector to other sectors and in various sizes of enterprises and have led to the development of a more stable professional trajectory (for workers) thanks to, for example, a full-time contract.

Description of initiative

The initiative examined here concerns the establishment and subsequent development of employers' alliances against precarious work. In France the first alliances were established in the 1980s as the result of regional work in the agricultural sector. These Alliances are non-profit associations. The Employers' Alliance in Poitou Charentes, created in 2001, is a specific focus of this study with the Alliance being established by France Joubert, Vice-President of the Resource Centre for Employers' Alliances (CRGE) of the Poitou-Charentes Region and subsequent initiator of the European movement of Employers' Alliances. A key main objective has been to extend the system of Employers' Alliances throughout Europe so as to disseminate the system of Employers' Alliances in the different regions of Europe through promotion actions, lobbying and by developing contacts between Employers' Alliances and Resource Centres for Employers' Alliances in Europe; to serve as a tool for implementation of the Lisbon decisions and of European employment and flexicurity policies like the resource centres put in place under the social partners' social agenda; to make the EEARC a tool for the development of social dialogue in new member countries; and to transfer them to other regions of Europe where they do not exist.

Outcome of the initiative

There are now five other French Employer's Alliances as well as Employers' Alliances based in Belgium and in Germany. At European level the EEE, as a European network, was founded in 2008 and has led to the creation of the European Employers' Alliances Resource Centre (EEARC) providing new possibilities for enlarging the network of Employers' Alliances to other regions of Europe. This project was supported by the European Community as part of the programme for Employment and Social Solidarity (2007-2013) – PROGRESS.

The Alliances have used a combination of local/territorial approaches but combined with European and international approaches conducting on different countries. It has developed a legal expertise; informative and legal publications; comprehensive studies; the development of a charter; the organisation of exchanges, seminars and study visits; support for initiatives in the regions; development of expertise; the development of transfer tools and methods; the centralisation of documentation, guides, handbooks; a forum for the exchange of best practices that recognises sectoral and territorial approaches. The initiative is based on the concept of openness and dissemination

Case study 17 - Taking precariousness out of call centre work: the case of Enterprise Koiné in Italy

Background/context

Enterprise Koiné is a call-centre company with 450 workers. Most of the workers had co.co.co contracts and, later, project contracts but between 2006 and 2007, the company was involved in an important process of precarious workers' stabilisation. This initiative was not related to the economic crisis; nevertheless, the government rules that it responded to were established due to the high number of precarious workers employed in the call-centre sector.

Description of the initiative

When current CEO of Koiné, Simone Cason acquired the company he inherited both the workers and the labour relationships previously established which were generally precarious project and self-employed contracts. Initially some additional protection was provided to workers but following proposals initiated by government Minister Cesare Damiano the company stabilised all its workers offering subordinate open-ended contracts. An agreement was concluded with both with the trade unions and the government official, which allowed him to pay a kind of amnesty tax for national insurance contributions not previously paid.

Outcome of the initiative

As a result Koiné workers have obtained permanent and subordinate contracts. The initiative has not only increased protection for precarious workers, but it has eliminated precarious work as a whole. According to the CEO, the stabilisation of precarious workers had a positive impact, improving the value and the potential of his company. Company productivity increased and the quality of the service offered to clients improved. The company has gained more and more clients and has begun to constantly invest in on-the-job training, believing that well trained workers remain its primary resource. Koiné workers now benefit from social security benefits such as full maternity leave, full paid sick leave and unemployment insurance. While the initiative has ended its outcomes continue as all newly hired workers are given subordinate contracts, either fixed-term or open-ended.

4.2.7 Regulating the labour market through other measures

Some respondents indicated that national, EU level or indeed international regulation were not necessarily the only or best ways to regulate the labour market. Alternative models could be based either on collective bargaining or on corporate social responsibility with trade unions emphasising the former and employers the latter. An employer spoke of supply chain responsibility as an alternative to legislation while another referred to the growth in their number over the last decade. ETI base codes had also focused on the elimination of precarious work.

4.3 EU level legislation

Some of the respondents held a very incomplete picture of EU level legislation and either made no reference to it or stated that they did not know how it operated and what it covered. Otherwise EU level laws were generally viewed positively particularly ‘as a valuable tool in the struggle against inequalities’ (Female government representative, France) and as providing ‘a very robust body of employment rights legislation ... effectively an existing floor of rights’ (Female employer, Ireland). Additional EU regulation that was being sought included the notion of a directive establishing the rights of all migrant workers, regardless of their status, drawing on UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. However, there were a few respondents who believed that EU regulation was too extensive and that it should be rolled back, for example, the temporary workers’ directive and its limitation on the number of fixed-term contracts that can be offered. A trade union respondent from Ireland indicated a certain wariness in relation to the introduction of international and EU rights into Ireland. Such rights were perceived as being of lower quality than those established by national law and of having the capacity of lowering existing provision. Reference in particular was made to the measures introduced as a result of the economic crisis which had led to the dismantling of the role of the Joint Labour Committees in regulating the pay and conditions of precarious workers. However, at the same time, it was acknowledged that the debate on precarious work, such as had taken place, was being driven by EU level developments. For a government respondent the impact of the law had been positive, whereas for an employer respondent it was largely detrimental, particularly in relation to small firms and their difficulties. A female respondent from Greece believed that it was feasible to define precarious work at EU level and to set guidelines, criteria and action plans to combat precarious work, particularly if backed up by the Court of Justice.

Although they generally did not use the term, several respondents referred to issues which could be interpreted as around matters of subsidiarity and the right of law to emanate from the most local context possible, in other words, that national and regional laws were rightly more dominant than EU laws:

‘The international level can indeed play an important role in framing and adopting policies that promote social rights, but the challenges of the labour markets remains an issue for each country to determine and they therefore need, in the first instance, to be examined at the national level, having regard to the different national context and reality.’ (Male employer, Italy)

There was a concern that laws emanating at EU level, which were intended to establish legal minimums within the member states tended to become maximum standards for precarious and vulnerable workers. One issue, however, stood out in terms of demands for EU legislation and this was in connection with pay, with a male employer in Sweden being one respondent who called for an equalisation across all the Member states.

4.4 Harmonisation in the context of EU enlargement

Interviewees discussed the impact of enlargement and the resulting need to harmonise employment practices within and across the member states. The study shows that many of the issues identified in relation to forms of employment relationship and precarious work are common throughout the countries in the study. While some

respondents made the point that standards were higher in some countries compared to others, so that some felt that EU level legislation had made no difference, all in practice identified similar problems, for example in relation to enforcement, the existence of grey economies, the presence of undocumented workers and discrimination based on ethnicity, gender and other outlawed forms.

The first issue raised was how to break the existing divisions between groups of workers within the member state, whether these were based on forms of employment relationship or the characteristics of workers themselves. In relation to employment rights within member states the view was expressed that a single body of law, applicable in all circumstances and applying equally to large and small enterprises was not suitable and that there was a need to differentiate between different types of employment situations. This could be though the establishment of a basic set of universally applicable rights, generally identified as around the protection of worker health and safety which would apply in all cases and, importantly, would be monitored and enforced. This model argued for a less but more effective regulation. At the other end of the spectrum were calls for universally applicable laws in relation to all member states, particularly covering social security and pay. Universal laws at EU level were seen as promoting 'more uniformity in Europe on topics like the labour market, labour conditions and collective labour agreements' although they were also viewed as utopian in the current conditions of the labour market. The problem of course was one of where to draw the line establishing universal laws. As a respondent from the Netherlands pointed out, that it would be hard for countries to raise their standards to the level of the highest while technically it would be possible to lower standards, but this, of course, would be resisted in countries with higher protection. There were also other differences, thus wage costs could be lower in one country than another but dismissal costs could be significantly higher and the issue was how enterprises made their calculations in deciding where to locate their plants or where to carry out work. Wages indeed were identified as a major issue of difference, with different purchasing powers in different member states, but a single market inevitably favouring the movement of production to those parts of the EU where wage costs were lower than the EU average. This was seen as advantaging some countries at the expense of others. Social welfare contributions were also seen as creating differences which ultimately affected decisions on where production would be based and respondents from Germany, the Netherlands and Sweden in particular focused on the total cost of the wages bill as a deterrent to employment there. For Poland, Latvia and Bulgaria, the countries in the study representing the accessions since 2004 one issue was over the lack of reciprocity, where Bulgarian workers did not have equal rights to work in other member states as EU nationals had in Bulgaria Genuine freedom of movement was also identified as an aim, particularly by the NGO respondents in the survey.

Chen's story

Chen is in his 30s and lives in Hälsingborg in southern Sweden. He works on a fixed-term contract as a cook in a Chinese restaurant. He has no formal training as a cook. The contract expires 30 June 2012, but Chen is not afraid of losing his job; he has been working on such short-term contracts since he came to Sweden from Shanghai some three years ago. Chen often works long hours and for low pay, but he is still happy with his job situation. His goal is to be able to stay four years in Sweden and then apply for citizenship. As a Swedish citizen, he would be able to bring his wife to Sweden and they could start raising a family. Although Chen's wage is no higher than it was in Shanghai, his expenses are much lower, hence the hope to raise a family in Sweden. In China, parents must pay tuition already from first grade and onwards. Nor is medical care free for children. It is almost impossible to have more than one child for financial reasons; therefore Chen is more than willing to accept 'precarious' work in Sweden as the social welfare system still might improve his life.

Thus there are a significant number of legal instruments at international level which seek to set standards on the employment relationships to challenge poor practice. While respondents acknowledged the role of international regulation, specifically in the form of ILO Conventions and Recommendations, for some there was indeed now enough regulation, a view in particular expressed by employers:

'This process has been accompanied by the development of a large amount of detailed international regulations, not only at European level through EU directives, but also at ILO level through ILO Conventions and Recommendations. As a consequence of that, an international "social floor" is already in place, also protecting flexible or vulnerable workers: it is based on the ILO Decent work and the EU social model with their respective labour standards. There is no need to add new global regulations, while it is the time to promote compliance and implementation at national level.' (Male employer, Italy)

The study suggests that the impact of economic crisis has been to prioritise further economic rights over social rights in a way that has encouraged the growth of precarious work situations. However, as the foregoing analysis clearly demonstrates, all EU Member States have clear obligations under European and international law in relation to social rights, obligations that are just as compelling as their obligations in relation to civil and political rights.

A key argument for the promotion of human rights in the field of employment is that such rights offer the capacity to de-commodify workers through the articulation of a right to dignity at work but, as a Spanish woman NGO interviewee observed:

'There have been however attempts at separating some human rights from others (civil and political rights from economic, social and labour rights). In this way, while civil and political rights have been protected at the international level, the other group of rights have been left for every country to deal with them.'

This perception that there is no overall societal responsibility for social rights in the area of employment is confirmed by the individual character of many of the mechanisms for redress, where the onus is on the individual employee to progress a complaint. This allocation of responsibility confirms this distancing between society and employment rights. The fact that the state plays a minimal role in the enforcement of employment and social rights – beyond forms of inspection in certain countries – may thus encourage the promotion of precariousness. However, the fundamental rights framework cited in Chapter 5 provides a valuable place in which to locate the

problems of precarious work, in view not only of the widespread recognition that social rights are fundamental rights, but also that like other fundamental rights they are universal in application.

5. A floor of basic social rights

This Chapter first presents the background to the European social rights that exist across the EU. It then presents the rights that exist for most workers in the 12 Member States and identifies what rights are lacking for precarious workers. Next it considers what elements a floor of basic rights might consist of, and reviews the different approaches to making them more effective. Finally, it considers the role of the social partners in determining the content of such a floor. It notes that the impact of the economic crisis has been to prioritise economic rights over social rights and that there is a need to re-balance and to strengthen social rights.

5.1 *Fundamental rights and European law*

An important dimension raised by some respondents is the question whether protection for precarious workers could be advanced by the human rights obligations of EU Member States. It appears sometimes to be thought that there is a natural division between different types of human rights, with civil and political rights (such as those found in the European Convention on Human Rights) being deemed worthy of effective protection, but with social and economic rights (such as those dealing with the right to fair wages and decent working conditions) being worthy of less effective protection. However, this is a view that seems to be inconsistent with emerging practice and established legal obligations under international law. It is to be noted, for example, that the Council of Europe's Revised Social Charter refers in its preamble to 'the indivisible nature of all human rights, be they civil, political, economic, social or cultural'. It is also to be noted that the EU Charter of Fundamental Rights includes both civil and political rights in the same document on an equal basis, without ascribing any priority of one category over the other,

5.1.1 *EU law as a source of protection*

EU Law is a potential source of protection for precarious workers. There are two instruments which are appropriate starting points. The first is the **Community Charter of the Fundamental Social Rights of Workers** of 1989, and the second is the **EU Charter of Fundamental Rights of 2000**. The former is important for recognising, in Art 5, that all employment shall be fairly remunerated. Specifically, that workers (including those not working under an open-ended contract) should be assured of an equitable wage sufficient to enable a decent standard of living and that wages may only be withheld, seized or transferred in accordance with national laws, recognising the rights of workers to enjoy the necessary means of subsistence. This is in addition to the recognition, in Art 7, of the need for an improvement in the living and working conditions of workers, and (in a passage directly relevant to the present study) 'an approximation of these conditions while the improvement is being maintained, as regards in particular the duration and organisation of working time and forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work'.

The 1989 Charter was accompanied by an Action Programme which brought in train legislative initiatives on employment rights including the directive on working time which directs attention to be drawn to the principles of the ILO relating to working time, while the Court of Justice of the European Union conceives the rights thus created as being fundamental social rights. The latter has two consequences, the first being that the term 'worker', to whom the directive applies, has an autonomous

meaning under EU law and thus cannot be constrained by the rules of domestic law. The Court has also taken the view that the directive is universal in scope, and that the right to paid annual leave cannot be made conditional on a 13 week qualifying period. The Action Programme also led to the introduction of directives addressed specifically to the problems faced by some categories of precarious workers, such as those on parental leave, part-time, fixed-term and agency work.

While the EU Charter of Fundamental Rights of 2000 covers a wide range of fundamental rights, unlike the 1989 it does not deal with pay. Nevertheless, there are several articles that are specifically relevant in the discussion of precarious work. Some of these (marked *) are referred to also in the 1989 Charter. Relevant articles of the EU Charter of Fundamental Rights include:

- Art. 7: Respect for private and family life;
- Art. 12: Freedom of association;
- Art 15: Freedom to choose an occupation and right to engage in work; to seek employment in any Member State, with third countries nationals authorised to work having an entitlement to equivalent working conditions*;
- Art 21: Non-discrimination on any ground;
- Art 23: Equality between men and women in all areas, including employment, work and pay*;
- Art 27: Rights to information and consultation for workers and their representatives*;
- Art 28: Right of collective bargaining and right to take collective action*;
- Art 29: Right to a free placement service*;
- Art 30: Protection against unjustified dismissal; and
- Art 31: Right to fair and just working conditions, to maximum working hours, breaks and holiday*.

The Charter applies whenever Member States implement Union law. All EU institutions (including the Commission, the Council and the European Parliament) must therefore respect the rights to human dignity; equality; solidarity; democracy; and the rule of law. With the entry into force of the Lisbon Treaty in December 2009 the charter was given binding legal effect equal to the Treaties. To this end, the charter was amended and proclaimed a second time in December 2007. The Charter has been referenced in a number of cases, both at the Court of Justice of the European Union and at the European Court of Human Rights. Furthermore the 2012 report on the implementation of the Charter asserts the key role of the Council in ensuring the effective implementation of the Charter and the commitment to ensuring that Member States proposing amendments to Commission legislative initiatives, or tabling their own legislative initiatives, assess their impact on fundamental rights. The report also notes that the Court of Justice of the European Union has increasingly referred to the Charter in its decisions and that in 2011 the number of decisions quoting the Charter in its reasoning rose by more than 50 per cent, as compared to 2010, from 27 to 42 (European Commission, 2012).

5.1.2 The instruments of the Council of Europe

The rights of all workers are recognised also by the instruments of the Council of Europe. These include the European Convention on Human Rights which contains

provisions invoked by the most precarious workers, notably domestic servants working in conditions of forced labour. For most workers, however, the Social Charter of 1961 and the Revised Social Charter of 1996 are likely to be more relevant. All Member States have ratified either the 1961 or the 1996 Social Charters. The importance of the Social Charters is reinforced by its acknowledgement in the Treaty on the Functioning of the European Union, Art 138 of which provides that the Community and Member States should have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization; proper social protection; dialogue between management and labour; the development of human resources with a view to lasting high employment; and the combating of exclusion. The Social Charters are also recognised by the Court of Justice of the European Union as a source of the fundamental principles of EU law. The Council of Europe's Social Charters are important for a number of reasons. Apart from the recognition in the preamble to the Revised Social Charter of 1996 that social and economic rights on the one hand and civil and political rights on the other are indivisible, there is a full recognition in these treaties of the rights of workers, rights which are generally unqualified and include that everyone shall have the opportunity to earn his living in an occupation freely entered upon. In addition they provides for all workers to have the right to just conditions of work; to safe and healthy working conditions; to a fair remuneration; to freedom of association; and the right to collective bargaining; special protections are recognised for children and young workers, for disabled workers and for women. Furthermore social and welfare rights are included. It should be noted that these rights apply to 'everyone' or to 'all workers' and while they are not unqualified, Art 31 states that they shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. Additional measures are to be found in a number of protocols to the Charter of 1961, these protocols having been included along with a number of new provisions in the Revised Social Charter of 1996. The former include the right of all workers to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex; the right of workers to be informed and to be consulted within the undertaking; and the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking. And so far as the latter is concerned, they include the right of all workers to protection in cases of termination of employment, the right of all workers to protection of their claims in the event of the insolvency of their employer, and the rights of all workers have the right to dignity at work.

The Council of Europe's Social Charters are important also because they provide a framework for supervision and complaints. The supervision process is based on governmental reports to the Committee of Social Rights, reports which are subject to examination and comment by the social partners in the Member State before the Committee publishes its comments. The complaints process is by way of a collective complaint by a trade union or NGO to the Committee against a Member State alleging that a breach of an accepted Charter provision exists in the country in question. The importance of this procedure is that it makes it clear that social and economic rights are not just aspirational but are justiciable.

5.2 *International human rights standards*

5.2.1 *The International Labour Organisation*

The first of various sources of international protection for precarious workers is to be found in the various instruments of the ILO. The starting point is the Constitution of 1919, which refers to the need to regulate working conditions relating to:

‘The regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures.’

There is no exclusion from this list for precarious workers, any more than there is any such exclusion from the renewed commitment to the principle that ‘labour is not a commodity’, to be found in the ILO Declaration of Philadelphia of 1944, which also recognises that:

‘All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.’

This latter commitment is re-affirmed in the ILO Declaration on Social Justice for a Fair Globalisation of 2008, which also re-affirmed the ‘solemn obligation’ in the Declaration of Philadelphia ‘to advance policies in regard to wages and earnings, hours and other conditions of work, calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection’. In addition, the Declaration of 2008 also recognised the importance that ‘the employment relationship should be recognized as a means of providing legal protection to workers’ as well as the importance of developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances. These measures include:

- The extension of social security to all, including measures to provide a basic income to all in need of such protection;
- Healthy and safe working conditions; and
- Policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wages to all employed and in need of such protection.

They also include ‘making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems’.

In addition these provisions contained in the foregoing texts there are a number of ILO instruments that deal specifically with precarious work. These include ILO Recommendation 198 (Employment Relationship Recommendation), 2006, which

states that governments should formulate and adopt national policies that establish the existence of an employment relationship, distinguishing between employed and self-employed workers and combating disguised employment relationships and is important not only for recognising in its preamble that it is the purpose of labour law generally ‘to address what can be an unequal bargaining position between parties to an employment relationship’, but also in drawing attention to the difficulty of identifying the employer, which is particularly difficult for workers in precarious work. Other ILO instruments dealing specifically with precarious workers include:

- ILO Convention 175 (Part Time Work Convention, 1994), designed to extend equal treatment to part-time workers in relation to a range of employment matters
- ILO Convention 181 (Private Employment Agencies Convention, 1997) requiring governments to take measures to ensure adequate protection for agency workers
- ILO Convention 177 (Homework Protection, 1996) designed to offer equal protection for home workers
- ILO Convention 189 (Domestic Workers Convention, 2011) designed to secure better protection for domestic workers.

So far as instruments of general application are concerned, ILO Convention 158 (Termination of Employment Convention, 1982) is particularly relevant in the context of precarious work, notably in relation to changes occurring in the area of dismissal protection in at least some of the study countries. The Convention protects against dismissal other than for a justified reason (Art. 4) and provides for a procedure of appeal against termination (Art. 8).

The study suggests that the impact of economic crisis has been to prioritise further economic rights over social rights in a way that has encouraged the growth of precarious work situations. However, as the foregoing analysis clearly demonstrates, all EU Member States have clear obligations under European and international law in relation to social rights, obligations that are just as compelling as their obligations in relation to civil and political rights.

5.3 Social rights in 12 Member States

A selection of key social rights applicable in the 12 Member States are set out in Table 24:

Table 24. *Social rights generally present in the 12 Member States*

Country	Nature of rights
Bulgaria	Rights to social insurance, health insurance and social assistance apply to all citizens, including precarious workers; there is a right to work; a right to minimum wage; a right to dismissal only on reasons explicitly provided for by the law; a right to non-discrimination. There are also specific rights for some categories of precarious workers – e.g. young persons, disabled persons, mothers with small children.
France	Rights to protection against unjust dismissal; French law establishes various legal provisions guaranteeing equal treatment amongst different categories of workers. Furthermore, the French Cour de cassation has set a principle “equal work, equal pay” applicable to all workers in the same company. This rule contributes to the harmonization of pay within undertakings. French law also provides

	precarious workers with specific rights. In particular, fixed-term and agency workers are granted with an indemnity of precariousness of 10 % of the wages.
Greece	Among the key social rights guaranteed by the Greek Constitution are the rights to work, to social insurance (linked by law to uninterrupted careers), to education, to health and to housing; The Greek Constitution also guarantees for all workers the freedom of association, collective autonomy and the right to collective bargaining, including the right to set minimum wages by collective agreement, the right to equality and non-discrimination and in particular to sex equality and the right to equal pay for work of equal value applicable to all employees. In Greece there is no constitutional or statutory right to protection against unjustified dismissal.
Germany	All legislative and/or statutory regulations are applicable to atypical employment relationships. Employment at up to 400 € of salary a month is excluded from the social security legislation.
Ireland	In theory all workers under a contract of service are covered by the full suite of approximately 30 pieces of protective employment legislation, provided they meet the qualifications contained therein, usually a time period qualification where such exist. However, much of that protection is based on redress to the employee in the event of breach by the employer
Italy	Subordinate employment contracts generally provide unemployment insurance as well as sickness, maternity and industrial insurance although the level of payment may be lower for those in non-standard contracts. Workers without an employment contract, which includes semi-dependent or 'para-subordinate' workers are outside the area of labour law protection; they only enjoy those rights that are universal such as rights to healthcare, education and non-discrimination.
Latvia	Dismissal rights are applicable only after three months. All workers have the right to a minimum wage. Where taxes are paid there is the right to statutory social insurance allowances.
The Netherlands	Dutch labour law has a very general character. Few exceptions are made as to the applicability to labour contracts to specific groups of workers or companies. Only domestic workers are partly excluded from the statutory law on the labour contract. Temporary agency workers', as well as fixed-term workers' labour agreements are covered by the statutory law, although it allows leniency in its application. They are excluded from dismissal law but some safeguards for abuse are provided. The problem is not necessarily in the law but in access to justice.
Poland	Access to social rights is dependent on the type of contract. Those working on the basis of employment contracts governed by labour law have full access to social rights. Whereas those performing their work on the basis of civil contracts have the lowest level of social protection. Social rights guaranteed by labour law include: freedom to work; freedom to conclude labour contracts; the right to the minimum wage; the obligation to respect the dignity of the employee; equal treatment; non-discrimination; the right to safe and healthy working conditions; rights to representation; rights to training;
Spain	The regulations do not distinguish between precarious and non-precarious workers. The main problem relates to the mechanisms of enforcement of those rights.
Sweden	Employees whose employers operate in Sweden generally are covered by all statutory social rights. They may also be covered by rights established in the collective agreement. Sweden has no rules on the minimum wage. Where there is no collective agreement salaries are determined in an agreement between the employer and the employee. If the terms in the contract are unreasonable the Swedish Contract paragraph 36 may be applied.
UK	UK law draws a distinction in terms of its personal scope of application between those working under a contract of employment ('employees') and workers who are not employed under any other contract to perform work personally for another party who is not his client or customer ('workers'). In theory the former category, subject to various qualifying periods, enjoys all labour law protections, whereas the second category (which we could see as including various 'precarious workers') enjoys fewer rights, and in particular do not enjoy any protection from unfair dismissal legislation, though they will often be protected by the National Minimum Wage Act 1998. Discrimination law statutes have a broader personal scope, as they ought to apply to people with 'any contract to do work personally' or any person in employment

Source: Reports from the 24 national experts to the study

The rights to which precarious workers are generally excluded, are shown in Table 25. A specific concern of several interviewees was that some workers were excluded from social rights on the basis of probation, length of service or age.

Table 25. Social rights to which precarious workers are excluded

Country	Extent of exclusion
Bulgaria	Labour law protection does not apply to those performing undeclared work and to those working under civil contracts. Workers hired for no more than five days in a month and those working without employment contracts are not compulsorily insured against temporary absence for reasons of maternity and unemployment nor are those in undeclared work.
France	There are no labour rights from which precarious workers are excluded. However, their lack of seniority may impact on the rights they can claim. They may also be excluded from complementary company social insurances. They have diminished access to vocational training including the portability of training rights. Migrant workers are highly concentrated into sectors where there are no trade unions, and a low impact of Labour inspection services.
Greece	Dependent on the form of the contract, precarious workers can be excluded from rights to protection

	against dismissals, working time rights and in-company training and rarely benefit from collective representation mechanisms; young workers are excluded from full entitlement to the minimum wage and again, dependent on their contract may be excluded from parental and maternity rights and the right to social insurance calculated on a daily basis.
Germany	Many precarious employees are not guaranteed access to the canteen or other benefits (free coffee, invitation social events etc.) enjoyed by the permanent staff and usually do not have access to representative structures.
Ireland	While those workers who might be regarded as in a situation of “precarious” employment may in theory not be excluded from, limitation/qualifying periods within their contracts may exclude or limit their protection e.g.. One years’ service to qualify under the Unfair Dismissal Acts, the qualifying provisions for a Contract of Indefinite Duration under the Fixed Term legislation.
Italy	Those who do not have a subordinate employment contract are generally excluded from both unemployment insurance and other forms of income support and have no rights other than those in the case of accidents and injuries at work. They are also excluded from protective labour legislation (non-dismissal law, minimum pay, guaranteed hours, parental leave, training and so on. Employees of small firms have a weaker protection against unfair dismissal. Precarious workers enjoy only limited social rights (universal welfare protection). Workers on fixed-term contracts and employees of labour agencies enjoy equal treatment in relation to permanent employees.
Latvia	Workers who are in irregular work have no right to statutory social insurance coverage
The Netherlands	Illegally residing and working persons are effectively excluded from every social right, although formally all statutory civil labour law is applicable to them. Workers that perform contract labour as self-employed can be under very strict and limited circumstances, covered by the social security laws.
Poland	Those not covered by the labour code are not entitled to the protections in Table 23 above. Social insurance contributions are generally lower but give a lower entitlement. There is no or limited access to healthcare. Workers on civil contracts are not covering by working time provisions including holidays. They have no rights to sickness benefit.
Spain	Regarding to subcontractors and temporary-work agencies, it is necessary to clarify the employment relationship in order to determine the employer’s responsibilities. In the field of health and security at work, there are cases where it is impossible to identify the figure of the employer and this renders the enforcement of legal rights of this kind of workers difficult. The content of benefits and the right to accede to some benefits, like unemployment benefits, are linked to the acquisition of a certain number of work days. The result is that part-time workers are easily excluded from entitlement to those benefits, resulting in a violation of the proportionality principle, contrary to the European directive on part-time work. A new contract for entrepreneurs introduces a one year period before which rules on unfair dismissal do not apply, in violation of ILO Convention 158, and the flexibilisation of training contracts (and the elevation of the age limit) circumvents the principle of non-succession of fixed-term contracts.
Sweden	Migrant workers are partially protected under Swedish law. Where there is no collective agreement there is a right to a minimum wage. Precarious workers may be included in the sickness insurance if they not are undeclared workers. Precarious workers (fixed-term workers and part-time workers) may however have problems in reaching the conditions for full unemployment insurance.
UK	Many precarious workers will be excluded from employment and social rights where they only apply to employees or have a long qualifying period. But the scope of these different concepts is contingent on the shifting sands of judicial interpretation, so that it is sometimes difficult to say who is and who is not excluded. Indeed. Precarious workers could be excluded from any legal protection, including, as seen above, anti-discrimination law. Lack of legal certainty itself may be said to be an aspect of precariousness.

Sources: Reports from the 24 national experts to the study

The concept of a basic floor of rights implies either legislating at EU or at national level, such that both ‘standard’ and precarious workers are covered. The PWSR interviewees were divided about the validity of a basic floor of rights. While a majority expressed support for basic generally applicable rights, a minority expressed concern that a basic floor might be applied only to those deemed precarious. A Spanish woman trade unionist explained:

‘Precarity is a mark that emphasises the shortcomings of our current mode, but at the same time it is the most dangerous threat that affects the European workers’ shared project, which is represented by Social Europe. The fact of converting precarious workers into a specific class with their own social and labour rights would mean renouncing the foundations of Social Europe, that is, cohesion and equal opportunities.’

The concerns were both that unless a floor of rights was universal it could be avoided by rights to free movement and that claiming the need for consistency, the baseline of

rights would be watered down. This would only be avoided if a full programme of fundamental employment and social rights was identified and promoted.

Interviewees identified a number of social rights they considered variously as ‘basic’, ‘fundamental’ or ‘applicable’ on the basis of international or EU law. Some also referred to national laws that recognised basic social rights. Where such national laws existed then it was argued these should apply to everyone, regardless of the nature of the employment relationship. This, for example, was considered the most effective way to challenge precarious work by a Greek woman trade unionist:

‘The establishment of a “hard core” of social and labour rights (at national and EU level) for all employment contracts, irrespective of their official characterisation, constitutes perhaps the best legal approach for the protection of precarious workers.’

Kurt’s story

Kurt is a middle-aged Swedish academic with a PhD dating from the mid-1990s. Ever since he graduated, he has been working on short-term research projects, none of them longer than two years. He also worked abroad for one year. Due to the Swedish academic system, universities are able to ‘pile’ fixed-term contracts more or less endlessly without having to offer people a permanent position. After a disagreement with the head of department where he worked, he was no longer able to place projects at his *alma mater*. He has therefore started a small business of his own together with a friend, and is now connected part-time to a research centre in another part of Sweden. He gets along financially, but it is not an easy life and he is disappointed with his situation.

There were also differences over what these basic social rights should cover. The protection of health and safety, insurance to cover sickness, the right of collective representation and social rights that concern the reconciliation of private and professional life were all areas over which there was general agreement. There was also broad support for general laws setting minimum wages, but a UK employer expressed scepticism both about using the law to create basic protections for all workers and specifically opposed the national minimum wage. A German employer viewed unemployment benefits and social security benefits as too high and argued it should be the role of the state to incentivise people back into work.

Some respondents presented relatively well-developed programmes of basic rights. For example, a Spanish NGO respondent argued for: ‘a right to work; a right to enjoy equal and satisfactory opportunities; a right to set up a trade union and to take strike action; a right to social security protection; a right to protection and assistance for the family; and a guarantee for appropriate life standards’. She went on to argue:

‘Societies are also composed of groups and persons who suffer higher levels of discrimination due to their social and personal conditions. Because they are disadvantaged they need better protection and specific social and legal measures that guarantee the real enjoyment of their rights.’

Case study 25: Improving the working conditions of precarious workers – the role of trade unions

Background/context

The Polish labour market, as with others, is facing a number of challenges, including the growth in temporary work seems to be one of them. Although the rules for the employment of temporary workers in Poland have been legally established, some employers and agencies have managed to circumvent the law with impunity. Employer abusive behaviours in some cases have resulted in precarious employment and low earnings. The case study presents actions taken by trade union in order to increase the level of protection of temporary staff in former Polish steelworks, currently owned by one of the largest multinationals in the global steel industry.

Description of the initiative

A major multinational steel company operating in Poland introduced flexible working arrangements which included a requirement on some workers to take unpaid leave and then to be employed through one of two temporary employment agencies. Where new workers were hired their conditions of employment differed from those of permanent workers. Trade union organisation operating in these units strongly disagreed with these employment practices, offering an alternative solution to increase the protection of temporary workers.

Outcome of the initiative

As a result of negotiations workers were given two contracts. One is an open-ended contract with the user-company under which workers do not perform their work as they remain on unpaid leave. The workers however, perform their work on the basis of the contract with agency. Those working through the agency now have the right to the same pay as they had when directly employed. Additionally the agreement gives a guarantee of three years' employment with the right to return to the user-company as its employees.

Disagreements were expressed over the extension of social rights to those who were 'self-employed'. Some interviewees argued that it was necessary to adopt measures that would remove incentives to work in the informal sector while others considered it was unlikely that any measures would be effective in circumstances where individuals felt the need to engage in precarious work to survive. They believed an extension of social rights was not on the agenda at a time of economic crisis.

There were also differences over the treatment of the most vulnerable. Some interviewees favoured providing a range of more generous benefits to all workers to offset the weakness of existing welfare systems including the vulnerability of those workers who had weak networks of protection (such as family). Others suggested the way forward was to only target additional social and employment rights to affect those workers identified as precarious or vulnerable. These interviewees were concerned that a basic floor of rights might be used to 'strip out the rights of workers with a permanent contract'. A male Netherlands employer argued 'This isn't the way to go when tackling the problem of precarious work':

'When someone does not earn enough to make a decent living, it is only in that case that there should be financial aid. It is important that we get a good view of

what the person can or can't do. The employers are responsible for creating job opportunities and giving precarious workers a chance to participate in the labour market. The role of government is in financially aiding of people who do not earn enough to make a decent living'.

Still others considered that precarious workers were already 'over-protected' and that strong social security systems resulted in too much of the burden being placed on the state.

Protecting the welfare of temporary workers

In **Italy** the bilateral body Ebitemp (run by the trade unions and the temporary work agencies) provides compensation through a guarantee fund, in cases of injury where it impacts on worker performance beyond the end of the employment relationship. In this way temporary workers can access credit on terms that are suited to their needs and which are more personalised than through seeking credit through the banks.

5.4 Elements of a floor of rights

The PWSR survey asked respondents to identify those social rights which in their view should apply to all those in non-standard forms of work. Table 26 provides their responses. Non-discrimination rights followed by sick pay, family rights and health benefits were perceived as being most important under a new social settlement.

Table 26. Social rights that should apply to all precarious workers (% responses)

	Not essential	Very slightly essential	More essential	Very essential
Non-discrimination rights	3	4	15	76
Sick pay	4	7	13	73
Parental rights, including maternity	4	8	15	72
Equal access to health benefits	5	6	14	72
Protection against unjust dismissal	4	7	16	71
Equal access to welfare support when out of work	4	9	14	71
Equal access to pension schemes	5	9	17	66
Equal rights regarding working time	3	10	23	61
Access to collective bargaining rights	4	12	24	58
Representation at work	4	11	25	57
Equal access to training	4	16	35	42

Source: Survey questionnaire

There were some significant differences in country responses, with pension rights being identified as very essential by 92 per cent of survey respondents in Greece, but only by 35 per cent in Bulgaria. Welfare rights were seen as very essential by 93 per cent of respondents from Sweden, but by just half of the respondents in Latvia and Poland, as shown in Table 27. These responses tended to vary with the historic degree

of embeddedness of the particular social right concerned in the national culture. . It is also interesting to note the under-representation of collective bargaining, despite it being considered by the ILO (amongst other organisations) as a core labour standard.

Table 27. Social rights identified as ‘very essential’ in 12 Member States, by country, 2011(% of responses)

	Bulgaria	France	Germany	Greece	Ireland	Italy	Latvia	Netherlands	Poland	Spain	Sweden	UK
Pension rights	35	75	54	92	55	76	48	47	65	77	89	65
Welfare rights	15	88	75	87	82	81	52	76	53	69	93	76
Health benefits	40	62	75	87	55	73	56	82	71	92	93	66
Representation at work	25	50	67	65	46	49	19	47	70	81	68	85
Access to training	20	75	50	52	36	38	22	41	41	50	36	58
Access to collective bargaining rights	25	63	75	61	64	60	30	53	35	65	82	73
Protection against unjust dismissal	30	75	75	78	91	62	55	65	53	88	79	96
Equal working time rights	25	75	71	61	73	43	55	59	53	73	71	85
Non-discrimination rights	35	75	79	61	73	73	63	82	82	88	96	92
Parental rights, including maternity	35	63	71	74	64	78	59	65	71	92	89	77
Sick pay	55	75	67	65	64	84	52	70	76	88	82	84

Source: PWSR survey, 2011

The PWSR interviews suggested that precarious work is challenged most effectively when employment rights are supported by a body of social and welfare rights, thereby providing rights to a pension, to a written contract, to be paid wages on the dates due and to have employer contributions made towards social welfare provision. Many of these areas are already covered by EU and by national law yet it is likely that they are often not applied in practice where workers are unlikely to attempt to enforce their rights. In the case of Spain, it is likely that, after the 2012 labour law reform, the right to not be unfairly dismissed would be considered as “very essential” by even more respondents.

5.4.1 Towards a floor of basic social rights

The study sets out eight suggested key elements of a basic floor of rights. These emerge from the responses to the questionnaire survey as well as from the interview data. However, it should be stressed that there was also a strong body of opinion that emphasised that there already exists a core floor of social rights, as established in international law, through the Conventions and Recommendations of the International Labour Organisation; through the Charter of the Council of Europe; and by way of the European Charter of Fundamental Rights. Embedding these legal instruments into the jurisprudence of national and EU level legal systems would establish an effective floor of rights. The study furthermore suggests that employment rights that are supported by social and welfare rights are the most effective way of challenging precarious work.

1. Equal treatment

The first element of a floor of basic social rights is the right to equal treatment. For an academic lawyer from France, 'equality is central for establishing a minimum floor of rights'. A number of respondents cited equal treatment as both a fundamental right under EU law and one which should be generally applicable. Equal rights was more generally discussed in relation to forms of employment relationships although in some cases it was raised in the context of noted gender discrimination in relation to work which they thus identified as precarious. For some therefore the principle of equality of treatment was considered the basis of any legal system and more fundamental than a principle of a minimum floor of rights. Moreover, the absence of equal treatment is generally due to higher vulnerability, and is even more evident in cases of multi-factored vulnerability related to the new forms of employment. Precarious work was thus identified with work that encouraged discrimination and especially violated the principle of equal pay between men and women and the general principle of equal pay for work of equal value. This was in particular discussed in relation to part-time and temporary work, forms of employment which many respondents associated with precarious work. The absence of equal treatment was for them an indicator of work being precarious.

For a majority of those who discussed the issue, the principle of equality should always apply and there were no circumstances which they identified where it would not. As an employer respondent from the Netherlands noted, 'everything should be of equal level and there should not be any exceptions', a position supported by both trade union and employer respondents. A trade union respondent from Poland who stated that there should be no differences between workers in the same workplace and in the same grade so that it was 'not acceptable for there to be different levels of rights according to which precarious workers would be below the rest of the workplace. That would amount to the same as validating precarity', a position also advanced by other respondents, in particular those from trade unions.

Some respondents, however, questioned whether the principle of equal treatment was applied in practice, for example, whether Directive 75/117/EC on equal pay had any impact on the pay rights of agency workers, and a German trade union respondent pointed to the union's campaign on temporary agency labour as an indication of 'what a scandal it is that people working alongside each other have different pay and conditions'. Others however noted that the impact of the directives on part-time, temporary and agency workers had been to establish equality of treatment. Indeed there was a strongly held view that where there was equal treatment workers could not be precarious, as a trade union respondent from France noted, 'there is nothing wrong with temporary employment as long as equal pay prevails'. Thus, the absence of equal treatment was an indicator of precariousness. Examining the extent to which equal treatment applied was accepted as one way of determining whether or not work was precarious. As an academic expert from Greece noted, 'In my opinion a minimum floor of rights is related to the provision of equal rights in the labour market for all groups within the workforce'.

2. A right to a minimum level of earnings

The second basic right proposed concerns the right to a minimum level of earnings that is sufficient to enable a worker to live decently and to enjoy the basic freedoms of a democratic society. Of the 12 countries in the study a majority already had a

statutory minimum wages system in operation. For some respondents the level at which a minimum was set was also as important as whether it should apply to all workers. Minimum wages which excluded young people or which provided a lower rate potentially encouraged employers to hire workers only while they had no entitlement to the full rate. From the trade unions it was generally argued that the minimum should be sufficiently high to allow individuals to have a decent life. However, for some employers minimum wages also had to be linked to the level of benefits for those out of work, as a method of encouraging individuals into work, was also proposed.

Whether the minimum should be sector specific is also an issue to be addressed, with some study interviewees favouring sector (as opposed to national) minimum rates. The other issue is whether such a minimum should be established by law or by collective agreement. Moreover, whichever form is utilised to establish a minimum wage then there is a need for an effective mechanism of enforcement. Furthermore, where workers might be precarious for other reasons, for example to do with employment status, job security or where they were at risk, then the establishment of a minimum wage by itself might not be considered sufficient to remove workers from precarious work.

The Spanish labour law reforms

Spanish labour law has been thoroughly reformed, breaking the equilibrium that was in place since the beginning of the democracy, and has been questioned from a constitutional and international standards point of view. Causes, presumptions, procedure and compensation related to dismissal all have been made more flexible, lowering protection for workers. Collective bargaining has been heavily decentralised and employers can more easily opt-out from collective agreements, all weakening the union power of representation. Part-time work has been reformed in favour of more flexibility on part of employers; the prohibition on the succession of fixed-term contracts has been by-passed by the introduction of the possibility of the renewal of training contracts and the increase of the age-limit to 30 years. Finally, 98 per cent of Spanish companies will be able to hire workers under an open-ended contract with an initial one year period where there is no protection against dismissal.

Luiza's story

Luiza is 28 years old and has an open-ended employment contract as a machine operator at a tobacco company in Gothenburg. Her parents immigrated from Yugoslavia (Bosnia) in the early 1970s, and Luiza is very much raised within 'two cultures'. She says that this has been an advantage socially at the workplace, which is very multi-ethnic. Luiza had a two-year secondary education to become a machine operator and also had some basic vocational training when she was new at the tobacco company. The 'precariousness' of Luiza's job is thus not insecurity or fear to get fired. It is rather that it is a 'dead-end' job with low wages and no serious possibilities for advancement. The situation has been rapidly worsening over the last few years. Previously there was a leadership training programme, which is however now discontinued. Due to an active 'lean' ideology, the tobacco company has further reduced the number of workers which has increased the stress for the remaining ones. The work environment has worsened, Luiza says, and the employees are no longer even allowed to take breaks at the same time, which has been devastating for the joy and social contacts. As a part of this downward spiral, people also 'whine' more. In conclusion, Luiza, despite having a permanent position, feels 'locked-in' with little possibility to improve her working conditions either at her present workplace or by moving jobs.

3. Protection against dismissal

Should the right to be protected against dismissal form part of a basic floor of social rights and how far should the protection apply? ILO Convention 158 provides an unqualified right to protection from unjust dismissal. The earlier sections of this study demonstrate that precarious work is closely associated with work that is insecure and that the concept of insecurity includes situations where workers can be dismissed without just cause. The study was provided with examples of cases where the ability of employers to dismiss could be cited as creating precarious work. In the UK cases were identified, particularly in the public sector, of workers issued with redundancy notices to terminate their contracts with the offer of new contracts with different terms. Equally, the predominance of triangular employment relationships in relation to precarious work separates the entity that takes the decision to dismiss from the entity which has to carry out the dismissal and thus fosters precarious work. For these reasons a number of respondents identified jobs with no protection against dismissal as precarious. Providing a right not to be dismissed arbitrarily was viewed as a basic social right according to at least some of the respondents. However, beyond this is the question as to whether the right should be mediated either through set qualifying periods or through adequate compensation. In Ireland, where the existing right not to be dismissed unfairly is subject to a length of service qualification, a trade union respondent argued that this undermined social protection for those in precarious work. It also had consequences for entitlement to welfare benefits when unemployed as these were also related to length of service. In Latvia too, the existence of a qualifying period of three months, during which workers could be dismissed without compensation and without justification was seen as a 'pressing problem', according to a human rights expert, while the introduction of a similar type of qualifying period of one year in Spain has also been seen as highly controversial, according to some of the legal experts interviewed. In the UK, a proposed change to the law, which would extend the period before qualifying for unfair dismissal rights from the current one year to two years' was viewed, by a trade union respondent, as having a disproportionate impact on precarious workers, in particular young workers and workers from minority ethnic communities. In industries where employment contracts are generally short, for example, in construction, the exclusion of workers on the grounds of service would have the effect of removing them from entitlement.

Including the right to protection against dismissal within a framework of basic social rights could accord either the right to protection against the loss of a job (the right to reinstatement) or the right to compensation for the loss. While many member states currently adopt the former model, the return of compensation for unjustified job loss is recognised as the principle remedy in the case of the UK and is a major component of the proposed new laws on the single contract in **Italy**. A legal academic from Italy suggested that the right of termination payments on dismissal, fixed at an adequate level, on the basis of length of service, was a basic employment right. It had the advantage of acting as a disincentive on employers to dismiss but at the same time did not prohibit the dismissal.

Proposals for a single employment contract in Italy

In 2011 Mario Monti's Technical Government proposed the introduction of a single employment contract as a way of addressing precarious work. After 15 years of flexibility there are now over 40 different types of contract in Italy and one of the lowest youth employment rates in Europe. The single contract aims at ending dualism in the labour market and at cutting labour costs. There are currently three proposals.

First proposal:

The single contract would apply only to new entrants with indefinite contracts. Dismissal would be permitted for serious misconduct of the employee or for economic reasons. In the case of a disciplinary dismissal considered unfair, the judge orders the reinstatement or to pay damages, or both. In the case of dismissal for economic reasons it is considered anyway fair but the employee is due compensation and not the right to be reinstated, other than a complementary treatment for the period of unemployment.

Second proposal: The single contract would also be of indefinite length but there would be a three year period moving towards greater levels of flexibility. In the first three years dismissal for just cause would be permitted with compensation but without the right to reinstatement. At the end of the three year period the existing rights to protection from unjust dismissal would be applied (automatic right to reinstatement). All existing rights to unemployment insurance would apply.

Third proposal: The single contract would apply to a training contract combining work and training and incentive consists of a path of access to employment. The lasting of such a contract is re-divided in a first-term period which has a three year term during which the contract is revocable. After the three years following the permanent employment all of the current dismissal laws apply (provided that the enterprise employs more than 15 workers). All existing rights to employment insurance would apply.

4. Working time, precarious work and social rights

Despite the existence of the EU Directive on working time, the study points to the exclusion of workers from the protections embodied in the Directive as one of the factors confirming precarious work. Guaranteeing that workers both have and can exercise rights associated with working time and have an element of control over working time remains an area identified as a basic social right. The issue of working time and work shifts was also identified by some respondents in the study and the timing of shift work, in particular, was seen as affecting the work life balance of all workers, but in particular of women workers who were pushed into precarious work where the shift and working time arrangements in standard work were such as to not enable them to undertake such work. The introduction of more flexibility for the employer in working time management in general and in some form of contracts, like part-time contracts in Spain, also has a clear impact on women, emphasising the importance of gender mainstreaming in working time regulation. From employers there was generally a perception of the need for some level of regulation over working time, but with a preference for general regulation, leaving the specifics to the employer. The study found that key issues related to the exercise of working time rights included:

- The exclusion of workers on the grounds of their status;

- Unilateral changes to contractual working hours either through increases or decreases that had the effect of placing workers in precariousness; and
- The continuing uses of zero hours contracts.

Bogus self-employment, together with undeclared work, result in workers being unable to enforce working time rights. Thus while working time has been recognised as one of the basic rights protected by EU law, forms of contractual relationship identified in this study have had the effect of excluding workers from the protection of the Directive. Thus a right which is considered basic is withdrawn from workers whose employment relationship falls within the category of precarious work.

5. Rights during periods of probation

Periods of probation at commencement of a job were raised by some respondents as placing workers in precarious work and raise the issue as to whether there should be a basic right to protection during a period of probation, given that this is more likely to coincide with work at the start of individuals' working careers, when their age and lack of experience place them in a position of vulnerability. While a trade union respondent suggested that there should be no differentiation in the rights that probationary workers had, in comparison with workers who had completed their probation, employers were less likely to hold this position and favoured a period where both parties were learning to work with one another, during which rights did not apply. The issue of how long such a period might be was also considered and it was apparent that periods of probation which were relatively short and which were strictly limited to assessing the ability of workers to perform the tasks as required in their contracts, were not contentious in the same way as long periods of probation, or probationary periods which were renewed. Academics from France, Poland and Bulgaria all suggested that, from a legal aspect, the first period of an open-ended contract is precarious, as workers normally did not have protection against dismissal during that period and the issue is whether there should be a specific form of protection during that period for example by ensuring that the length of the probationary period is established at the time of the job offer and where reasons are provided for where employment is terminated during the probationary period

Increasing probationary periods

In **France** the government has tried to increase flexibility at work through indefinite contracts but containing longer probationary periods. In 2006, a Contract New Employment was introduced in French law which foresaw a two year probationary period for companies of less of 20 employees. In 2008 the courts ruled that the law was contrary to ILO Convention 158. The French government had also intended to create a First Employment Contract that would apply only to workers of less of 26 years old which would have permitted dismissal without just cause during the first two years of the contract. As a result of a large-scale protest movement against the reform, the proposal was abandoned. In **Greece**, a recent law adopted in 2010 to implement the first Memorandum of Economic and financial policies signed between the Greek government and the Troika, extended the probation period, during which the termination of employment relationship does not require the payment of a severance pay, from two months to two years. **Spain** has recently introduced the "contract for entrepreneurs", applicable to 98 per cent of Spanish companies, an open-ended contract with an automatic probationary period of one year

6. Health and safety

The right to a safe and healthy system of work is a recognised basic social right and interviewees and respondents to the study identified an absence of health and safety or indeed an absence of effective inspection as an indicator of precarious work. For many the requirement is that health and safety rights are applied regardless of the employment relationship, as an employer respondent from the UK noted, without general application ‘it’s a slippery slope if you have differentiated rights’. Similarly an academic expert in Germany stated:

‘Occupational health and safety laws and regulations should apply to all employees, not considering gender, age and/or other discriminatory factors. This also includes employees in precarious employment – meaning that they should have access to all fundamental rights and freedoms, as well as the right to equal treatment.

7. Awareness of rights, access to justice and enforcement

Any rights are only as effective as they are known to those who might be able to exercise them and where there are real possibilities of exercising them. Thus in relation to a basic floor of rights, knowledge and access are two key elements. Where the law excludes workers from being able to complain or where it places too heavy an onus on the employee to pursue a claim, then this could be seen as effectively an inducement to precariousness. Indeed some respondents identified the absence of either knowledge or access or both as indicators of precarious work. As an employer organisation representative from the UK noted:

‘We would accept that somebody who is unable to access the legal protections already in existence (both in terms of knowing what her/his legal entitlements are and in terms of accessing the judicial system, should that be necessary) is obviously in a vulnerable situation.’ (Female employer, UK)

Workers thus need both to know what their rights are and how to enforce them and it must be the role of the state to improve access both to the information needed and to the labour courts, in particular for workers under short-term contracts. Equally important are the enforcement mechanisms available and the role of the state enforcement agencies in combating precarious work.

8. Rights to representation

Articles 27 and 28 of the Charter of Fundamental Rights of the European Union establish a series of rights that imply a right to representation at work. Similarly the 1998 ILO Declaration on Fundamental Principles and Rights at Work includes freedom of association and collective bargaining as one of its four core principles. Thus the right to representation would appear to fall within the definition of a basic employment right. The PWSR survey endorsed this view considering that any loss or reduction in access to collective representation represents a current key employment issue. One third of respondents described this as a very key issue, compared to 10 per cent who thought this was not the case. However, there was significant variation in responses by country, with a majority in Greece (57 per cent), Ireland (55 per cent), Poland (53 per cent) and the UK (50 per cent) stating that it was very important. For the remaining countries in the study a loss or reduction in representation rights was not viewed as so critical. Arguably in some of the 12 study countries the existing systems of representation are considered sufficiently robust so as to withstand the consequences of change. However where representation is insufficiently embedded in

national systems there was an identified deficit. Thus a focus on representation rights would need to take account of the differences of application in current member state protections and be viewed within a context of the erosion of collective rights, increasingly considered as less important on a global level, as evidenced by a movement towards the decentralisation of collective bargaining and the creation of separate, segmented forms of collective regulation for new forms of employment, such as in the case of economically dependent autonomous workers in Spain.

5.3.2 *Social protection rights*

It may be asserted that the traditional male breadwinner model of social welfare rights, based on the full-time, permanent worker paying the relevant contributions and becoming entitled to social protection when needed clearly does not fully match the pattern of work relationships today, particularly in those sectors identified with precarious work. A Greek academic commented:

'In terms of social insurance, non-standard work is penalised by virtue of the fact that during his [sic] working life, the non-standard employee will have worked less working hours than the amount of insurable employment time needed to qualify for pension benefits. Because of long periods of unemployment and reduced duration of either employment or working hours, this kind of employee will have much more difficulty in meeting the requirements for insurance benefits than a full-time regular employee. In addition his precarious working situation will result in reduced pension entitlements.'

The separation of welfare from contribution models would be one way of avoiding this two-tier system. Bogus self-employment, for example, is not only a way of avoiding the payment of taxes but it also effectively excludes workers from entitlement to welfare. Such workers are more usually excluded from those measures that would otherwise provide protection, such as collective bargaining, and have less entitlement to protection when faced with the very factors which delineate their precarity – for example, short term contracts and periods of unemployment.

Migrant workers are one group likely to be most consistently excluded from welfare entitlement. They are less likely to have sufficient service to get entitlement to length-of-service based benefits; they are less likely to access benefits as their mobility means that in periods when they are out of work they are less likely to still be in the Member State where contributions had been paid; and they are more likely to be in informal employment where contributions are not paid at all. An absence of social rights may promote precarious work since workers who are not covered between periods of work may be more likely to take precarious jobs. Interviewees viewed strong social rights as a pre-condition for getting rid of precarious work. In those cases where it was possible to avoid or evade contributing to social rights (including pension rights), then this was perceived as helping promote precarious work, as a Bulgarian trade unionist indicated:

'In fact more and more employers have used precarious employment to evade their obligations to provide social security and pensions, maternity and family leave, overtime payments, vacation and holidays and occupational health.'

Social rights were associated with strong democratic traditions and in the context of economic crisis reduced social rights were perceived as linked to an increase in

precarity. Social protection rights which could be considered as basic social rights include:

- The right to a pension in retirement;
- The right to maternity leave and pay;
- The right to paid holidays;
- The right to unemployment benefits when out of work.
- The right to benefits when sick or in cases of accidents

These social rights are considered fundamental to a healthy democracy. In relation to them the study found strong support for universal application of social rights, without exclusion on the grounds of employment status. In relation to pensions there was a view that the total length of working time should be taken into account, including periods of work in non-standard working relationships. Wider social rights, not directly associated with employment, such as the right to housing, insurance during periods of illness, healthcare and the right to facilities to enable parents to organise the care of their children were also identified.

Interviewees gave examples of innovative state provision:

- In 2009 a measure providing for part-time unemployment benefits was introduced in the **Netherlands**. This was introduced due to the loss of customer confidence following the economic crisis. It allows employers to part-dismiss workers while ensuring that those workers had entitlement to half unemployment benefit. This allows employers to keep workers with a permanent contract for a period of time, without the risk of having to dismiss them due to the immediate downturn;
- Administrative fines have been introduced in the **Netherlands** in cases of non-compliance with the minimum wage. Fines are administered where it is shown that an individual earns less than a certain amount substantially below the minimum wage. Where the differences are only small then the company is only required to adjust the wage level. The result is that enforcement is made less complex and therefore more effective, according to a government respondent;

Conclusions and recommendations

This study was conducted in a period of deep uncertainty generally within Europe, with the effects of the economic crisis impacting negatively on the working conditions of Europe's labour force and where welfare provision has also seen widespread cuts, particularly in relation to unemployment benefits and to pensions. Some of these trends have been developing during the period of what some commentators term Neo Liberalism or the Reagan /Thatcher era but it is the current crisis that has made the changes critical. The speed of the changes imposed as a consequence of crisis have presented the study with a particular challenge in analysing the overall picture while keeping in mind the rapid advancement of new solutions to existing and emerging problems. The crisis has without doubt polarised opinions between those arguing for maintaining a model based on fundamental rights, the principle of equal treatment and standards of protection and those arguing for the deregulation of labour markets. For those opposing the crisis measures, the report articulates their clear feelings that crisis had presented opportunities to those who wished to find them, to de-regulate employment protection and to embed precariousness within employment relationships more generally. Europe's workers are more concerned about their futures than at any time probably since the last major depression and the fact that in nine of the 12 study countries, one in six workers in 2010 believed they were likely to lose their jobs expresses the scale of the problem and it is likely that, were the same question to be put today, the number fearing job loss would be even higher. It is also important to stress that the de-regulation of employment and the embedding of precariousness is as much an issue for employers and government as it is for workers, although obviously its negative impact falls more heavily on the latter. Overall it is an issue for society as much as if not more so than economy. A more level playing pitch for both employers and workers protect both players and more equal societies are ultimately more successful (Wilkinson and Pickett, 2010²⁹).

The study has generally concluded that there is no single way to identify precarious work and that precariousness arises from a combination of factors both specific to the employment relationship and particular to the category of work or to individual circumstances, like gender. The consequence of this is that policies that are put in place to tackle the issue have to take into account this multi-factored character and have to be 'precariousness factor mainstreaming policies'. Furthermore, there is a relatively common consensus that factors such as low pay, insecurity, lack of voice, risks at work are often present in work that is categorised as precarious and that some categories of workers are more at risk of precarious work than others. The issue therefore is whether the existing legal frameworks, at national, European and international level are adequate to tackle the various components of this reality of precarious work as have emerged from the various tools used in the study and whether there are specific areas, forms of employment and/or categories of workers in need of special or additional measures. Furthermore, the many examples of initiatives taken by governments and social partners – with more than 60 recent initiatives highlighted in the report – indicate that there are effective measures that can be taken to address precarious work. Thus in considering how to do this the issue is not to start from the adoption of a single definition and then determine the level of employment protection

²⁹ Wilkinson, R. Pickett, K. (2010) *The spirit level: why equality is better for everyone*, Penguin, London.

that should apply to those who fall within the definition. Rather it is about determining what it is that workers need to be protected from in what circumstances. It also means that existing directives need to be strictly enforced in accord with their protective intention, such as, for example the directives on part-time and fixed-term work.

This concluding chapter therefore explores a range of options identified in the course of the study and considers the extent to which they might address aspects of the employment relationship which are identified with precariousness. The study does not necessarily point to the need for new laws covering a new range of issues although it does support the principles of universal application and of the establishment of standards to prevent the constant exploration of cheaper forms of labour. The already existing principles enshrined in EU law through the Charter of Fundamental Rights, together with the standards set by international law and in particular through the Conventions and Recommendations of the International Labour Organisation, already provide a robust floor of basic social rights. Those instruments have also to be read in relation to their interaction with multiple actors, like international, regional and national courts. The issue therefore is not necessarily to expand these areas, but to look at ways that ensure that in practice they are complied with and that workers have effective remedies in cases of non-compliance. This requires better regulatory systems where these are lacking and it requires of member states that they invest the necessary resources into the elimination of practices that have the aim of excluding workers from rights that otherwise they would be entitled to. The study also concludes that the continued investigation of employment relationships through the lens of permanent, full-time, job for life contracts has shaped the way that legislation has developed both at national and at EU level, with the model of the full-time permanent job being taken as the standard against which all other forms of employment are measured. This extends not just to employment rights, but also to social and welfare rights which also are based on the standard, full-time model. The study notes that while forms of employment described as atypical or non-standard continue to represent a minority of existing employment relationships there have been significant increases in their number in recent years and that the economic crisis of 2007 onwards has exacerbated this trend, in particular, although not exclusively, in those countries subject to special measures, like Greece, Italy, Ireland, Latvia and Spain. While non-standard forms of employment relationship do not of themselves translate into precarious work, where precarious work is acknowledged as encompassing criteria such as instability, very low pay or pay that is not guaranteed, insecurity, risk and so forth, it is more likely to be found in non-standard employment relationships and this is equally the case for the public as well as the private sector. Frequent references to ‘insider’ and ‘outsider’ labour markets, with insiders being protected, full-time, permanent workers and ‘outsiders’ being all those who do not come within the insider definition also need to be addressed. However when considering strategies that might close or eliminate the gap between the two, it needs to be acknowledged that there are contending positions and that solutions proposed differ, dependent on which party is posing the question, with generally employers supporting the equalisation of employment rights, even if, or perhaps only if, this results in an overall reduction of them. In contrast trade unions support the closing of the gap by extending rights to outsiders. These opposing visions make the circle harder to square.

The study has sought to measure employment protection in the 12 countries but it is also evident that such an examination on its own provides an unclear picture where

large and growing proportions of workers are excluded from employment protection due to their work in the informal sector. Introducing robust measures that would bring informal workers into employment protection regimes would represent a major advance in the elimination of precarious work. There are various ways that this might be achieved and labour inspection could have an important role to play. Moreover, in at least three of the study countries the measure proposed is the introduction of a 'single contract' applicable to all new employment relationships. There is some attraction in such a proposal as a way of equalising employment rights but there are also strong caveats. First, the introduction of the single contract, in the absence of measures addressing informal work, is unlikely to eliminate it; indeed it may serve to encourage an even greater expansion of it. Second, proposals on the single contract envisage long-term employment relationships, with workers moving from less secure to more secure employment relationships after a period of time. However, given the increasingly fragmented nature of such relationships and accepting that there would be advantages to employers to not continue employment beyond the insecure phase, single contracts could merely serve to reduce protection generally while not offering a genuine route to stable work over time. For this reason the study concludes that the concept of the single contract, if advanced, should contain measures that give workers a real hope of security in the future.

The study also has referred to the central role of the national state as the primary protector of employment rights. It asserts that this role has been compromised through the growth of non-standard employment relationships, where the outcome of their introduction has been to exclude workers from employment rights to which they would otherwise have been entitled, were they to have remained within standard employment relationships. Just as triangular employment relationships, involving agencies or third parties, have served to distance workers from those who use their labour, it can be argued that states have also distanced themselves from the obligation to protect their citizens as workers, where the non-standard employment relationship is at odds with a system of law designed around a standard employment relationship.

But while the social state is retreating, the study has verified the consolidation of new social risks which had already been identified (Rogowski, 2008, Schmid, 2006; Ezhel, 2007) emanating from a liberal and more or less uncontrolled functioning of labour markets. These include the risk of an earlier exclusion from the labour market or a diminishing earning capacity faced by the median age group, the risk of delayed entry to the labour market or of remaining trapped within a precarious status faced mainly by the young and the risk of long-term unemployment or forced inactivity faced by those excluded from the labour market for whatever reasons. Additionally greater proportions of workers face the risk of inadequate social protection related to compressed work careers, the increased number of discontinuities and the reduction of standard full-time employment. One way of managing these risks might be in the establishment of some form of work-life course insurance, which would cover every individual, who has completed their education and is available for work, and provide the right to benefit from unemployment, healthcare and pension insurance, mobility insurance, and to acquire time accounts and voucher entitlements to training, in the event of voluntary or involuntary transitions between employment and unemployment, within employment, between employment and family life and between employment and inactivity at the end of career (retirement), with the financial costs shared between the State, potential employers and the individual.

Drawing on the above, 19 proposed recommendations addressing precarious work are listed below under three headings: by forms of contract; category of workers; and thematic area. They draw substantially from the study case studies as well as from the other initiatives highlighted in the study.

A. Forms of contract

Bogus self-employment

Bogus self-employment raises a number of issues in relation to precarious work. Among the most pressing and in need of reform is the inability of the law to provide a robust enough definition of self-employment that would enable workers and their unions to separate out the genuinely self-employed (for whom nevertheless there should be some employment and social welfare protection) from those who have to adopt this employment status to remain in employment. Welfare systems are too often described as insufficiently flexible to respond to the new forms of employment.

Specific recommendations

1. A presumption that all working relationships are concluded and performed on the basis of a contract of employment and are thus dependent contractual relationships, unless the parties clearly and unambiguously state that they are not intending to create a contractual employment relationship and where this can be evidenced through the submission of documentation to the relevant authority and its confirmation according to a set of criteria established by the relevant authority and by the actual conduct of the parties during the performance of the contract or employment relationship itself³⁰.
2. The inclusion of all of the self-employed within social insurance systems applicable to those in dependent work unless the parties clearly and unambiguously state that they are not intending to create a contractual employment relationship and where they provide evidence of the alternative appropriate social insurance protection that they have established for themselves.
3. Recasting EU labour law directives so as to render them applicable to all ‘workers’ as defined by the Court of Justice in its established case law on the ‘free movement of workers’.
4. Recasting all EU anti-discrimination directives so as to render them clearly applicable to both subordinate workers and all self-employed persons providing personal work or services.

Fixed-term contracts

While Directive 99/70/EC on fixed-term contracts imposes some limitations on the their repeated renewal, the examples provided in the study demonstrate that in practice the Directive has not eliminated the piling up of fixed-term contracts (see Swedish case study). As highlighted in many of the case studies – those from **Bulgaria** on the lengthening of periods of seasonal work and on reorganising construction projects to provide greater job security; from **Italy** on the collective agreement for the metal industry on the joint regulation of atypical forms of work;

³⁰ It should, however, be noted that the prevailing opinion in Sweden is that workers’ salaries for different branches are determined by collective bargaining, between the social partners and not by a general regulation in legislation.

from the **Netherlands** on the Flexwork law; all suggest ways in which the employment conditions of workers on fixed-term contracts could be stabilised.

Specific recommendations

5. Workers on fixed-term contracts should be guaranteed social insurance and welfare rights, regardless of whether the employment relationship was with one employer or with several employers, even where there are breaks in service between them.
6. Enforce and enlarge the application of existing limitations on succession of fixed-term contracts.
7. Assess and take into account the impact of the regulation of fixed-term contracts on young people and women, especially in the areas of rights to training, family friendly policies and collective rights.

The single contract

While there are pressing reasons to explore measures that would eliminate the ‘insider’ ‘outsider’ dichotomy, the measures under discussion in relation to the single contract might create a situation where workers are excluded from employment protection for pro-longed periods, beyond those stipulated in the legislation, as the single contract model still assumes that the employment relationship is basically one of permanency.

Specific recommendation

8. Where the harmonisation of single contract covering permanent and temporary workers is proposed, time periods for entitlement to employment protection should be calculated not on the basis of the specific employment contract but on the length of time that the individual has been in the labour market.
9. Where the introduction of the single contract is proposed, it should be framed in such a way as not to conflict with the fundamental right to ‘Protection in the event of unjustified dismissal’ (Article 30 of the Charter of Fundamental Rights of the EU) and with the obligations deriving from ILO Convention C-158, Termination of Employment Convention 1982 as interpreted by the ILO Committee of Experts on the Application of Conventions and recommendations .

B. Categories of worker

Women workers

The study has found growing evidence of women workers being trapped into precarious work. Often this is associated with their dual role as mothers and the obligation to provide and care for dependent children limits the abilities and opportunities that women workers have to challenge precarious work. It is evident from the study that strong and supportive measures from the national, regional and local administrations, in the form of expanded childcare provisions, is one way of addressing the burden that women workers have in reconciling their private and professional lives. Furthermore, according to the Court of Justice of the European Union in the Danosa case C-232/09 – it is up to the EU law to define which are employment relationships and which are not.

Specific recommendation

10. Maternity and parental rights should be regarded as fundamental rights applicable to all workers, regardless of the employment relationship.
11. Family friendly policies in the context of gender mainstreaming should be considered fundamental.

Students and young people

As Europe's student populations grow then so too do the numbers of students combining studies with work. This ready supply of labour is often utilised in non-standard employment relationships with high elements of precariousness. But the evidence suggests that students who are in precarious work may find that their exit from such work is blocked. A number of the cameo portraits in this report show how precarious work risks becoming a permanent feature of their employment status.

Specific recommendation

12. Students should be treated as workers both for the purposes of taxation and social insurance contributions and also in relation to the exercise of employment rights.

C. Thematic areas

Minimum pay rights

Levels of pay which do not enable workers to live decently create precarious work conditions. National minimum pay rates do not currently apply in all of the 12 study countries and even where there was relatively universal application of collectively agreed terms, some workers fell outside the net. Measures that address the issue of pay therefore need to be considered within the context of the elimination of precarious work.

Specific recommendation

13. Clear national minimum rates of pay for all workers should be introduced (by government legislation or collective bargaining) to cover all forms of employment relationship, with effective enforcement measures to include state support for those taking claims based on non-payment of the minimum.
14. Provision should be made for the payment of additional allowances by employers to those engaged under fixed-term contracts to enable them to set aside money for periods when out of work.

Representation and voice

The case studies have demonstrated the importance of giving workers a voice to challenge precarious work, for example, those from **France** in relation to low paid retail workers and from the **Netherlands** on improving the pay of cleaners. However rights to representation are often constrained in small and medium enterprises and yet it is often in these that the most precarious forms of work can occur.

Specific recommendations

15. Rights to representation and employee voice to engage in meaningful collective bargaining should apply regardless of workplace size and length of employment and based on those rights applicable under ILO Conventions and Recommendations and the Charter of Fundamental Rights of the European Union

16. Social partner dialogue should be promoted as a primary method of tackling precarious work with Member State support for such dialogue, particularly in relation to the public sector.

Taxation and precarious work

The study suggests that current taxation models may be encouraging the growth of informal work and discouraging the employment of workers on standard employment contracts. Society in general loses out when taxation is avoided, not just in monetary terms but also in terms of how citizens view the state, their obligations to it and its obligations to them.

Specific recommendations

17. Taxation could be used to incentivise employers to stabilise contracts, by setting rates of taxation related to the forms of employment relationship present in the workplace.

Training and lifelong learning

The study has noted the importance of employees' lifelong learning and their rights to competence training accounts which encourage continuous development and this is a key to providing long-term employment security for employees.

Specific recommendations

18. Member States should be encouraged to promote individual competence development accounts as part of the on-going employment contractual relationship. Such accounts would take account of the entire length of the employment relationship, including where individuals are absent from work, for example on parental leave.

Enforcement

The study has noted a problem of enforcement generally and that an absence of effective labour inspection or inadequate mechanisms of enforcement are both associated with precarious work and are increasingly problematic in situations where budgets are being reduced for inspection bodies in many of the 12 countries.

Specific recommendations

19. Enforcement mechanisms have been shown to be a successful means of tackling precarious work and Member States should be persuaded to consider the societal value of effective enforcement and to include this in any cost/benefit calculation.

Annexes

A. Methodology

B. The 36 Case studies

C. The literature review



Annex A
Methodology

Study on Precarious work and social rights

(VT/2010/084)

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Social Dialogue, Social Rights, Working Conditions, Adaptation to Change
Labour Law

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Introduction

The Working Lives Research Institute (WLRI) was commissioned by the European Commission's Directorate-General for Employment, Social Affairs and Inclusion in May 2011 to conduct a comparative Study on Precarious work and Social Rights in 12 EU Member States¹. The study has utilised a range of methodologies, quantitative, qualitative and desk-based with a focus on an analysis of the law and industrial practice in the 12 Member States. It has brought together 12 legal experts and 12 industrial relations experts who, working with the research team at the Working Lives Research Institute, have been responsible for the compilation of the wide range of data documented in this Annex. Collaborative working has been at the centre of the study's methodology.

The starting point for the study was for the experts to collect data which provided a basic overview and framework for the study. This was supplemented by desk-based research exploring relevant statistical data on precarious work and through a wide-ranging literature review. Qualitative data consists of 153 semi-structured interviews with key informants conducted by the study legal and industrial relations expert and 36 case studies highlighting innovation in addressing precarious work. The quantitative data was collected through a targeted questionnaire to around 500 named individuals, resulting in 265 respondents. Additionally the study conducted a systematic mapping of law and practice in the 12 states to provide usable comparative data on precarious work while cameo portraits of more than 30 individuals were reported by the experts to provide real life examples of the realities of precarious work. Triangulating in this has permitted a higher probability of credibility and reliability in the results obtained.

The choice of countries and of sectors for the study

Six of the 12 countries in the study were determined in the tender call as being France, Germany, Italy, Poland, Spain and the UK. The additional six countries – Bulgaria, Greece, Ireland, Latvia, the Netherlands and Sweden were chosen to reflect the following criteria:

- Variety of types of employment and social systems;
- Significance or high incidences of precarious work to the country;
- Ensuring a balance between EU15 and EU12 (post 2004) countries;
- Impact of economic recession;
- Population size; and
- Knowledge of experts in each country.

The study had a particular (although not exclusive) focus on four sectors with high levels of precarious work and embracing a range of atypical contracts. Following the meeting of the Scientific Committee, and in discussion with the Commission and upon the initial literature review, the sectors selected were:

¹ Bulgaria, France, Germany, Greece, Ireland, Italy, Latvia, the Netherlands, Poland, Spain, Sweden and the UK.

- Construction – characterised by high levels of ‘self-employment’ and temporary work, but also informal work;
- Hotels and catering – characterised by part-time and variable hours work, as well as fixed-term contracts;
- Agriculture – high levels of seasonal, informal and migrant labour; and
- Information technology – a sector identified with highly skilled work but which contains high numbers of workers on temporary contracts and other forms of casual employment.

Hotels and catering generally employ high proportions of women workers often in highly gender segregated occupations and are also characterised by large numbers of young workers. Agriculture employs both women and men, but often in segregated jobs. Construction, hotels and catering as well as agriculture employ substantial proportions of migrant workers. The case studies conducted for the study generally focused on one or more of these sectors where appropriate.

The Scientific Committee and the Panel of Experts

When the study commenced the existing research team consisted of the co-ordinating organisation, the Working Lives Research Institute, working with six legal and six industrial relations experts from France, Germany, Italy, Poland, Spain and the UK from the initial six countries. The six legal experts comprised the Scientific Committee and together with six industrial relations experts formed the study Panel of Experts. The first task of the Scientific Committee was to make proposals for another six countries to be included in the study, making 12 countries in all. These proposals were submitted to DG Employment for its agreement and by the end of August 2011 the study countries consisted of the initial six together with Bulgaria, Greece, Ireland, Latvia, The Netherlands, and Sweden. A list of all the country experts is included as Appendix A of this report.

The Scientific Committee received and commented on the Literature review, the interview schedules, the reporting templates for the national data collection and the interviews, the survey questionnaire, the case study template and the draft final report. The Committee met in London on three occasions, in June 2011, December 2011 and March 2012. Additionally Skype conference meetings were held with all the experts in October, November and December 2011 and again in February 2012.

National specific data

National experts provided national specific data that identified the types of employment contracts/relationships and their incidence in the 12 Member States. The data, produced to a template developed by WLRI, was provided by both the legal and industrial relations national experts. Their data covered forms of employment relationships identified, the groups of workers and sectors where these forms appear; whether there was an existing national definition of precarious work; the main social rights that applied generally to all workers and those from which precarious workers were

excluded; and the extent to which particular groups of workers were more susceptible to precariousness.

The literature review

A literature review was undertaken in the first three months of the study. The review focused primarily on academic papers, articles and policy documents published in the period 2007 to 2011 although of necessity it also took account of some earlier seminal works. A search of the main academic journals over the period was undertaken, looking for articles that referred to 'precarious work', 'precariousness' or 'precariat' in the title. In addition all of the literature presented in the weekly *Flexwork Newsletters*² was searched, looking, in addition at papers that made reference to 'flexibility', 'flexicurity' or 'flexible work' in their titles.

The 24 legal and industrial relations experts working on the project were asked to provide information on papers known to them which might be relevant for the literature review. In some cases these were papers produced in languages other than English and in these cases the experts provided a short resume of the main points in the articles. Finally, searches were conducted on the European Commission's websites and on the website of the European Foundation for the Improvement of Living and Working Conditions, again looking for the words 'precarious' or 'precariousness'.

These sources provided in excess of 100 relevant articles and form the core of the Literature review. The review was completed in September 2011 and was submitted to the members of the Scientific Committee for their comment. Following this the review was revised and then submitted to DG Employment in early November 2011. The review was updated in February 2012 to take account of significant new literature. The review forms Annex D of the study Final report.

In-depth interviews

The study had a target to conduct at least 144 in-depth, face to face interviews with identified stakeholders in the 12 countries. Legal experts submitted a minimum of three proposals for interview and industrial experts submitted at least nine names. The selection was made on the basis of at least three being with employers, a similar number with trade unions and the remaining interviews with academic experts, lawyers, government officers and representatives from NGOs. On acceptance of the prospective list of interviewees by DG Employment, WLRI prepared a letter and summary document for the national experts to use in contacting interviewees.

The themes that were to be explored in the interviews are set out in Appendix B. Interviews were conducted in the period August to November 2011. They were semi-structured utilising a thematic approach. Each interview lasted between 30 and 90 minutes and was conducted in the relevant national language. Experts then completed a template in English and submitted this to the WLRI team for analysis. The template is attached as Appendix C. A total of 153 detailed interview reports were submitted to the WLRI team, 49 were interviews with employers or employer organisations; 44 were

² Produced by the Flex Work Research Centre based in The Netherlands

interviews with trade unions; 24 with government bodies; 13 with NGOs and 23 with legal experts or academics. A list of the organisations interviewed is included as Appendix D.

A coding frame was established and all of the interviews were uploaded by WLRI on to Nvivo, the qualitative analyses software which the research team used to thematically analyse the interview data utilising 12 main themes, each of which was further sub-coded to produce 70+ codes in all.

The survey questionnaire

A questionnaire was developed in discussion with the experts and with DG Employment and is attached as Appendix E. Following requests from the experts, the questionnaire was translated into the national languages of the 12 countries. National experts were asked to provide lists of individuals/organisations to which the questionnaire could be sent and in early November the WLRI research team emailed all of the contacts with the questionnaire both in English and in the relevant national language. The aim was to distribute the questionnaire to mirror the profile of the interviewees and those targeted included employers and employer organisations, trade unions, government bodies, NGOs and academics. While the aim had been to target 50 potential respondents in each country, in discussions with the national experts it became clear that this target was more challenging in some of the study countries, although generally most experts were able to identify relevant respondents.

Questionnaires were emailed to more than 500 named individuals/bodies in the 12 countries and three reminders were sent. In all 265 usable questionnaires were returned, a response rate in excess of 50 per cent. Questionnaires were analysed using SPSS and the responses were utilised in compiling the final report.

The 36 case studies

Based on the information obtained from the interviews each of the national industrial relations experts was asked to propose three subjects for case study. A provisional list of the case studies was included in the first draft *Interim report* submitted to DG Employment in late October. This was subject to discussion and in a small number of cases experts were asked to review their selection. A final list was agreed in December 2011, following which the experts began to conduct the case study. In each case the experts conducted additional interviews, reviewed documents and literature and in appropriate cases observed activities that formed the core of the case studies. Case studies were produced to a standard template that covered the background to the initiative, identified the content of the initiative and its outcomes. The final version of the case studies forms Annex C of the study final report.

Mapping precarious employment

To assist in the provision of usable comparative data, the study utilised a mapping exercise to identify common characteristics of precarious work in the 12 countries, taking account of law and industrial practice. A proposed template was produced and

discussed by the Scientific Committee at its meeting in December 2011. The template was revised as appropriate and then circulated to all of the experts in early January.

The legal and industrial relations experts completed Mapping Templates providing a heuristic scoring of nine elements in the employment relationship. The returned tables were analysed by the WLRI team and final scorings were produced and included in the Final Report.

Cameo portraits

The final data collection task was for the industrial relations experts to provide three short cameo portraits each of an individual in precarious employment. The cameos were produced in early 2012 and have been used in the study final report to highlight the real life consequences of precarious work for a variety of people.

Final workshop

A final study workshop was held in the Women's' Library, London bringing together the country experts, social partner representatives and nominated representatives from government bodies in some of the 12 countries. A draft agenda was submitted to DG Employment in January and the structure of the final workshop was agreed to encompass three main sections: presentation of the results of Task 1: *Criteria and measurement of precarious work*; presentation of the results of Task 2: *Policy measures addressing precarious work*; Presentation and discussion of the results of Task 3: *A floor of basic social rights and precarious work*, including full discussion of the proposed floor of basic social rights. Forty-four participants registered to attend the workshop, including the employers' organisation Eurociett and the trade union organisations the ETUC, UniGlobal and the UK TUC. All but three of the study experts were in attendance. The level of discussion and engagement in the workshop was high with three panel-led discussions and three presentations. Six of the 12 industrial relations experts also each presented one of their case studies.

APPENDICES

Appendix A: Members of the Scientific Committee and Panel of Experts

Scientific Committee of legal experts

Country	Name of Committee Member
Bulgaria	Krassimira Sredkova
France	Christophe Vigneau
Germany	Reinhard Vorbau Tjark.Menssen
Greece	Stamatina Yannakourou
Ireland	Michael Halpenny
Italy	Bruno Caruso
Latvia	Kristīne Dupate
The Netherlands	Klara Boonstra
Poland	Joanna Unterschütz
Spain	Julia Lopez
Sweden	Carin Ulander- Wänman
UK	Keith Ewing Nicola Countouris

Panel of Industrial relations experts

Country	Panel Members
Bulgaria	Vassil Kirov
France	Emmanuelle Lada
Germany	Michael Whittall
Greece	Lefteris Kretsos
Ireland	Tom Prosser
Italy	Volker Tellejohann
Latvia	Aija Lulle
The Netherlands	Maarten Keune Luc Benda
Poland	Joanna Szymonek

Spain	Paolo Leotti
Sweden	Monica Andersson Back Christer Thornqvist
UK	Nick Clark

Appendix B: Themes explored by the legal experts and industrial relations experts in interviews

- A. The changing role of the law in relation to precarious work and employment outcomes
- B. A meaningful comparative definition of precarious work
- C. Issues emerging in the national debate on precarious work
- D. The extent to which specific categories of workers are identified as precarious (taking account of gender, ethnicity, age, migration status etc)
- E. Universal and selective/capped levels of social or employment rights for some groups of workers
- F. The concept of a minimum floor of rights in relation to precarious work
- G. Legislative methods that contribute to reducing/eliminating precarious work

Additional themes explored by the industrial relations experts in their interviews

- H. Trends in precarious work
- I. The role of government and the public sector in precarious work
- J. Different sectoral traditions of precarious work
- K. Choice or its absence in precarious work decision-making

--

C. The changing role of the law in relation to precarious work and employment outcomes (In this section please provide a brief summary of any legislative changes discussed and their impact on precarious work).

--

D. A meaningful comparative definition of precarious work (in this section summarise the interview's views on what is precarious work, any key criteria to define precarious work, relation between precarious work and social rights)

--

E. Issues emerging in the national debate on precarious work (In this section summarise the key issues discussed on the debate on precarious work and in connection to social rights)

--

F. The extent to which specific categories of workers are identified as precarious (taking account of gender, ethnicity, age, migration status etc) (*This section should focus on the forms of precarious work, particularly vulnerable workers such as women, young/older workers, disabled, migrants, ethnic minorities*)

G. Universal and selective/capped levels of social or employment rights for some groups of workers (this section should highlight the interview's views of the precarious work at international level and the purpose of international employment and social rights for particularly vulnerable workers)

H. The concept of a minimum floor of rights in relation to precarious work (This section should list the interviewees' perceptions on the concept of a minimum floor of employment and social rights for precarious workers at national and EU level)

I. Legislative methods that contribute to reducing/eliminating precarious work (This section should show good practice at legislative level that helps to tackling precarious work)

J. Trends in precarious work (For labour market experts only) (this section should summarise past and future trends on precarious work and interview's views on these trends)

K. The role of government and the public sector in precarious work (For labour market experts only) (this section should focus on interview's perceptions on the role of government and the public sector in influencing policy on precarious work)

L. Different sectoral traditions of precarious work (For labour market experts only) (Here experiences from different sectors should be listed, if there are any differences or similarities or any particular issues with sectors)

M. Choice or its absence in precarious work decision-making (For labour market experts only) (This section should list the type of bodies most or least active on the issue of policy making on precarious

work, what is the social dialogue in the country, what are the strengths and what are the limitations)

Final comments (here we are interested in your assessment of the interview, the interviewees particular areas of expertise in relation to the theme, any additional information you might have obtained).

Appendix D: List of organisations interviewed for the study

Country	Employer/employer organisation	Trade union organisation	Government body	NGO	Lawyer/academic expert
Bulgaria					
	Manger, Waste Collection company	Executive Secretary, CITUB	Director of Direction, Ministry of Labour and Social Policy	Director, Balkan Institute for Labour and Social Policy	
	Vice-President, Bulgarian Industrial Association (BIA)	Confederal Secretary responsible for "Industrial Relations and Sustainable Development", CL "Podkrepa"	Chief of direction and labour law, Ministry of Labour and Social Policy	NGO in the sphere of social policy	
	Vice-President, Union of Private Economic Enterprises (UPEE)	President, Federation "Construction, Industry and Water Supply", CL "Podkrepa"			
	President Bulgarian Hotels and Restaurants Association				
	Director Bulgarian Sectoral Employment Association from the Services				
	President of the Governing Body, Bulgarian Chamber for Industry and Commerce				
France					
	Head of sustainable development, ADECCO	CGT – Federation of home care workers	Observatoire de la parité	Union Nationale de l'Aide, des soins et des services à domicile	Law professor at the university of Nanterre
	European Resource Centre on Employers' Alliances/ employers' groups), Poitou-Charentes region.	Vice President, CFDT – construction and forestry section			Director of Research at the National Center of University Research
	Economist, coordinator of the Coopaname research committee, Coopaname	Secretary General, CGT National Federation of Building and Wood Workers			Senior Lecturer at the University of Paris I Panthéon Sorbonne
Germany					
	CEO, Der Bundesinnungsverband des Gebäudereiniger-Handwerks (BIV)- Employers federation cleaning industry	IG Bau - Construction union			Ass. Jurist
	Head of Unit, responsible for cleaning, KMG, subsidiary of Hospital Großhadern	Verdi, Officer responsible for the retail trade			Ass. Jurist

	CEO responsible for collective bargaining, Arbeitgeberverband der Bayrischen Ernährungswirtschaft e.V.	Officer responsible for collective bargaining in the textiles, wood and plastic sector and precarious employment (PE) expert for the IG Metall – specifically temporary agency work, IG Metall –			Prof. Universität Bann, Institut für Arbeitsrecht und Recht der sozialen Sicherheit,
	Founder and managing director on Consono				Prof Leibnez, University Hannover
	Legal representative responsible for employment law and general employee issues, Landesverband Bayerischer Bauinnungen				
Greece					
	Employment and Labour Market Issues Department, Hellenic Federation of Enterprises, (SEV)	President, POYEE (trade union confederation covering workers in hotels and catering)	Ministry of Labour and Social Security (Department of Employment Conditions and Gender Equality)	Public relations, KLIMAKA	Professor, Faculty of Law, Aristote University of Thessaloniki
	HR Manager for Greece and Cyprus, IT company	Union officer OIYE (Federation of Private Sector Workers that covers workers in the IT industry)	Scientific advisor, Institute of GSEVEE		
	President, SATE	President, The Centre of Athens Labour Unions (EKA) (trade union confederation covering workers in construction industry)			
		Legal Service, General Confederation of Greek Workers (GSEE)	Directorate working conditions, Ministry of Employment and Social Security		
Ireland					
	Head of employment law, IBEC (employer organisation)	Researcher, Siptu	Head of Register Commission Service, Labour Relations Commission	Deputy director, MRCI Ireland	
	Head of Research, ISME	General Secretary, Mandate	Chair of the Labour Court/ Rights commissioner/EAT		
	Representative of employer bodies-Irish Business and Employer Confederation (IBEC) – Solicitor dealing with Employment	Industrial officer, ICTU	Recently former Director of the government's National Employment Rights Authority and currently Director of the government's Employment Rights and		

			Industrial Relations Programme Reform Office		
	Chief Economist, Irish Farmers' Association	Research, Unite			
Italy					
	CONFINDUSTRIA (general employers' association), (Director of industrial relations and social affairs)	CGIL, (General secretary of NIDIL-CGIL, trade union for temporary and precarious workers)	Minister of Labour and Education of the Region Emilia-Romagna		Full professor of Labour Sociology at University of Milano-Bicocca.
	CNA (craft sector), Responsible for industrial relations	CISL Member of national board of CISL, responsible for gender policies, youth, migrants	Councillor in charge of equal opportunities, Emilia-Romagna Region		Senior lecturer in political science at University of Milan
	LEGACOOOP (cooperatives Responsible for labour policies, industrial relations and social security	Member of national board of UIL, responsible for labour market and vocational training			Professor of law Milan university and Member of the Senate of the Italian Parliament
	Enterprise KOINE', (CEO of call centre enterprise Koinè	CGIL-Emilia-Romagna Member of board of CGIL Emilia-Romagna, in charge of gender policies, youth, territorial bargaining),			Professional journalist, Editor in Chief, Economic Diary.
		Member of board of CGIL Emilia-Romagna, in charge of immigrant workers			
		Member of board of CGIL Emilia-Romagna, in charge of industrial policies and cooperatives			
		Secretary general of the metalworkers' union FIOM-CGIL Emilia-Romagna, in charge of industry and craft sector			
Latvia					
	Member of Council of Employers' Confederation of Latvia, President of Association of Latvian Restaurants and Hotels, Member of Advisory Council of National Economy (under Ministry of Economics), Member of Advisory Committee of State	Trade Union of Construction Workers	Field expert Ministry of Welfare (ex Deputy State secretary, ex Head of Legal department Ministry of Welfare, drafter of the Labour Law (1999-2000)	Senior human rights advisor, Human rights centre	Principal lawyer (Trade Union Confederation)

	Agency of Tourism Development, owner and member of board of directors of several undertakings (hotel, taxi and manufacturing).				
	Employers' Confederation of Latvia	Trade Union of Public Service and Transport Employees LAKRS	Deputy State secretary, Ministry of Welfare		
	Chair Building Association of Latvia	Deputy chair, Trade Union of Agriculture and Food Industry Workers	Head of the legal dept, State Employment agency		
	Head of dept, The Association of Hotels and Restaurants of Latvia		State Labour Inspectorate		
	HR administrator, RIMI Latvia, retail chain				
Netherlands					
	Dutch national association of managers with municipal services in the fields of work, participation, income, social welfare and social inclusion.	Federation of Dutch Trade Unions, member of the board of directors	Ministry of Social Affairs and Employment, Policy Advisor Labour Law		Solicitor
	Randstad - Manager Social Affairs (Employer, Temporary Work)	FNV Bouw - Board-member (Construction)			Prof, University of Amsterdam
	ZLTO - Policy Official of Social-Economic Policy (Agriculture - Employers organization)	FNV AgrarischGroen - Board-member (Agriculture)			
	Nederland, Policy Advisor (Hotel and Catering - Employers organization)	FNV Horeca - Board-member (Hotel and catering)			
	Owner, Meeusen B.V.				
Poland					
	Polish Craft Association (member of UAPME), Deputy head Dep. of Education and Social Affairs	National Commission NSZZ Solidarnosc, Women Coordinator	Ministry of Labour and Social Policy, Main Specialist, Department of Labour Law	Association of Migrant Workers, President	Assistant professor, UniwersytektKardynałaStefanaWyszyńskiego (UKSW)

	Polish Confederation of Private Employers Lewiatan (member of BUSINESSEUROPE), Deputy Head, Department of Social dialogue and Industrial Relations	President of NSZZ Solidarnosc at Decathlon	Senior expert in the equality department, National Labour Inspectorate		University of Warsaw, Faculty of Philosophy and Sociology, Institute of Sociology
	Polish HR Forum, Head Manager	Asst professor/ Senior expert, Uniwersytet Gdański/ NSZZ Solidarność National Commission			Warsaw School of Economics, Chair of Economic Sociology
Spain					
	Responsible for legal services, Asturian Employers' Federation	Social economic secretariat, CCOO Catalonia	Judge (Magistrado), Supreme Court – Social chamber (Tribunal Supremo, sala de lo social)	SURT, Women's Association for Labor Insertion	Professor of Labour Law – Director of the Labour Law and Social Work Department, University of Castilla-La Mancha
	Responsible for development, SIFU, S.L	Responsible of the migrations department, UGT	Co-ordinator of the labour services, PROBENS	Director, Foundation Cecot Persona i Treball	Professor of labour law, University of Castilla-La Mancha
		Fernández Santillana, Confederal secretary, USO		Cáritas Española	
Sweden					
	Vitec Software Group AB, Managing Director	The negotiating secretary at the Hotel & Restaurant Workers' Union (HRF)	Official at the Equality Ombudsman (DO)	(Gothenburg City Executive Board – NGO Tankeverksamheten respectively) with the overall responsibility for seasonal worker issues (it is among seasonal workers, in particular foreign guest workers, the precarious jobs are found in Swedish agriculture)	The Legal Bureau of the Swedish Trade Union Confederation, Head of the Labour Law Department
	Almega, (the largest employer in the IT and Telecom sector)	The negotiating secretary at Unionen (The largest trade union for white-collar workers in the private sector, negotiating collective agreements with IT companies)	Senior advisor, Ministry of Employment		The chief jurist at the Swedish Building Workers' Union (Byggnads)
	Regional manager, NCC	Regional trade union ombudsmen (southern and western Sweden respectively) with the overall responsibility for seasonal worker issues			
	Negotiating manager at the SHR's department for Labour Law and Negotiation, The				

	Swedish Hotel- and Restaurant Association				
UK					
	Association of Labour Providers	Legal officer TUC	Health and Safety Executive	Migrant Rights Network	Prof, labour lawyer
	HR adviser House of Commons Staff	Education officer, UNITE		Head of membership services, Ethical Trading Initiative	
	Health and Safety Engineering and Construction Industry	UNISON	Deputy Director, Strategy and Operations, Market Analysis and Research, Bis		
	Employment relations, Engineering and Construction Industry	UCATT			
	CBI				

Appendix E: Questionnaire for the Study on Precarious work and Social Rights



Precarious work and social rights VT/2010/084

Questionnaire

This questionnaire has been sent to you as part of an on-going research project on *Precarious work and social rights*. The project is funded by the European Commission, Employment, Social Affairs and Equal Opportunities and is co-ordinated by the Working Lives Research Institute (WLRI) at London Metropolitan University. It is being conducted in 12 EU Member States, where legal and industrial relations experts have been investigating precarious work and analysing the applicable social rights.

The first phase of the research involved face to face interviews with relevant social actors and, if you were one of those who was interviewed, we would like to take the opportunity to thank you for having set aside time to speak to one of the researchers.

We are now moving into the second phase of the research involving a questionnaire survey of representatives of employer associations, employers, trade unions, non-governmental organisations competent authorities and/or offices of the Member States,. You have been suggested as someone to whom the questionnaire should be sent and we very much hope that you will complete and return it. Researchers at WLRI will analyse the data, which will first be completely anonymised, so that neither you nor your organisation is identified, in any way, in any of the research outputs. We have provided a short definition of the terms used in the questionnaire; these are given at the end of this document.

Because we appreciate that your time is valuable we have kept the questionnaire short and easy to complete and we hope that you will agree to support this important research. Once you have answered all the questions please save the form as a word document and email it back to Dr Anna Paraskevopoulou: a.paraskevopoulou@londonmet.ac.uk. Should you have any questions on the project you are welcome to contact the Project Co-ordinator, Professor Sonia McKay: s.mckay@londonmet.ac.uk.

We would ask you to email the completed questionnaire back to us **by no later than 26 November 2011**



1. Which of the following forms would you identify as precarious? (On a scale of 0 to 3, with 0 as not precarious, 1 as slightly precarious; 2 as more precarious; and 3 as the most precarious)

Score 0-3

- (a) Seasonal work
- (b) Part-time work
- (c) Fixed-term work
- (d) Agency work
- (e) Casual work
- (f) False self-employment
- (g) Posted work
- (h) Informal or undeclared work
- (i) Zero hours contracts
- (j) Other, please state

2. Which of the following would you include within a definition of precarious work? (On a scale of 0 to 3, with 0 as not precarious; 1 as slightly precarious; 2 as more precarious; and 3 as the most precarious)

Score 0-3

- (a) Work that does not provide stability
- (b) Work where health and safety is put at risk
- (c) Work where individuals are unable to enforce their rights
- (d) Work that does not allow individuals to plan for their future
- (e) Work that does not provide sufficient income to live decently
- (f) Work where social insurance protection is absent
- (g) Work that is 'non-standard' or atypical
- (h) Work that is economically dependent (self-employment or freelance
- (i) Work which is temporary (the duration of which is uncertain)
- (j) Work without equal access to training, whether in relation to employability; job requirements; or career development

3. Which of the groups of workers would you identify with precarious work? (On a scale of 0 to 3, with 0 as not precarious; 1 as slightly precarious; 2 as more precarious; and 3 as the most precarious)

Score 0-3

- (a) Young workers
- (b) Women workers
- (c) Older workers
- (d) Older women workers
- (e) Trainees
- (f) Apprentices
- (g) Working students
- (h) Interns
- (i) Third country migrants
- (j) Third country migrant women workers
- (k) Undocumented migrants
- (l) Women who are pregnant or returning from maternity leave
- (m) Workers with caring responsibilities
- (n) Economically dependent autonomous workers
- (o) Public sector workers
- (o) Other, please state

4. Which sectors listed below would you most identify with precarious work? (On a scale of 0 to 3, with 0 as not precarious; 1 as slightly precarious; 2 as more precarious; and 3 as the most precarious)

Score 0-3

- (a) Construction
- (b) Hotels, catering and tourism
- (c) Agriculture
- (d) Transport
- (e) Logistics
- (f) Retail
- (g) Information technology
- (h) Private health care

- (i) Public sector health
- (j) Public sector administration
- (k) Public sector education
- (l) Cleaning
- (m) Private security services
- (n) Not for profit sector
- (o) Other, please state

5. What do you consider as current key employment issues in your country? (On a scale of 0 to 3, with 0 as not a key issue; 1 as a minor key issue; 2 as a mid-range key issue; and 3 as very key)

Score 0-3

- (a) The creation of employment opportunities for those who are unemployed
- (b) The exclusion of young people from the labour market
- (c) The lack of opportunities for older workers
- (d) Third party employment relationships
- (e) Undeclared work
- (f) The loss of public sector jobs
- (g) Outsourcing of work to third countries
- (h) The growth of atypical work
- (i) Enforcement of employment rights
- (j) A loss or reduction in access to collective bargaining
- (j) Other, please state

6. Which of the social rights listed below would you consider should equally apply to those in precarious work as they would to those in permanent, full-time, non-precarious work? (On a scale of 0 to 3, with 0 as not essential, 1 as very slightly essential; 2 are more essential; and 3 as very essential)

Score 0-3

- (a) Equal access to pension schemes
- (b) Equal access to welfare support when out of work
- (c) Equal access to health benefits
- (d) Representation at work
- (e) Equal access to training

- (f) Access to collective bargaining rights _____
- (f) Protection against unjust dismissal _____
- (g) Equal rights regarding working time _____
- (h) Non-discrimination rights _____
- (j) Parental rights, including maternity _____
- (j) Sick pay _____
- (k) Other, please state

7. About you

- a. Name: _____
- b. _____ Function / _____ job _____ title:
- c. Organisation _____
- d. Country: _____
- e. Contact details: Email: _____ Tel no: _____

Thank you for taking the time to complete this questionnaire. Do not forget to email it to Dr Anna Paraskevopoulou: a.paraskevopoulou@londonmet.ac.uk before 26 November 2011

Definitions

False self-employment: work that is labelled as 'self-employed' for tax and/or social insurance purposes, but is in fact undertaken under the direct control or guidance of an employer

Casual workers: workers who are called in by an employer upon need, often ad hoc, to complement the permanent workforce, on an hourly or daily basis

Fixed-term work: work where the employment contract or relationship is directly entered into with an employer and which is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event

Migrant work: work performed by people who leave their country of origin to work in another country

Part-time work: when working hours, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of a comparable full-time worker

Posted work: work performed by people who are sent by an undertaking for a limited period to carry out work in the territory of an EU Member State other than the State in which they normally work

Seasonal work: work which by its nature is performed for a limited period during a specific time of the year, for example, to harvest a crop, to work in the tourism sector in the peak season, or to produce a seasonal food product

Subcontracted work: work that is contracted out to a different employer, workers are thus employed by a subcontractor undertaking, even if in the past they were directly employed by the recipient of their work

Temporary agency work: work that is performed under an employment contract or relationship with a temporary work agency, with a view to being assigned to a user undertaking and to work temporarily under its supervision or direction

Third party employment relationships: where an individual is contractually engaged by one party but in practice carries out work for another, for example, through a temporary work agency

Undeclared work: work for which tax and/or social insurance are not paid fully or partly



Annex B: Case Studies

Study on precarious work and social rights (Tender no: VT/2010/084)

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March 2012



EUROPEAN
COMMISSION

Employment, Social Affairs and Equal Opportunities DG, Social Dialogue,
Social Rights, Working Conditions, Adaptation to Change Labour Law

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Bulgaria

Case Study 1: The hotel international chain: transparent employment conditions and lengthening the season

Sector: Hotels and catering

Sub sector: hotels

Main theme(s) covered in the case study: Employer initiatives aimed at tackling precarious work

Background/context

The tourism sector in Bulgaria is one of the most important employers in the country. At the same time its seasonality makes it a very precarious sector. The development of the Bulgarian sea resorts in the last 10- 12 years has contributed to a spectacular rise in the amount of accommodation offered. Employers have difficulties in hiring personnel ready to work intensively during a period of three to five months per year. This deficit has been filled by seasonal internal migration and by the work of students and school pupils. Although multiple discussions have been held, foreign workers are still rare in the country and in the sector. The emigration of qualified Bulgarian employees abroad makes further difficulties for companies operating in the hotels and restaurant sector.

The working time issue in the sector contributes to the precarisation of work. In practice, there are many cases of employees working overtime without any compensation – mainly in private companies and in industries such as construction, tailoring, retail trade, restaurants and tourism. In such instances, the workers are usually not covered by a collective agreement. Cases of violations of labour legislation are among the most important in the country, according to the Annual reports of the General Labour Inspection, and they include work without a labour contract, violations of the working time laws and non-payment of overtime.

In this context companies try to address precariousness in different ways. Very often there is a ‘race to the bottom’ in which companies (especially small ones) promise better wages and end-of-season bonuses that are never paid. However the other segments of the sector recognise the importance of addressing precariousness in proper way. Some larger companies have diversified their activities to both winter and sea tourism in order to retain a core workforce and offer it almost full time employment (but in different geographical areas). Other companies investigated as part of the case study have lengthened the season and provided transparent employment conditions for their staff.

The hotel in this case study was built by Bulgarian owners about a decade ago, but from the very beginning it has been managed by a large international chain. The employment is seasonal as it is generally within this sector. However the management and the owners of the hotel have invested in possibilities of extending the season through negotiations with foreign tour operators or the development of congress tourism. In this way employees can have contracts for six months or longer from the beginning of March to the end of October. A proportion of employees (about 15% are engaged in maintenance activities and have annual

labour contracts). The other important policy in place as a way of retaining employees relates to the wages which tend to be higher than in the other hotels in the case study resort.

Description of the initiative

“BulHotelco” was chosen for several reasons. Firstly, it owns a hotel in one of the largest Bulgarian Black sea resorts, and operates in the field of summer tourism which constitutes the largest proportion of tourism revenues in Bulgaria. Secondly, the company specialises in offering low priced package tourism – one of the main characteristics of Bulgarian tourism industry. Thirdly, it is part of a large international tour operator chain, which is the case in 60 per cent of all Bulgarian hotels in the Black sea and winter resorts. The hotel is in a four-star category, offering about 900 beds. It has a high average occupancy rate for the period May - October. According to the contract between the owners and the international chain, the international management, in compliance with its own internationally recognized standards, takes responsibility for the quality of the tourist product on behalf of and on account of the hotel owner. Besides the quality of the tourist product, the foreign tour operator management has the obligation to recruit and manage hotel personnel, as well as to communicate to the owner the quality of the employee’s performance. Due to the sector’s seasonal character, the employees of “BulHotelco” are hired on six month labour contracts (longer than in many of the others hotels) and as mentioned above fifteen per cent of the employees, mainly maintenance staff, are offered annual contracts.

The foreign management gives employees certain security, provides options to increase their qualifications through learning by practice and training according Chain standards, and guarantees better future realisation on the labour market, especially in the sector, due to its improved reputation and high standards. The rights, obligations and responsibilities are strictly determined through a hierarchical structure between departments. A certain “professionalisation” of tourist operations and a standardisation of the product exist. The remuneration of each employee depends on the group achievements and on tourists’ assessments of the quality of each department (kitchen, restaurant, etc.). The main problems, in terms of work organization are related to the necessity of team working, and the requirement for close cooperation between the departments.

Outcome of the initiative

The initiatives examined in the case study company have resulted in limiting precariousness created by seasonality and addresses the prevalence of informal practices within tourism employment relations. With the management coming from an international chain, the hotel has introduced transparent management and employment relations. Employees have labour contracts and receive wages officially. Overtime is recorded and paid. Some employees prefer their working hours which allows them to stay with their families in the out of the season period.

This initiative should be examined in the overall context of a sector characterised by seasonal employment, violations in labour legislation, precariousness and the absence of employee representation. It is a sector where there are still many cases of workers employed without labour contracts or of the non-calculation and non-payment of additional amounts under the regulations for additional and other work payments such as: the non-payment of seniority pay; non-payment of premiums for night work; non-payment for overtime work or non-payment of holiday working premiums.

Due to the practices that this employer has introduced employees have secure employment over a longer period than is usual in the sector and also have established rights to training, wages, overtime and additional payments. The other important policy aimed at retaining employees is that wages that are higher than the average in the resort and consequently labour turnover is lower thus enabling BulHotelco to keep its personnel from season to season.

Sources

The main sources of information are: Interviews with manager,

Observations: <http://www.eurofound.europa.eu/eiro/country/bulgaria.pdf>
<http://www.gli.government.bg/bg/page/284>

Ghodsee, Kristen, "State Support in the Market: Women and Tourism Employment in Post-Socialist Bulgaria", *International Journal of Politics, Journal and Society*, Vol. 16, N 3, Spring 2003, pp. 465 - 482

Case study 2: The mobile construction company: retaining workers

Sector: Construction

Main theme(s) covered in the case study: Employer initiatives aimed at tackling precarious work

Background/context

The construction sector in Bulgaria has experienced a dynamic development during the last decade however after a period of significant growth from 2002 to 2007 the sector, since the autumn of 2008, has experienced a decline. During the so called "boom" in construction all the key economic indicators registered a strong increase, e.g. production output exceeded 300% relative growth. The increase of employment was important (the number of people employed in construction during this period increased by over 100,000). This growth was mainly concentrated in residential construction, in particular regions such as the capital Sofia, the Black Sea coast and the mountain resorts. As elsewhere, construction work is traditionally seasonal and that is why there is a serious decrease, both in employment and production, during the winter season. Output and employment sharply decreased since 2008 and many companies are in difficult positions. The sector consists of a small number of large companies, mainly owned by local investors and large number of SMEs. During the post-communist transition the majority of the sector activities were based on labour intensive processes.

Job security represents a serious problem in the sector. The inspections of the GLI continue to register high numbers of violations in employment rights and there are lots of cases of workers without contracts at the construction sites. The seasonality in the sector, seriously affects security of employment issues in construction. The attempts of the social partners to establish a "Bad weather" fund have not to date been successful as until now they have not been supported by the state bodies with legislative power. The strong presence of informal practices in many companies in construction additionally worsens the situation of health and safety, and the security of workers in construction.

Collective bargaining in the sector has achieved some results: such as higher minimal wages in construction, higher social insurance incomes or longer paid annual leave, but they are only mandatory for the members of trade unions and the Employers' Chamber and trade union density is relatively low. Many small companies in construction are not members of the Bulgarian Construction Chamber and there is no comprehensive information about work and life quality in these companies. And where CLAs are introduced in construction companies,

the application and implementation of the CLA provisions is under question because the GLI only monitors compliance with the Labour Code.

In these difficult conditions companies have been trying to address issues of precariousness in different ways. The initiative examined in this case study illustrates some approaches to retain the core workforce.

Description of the initiative

“BulConstruction” is a Bulgarian private company established at the beginning of the 1990s. It specialises in the construction of housing complexes, administrative and trade centres and industrial sites. During the 1990s the company was involved in construction in Middle East countries. In the next decade it focused its activities in Bulgaria, as it was a flourishing market. At its peak it employed around 350 workers. However, the company was badly affected by the current economic crisis. As a result of the negative developments experienced in the sector (markets’ shortage, accumulation of debts to the company by investors and other business partners, freezing of construction works on projects that had already started and sites, working at a very low rates- and reduced output volumes) employment numbers in the company decreased to around 80 workers in 2011. Many workers were dismissed or on lay off. Some felt particularly insecure because they were working on fixed term contracts on project work. These workers had no guarantees that once the work on the construction site is over they will preserve their jobs.

In order to limit the precariousness of the work for at least the core workforce, different measures have been introduced by the management. The first measure was the reduction of working time for some employees; others were put on paid or unpaid leave. These measures while having negative impact on the remuneration levels contributed to the preservation of the employment. There are no options for working overtime to gain additional income. In spite of the reduced remuneration levels, the average pay in the company is still above the level negotiated in the branch collective labour agreement (BCLA).

At the same time the company management is flexible and reacts effectively to the changing environment. By planning in advance its building and construction operations the company provides work to its employees throughout the year. (Unlike most other companies operating in the sector, that use the winter time as a shutdown period due to inclement weather, “BulConstruction” in contrast reacts by altering the organisational principles at the construction site. Groups of workers are formed and then trained to perform multiple activities from any stage of the building process. The company uses its own machinery and equipment and in this way it limits the need to use subcontractors.

The company has introduced systems and policies that demonstrate that it acts as a socially responsible employer. The company management shows respect to loyal employees by providing benefits and stimulus. The top management of “BulConstruction” Ltd. values and appreciates the work and loyalty of its workforce and expresses that by giving “golden badges” and certain cash benefits. Employees with 15 years of experience with the company receive the “golden badge” plus a 1,000 BGN cash premium. Employees with special contributions to the company with 10 years of service also receive the “golden badge” plus 1,000 BGN cash premium. Also workers who have contributed immensely to the reputation of the company and have achieved excellent production results and outstanding quality receive the “golden badge” plus 500 BGN cash premium. Golden badges are also given to investors, subcontractors and suppliers. These awards are decided by a committee composed of top managers and administrative employees.

Finally the company management is investigating the possibility of moving into contract construction work in Western Europe. This option has been evaluated as beneficial for preserving some employment in the conditions of a freeze on local markets in Bulgaria.

Outcome of the initiative

The investigated company is a rather peculiar case because it provides an in-depth example of the impact of economic crisis on a concrete industrial sector – building and construction. It also illustrates the strategies used by private companies in the sector to overcome the negative economic environment by combining various flexibility instruments to minimize the effects on the quality of work.

The main measures employed by the company involve flexibility of working time, use of paid/non paid leave, avoidance of extra work, shortening of normal working hours and so on. In the organisation of work the use of subcontractors is limited in order to create employment for its own workers. Specialized teams or groups of construction workers with team leaders or foremen are substituted by complex groups or teams comprised of workers who are trained to perform any kind of construction activities and building operations. Thus, multitasking is another outcome of this policy – remaining workers are supposed to execute different types of construction work. These measures make possible the retention of a portion of the workforce. The careful planning of work activities also allows it to preserve employment during all the year. Another strategy with a target to protect the employment level of building workers (under unfavourable climatic conditions) is an in advance forecast of construction efforts. The smart yearly forecast of buildings plans allow for year round construction works, without the necessity of laying off workers during winter months (which is a frequent practice in the building sector).

The other measure planned by the company is the search for contracts abroad. This strategy was successful in the difficult times in the 1990s when the company contracted activities in the Middle East.

Sources

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Kirov, V. 2003. ‘Industrial relations in construction in six CEE states - Bulgaria’ in EU enlargement Construction Labour Relations as a Pilot.

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Case Study 3: The EU structural Funds in agriculture: legalising employment practices

Sector: Agriculture

Main theme(s) covered in the case study: Employer initiatives aimed at tackling precarious work

Background/context

The transformation process in agriculture in Bulgaria began in particularly unfavourable conditions due to the previous decades of very poor economic planning and the legacy of an extensive inefficient industrial sector and a systematic neglect of the agricultural sector. At the same time, the process of economic reforms in the other Central and Eastern European Countries (CEEC) also had a negative effect on the Bulgarian economy, due to its close integration within the Council for Mutual Economic Cooperation (CMEA). The restitution of land and means of production that operated in the early 1990s led to the abolition of former cooperative farms and of subsistence agriculture. From this perspective during the 1990s agriculture was an important social buffer absorbing some of those workers who had been dismissed from manufacturing. Agriculture accounts for less than one-fifth of the national income of Bulgaria. The NSI data suggests that a large part of the labour force of the sector are employers or self-employed and the directly employed represented just 83,000 in 2010 (out of a total of 704,000 working in the sector). But at the same time this reflects a situation where most of the employees work in the sector without contracts.

Many hopes about the modernisation of Bulgarian agriculture are related to the use of European Union funds. Even before accession, the country's agriculture was a beneficiary of the SAPARD programme. For the period of 2007 – 2013, since the country is member of the EU, the Ministry further boasts an increased rate of processing projects applying for funding from the EU Rural Development Program. It says that 36 per cent of Bulgaria's total funds under the program for 2007-2013 have been contracted, and 19.7 per cent have been paid out to beneficiaries, which means that the program has the highest level of absorption of all EU programs in Bulgaria.

Description of the initiative

The fact that agricultural producers became potential beneficiaries of structural funds, encouraged a changed behaviour in relation to employing external employees or ensuring conditions for self-employment. In the case of Farm development (Filiz Mustafaova Alibasheva), described in the ECORYS 'Study on Employment, Growth and Innovation in Rural Areas (SEGIRA) Good practices (See http://ec.europa.eu/agriculture/analysis/external/employment/good-practices_en.pdf pp 34 - 35), "BulAgriculture" began with a farm of 3,31 economic units, 18 sheep and a 352.694 ha of land. The purpose of the business plan for this project was the growth of the economic size of the farm with at least 3 economic units, so that at the last 5th year, there would be 10,44 units consisting of around 300 sheep and rams, and with an increased farm size to 100 ha. The overall value of the project is around €90,000 and 74 per cent are an EU contribution.

Unemployment is high in the region, and agriculture is not considered attractive for young people. However, currently, "BulAgriculture" is fairly unique but the whole family is involved in the project. Through the activities promoted under the project the employment of the family and other workers is guaranteed.

A specific measure (112 of RDF) on young farmers has a focus on those under the age of 40 and helps them to build new farms or manage existing ones, as well as providing assistance in the process of modernization of the agricultural farming. Without the support provided under measures 112 and 121 on the "Modernization of agricultural farms", "BulAgriculture" would not be in a position to invest and develop its activities.

A key reason under Measure 112 was the economic crisis and this provided an opportunity for them to find financing for the future development of the farm. This will provide employment in the family, but when needed – people will be hired for the implementation of specific activities.

Outcome of initiative

Employment in the agricultural sector in Bulgaria is dominated by the grey economy and seasonality and it is one of the most precarious sectors in the country. Trade union representation is very low, and exists mainly in some state owned or former state owned structures supporting agriculture (http://www.fnsz.org/new/index.php?option=com_content&view=article&id=5&Itemid=7&lang=bg). However unions have announced their wish for the introduction of a system of registration of the employed in the sector which could be a barrier to the grey economy.

From this perspective, the formalisation of employment through the instruments of structural funds is an important step against precarious work. The outcomes of the introduction of the EU structural funds in Bulgaria are related to the need to formalise employment relations. In order to get their subsidies, agricultural producers and farmers have to operate transparent business practices, invest in new machines and provide employment based on formal labour contracts, respecting labour legislation.

There are no precise data about the number of people that were transferred from the grey to the formal economy but the perspectives are positive. The first projects of Bulgarian farmers financed by the EU funds started in the years 2007 – 2008 but the bulk of investment for this programming period is at the present moment.

Sources

REPUBLIC OF BULGARIA, RURAL DEVELOPMENT PROGRAMME, (2007-2013)

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http://europa.eu/legislation_summaries/agriculture/enlargement/l60023_fr.htm
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http://ec.europa.eu/agriculture/analysis/external/employment/good-practices_en.pdf
<http://agro.bg/topical/article18088.html>
http://www.fnsz.org/new/index.php?option=com_content&view=article&id=5&Itemid=7&lang=bg
<http://www.eufunds.bg/en/page/31>

France

Case Study 4: Employers against precarious work

Sector: No specific sector coverage

Main theme(s) covered in the case study: Employer initiatives aimed at tackling precarious work

Background/context

Structural change in the labour market has been observed over a number of years and this has resulted in an increase in the number of precarious workers. There have also been new rules based on the individualisation of the working conditions, of wages, careers and of work organisation. A segmentation of the labour market has been observed that impacts people's social and professional mobility. This is accompanied by deregulation of the labour market. Moreover, full-permanent employment, which was once considered the norm, is not necessarily the case. In addition, low average employment rates and high long-term unemployment are considered to be threatening the sustainability of social protection systems. These trends impact on workers' trajectories (uncertainty) as there is an increasing number of vulnerable workers on the labour market (the working poor). In parallel, trade-unions, through Europe, are involved in fighting this trend.

This is a common situation for all European countries, even if it appears under different forms in each country. However, as the initiative covered in this case study demonstrates there are ways of addressing this trend in a positive way.

Description of initiative

The initiative concerns the establishment and subsequent development of employers' alliances against precarious work. In France (one of the leading and historical actors in relation to the analysis of precariousness), the first employers' alliances were established in the 1980s as the result of regional work in the agricultural sector. This led to the establishment, under the law of 1901, of what has since come to be known as the Employer's Alliance. These Alliances are non-profit associations within the meaning of the 1901 law and were identified by the French government as an initiative of "dé-precarisation"). This case study focuses on the Employers' Alliance in Poitou Charentes, which was established in 2001 by France Joubert, Vice-President of the Resource Centre for Employers' Alliances (CRGE) of the Poitou-Charentes Region and subsequent initiator of the European movement of Employers' Alliances.

The CRGE has an associative and joint governance structure funded by the French state and also by the Poitou Charentes Region. Regional unions such as the CGT (trade-union), CFDT (trade-union), CFE-CGC (trade-union) sit on this structure as well CGPME and the MEDEF (the employer representative organisations). The CRGE's mission is to develop and to promote the Employers' Alliance in the Poitou-Charentes region but also in other regions and countries. To this end it organises an annual meeting of the Employer's Alliance at national level and has initiated the creation of Employers' Alliances in Belgium, Germany and

Austria. CRGE is currently identified as an Employers' Alliance European expert, the EA being recognised as a tool to fight against precarious work.

The first experience in France in the 1980s took place in a rural area where seasonal work was the norm for salaried workers. This was within the context of economic crisis as well as of technical changes requiring qualified workers. Some employers had created a non-profit organisation to mutualise employment (job sharing). The labour inspectorate had identified this as an interesting "organisational invention", permitting the improvement of the social conditions of seasonal workers (full-and-permanent contract and so forth) and their skills. These included an assessment of the need for workers to possess multiple skilled linked to effective vocational training. The actions spread from the agriculture sector to other sectors (service, etc.) and in various sizes of enterprises (SME, PME, etc.) and have led to the development of a more stable professional trajectory (for workers) thanks to, for example, a full-time contract.

Outcome of the initiative

There are now five other French Employer's Alliances as well as Employers' Alliances based in Belgium and in Germany. Enterprises gain access to an outstanding human resources centre through the Employers' Alliance.

The Alliances have the following aims:

- to develop stable employment (full-time or part-time jobs), by combining different seasonal or part-time jobs. From this point of view, it is an opportunity to access to better jobs for individuals in insecure employment situations;
- to act as an effective tool for getting the jobless back into secure employment;
- to fit the needs of SMEs and those of the workers assigned to them;
- to develop specific support actions for the most vulnerable target groups for whom it is hardest to find work;
- to develop employment on the territory; and
- to develop what the keys actors call a "win-win situation" for the state and local authorities, thanks to the development of employment on the territory, for all categories of enterprises, regardless of size.

At European level the EEE, as a European network, was founded in 2008. Leading actors of regional Employers' Alliance (France) took the initiative to create this network, by contacting others keys actors and by organising an international symposium. After its first European level convention it has moved to the creation of the European Employers' Alliances Resource Centre (EEARC) providing new possibilities for enlarging the network of Employers' Alliances to other regions of Europe. This project was supported by the European Community as part of the programme for Employment and Social Solidarity (2007-2013) – PROGRESS.

In summary, a key main objective has been to extend the system of Employers' Alliances throughout Europe so as to disseminate the system of Employers' Alliances in the different regions of Europe through promotion actions, lobbying and by developing contacts between Employers' Alliances and Resource Centres for Employers' Alliances in Europe; to serve as a tool for implementation of the Lisbon decisions and of European employment and flexicurity policies like the resource centres put in place under the social partners' social agenda; to make the EEARC a tool for the development of social dialogue in new member countries; and to transfer them to other regions of Europe where they do not exist.

The Alliances have used a combination of local/territorial approaches but combined with European and international approaches conducting on different countries. It has developed a legal expertise; informative and legal publications; comprehensive studies; the development of a charter; the organisation of exchanges, seminars and study visits; support for initiatives in

the regions; development of expertise; the development of transfer tools and methods; the centralisation of documentation, guides, handbooks; a forum for the exchange of best practices that recognises sectoral and territorial approaches. The initiative is based on the concept of openness and dissemination.

Sources

Interview with France Joubert

Analysis of key documents: updated brochures, proceedings, progress reports, as well as scientific papers

On-line searches:

Concerning the French case:

<http://www.ugef.fr/spip.php?article117>

Concerning the European network or initiatives in different countries (relating to EE):

http://www.pactes-locaux.org/bdf/docs/synth-se_actes_en.pdf

http://www.pactes-locaux.org/bdf/docs/a89_acte_fondateur_en.pdf

<http://en.cerge.eu/projects>

<http://www.eurofound.europa.eu/eiro/1999/05/feature/de9905107f.htm>

Case Study 5: Tackling precarious work in the hotels sector

Sector: Hotels and catering

Sub sector: Hotels

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work; Ngo actions around precarious work

Background/context

The initiative covered in this case study took place in the French hotels and catering sector, specifically in hotels.

For several decades, radical changes have been affecting this subsector. However, this process enormously accelerated over the past two decades, in relation to terms and conditions of employment as well as in work organisation and working conditions. In a context of global competition and of labour cost cuts, the landscape of the players has changed, in favour of leading hotel companies and low-cost hotel chains, emerged as newcomers in the market, whereas the number of independent hotels (while in a majority in 2002-2003) has significantly declined. Under this influence, the number of precarious workers but also the forms of precarious employment/work have changed, in a sector where labour law was (and still remains) historically less favourable to workers than other sectors (system of derogations) and social rights were also lower. Thus:

- the minimum guaranteed salary in the hotel sub sector was (is even now) lower than the national one (€70 in 1997),
- the minimum guaranteed salary was removed in 2004,

- 'statutory hours of work' were higher than in other sectors while, pension and insurance plans were set up in 2004 (collective agreement between some trade-unions and employer representative).

On the one hand, it was possible to observe an increasing number of precarious workers, while the grey economy was (and still remains) a structural phenomenon (some have observed an increase in it). These workers have been affected by « traditional » atypical employment (temporary work, fixed-term contracts etc.) but also by new forms of precarious employment: outsourcing (for low-skilled workers and some jobs, such as chambermaids, were especially affected by this trend, except in the luxury hotel sector (4* or above), on-call work, part-time jobs (few hours). In this context some researchers have stressed how precarious work is not a consequence of the changing organisation of the sector but a condition of this trend.

On the other hand, these workers have been experiencing a degradation of their working conditions (greater time-related pressures, working on different job sites, unstable/flexible working hours etc).

Migrants, documented or undocumented and especially women have been experiencing this situation. In this context, in 2002, migrant chambermaids (from Africa) stopped working, determined to assert their rights (a very small minority were trade union members). Concerning their working conditions: a) they were paid by a piece rate of €2 per room; b) they faced greater time-related pressures: four rooms per hour; c) their working hours were changed every day; d) their workplaces were also changed on a daily basis; e) there were negative health effects, consequent on an absence of protection against toxic products used in the hotels, miscarriages or premature births were observed. "FrCleaning" is a French cleaning firm. This firm employs around 3,000 employees, a majority of women, all with part-time contracts (five hours per day on average).

Description of the initiative

The key parties were:

- Thirty women, all migrants (from Sub-Saharan Africa), took industrial action and decided to take their case to a tribunal, after having compared their working conditions as subcontracted workers with those of workers of a major hotel group that they were supplied to. Indeed, they noted that these workers had better working conditions in terms of break times, fewer rooms to clean, higher salaries, etc. A large majority of these women had no history of activism before the strike. It was the first time in France that the hotel sub sector was experiencing such strike and initially some women were dismissed.
- Trade-unions: the industrial action had been supported by SUD Rail and Sud Education.
- Actors from NGOs had also supported the movement (during the eight months of the strike). A support committee was established.

The action lasted for more than a year and the aims of the workers were:

- to assert their rights but also to see an improvement in their social and professional rights;
- to obtain payment for overtime, as well as damages for breach of contract and punitive damages;
- the recognition of irregularities concerning their contracts of employment;
- to ensure against the curtailing their freedom of association; and
- to achieve the reintegration of the women the company had laid off.

Demonstrations in hotel corridors were organised to make the action visible, to highlight their demands, to engage with customers, etc. (for example: picnics in the corridors; leafleting campaigns; filing complaints in court and alerting the media; while a common strike fund was established by Sud Rail). In addition, decisive action was taken by some of the main actors to make direct contact with the hotel group rather than the sub-contractor with a view to negotiation. The hotel group in turn agreed to negotiate. Indeed, the group's image, products and services could now be said to have benefited from the initiative. This movement has been identified by observers and researchers as an “[l'invention d'une lutte atypique](#)” (Eff, 2004), an atypical strike, but whose form has been extended.

Outcome of the initiative

One-by-one, nearly all women returned to work (either in the same firm or for other subcontracting companies) under their previous working conditions. The industrial action was ended with an agreement resulting in a reduction in both the work rates and in the workloads; a suspension of the prosecution of some workers through the court system and the lifting of sanctions; the award of a bonus of €215 in 2003 and €305 in 2004 and an indemnity equal to 35 per cent of their salary (to 12 months) (without social security contributions, tax free). This indemnity was to compensate for loss of pay during the action. In addition, an agreement was signed between the hotel and the trade unions which contained the principle of harmonisation of working conditions between subcontractor and contractor employees; that all the employee's attendance times had to be paid; that there would be access to vocational training; and that there would be improvements in the work environment. In practice the hotel group assumed responsibility for the terms and conditions of sub-contracted workers.

Sources

Main sources used for the case study: Interviews with workers involved in the action together with the use of an empirical study undertaken on the dispute

Cusack Ivora. Remue-ménage dans la sous-traitance, vidéo / 70 min / 2008 http://remue-menage.360etmemeplus.org/?lang=fr_fr-%3Ehttp://remue-menage.360etmemeplus.org/?lang=fr_fr

Effé Carine, Journal d'une femme de chambre/1 : [La lutte improbable des salariées d'Arcade](#), Vacarme n°22, hiver 2003

Effé Carine, [Journal d'une femme de chambre/3](#), Vacarme n°28, été 2004
<http://www.vacarme.org/article1116.html>

Lada Emmanuelle. Divisions du travail et précarisation de la santé dans le secteur hôtelier en France : de l'action des rapports sociaux de sexe et autres rapports de pouvoir , Travailler 2009/2 (n° 22)

Case Study 6: Trade union initiatives in the retail sector

Sector: Retail sector

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work

Background/context

The initiative has been taking place in the retail sector, especially in large stores and supermarkets since 2008. It firstly consisted of a national strike, then in a succession of national days of action and demonstrations and also a trial action. It has been seen and presented as an “historical movement” by observers (employee representatives but also the media). Indeed, in the French context, it was the first time that three united trade-unions (the CGT, the CFDT and the FO, the main trade-unions of the subsector), had denounced the working and remuneration conditions in the French supermarkets and large stores. Workers of all chains were involved: that was clearly unusual. Structural precarious employment, the increase in the numbers of precarious workers but also a process of deterioration of employment built by employers’ new policies and the consequent erosion of social/professional rights were the causes of the initiative.

This subsector had around 636,000 employees in 2008. Before the start of the first strike, the employee representatives announced that at least 300 job sites would be on strike, with estimates of between 50 to 80 per cent of the workforces involved, according to the trade-unions.

The origins of this wave of strikes in 2008 and during the following years were three years of pay freeze. Additionally a majority of workers (especially the cashiers) were earning less than the SMIG (the guaranteed minimum industrial wage), an observation seemingly verified by the fines imposed by Labour Inspectorate on the employer. While the percentage of part-time employees in the sub-sector was 37 per cent it was as high as 70 per cent in the hard-discount chains. These contracts were often for very short hours and embedded poverty within the group of mainly female workforce. The media (including the mass media), which was targeted by the strikers and the unions had widely publicized this social movement.

Description of the initiative

The key parties were the three main trade unions in France and their aim was to address three issues: wages, working conditions (with a focus on Sunday working), and employment. The employment issue: the objective of opening negotiations was scheduled by trade-unions in the anticipation of mass job losses, due to the development of new technologies in this sub sector. Indeed, in a context of the automation of work stations, the future of 200,000 cashiers was uncertain. The second issue concerned working conditions. The unions were opposed to Sunday working and had opposed the extension of Sunday shopping hours as workers already had to work some Sundays and, as low-waged workers they were seen not to be able to choose to refuse to work Sundays. The third key issue was around wages. For several years some of the large supermarkets had been paying their employees at below the minimum wage and had been doing this by including in their calculations pay for break times which was contrary to the law. A survey by the Labour inspection services assessed the shortfall in revenues at between €4.53 and €45.148 a month. The aim of the initiative was to prevent and end unlawful employers’ practices and to oblige employers to respect labour law, salary increases, the recognition of workers’ rights, and to improve working and employment conditions. The unions and workers leafleted, conducted petitions, organised street demonstrations and called a series of national days of action.

Outcome of the initiative

Following protracted legal action the case ended up at the Court of Cassation which annulled an earlier judgement of the Court of Appeal and upheld the workers’ claim. The retail group was sanctioned by the Court to pay a penalty of €1.287m to the Public Treasury for having paid more than 400 employees working in two supermarkets in the Rhone region below the minimum hourly wage. This amounted to the heaviest penalty imposed on a supermarket chain. The company also had to pay €3,000 to each of the aggrieved employees and in

addition, the group also had to pay damages to the three trade-unions (€75,000 euros) who were the civil party in the trial against the group.

The salaries of the cashiers are no longer affected by the inclusion of break times and they now are paid according to the hourly minimum wage

Sources

Interview with CGT federal secretary (service federation).

On-line searches on-line in order to establish the chronology of the initiative

Scientific papers including:

Benquet Marlène, Les damnées de la caisse. Grève dans un hypermarché, Paris, Editions du Croquant, coll. « Savoir/Agir », 2011

Desrioux François. Grève des caissières : gagner peu et travailler dur. Santé et travail, 2010.

Floury Nadine. Grèves dans la grande distribution : des travailleurs pauvres en France ? Vraiment ? <http://www.acrimed.org/auteur175.html>

<http://cgtcarrefouraulnay.blogspot.com/2011/06/carrefour-condamne-pour-salaire.html>

http://www.commerce.cgt.fr/spip.php?page=article-6Actus&id_article=735

Germany

Case study 7: DGB Beratungsstelle Berlin

Sector: No specific sector coverage

Main theme(s) covered in the case study: National laws aimed at reducing precarious work by increasing social rights; Trade union and public authority initiatives aimed at tackling precarious work

Background/context

This case study concerns the establishment of an advice centre. The advice centre was a response to the deficit associated with the service law, namely that although the law stipulated that advice centres (point of single contact) should be set up to advise service-providers coming to Germany, this advice did not extend to providing employees with advice about their rights. The DGB, with the support of the City of Berlin, with the City financing the

project, set about addressing this deficit with the foundation of the DGB advice centre for posted workers in Berlin and the outlying areas. The advice centre exists to inform employees of their employment and social rights. The DGB had long intended to set up such a centre. However, the launch of the project in May 2010 was delayed due to the fact that potential candidates did not possess the necessary skills, namely knowledge of the relevant Eastern European languages as well as a legal understanding of employment law.

It was pointed out that although similar services are provided in other German cities, the Berlin project differs in that there was a conscious decision to employ individuals with the relevant Eastern European Language and cultural skills.

The respondents also noted that there was quite a lot criticism of the DGB's plans initially, the so-called point of single contract arguing that this was a service that they provided. However, the DGB felt that when employees accompanied their employer to the office single contact, their rights were either not addressed at all or only fleetingly.

Description of the initiative

The project exists to inform posted workers of their employment and social rights, in particular that a minimum wage of €12.75 exists for Berlin. Initially the project had to address how it could reach out and make contact with posted workers living in and around Berlin. Firstly, the two advisors were able to use the various information channels provided by the DGB, in particular the DGB's office for migrant workers proved very helpful here. Secondly, they ran flyer campaigns which involved visiting community centres as well as churches frequented by posted workers. For example, the Polish community in Berlin is renowned for converging on one particular church on a Sunday where they meet after mass and exchange products (food goods and papers) and information. It was noted that after such actions the number of phone calls received greatly increased. The DGB centre is also a good filter for information and contacts not related to posted worker issues, the two employees informing people where they can get advice on things as diverse as child care and housing issues. Further, the advice centre is able to seek legal representation for employees when required. The centre also uses information communication technology to advise people about their rights. Both advisors are active in internet forums giving advice on rights. .

The advisors discovered, however, that reaching out to posted workers and advising them of their rights is complicated by the fact that many employees compare what they earn and under what conditions they work with what they are used to back home. Hence, someone earning €8 instead of the set €12 Euro an hour is less likely to complain because this greatly exceeds what they would earn back home. Further, many of the employees prove reluctant to contact the advice centre out of fear that should the employer find out they might be fired. Contact usually occurs only when individuals need support when promised salaries fail to materialise.

Outcome of the initiative

Initially the advice centre was seen as a small pilot project. Launched in May 2010, the DGB Berlin provided an office and advice, whereas the City of Berlin financed two eight hour positions. The nature of the pilot project meant that within six months it was recognised that an advice centre like this was necessary, i.e. whether employees would take advantage of such a resource. By the end of 2010 the project was deemed to be such a success that the funding was extended and the two advisor positions saw their hours increase to around 28-hours a week.

One of the advice centre's main successes involves its ability to reach potential posted workers before they come to Germany, either through internet forums which they are very active in or through official channels, such as agencies set up to help employees going to work in Germany. These two channels often lead to potential posted workers, in particular Polish employees, phoning the Berlin office for support. Such support often involves informing employees of their rights, i.e. that a minimum wage exists or that they have to be

careful not be caught in the so-called pseudo-self-employment trap in which the minimum wage and social insurance contributions are not applicable.

The advice centre has been very good at utilising the mass media to inform posted workers of their rights, as well as informing the posted workers' debate in Germany. This has involved writing articles in newspapers as well as taking part in radio discussions as well. Furthermore the advisors were invited to attend an SPD parliamentary commission on Fairer Mobility and Secure Social Security in May 2011. Since then there have been moves in the German parliament to set up such centres in other German cities. See the following links for a better overview of their public relations work:

<http://dipbt.bundestag.de/dip21/btd/17/045/1704530.pd>.

<http://www.rbb->

[online.de/klartext/archiv/klartext_vom_25_05/ausgebeutete_rumaenische.html](http://www.rbb-online.de/klartext/archiv/klartext_vom_25_05/ausgebeutete_rumaenische.html)

<http://www.dradio.de/dkultur/sendungen/imgespraech/1463095/>

The respondents note, that they are inundated with calls each and every time they take the initiative in trying to reach posted workers through the various media channels.

In summary, the advice centre's main success is its ability to offer employees support against illegal exploitation. This not only involves the centre offering employees information about their rights but equally support in seeking legal aid. The centre has been successful in bringing cases to court but also in settling issues outside of the legal corridors. For example, they discussed the case of 40 Polish construction workers in Berlin, all on so-called service contracts, who, with the exception of the pocket money they had received each week, had not been paid. The advice centre, together with the construction union the IG Bau, although they were working for a Polish company, informed the German construction company on whose site they working that they would inform the media if they did not try to solve the problem. Although the German company had paid the Polish sub-company it eventually agreed to pay the employees the wages they were owed, so as to hinder the possible bad publicity associated with a legal case.

Sources

The information was collated by interviewing Bettina Wagner, and Marta Böning from the Beratungsbüro für entsandte Beschäftigte in Berlin.

Documents accessed via the advice centre's home page were also used.

Case Study 8: Empowering posted workers

Sector: Construction

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work; NGO support for initiatives on the issue of precarious work

Background/context

The case study involves a campaign fronted by the IG Bau and the Europäische Verein Wanderarbeiter (EVW) "aufsuchende Bildungsarbeit". To fully understand how the campaign came into existence there is a need to consider the IG Bau's response to migrant workers from Eastern Europe since the 1990s, in particular how it has systematically attempted to inform construction workers of their rights in Germany. This involved, setting up an information office in Warsaw (2000) as well as founding a

union federation for migrant construction workers, the EVW (2005). In both cases the IG Bau's strategy exhibited certain limitations, particularly the amount of resources it was required to provide. For example, Europäische Verein Wanderarbeiter, was designed in such a way that trade unions would take over the task of representing posted workers. Unfortunately, the IG Bau faced two problems: it did not get the planned support of unions outside of Germany, plus it was overwhelmed by representation demands – “we were fire fighting all-over Germany”. Faced with these difficulties the IG Bau decided that the EVW needed to review the service that it provided for migrant employees working in the construction industry – this involved seeking/visiting workers at their place of work to inform them of their rights. The respondent referred to this as a proactive, as against the reactive strategy. Although the campaign is fronted by the IG Bau and the EVW, the EVW providing the necessary personnel, the project is financed by the charity “A Social Society and Sustainable Development”, Berlin. Although the finance provided is aimed at offering posted workers a better understanding of their rights within Germany it also has another spin-off, it helps finance the EVW officer and is a potential source for gaining new IG Bau member.

Description of the initiative

The “aufsuchende Bildungsarbeit“ campaign was constructed as a means of not only informing workers of their rights but equally of offering them arguments on how they should deal with employers that are not conforming with legislation, i.e. empowerment. In particular, this strategy was perceived as being more sustainable, it did not involve in an one off action, but rather a concern with the possibly of ensuring that employees became active union members. The following quote sums up the campaign's aim “I cannot simply buy a service, they (union officers) are not lawyers or an insurance company, it is a trade union... I have to personally get more involved if we are to survive.”

First and foremost this involves having personnel that possess the necessary language and cultural skills, in particular individuals that speak Polish and Rumanian, two languages that are dominant on German construction sites. Secondly, the campaign began by focussing geographically on areas with a high percentage of Rumanian and Polish workers, the cities of Munich (Rumanian) and Nuremberg (Polish). The responsible campaign workers were required to spend a considerable amount of time in these two cities visiting construction sites. In the case of Nuremberg an officer from the IG Bau running the information office in Warsaw is required to spend time in Germany.

The campaign workers used data they had from the holiday account, as all employees on German construction sites are required to pay into this account, to discern where Polish and Rumanian workers were employed. In addition, these outreach workers benefited from the fact that collective agreements automatically give them the right to enter a building site. Once on the sites the campaign workers take time to explain who they are and invite workers to a social event, usually a breakfast or a trip to a local pub (all paid for by the campaign). Here they take time to explain to the workers what their rights are how much strength they have as a collective group. Gaining access to employees is not always easy - occasionally the campaign worker was threatened with violence. When faced with such situations the campaign manager responded by informing the individual in question, often a Rumanian manager, that they were more than welcome to involve the police if they were not happy with their request to have the opportunity to talk to the employees.

The campaign has also been designed to offer training to works councils on the issue of precarious employment practices amongst posted workers. Such activities are designed to make works councils more sensitive to the problems faced by such employees as well as to address some of the negative views towards posted workers. It was pointed out,

though, that the works councils' hands are tied to a great extent by the fact that their powers do not extend to employees working for subcontractors.

Outcome of the initiative

The campaign's main success is undoubtedly the fact that an increasing number of posted employees are now more aware of their rights in terms of minimum wage and working conditions etc... Furthermore, they are now aware of what action they should take in the case of industrial accidents, not uncommon on building sites. However, as the respondent noted such one off actions are not a quick solution to the problems faced by such employees.

The campaign, though, in the short term is viewed by the unions and the financiers to have been a success, i.e. employees have responded positively in terms of their willingness to attend the campaign's information events as well as taking time to listen to what the campaign managers have to say when being addressed on building sites. In a few cases employees have even agreed to join the IG Bau. For this reason a decision has been taken to extend the initial pilot project, the campaign managers were convinced that a degree of patience is required. Experience shows that coming into contact with employees on more than one occasion helps address the reservations they might have towards unions as well as improve trust relations. Ultimately, it is felt that new union members will function as disciples whose task it is to remind their colleagues that certain rights exist in Germany to protect them.

Furthermore, the presence of the campaign managers on construction sites has also resulted in a management reluctance to take advantage of employees' lack of knowledge relating to employee rights. In one particular case the arrival of the campaign manager on a site helped resolve a dispute over wages, promised but not paid, to employees.

Finally, the project has helped provide the EVW with important information relating to the problems faced by posted workers; information that has been used to produce brochures on how to optimise their rights whilst working in German. For example, the fact that it is important to document the hours you have worked and the accidents that have occurred. Plus, it is necessary to collect documents that prove you have worked on a particular building site. As the campaign manager noted: "good will alone does not help".

Sources

The case study is based on two interviews with one of the campaign managers in which the respondent was queried about their role within the EVW as well as how the EVW had evolved.

Furthermore, the case study benefited from the fact that the interviewer was invited to attend one of the information events organised by the EVW/IG Bau.

Case Study 9: Public procurement in the City of Munich

Sector:Cleaning

Main theme(s) covered in the case study: Government initiatives on the issue of precarious work

Background/context

Munich's procurement department for cleaning services has the task of advertising and signing contracts with service providers whose task it is to clean all the City's public facilities, this involves predominantly schools, childcare facilities and public WCs. Altogether the city has 1,100 objects that need to be cleaned. Until 1999 the City of Munich employed its own cleaning staff, around 1,200 in total. However, due to the financial difficulties the city was faced with in the late 1990s there was a general move to outsourcing such services, as means of addressing the City's financial deficits. Within a few years of outsourcing services the procurement department became concerned, initially about the quality of the services being provided. The focus on value for money therefore soon switched to a concern about the general employment conditions that workers had to contend with. Firstly, it was quite clear that the high turnover of personnel was a reason for the poor quality of the service being provided, which in turn could be directly linked to the salaries being paid. Secondly, in around 2003 the procurement department started to notice that the quotes being offered were going through the floor, that is to say that the low square metre price offered could only be achieved by paying inhuman salaries. Thirdly, there existed the political will, something that had been a priority in theory since the City of Munich started to outsource such services, that any services provided should not involve precarious employment practices. Munich in some respects is the exception to the rule as it could be said that for many other municipalities the principal concern is with achieving the best value for money irrespective of the employment conditions that prevail. The City Munich's motto is "the best doable price".

Description of the initiative

The decision to ensure that service providers tendering for cleaning contracts did not involve precarious employment was initiated by the City of Munich Procurement Department for cleaning services. After determining that a problem existed in terms of the quality of the service provided, as well as the affect this had on the working conditions of employees. The department set about dealing with this problem, first by putting in place a cost assessment program, assessing what prices needed to be paid per square metre if a decent salary was to be guaranteed. This involved training the department's staff of 14 staff in how to assess proposed contracts. Employees of the procurement department also call on tenderers to explain how they have reached the price being offered. For example, often the price calculations are based on using certain equipment that cannot be used at a particular location. The calculation also includes comparing the price being offered against social insurance contributions and salaries. The respondent noted that European law is supportive of this strategy. The law for public tendering allows organisations seeking a service to calculate the prices being submitted.

This was accompanied by a realisation that such a procedure would prove worthless if there did not exist a means by which they could check whether firms were adhering to

the contracts agreed to with the City of Munich, in particular in relation to salaries. The department soon realised that it needed to employ someone who could do spot checks, namely visit cleaning locations to talk to employees as well as caretakers about their terms and conditions. It was pointed out that the caretaker is an individual the cleaning staff can confide in. Such spot checks are also designed to check whether the personnel numbers per object are being adhered to. This required the City of Munich to finance such a position at a time when the City had a ban on recruitment – the fact that the City of Munich agreed to such a move is seen as further proof that the City is committed to fighting precarious employment practices where at all possible.

Outcome of the initiative

The respondent argued that the program has been an unmitigated success both economically in terms of quality but equally measured against the salaries and employment conditions of workers. For example, since 2005 the procurement department has registered a 20 per cent increase in the prices being paid to tenderers. Furthermore, such an increase is taken as evidence to highlight how the City of Munich is committed to fighting precarious employment conditions.

The respondent was also able to offer examples where the new procedure could be shown to be having a real impact. He pointed to the example of a company which had failed to pay the collectively agreed extra payment to employees cleaning public toilets. On discovering that the collectively negotiated payment had not been paid the procurement department threatened to cancel the contract should the company fail to 1) implement the agreement in the future; and 2) not pay all outstanding monies owed to the affected employees. It was also noted that the procurement department has a philosophy of giving firms a second chance, not only because finding a new service provider is costly and time consuming but moreover they do not want to threaten the livelihood of those employees who have already been wronged by cancelling a contract.

Another positive spin-off from the program of procurement, in particular the spot check practice, involves the fact that it has helped raise employees' awareness of their rights. In addition, it has helped introduce a good practice into companies, conscious that they could lose important contracts if they fail to comply with the parameters set by Munich in opposing precarious employment practices which were rampant before 2005.

Sources

An interview was conducted with Mr Neß head of the procurement department for cleaning services. The initial contact was organised by Mr Kießling, officer of the German construction industry IG Bau.

Greece

Case Study 10: Establishing an information centre for precarious workers – the example of KEPEA

Sector: No specific sector coverage

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work

Background/context

The Greek Trade Union Congress (ΓΣΕΕ) established the Information Centre of Workers and Unemployed People (Kepea) in the city centre of Athens in 2000. The need for the Centre came as a response to constant labour law violations observed in the Greek labour market. For ΓΣΕΕ such symptoms of violation demand the strong ability of individual workers to know their rights according to the established regulatory framework (rules set by labour law and collective bargaining agreements). In addition, the role of the Centre was considered as crucial by ΓΣΕΕ, in the sense that it could help certain groups of the workforce, such as young and migrant workers to deal with the risk of unemployment and social exclusion.

The main objective of Kepea is to provide up to date and accurate information to workers and unemployed people regarding industrial relations issues, as well as social security rules and future or currently available employment and training schemes. Special attention is paid to providing information and counselling services to foreign migrants that live and work in Greece. The operation of the Centre is based on the work of trade union officers and specialised professionals in the fields of labour and social security law. Different divisions in the Centre deal with a plethora of requests made by employed and unemployed individuals. More specifically there are three distinct domains in the organisational structure of Kepea: the Industrial Relations Unit, the Social Security Issues Unit, the Economic Migrants' Unit. Each unit covers specific requests for information by employed and unemployed individuals, most of which are related to issues of unfair dismissals, discrimination at work and violation of labour and social security law.

Kepea has also established a Jobcentre for those workers who are already or may be unemployed in the near future. The Jobcentre provides access to job opportunities and job-hunting training, while it disseminates information on available employment and training schemes. Individual employers have also access to the electronic database of job seekers in the Jobcentre of Kepea. It should be mentioned that the educational and career consultancy services of Kepea are available not only to unemployed individuals, but also to broader groups of the workforce, such as migrants, young and female workers that in many cases are in temporary and low paid jobs.

The dramatic increase in unemployment levels and the worsening employment conditions for many workers since the upsurge of the economic crisis has made the activities of Kepea very significant for a considerable number of people. For example more than 4.000 people visited Kepea in 2010. The main reason of visit in the vast majority of cases was to get information regarding worker rights, especially concerning issues of unlawful dismissals, illegal conversion of full-time employment contracts to part-time and shift-work ones and delayed

payment or non-payment of arrears.

Description of the initiative

A distinctive feature of the Greek labour market is complacency as to the labour law standards by many employers. Symptoms of labour law violation and undeclared work are widespread in the Greek case. At the same time the vast majority of enterprises in the private sector are very small. This development is responsible for the lack of workplace level union representation structures, as the legal threshold to form a union is to have at least 21 members. For these reasons the most popular industrial dispute resolution method in Greece is either to sort out the industrial relation issue(s) on an individual basis with the employer or to take the case to court that is costly in terms of time and money. In this context, the biggest trade union organisation in Greece (ΓΣΕΕ) decided to establish Kepea initially in the city centre of Athens and at a later stage to other regions of the country. According to this point of view, Kepea was supposed to become the main vehicle of information and defence of the workers in order to deal with employers' offensive towards employment standards and rules. At the same time Kepea could help other vulnerable groups of the workforce, such as migrant workers and unemployed people by providing individualised services in the fields of career advice including access to available job opportunities.

No doubt Kepea has been a successful initiative since its establishment in 2000. Thousands of workers and unemployed people have visited the Centre or been in phone contact with the members of the staff. Further, the unfortunate economic situation across the country has increased the demand for its services in the last 20 months, by groups of the workforce who are in a precarious position in the Greek labour market. The success of Kepea is also based on a number of factors related to its internal organisational environment.

The Centre's staff is specialised in providing information and advice on the job market and the regulatory framework that is driven. Experienced trade union officers support the scientific staff in their actions and are available to support precarious workers in a multiple way. The characteristics of the unemployed, as well as the nature of the requests made by the precarious workers who ask for help and advice in the Centre are analysed on a constant basis providing significant knowledge to trade unions in order to formulate appropriate policies and strategies of employee representation. The Centre has gradually expanded its operations to other regions and areas of the country. There are regional branches of Kepea in the island of Chios, the regions of Florina and Kozani and the urban areas of Agioi Anargyroi, Argyroupolis, Chalandri and Zografou. Kepea also prepares and disseminates to a growing mailing list an electronic newsletter, while it is active in social networks and blogs, such as facebook. Finally, Kepea has prepared and disseminated both on-line and on hard copy a special targeted publication that is used as a guide for workers' rights. The publication became very popular and represents one of the most well known publication output by the Greek trade union movement. On certain cases Kepea has acted as a bridge in building relationships between unemployed people and employers who are willing to create new jobs through the on-line search engine of recruitment.

Outcome of the initiative

Kepea represents a trade union initiative against the social exclusion of precarious workers and unemployed people with tangible effects and concrete outcomes. Such outcomes include the provision of accurate, up to date and individualised information regarding workers' rights and the activation of unemployed people or workers with short-term contracts through seminars on effective job hunting methods and through access to recruitment database. It is difficult to estimate the number of individual cases of workers who benefited from the services of Kepea at their work and in cases of workplace dispute. Nevertheless thousands of people have called or visited the Centre and its on-line platforms. So far there has not been any evaluation of the Centre by non-trade union organisations, but its presence in the landscape of the Greek labour market has been highlighted with very positive comments by

the press. Kepea has also indirect positive results in the sense that it helps Greek trade unions formulate more appropriate policies and tools of approaching and representing precarious workers and workers who face the risk of unemployment. In a similar vein the findings of Kepea provide an additional element in the public debate on precarious employment and unemployment in Greece.

Sources

Evidence regarding Kepea was based in an interview with Kostas Nikolaou (member of the executive board of Kepea) and Professor Yannis Koyzis (Panteion University and member of the scientific staff of INE/ GSEE-ADEDY). Additional information was received by the website of Kepea and the press:

<http://www.kepea.gr/>

<http://www.enet.gr/?i=news.el.article&id=316511>

http://www.iskra.gr/index.php?option=com_content&view=article&id=2058:2011-01-11-14-05-32&catid=44:sylogikes-symvaseis&Itemid=170

Case Study 11: Working with the socially excluded – the KLIMAKA NGO

Sector: No specific sector coverage

Main theme(s) covered in the case study: Ngo actions around precarious work

Background/context

Klimaka is one of the most active NGOs in Greece. It was established in 2000 and its overarching objective is to contribute to the fight against social exclusion by providing specific services to people who are in urgent need of help. Such cases include medical services, as well as the services of psychological support through specialised personnel in the fields of psychiatry, psychology and social work. Part of Klimaka's commitments is to integrate socially vulnerable groups of the population, such as people with mental health problems and minorities into the labour market. Klimaka is also active in its participation in EU level projects against social exclusion and poverty. It also participates in international mission tasks that aim to tackle humanitarian crisis' employing street clinics, medical experts and specialised social workers. Klimaka has become a very significant actor in the provision of welfare with the upsurge of the economic crisis in Greece. More specifically its activities into the fields of homeless people and assistance to prevent suicides have provided shelter to many precarious workers and unemployed people. Since 2010, the number of suicides has dramatically risen in Greece, as recent relevant studies (e.g. Kentikelenis et.al. 2001; *Get Involved European study*, 2011) have indicated. Such an outcome is definitely related to the harsh economic situation that many people in Greece face. Last year the Klimaka helpline received more than 2,500 calls from people who were suicidal. According to the analysis by Klimaka's experts, financial issues and urgent economic problems were the main causes.

Description of the initiative

Klimaka has a strong tradition in implementing action plans that aim to combat social exclusion. Before 2000 the predecessor NGO was more active in areas of mental health and poverty. At the moment it is active in more than nine projects and engages in numerous

activities across the country, receiving international and national recognition and respect. The projects on preventing suicides and homelessness are the most relevant activities of the organisation in relation to the issue of precarious work. Financial difficulties are stressors and for both cases (for those who are suicidal and the homeless) play an important role according to the international literature and practice. The demand for such services by Klimaka has lately increased for two main reasons. First, because Greece faces a severe and all-embracing crisis that has resulted in dramatic rises on the levels of unemployment and precarious work. Secondly, because the traditional provider of social policy in Greece, which is the family unit, struggles to meet its protective role to its members in the way that it did in the past. For example it is a common to find households where more than one of their members has lost her/his job or that they cannot pay their mortgages and electricity bills due to wage cuts. The burden of providing support to people who face the risk of social exclusion has gradually been transferred to NGOs and individuals, given the relative policy reforms so as to minimise public spending and the cost of welfare state. Greece's economic problems are creating an upsurge in homelessness and in suicides. As the interviewed members of the staff in Klimaka interviewed said: *'The new homeless generation – the 'new homeless' – are homeless particularly for financial reasons. They are people who are unemployed and come from middle and higher educational backgrounds. They used to have an adequate lifestyle'*.

The Homeless People Support Project run by Klimaka has established several Day Centres – Short Term Hostels and street working units with homeless people across the country. Homelessness in Greece is rising and by the end of 2011 was expected to rise to about 17 to 18 per cent, which is five per cent higher than for any other country in Europe. Most of these people are people that have lost their jobs or been bankrupted and have been forced on to the streets. In the Klimaka hostels in Athens about two new people arrive a day. If the financial crisis continues people are afraid that homelessness will keep rising. According to Klimaka about 20,000 people are living on the streets of Greece. Klimaka has organised the 6th annual "sleep out" events in Athens. More than 500 people participated in the latest event in June 6th 2011 with about 60 spending a symbolic night on the street. There were other activities such as songs, dances, theatre, photo exhibits, food, drinks, and hygiene supplies and medical examinations for homeless people. The event was aimed at raising awareness and to force Greek citizens to end homelessness in Greece. Homeless people participated in the event and told their own stories on being homeless.

Klimaka has established strong collaboration ties with the social services run by local authorities, as well as with public hospitals, radio stations and other media. At the same time Klimaka is active in social networks and operates relevant websites (www.suicide-help.gr, suicidehelp-klimaka.blogspot.com). The 24 hour/ 7 days a week helpline to people exhibiting suicidal behaviours has emerged as a response to inadequate mechanisms for the prevention of the problem by the national health system. The helpline provides medical advice and psychological support to people with suicidal behaviour symptoms. It further organises campaigns within broader society that addresses suicidal behaviour, while it provides training to mental health practitioners and other occupational groups, such as hospital doctors, prison pastors and policemen and journalists. The helpline was set up in May 2007 under the supervision of the Ministry of Health and Social Solidarity. Since that time, Klimaka has hired six psychiatrists, seven psychologists and many volunteers (psychologists and social workers) in order to make the helpline functional and effective. In 2010 the helpline team that fights to prevent suicides responded to 2,500 calls by people with relevant suicidal incidences, while more than 3.000 calls were made by other people who were just concerned about the issue. As the staff member of Klimaka who was interviewed stated: *At the moment we have people who ask for accommodation on a daily basis and we receive more than 100 phone calls from people who are thinking or planning to commit suicide in the near future due to financial problems'*. The big advantage of the helpline is mainly related to the fact that it provides open, easy and direct access to people and/ or their families who need advice and medical treatment.

Outcome of initiative

The services of Klimaka have provided significant support to homeless people and to people who suffer from serious depression symptoms. The dramatic rise in the demand for the services of Klimaka is indicative of that. Klimaka has become an important welfare provider for people trapped in debts and those engaged in precarious employment arrangements and especially those who face both psychological and housing problems. The activities of the organisation have become more crucial given the fact that the national legislation on such matters and especially regarding the problem of homelessness is limited. Further the dynamics of social exclusion in the country have become stronger with the current economic crisis and the deregulatory policies in the labour market. Nevertheless, and despite the gradual rising trends of people living on the streets, there is still no national or local action plan for homeless people.

Sources

The case study was based on material provided by the following members of Klimaka's staff: Anta Alamanou and Aris Violatzis who were interviewed.

Reference was made to material on Klimaka's website and national and international press coverage of Klimaka's activities, such as the following

<http://www.euronews.net/2011/09/08/economic-crisis-creates-new-homeless-in-greece/>

Case Study 12:– ARSIS: NGO support for Young people in Greece

Sector: No specific sector coverage

Main theme(s) covered in the case study: Ngo actions around precarious work

Background/context

Arsis is an NGO active in the prevention of social marginalization and the promotion of integration of young people belonging to vulnerable groups of the population mainly migrants. Arsis has implemented or participated in a number of projects, national and transnational against the exploitation and trafficking of migrant children. The projects implemented since 1992 targeted the location, contact, assistance, protection in collaboration with the authorities, and social integration of children-victims of trafficking. Arsis, among other actions provides support to families with problems, works intensively with the children and their families and offers psychological and social support. The organization operates several centres for the empowerment of young people with social or psychological problems. The organization also provides daily shelters for homeless people, as well as information services open to the public regarding issues of social rehabilitation and inclusion. Arsis's people are mainly social policy practitioners and psychologists. Nevertheless it has established a strong network of individuals who provide volunteer work, while it operates special alumni of members and frequent donators. For example only in the city of Larisa there are about 60 volunteers and 10 professional members of the staff.

Description of the initiative

Arsis is highly active in street-work. For example Arsis has worked - particularly, through transnational collaborations - with children trafficked between Albania and Greece. It has been active for their safe voluntary repatriation and in cases where repatriation is either not desired or not feasible, for their integration into Greek society, so that further marginalization

is avoided. The information provided by Arsis concerning trafficking in migrant children is the following: Most of the children located are children that are accompanied by their parents. Exception made of 6 traffic-lights children, which are the only cases of children that have been recognized as victims of trafficking. Concerning the children that are in Greece with their families the situation was described to us as follows: Families come to Greece with the intention to exploit the labour of their children, consequently these are cases of trafficking that are very difficult to prove. The parents can easily put forward that they are migrants and children were forced to work due to the financial difficulties of the family. Thus, while some of these are cases of extreme exploitation they are not recognized as trafficking for labour, but as simple cases of child labour.

Other interesting activities implemented by Arsis are related to the establishment of a strong network with other voluntary organizations and social policy institutions. Typical examples include the following coordinated initiatives and networks at national level:

- Network for the support of Young People
- Coalition against Poverty and Social Exclusion
- Network of Social Policy Supportive Services
- NGO Commission for the Monitoring of United Nations Convention for the rights of children.

In a similar vein, Arsis cooperates with relevant partners and networks abroad, such as:

- European forum for the Employment of Offenders
- European Federation of NGOs that aim to fight homelessness
- Creative Co-operations, art for young people with social problems
- ICYE International Cultural Youth exchange
- STEP - BY - STEP youth exchange network.

Arsis has also published and implemented several research studies for social policy practitioners and for those interested in human rights and youth problems. The interest of the organisation to young peoples' problems and the dissemination of the outcomes of its activities are also presented in conferences of international and national level interest. A special programme of occupational counselling has also been provided to young people. At the same time Arsis has been involved in international actions and European level research and policy implementation projects, such as the TACT project (Transnational Action against Child Trafficking).

Arsis people are based in six different cities across the country. This broad geographical coverage has established Arsis as a very significant national actor in the landscape of Greek NGOs and especially those targeting at young people who live or work in problematic and precarious conditions. In general their open and inclusive character of its activities for both individuals and other organisations is another part of the success of the organisation. An important element in the whole success of Arsis is related to its financial autonomy. Collection of individual donations and membership subscriptions (30 euros on an annual basis) has helped the organisation to survive financially and to implement more ambitious projects. In most cases such projects included the partnership of other stakeholders, such as local private companies. To name a few examples; the creation of graffiti art workshops funded by Goody's restaurants, the Minister of Macedonia and Thrace that funded the Citizen Advice Bureau, certain publications were funded by the University Studio Press and Levi's Greece was highly supportive on certain projects of Arsis.

Outcome of initiative

The services of Arsis have provided strong support to many young people and children from vulnerable economic and social background. Its strong network of collaborative institutions and organisations has established Arsis as an important player and provider of social policy in the country. Arsis has established special centres of support for young vulnerable people in six countries and its publications are highly recognizable and useful in the public debate about

the problems of the younger generation of workers. In 2002 Arsis was awarded with the prize of the best NGO in the area of Salonica. Arsis provides free space for joint initiative and compassion to everybody that is willing to do so. As such the aim is to make the young people with social disadvantage who join the Arsis take their life in their own hands by providing options for creative activities and personal growth and development. Arsis is open to all types of institutions and one of the few NGO in Greece where the open door policy has attracted the interest of public schools and university students. Such volunteers provide important work and help to young people who need it. Typical examples include the recent activities in second school chance for illiterate Greeks and the Greek language classes provided to third country young migrants and refugees, the job club which is a team of supporting migrants to get a job and the creative art workshop at the youth prison of Avlona.

Sources

The case study was based on material provided by the following interviewed members of Arsis's staff: κα. Valbona Hystuna, Argyrw Dimopoulou and Nikolaos Gavalas. Important reference was made to material presented at the Arsis's website, <http://www.arsis.gr/> and national press coverage of the activities implemented by the organisation.

IRELAND

Case study 13: The National Employment Rights Authority and its impact on detection of precarious work in Ireland

Sector: No specific sector coverage

Main theme(s) covered in the case study: Government initiatives on the issue of precarious work

Background/context

The National Employment Rights Authority (NERA) was established by the Irish Government in 2007 following a social partnership agreement reached by the Irish social partners. The stated goal of NERA is to 'achieve a culture of national employment rights compliance'. NERA was created due to a number of concerns that were current in the Irish policy context. Firstly, there was a perception that the increasing number of precarious workers in Ireland necessitated a stronger employment rights enforcement regime. Due to factors such as mass migration and high economic growth in Ireland in the first half of the 2000s, there had been a growth in the number of precarious workers within the country. Many jobs had been created in sectors such as construction, catering and domestic work that were associated with precarious work. High numbers of migrant workers also worked in these sectors. A consensus had thus formed that more needed to be done to ensure that workers in such sectors were adequately protected.

Secondly, there was a general concern that employment law was not being complied with adequately in Ireland. This sentiment was particularly strong within the Irish trade union movement. Although much legislation (primarily as a result of the implementation of EU Directives) had been introduced in Ireland in the previous decade that aimed to protect the rights of precarious workers, there was a concern that this legislation was not being enforced effectively. Finally, there was a concern on the part of Irish firms that firms not complying with Irish employment law were getting an unfair competitive advantage over Irish firms who complied with employment law. One of the key motivations of Irish firms in seeking to improve the quality of national employment rights compliance was in order to ensure that law abiding firms were not at a competitive disadvantage.

Description of the initiative

NERA performs four key functions:

1. NERA is a key provider of information on the rights of employees in Ireland. It maintains a website that details the relevant rights for Irish employees, and also maintains a telephone service that gives information on employment rights to interested parties. Much of this information is available in other languages and is thus accessible to migrant workers who are at a higher risk of being engaged in precarious work.

NERA has also produced numerous publications that seek to improve levels of awareness about employment rights. Many of these publications concern topics highly relevant to

precarious workers. They include topics such as compensatory rest periods, dispute procedures in essential services, bullying in the workplace, self-employment status, the information and consultation of employees, employment of workers in other people's homes, Sunday work, the employment of young people, and grievance and disciplinary procedures.

2. NERA also regularly inspects Irish workplaces. It has a team of workplace inspectors, and they regularly inspect Irish workplaces to ensure that firms are operating in compliance with Irish employment law.

3. If firms are not found to be in compliance with Irish employment law, NERA acts as an enforcer of Irish employment law. To this end, it prosecutes firms that are not in compliance with the law and maintains an Enforcement Services Unit. NERA also works closely with the Irish Labour Court and Employment Appeals Tribunal.

4. A fourth goal of NERA is to protect young workers. In most cases in Irish employment law, the employment of workers under the age of sixteen is illegal. NERA ensures that firms do not breach the law and employ workers under this age illegally.

Outcome of the initiative

It is generally considered by the Irish social partners that the creation of NERA has had a beneficial effect in attempts to reduce levels of precarious work in Ireland. Irish trade unions are particularly positive about the organisation's role, and have emphasised the role of NERA in helping create a culture of compliance with employment law in Ireland. The work that NERA has done in helping workers engaged in work in private homes has been particularly lauded.

NERA's own statistics also demonstrate that the organisation plays an important role in regulating and preventing the spread of precarious work in Ireland. For example, in 2010 the NERA telephone helpline dealt with 121,435 calls and the organisation's website recorded 1.3 million hits. NERA also conducted thousands of inspections in 2010. The organisation's data shows that the organisation was particularly active in protecting the rights of young workers and in enforcing the Irish national minimum wage. In 2010, NERA examined 3,535 cases of the protection of young persons. 98 per cent of the cases were in compliance with Irish employment law. In 2010, NERA also examined 1,883 cases of the payment of the minimum wage to employees in Ireland. 48 per cent of the cases were not in compliance with Irish employment law, and NERA recovered €155,899 in unpaid wages for employees. The relatively low rates of compliance with Irish minimum wage legislation amongst inspected firms suggest that the payment of the proper minimum wage is a problem for precarious workers in Ireland.

NERA has also been substantially engaged in monitoring compliance with Irish employment regulation across a range of Irish sectors. Many of these sectors, such as agriculture, catering, hotels and construction are typically associated with high rates of employment of precarious workers. In the agriculture and hotels sector, NERA has uncovered and helped correct high rates of non-compliance with Irish employment law. In the agriculture sector, NERA examined 76 cases in 2010 and found that only in 29 per cent of cases did firms properly comply with Irish employment law. In the hotels sector, NERA examined 127 cases in 2010 and found that in only 31 per cent of cases did firms properly comply with Irish employment law. The high rates of non-compliance with Irish employment law and the comparatively high levels of precarious workers in these sectors suggest that precarious workers are particularly vulnerable to exploitation in these sectors. Rates of compliance were better in the catering and construction sectors. In the catering sector, NERA examined 474 cases in 2010 and found that in 38 per cent of cases firms properly complied with Irish employment law. In the construction sector, NERA examined 407 cases in 2010 and found that in 56 per cent of cases firms properly complied with Irish employment law.

However, several Irish trade unions and NGOs have expressed concern about cuts to the budget and manpower of NERA in recent years. Because of the impact of the economic crisis, the organisation has faced cuts in these areas repeatedly in recent years. In 2008, NERA spent a total of €9.6 million and employed 132 staff. However in 2010, NERA spent a total of €6.9 million and employed 108 staff. Officials from Irish trade unions stated that it was very important that these cuts did not significantly impair the ability of NERA to continue monitoring the treatment of precarious workers in Ireland.

Sources

Interviews were conducted with representatives from all of the main Irish social partner organisations and relevant branches of the public authorities. The website of the National Employment Rights Authority and relevant documentation were also consulted.

Case study 14: The impact of the economic crisis on precarious work

Sector: No specific sector coverage

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work; Ngo actions around precarious work

Background/context

Since 2008, Ireland has been afflicted by a deep economic crisis. The crisis, which originated in U.S. financial markets, has had key effects on levels of private and public debt in Ireland, and led to the Irish Government requesting an emergency loan from the IMF and EU in November 2010. The implications of the economic crisis for levels of unemployment and precarious work in Ireland have also been considerable. By 2011, the rate of unemployment in Ireland was over 14 per cent. The unemployment rate in the years prior to the crisis was close to 4 per cent. The economic crisis has also led to an increase in precarious work in Ireland. Due to factors such as higher unemployment, public spending cuts and greater economic uncertainty, jobs in Ireland are increasing lower paid and use precarious work contracts.

There has also been a great influx of migrants to Ireland in the last ten years. Many of these migrants came from the central and eastern European countries that acceded to the EU after 2004. Many of these workers have also been engaged in precarious work, and have been employed in sectors such as construction, hotels, and agriculture that are associated with high levels of precarious work. As a result of the economic crisis, many migrant workers have left Ireland. However, amongst those who have stayed in Ireland, the concern has been expressed that the economic crisis has meant that levels of precarious work amongst these workers has greatly increased.

Description of the initiative

In response to concerns about high rates of precarious work involving migrant workers as a result of the economic crisis, Irish trade unions and public authorities have pursued a number of strategies. Irish trade unions have attempted to organise in sectors where there are high levels of migrant workers. Because migrant precarious workers are typically unorganised by trade unions, there has been a perception amongst Irish trade unions that conditions amongst

such workers can be improved by the presence of trade unions. Specifically, information about trade unions has been disseminated to migrant workers in sectors like agriculture, construction and hotels, and this information is often disseminated in the languages spoken by immigrant workers. Irish trade unions like SIPTU have also employed Polish officials who are responsible for organising Polish workers within Ireland.

Much work has also been done by the Migrant Rights Centre Ireland (MRCI). MRCI was established in 2001, is a registered charity, and exists to protect and strengthen the rights of migrant workers and their families. MRCI has three strategic goals for 2008-2011:

- To strengthen the rights and protections for migrant workers who are at risk of or experiencing workplace exploitation, are trafficked for forced labour or are undocumented.
- To mainstream a focus on migrant workers at risk of social exclusion, poverty and discrimination within service and information provision, and within community and local development.
- To proactively provide migrant workers with the opportunities to develop leadership capacity.

Since the start of the economic crisis, MRCI has engaged in a number of specific programmes to help migrant workers engaged in precarious work. One particularly successful campaign was started in the Irish mushroom growing industry. The Irish mushroom growing industry was a sector associated with high levels of precarious work involving migrants. In this case, MRCI worked with the trade union SIPTU to publicly highlight issues within the sector. The campaign was considered a success, led to many employers within the sector adopting better practices, and led to a Registered Employment Agreement within the sector to improve pay and conditions.

In response to concerns about high levels of precarious employment involving migrant workers engaged in domestic work, MRCI has also lobbied the Irish Government for the establishment of a Code of Practice for Protecting Persons Employed in Other People's Homes. MRCI has proposed that such guidance would outline the employment rights and protections available to domestic workers, and employers' obligation to inform such employees of their rights. MRCI have also advocated for the Irish National Employment Rights Authority to undertake inspections into employment conditions for workers in private homes. This campaign led to NERA adopting such inspections.

Outcome of the initiative

Although Irish trade unions and organisations like MRCI have attempted to protect the rights of precarious migrant workers affected by the economic crisis, their efforts to this effect have been compromised by a number of countervailing trends. Officials from Irish trade unions and NGOs stated that because of the cuts associated with the crisis, they were very often powerless to prevent trends towards increasing levels of precarious work involving migrant workers. Two developments that are associated with the economic crisis are of particular relevance.

Firstly, cuts have affected the Irish National Employment Rights Authority NERA (see previous case study). Secondly, Irish Joint Labour Committees (JLCs), institutions that are traditionally crucial in protecting the rights of migrant precarious workers, have recently been weakened following a decision by the Irish High Court. JLCs covered many sectors with low wage rates such as catering, cleaning, hairdressing, hotels and retail that employed high levels of migrant precarious workers, and protected the rights of such workers by issuing Employment Regulation Orders (EROs) that established minimum terms and conditions in

these sectors. However a July 2011 Irish high Court ruling found that the 1946 Industrial Relations Act establishing EROs was unconstitutional because it did not set out legislative guidance for JLCs about the principles they should follow when deciding pay and conditions. Since the ruling was delivered, all existing EROs have ceased to be legally binding from 7 July 2011, and new legislation will be needed to reinstate the jurisdiction of the JLCs. The Irish Government is currently in the process of discussing reforms to JLCs, but Irish trade unions worry that the weakening of JLCs will adversely affect the rights of migrants involved in precarious work.

Sources

Interviews were conducted with representatives from all of the main Irish social partner organisations and relevant branches of the public authorities. The website of MRCI and relevant documentation were also consulted.

Case study 15: The reform of the Irish Joint Labour Committees (JLCs)

Sector: No specific sector coverage

Main theme(s) covered in the case study: National laws aimed at equalising social rights downwards

Background/context

Irish Joint Labour Committees (JLCs) were the traditional institution for establishing minimum pay rates in low wage sectors in Ireland. JLCs were established by a statutory order of the Irish Labour Court under the Irish Industrial Relations Act 1946. JLCs were independent bodies made up of equal numbers of employer and worker representatives appointed by the Labour Court, with a chair appointed by the Irish Minister for Jobs, Enterprise and Innovation. As of 7 July 2011 there were 19 JLCs in Ireland. JLCs covered many sectors with low wage rates such as catering, cleaning, hairdressing, hotels and retail. It has been estimated that between 150,000 and 205,000 workers were covered by JLCs in 2009.

JLCs submitted their proposals on pay and working conditions to the Irish Labour Court. The Labour Court then made an Employment Regulation Order (ERO) that made the JLC agreement enforceable by law. This system co-existed alongside the Irish national minimum wage. JLCs and EROs had particular relevance to the rights of precarious workers. Because low rates of pay are one of the key factors that define precarious work, JLCs were one of the key institutions that protected the rights of precarious workers in Ireland.

Description of the initiative

Two particularly significant developments affected JLCs in 2011. Firstly, as part of the four-year economic plan announced in November 2010 by the Irish Government that was a condition of the EU-IMF emergency loan granted to Ireland, a review of JLCs and EROs was initiated by the Irish Government. This review was carried out by Kevin Duffy, Chair of the

Irish Labour Court and economist Dr Frank Walsh of University College, Dublin. The report made 19 recommendations. The most significant of the recommendations were that:

- The Irish Labour Court should report on the scope of all remaining JLCs to ensure that the range of establishments to which they apply remains appropriate, with any necessary amendments made to the establishment orders by which they were created.
- Certain JLCs should be abolished or amalgamated due to them covering sectors which have effectively ceased to function or have a very small number of employees.
- Collective agreements should override the powers of any relevant JLC and, subject to certain conditions, the Irish Labour Court should be authorised to exclude any undertaking to which a collective agreement applies from a JLC's jurisdiction.
- If the national minimum wage is adjusted downwards, the JLCs should have to consider, within a set time, also revising the rates prescribed by EROs.
- Rules on overtime and the Sunday premium should be standardised.
- It should be possible to cancel the registration of an REA where either the trade union(s) or employer parties have ceased to be substantially representative of workers or employers in the sector to which the agreement relates.
- Statutory provision should make it possible for derogation from the terms of either an ERO or an REA on economic grounds.

As of November 2011, these reforms are being debated by the Irish Government and parliament.

The second significant development to affect JLCs in 2011 came as a result of an Irish High Court ruling on 7 July 2011. This High Court ruling found that the 1946 Industrial Relations Act establishing EROs was unconstitutional because it did not set out legislative guidance for JLCs about the principles they should follow when deciding pay and conditions. Since the ruling was delivered, all existing EROs have ceased to be legally binding from 7 July 2011, and new legislation will be needed to reinstate the jurisdiction of the JLCs. Irish employees who were covered by an ERO have existing contracts of employment which govern their pay and conditions of work. The pay and conditions of employees who start work after 7 July 2011 is governed by employment legislation such as the Irish minimum wage.

Outcome of the initiative

The Irish Government has proposed legislation on JLCs that includes the following points:

- Reducing the number of JLCs to about half the previous number;
- Reducing the number of ERO rates; JLCs to set basic adult rate and two supplementary minimum rates;
- Companies may seek exemption from paying ERO rates due to financial difficulty;
- Removal of Sunday premium and other conditions of employment covered by other employment legislation from ERO provisions. A new Code of Practice on Sunday Working for workers covered by ERO sectors is to be prepared by the Irish Labour Relations Commission;
- New criteria to be used when making or changing EROs, which could include competitiveness factors and rates of employment and unemployment.

The Irish social partners are sharply polarised in their assessment of the impact of the reform of JLCs on rates of precarious work in Ireland and the implications for Irish competitiveness. Since the High Court ruling in July 2011, the Irish trade union movement has lobbied the Irish Government to pass legislation restoring the legally binding character of EROs. The Irish trade union movement considers that JLCs and EROs are indispensable in combating the prevalence and rise of precarious work in Ireland. Alternatively, Irish employers' groups

generally support the dismantling of JLCs. Irish employers' groups typically consider that the existence of the JLCs impede job creation and harm the competitiveness of Irish firms.

However, the evidence collected by Kevin Duffy and Frank Walsh, the two experts tasked with reviewing JLCs by the Irish Government, gives little support to either the position of the trade unions or the position of the employers. Duffy and Walsh found that, controlling for factors such as hours, experience, tenure, education, the broad occupation and industry, the weekly wages of workers in JLC sectors are typically seven per cent less than other workers not covered by a JLC/REA. The authors conclude that, for the covered workers, 'the regression results do not provide evidence that there are positive wage premiums'. Also, Duffy and Walsh found that there was little evidence of a link between JLCs and limits on the creation of jobs. Their report stated that 'lowering the basic JLC rates to the level of the minimum wage rate is unlikely to have a substantial effect on employment.'

Sources

Interviews were conducted with representatives from all of the main Irish social partner organisations and relevant branches of the public authorities. The websites of the Irish social partners and national public authorities and relevant documentation were also consulted.

Italy

Case study 16: Limiting precarious work through a collective labour agreement in craft metalwork in Italy

Sector: Other sector

Main theme(s) covered in the case study: Social partner joint initiatives aimed at tackling precarious work

Background/context

The recent collective labour agreement of craft metalwork, signed the 16th of June 2011, involves the principal craft organisation (CNA, Confartigianato, Casartigiani, CLAAI) and all the main trade unions (FIOM-CGIL, FIM-CISL, UILM-UIL) of the sector.

The renewal of the collective labour agreement for the craft enterprises in the metalworking industry was not determined by the economic crisis, since the renewal of the collective labour agreement takes place periodically. It should be noted that the last agreement which introduced changes to the law was made in 1997, before the period when a large number of atypical contracts was introduced into Italian labour legislation.

On the one hand, the rules introduced in the collective labour agreement of June 2011 (regarding part-time contracts, fixed-term contracts, and contracts of inclusion and apprenticeship) can be considered as the updating of the 1997 older agreement. On the other hand, the high increase in the number of precarious workers during the economic crisis pushes trade unions to seek new rules able to better discipline atypical contracts. Thanks to this new agreement it will be possible to reduce precarious work, even though it must be remembered that in craft metalwork there is a high level of labour flexibility because of the limited number of workers and a very close relationship between the employer and the employee.

Description of the initiative

The recent collective labour agreement of craft metalwork is particularly important since it involves all the principal craft organisations and all the main trade unions of the sector, which after a long period of division jointly signed the agreement. This agreement is applicable to around 600,000 workers in thousands of craft enterprises belonging mainly to the metalwork but also to the goldsmith, silversmith, dental technician, and installation sectors. In the above mentioned agreement there are aspects closely related to precarious work, since it establishes well-defined rules for fixed-term contracts, part-time, contracts of inclusion and apprenticeship. These contracts are strictly regulated by the agreement which is even more restrictive than related national legislation.

Firstly, the timetable of a part-time job must be clearly defined in writing, with regard to day, week, month, and year. Also, if enterprises want to make changes to the agreed timetable, they have to give five days' notice.

Secondly, a fixed-term contract can be renewed for a maximum of 36 months, including the vacancy period between the different contracts. In addition, workers who have been employed

for at least six months with fixed-term contract, for the following 12 months have the right to preferential hiring. Finally, fixed-term workers gaining an open-ended contract will receive length of service benefit even for the period when they were temporary.

These best practices have been designed thanks to the monitoring action of permanent observatories established in the main craft sector.

The representative of CNA during the interview underlined that this agreement stiffens the rules on flexibility, in order to avoid a rise in precarious work and the growth of industrial disputes, which are too expensive for small craft enterprises. The secretary general of FIOM Emilia-Romagna stressed how this agreement tries to limit the damage created by the legislative changes in the labour law in the last decade. In his view, the collective labour agreement could help reduce the level of precariousness by introducing stricter rules on atypical contracts as occurred in craft metalwork.

Outcome of the initiative

The recent collective labour agreement in craft metalwork can reduce the amount of precarious workers employed in this sector, thanks to the introduction of rigid rules which disciplines the use of “atypical” contracts.

In particular, the possible abuse of fixed-term contracts is considerably reduced: a maximum length of fixed-term contract has been clearly established and temporary workers, employed for at least six months, have the right to be hired before new workers and in this case they will receive length of service even for the period they were temporary. Moreover, it is established that fixed-term contracts can be used only in the cases established by the agreement itself, because the open-ended contract is recognised as the normal employment relationship to be used. These rules not only equalise working conditions between precarious and non-precarious workers, but they can protect temporary workers and avoid the rise of precariousness.

Regarding part-time, the new rules introduced, and explained above, can avoid the illegal situation in which workers have a part-time contract even though they work full-time thanks to the fact that every change in working hours must be in writing. As the representative of CNA underlined, a part-time worker who regularly works full-time is illegal: the employer must be prosecuted by law since he pushes this worker to work half of the time regularly and half of the time as in undeclared work to avoid taxes and other labour costs.

The agreement was signed in June 2011 and it will be applicable for the next three years, and at the end of that period it will be possible to assess the real impact of this agreement for the reduction of precarious work in craft metalwork.

Sources

The main sources used for the case studies are: interviews and the analysis of official documents regarding the collective labour agreement signed on the 16th of June 2011 in craft metalwork (available at <http://www.cna.it/DIPARTIMENTI-E-UFFICI/Relazioni-sindacali/CCNL/Area-Meccanica-c.c.n.l.-Metalmeccanica-e-Installazione-d-Impianti-c.c.n.l.-Orafo-Argentiero-e-Affini-c.c.n.l.-Odontecnica>). The interviewees were: Stefano Di Niola (CNA Responsible for Labour Relations Department) and Gianni Scaltriti (Secretary general FIOM Emilia-Romagna and responsible for collective bargaining in craft metalwork).

Case study 17: Taking precariousness out of call centre work: the case of Enterprise Koiné

Sector: Information technology

Main theme(s) covered in the case study: Employer initiatives aimed at tackling precarious work; government initiatives aimed at tackling precarious work

Background/context

Between 2006 and 2007, the Koiné enterprise was involved in an important process of precarious workers' stabilisation which took place in the call centre sector under a specific set of rules established by the former Minister of Labour, Cesare Damiano. Enterprise Koiné is a call-centre company which employs 450 workers both in the Emilia-Romagna and Veneto Regions. Most of the workers had co.co.co contracts and, later, project contracts. As a result of the introduction of Damiano's rules in 2006, Cason, CEO of Koiné, decided to stabilise all his workers, who then obtained a subordinate open-ended contract.

This initiative was not related to the economic crisis, since it developed before it arose. Nevertheless, it must be said that the rules defined by the Ministry were established due to the high number of precarious workers employed in the call-centre sector. Actually, before the 2006 rules the majority of call-centre workers were employed with project contracts even though they had regular working hours and a specific work-place. In addition, many of these workers were paid by result, especially when their task was to call people and try to sell them some services or goods. It must be said that the wide-spread exploitation in the call-centre sector had been demonised by the mass media and in films, influencing public opinion and workers' perception negatively.

Description of the initiative

Koiné was established in 1999 as a joint-venture in which 49 per cent of stocks belonged to Cason, the current CEO of Koiné, and 51 per cent to a holding company which appeared to be interested mainly in maximising profits and being quoted on the stock exchange. In the end, Koiné, however, was never quoted on the stock exchange and Cason bought it out, inheriting both the workers and the labour relationships previously established. Most of the workers at that time had co.co.co contracts and, later, project contracts. Cason agreed to add into those contracts some protection such as paid sick leave and paid holidays, although he initially continued to use these types of self-employed contracts because of the lower labour cost, stressing that the call centre business was a labour-intensive sector where labour cost is the main cost and the only one that could be cut in order to be more competitive.

In 2006 and later in 2008, former Minister of Labour Cesare Damiano established a specific set of rules aimed at stabilising precarious workers in call centre companies. As an outcome of Damiano's rules in 2007, Cason decided to stabilise all his workers, who thus obtained a subordinate open-ended contract. He signed an agreement both with the trade unions and the

government official, which allowed him to pay a kind of amnesty tax for national insurance contributions not previously paid.

According to Cason, the stabilisation of precarious workers had a positive impact, improving the value and the potential of his company. Company productivity increased and the quality of the service offered to clients improved. As a direct consequence, Cason gained more and more clients and began to constantly invest in on-the-job training, believing that well trained workers remain his primary resource.

The initiative ended once the stabilisation of Koiné workers had been achieved, but nowadays the positive effects of the 2006 rules can be still found: the majority of call centre workers can no longer be hired on project contracts, which are still valid only for those workers who made outbound calls.

Outcome of the initiative

As a result of the stabilisation, Koiné workers obtained a permanent and subordinate contract. The initiative not only increased protection for precarious workers, but it eliminated precarious work as a whole. As a matter of fact, after obtaining a subordinate open-ended contract the Koiné workers could benefit from social security benefits such as full maternity leave, full paid sick leave and unemployment insurance. This process of stabilisation was aimed at equalising precarious and non-precarious working conditions especially regarding social rights, since prior to the initiative Koiné project workers had been excluded from the major part of these rights.

The initiative finished with the stabilisation of the Koiné workers. It is, however, also very important for the newly hired workers. New recruits are no longer hired on the basis of project contracts, but on the basis of subordinate contracts, either fixed-term or open-ended.

Sources

The main sources used for the case studies are three interviews with: Simone Cason, Koiné CEO, Simone Fluperi, Koiné Human Resources Responsible and Antonio Rossa, Responsible for precarious workers' stabilisation in Koiné enterprise for the SLC-CGIL (Trade union for IT workers). The set of rules established in 2006 by Former Ministry of Labour Cesare Damiano can be found at: http://www.lavoro.gov.it/nr/rdonlyres/434476cf-3dfa-423d-b298-417ae4df74f0/0/20060614_circ_17.pdf

Case study 18: Training for new employees: the Fon.Coop initiative

Sector: Co-operative sector

Main theme(s) covered in the case study: Social partner joint initiatives aimed at tackling precarious work

Background/context

Fon.Coop is the national fund for vocational training in cooperative enterprises established in 2001 by the three main Italian associations of cooperatives (AGCI, Confcooperative,

Legacoop) and the principal Italian trade unions (CGIL, CISL and UIL). About 13,500 cooperative enterprises, employing a total of more than 500.000 workers are Fon.Coop associates. These cooperatives belong to all economic sectors and come from all over Italy, although they are more concentrated in Emilia-Romagna region and in Lombardy.

The initiative described in this case study was established for the following reasons. Firstly, it is closely related to the regular activities of the fund, whose mission is the promotion of the vocational training plans for cooperative enterprises. These plans can be developed at firm level (even including workers on an individual basis) or they can involve whole sectors and territories. Secondly, the economic crisis has, on the one hand, caused a rise in both unemployment, especially youth unemployment, and precarious work, and on the other hand, has had a deep impact on cooperative enterprises, above all in construction and services. In both sectors the cutting of contracts and sub-contracts caused a reduction of working hours and stable work.

The initiative was established thanks to an agreement between the three main associations of above-mentioned cooperatives and the principal Italian trade unions (CGIL, CISL and UIL), with both sides represented in the fund itself. As a matter of fact, all of them recognised the necessity of joint stabilisation and vocational training in order to promote more stable employment in cooperative enterprises.

Description of the initiative

The Fon.Coop project is aimed at stabilising precarious workers employed in cooperative enterprises. The project is based on the idea that it is necessary to combine stabilisation and vocational training to reduce the amount of precarious work, because well trained workers are more valuable and not inter-changeable. A public competition open to all the cooperative enterprises associated to Fon.Coop allows them to obtain funding for stabilising precarious workers - such as co.co.co, project workers, traineeships, apprenticeships - through vocational training courses. At the end of the training period, precarious workers must obtain at least a subordinate fixed-term contract of 24 months or possibly even open-ended ones.

The initiative was launched thanks to funding from Fon.Coop to the tune of €1.5 million. The main actors in the initiative are Fon.Coop, the cooperatives associated with the fund, the workers employed in the cooperatives, the trade unions representing those workers, and all the cooperatives' partners.

The main advantages of the initiative, declared by the promoters themselves, are related to both workers and cooperative enterprises. On the one hand, the form of a subordinate fixed-term contract is better than other atypical contracts such as co.co.co, i.e. project work which does not provide for social security benefits. Moreover, the minimum length of the contract is 24 months, considerably longer than the average for atypical contracts. On the other hand, fixed-term contracts allow cooperatives to benefit from the labour flexibility necessary to manage market-related risks, but they can also serve as a period of probation towards obtaining a stable job. In general terms, reducing precariousness gives workers the chance to improve their working conditions while cooperative enterprises benefit from the higher qualifications of their workers, an increasingly necessary factor of success. The fund itself benefits from the development of both cooperative enterprises and workers' skills.

The factors which led the above-mentioned actors (the associations of cooperatives and the trade unions) to promote the initiative were mainly the consequences of economic crisis on both cooperative enterprises and their workers together with the specific demands for training made by cooperatives themselves.

It must be said that many workers of cooperative enterprises are not only employees but also partners of the cooperatives. Often these workers do not have permanent contracts but the length of their contracts depend on the specific economic sector in which they work. Many sectors such as agriculture and forestry or tourism employ workers only on a seasonal basis,

so most of the so-called “partner-workers”, are not on open-ended contracts. For these reasons, even cooperatives’ partners who work in the enterprise can be the target of the Fon.Coop project and can be stabilised with open-ended contracts after the established training period.

Outcome of the initiative

The intended outcome of the initiative is the stabilisation of precarious workers employed in cooperative enterprises. In particular, its main targets are: project workers, trainees, apprentices, temporary agency workers, casual workers and partner-workers. All of those involved, after the period of training established by the project, will obtain a subordinate contract of at least a 24 months’. In this way they raise the level of protection they have since they become entitled to benefits from the main welfare provisions such as unemployment insurance, fully paid maternity leave, paid sick leave. This is particularly valuable for partner-workers because most of them are not real partners but just workers obliged to act as partners in order to have a job but their status means that they do not have access to any social security benefits. The remaining difference between workers obtaining 24 month contracts and permanent workers will be the length of the contract. If precarious workers in cooperatives obtain an open-ended contract at the end of the training period, they are no longer precarious and the equalisation between precarious and non-precarious workers is complete. The equalisation of rights in the Italian system between precarious workers and permanent ones does not imply a reduction of rights for stable workers but rather an increase in the level of protection for precarious workers. There is provision for the initiative to be renewed if a high number of cooperatives ask for funding

Sources

The main sources used for the case studies are interviews and the analysis of the official document regarding Fon.Coop initiative. More precisely, two interviews have been undertaken: with Carlo Marignani and Francesco Agostino, respectively the President and the Director of Fon.Coop. In addition, a document called *Company programmes for training measures for newly hired employees* gives precise information about the actors involved in the project, the amount of the funding, the procedure to accomplish etc. This document can be found at: <http://www.foncoop.coop/>

Latvia

Case study 19: The use of three-month probationary periods

Sector: No specific sector coverage

Main theme(s) covered in the case study: Social partner joint initiatives aimed at tackling precarious work; Trade union initiatives aimed at tackling precarious work; Ngo actions around precarious work

Background/context

The risk of being involved in precarious work is high when a person starts a new job or changes employer. Latvian Labour law permits the dismissal of workers during the three months of the probation period without justified and proven reasons. No dismissal compensation is provided to a worker, if he or she is dismissed during this period. Lower salaries are typically paid during the probationary period while the work load is no different to that carried out by those with permanent contracts.

The current Labour law, Section 47, “Consequences of a probation period” states that:

“During the probation period, the employer and the employee have the right to give a notice of termination of the employment contract in writing three-days prior to termination. An employer, when giving the notice of termination of an employment contract during a probation period does not have a duty to indicate the cause for such notice.”

On 22 April 2004 a new Section 48 “Violation of the prohibition of differential treatment when giving notice of termination of an employment contract during the probation period” was added, stating that “ if an employer, when giving notice of termination of an employment contract during the probation period, has violated the prohibition of differential treatment, an employee has the right to bring an action to a court within a one-month period from the date of receipt of a notice of termination from the employer.” Thus the law permits employers to dismiss workers, when the probation period is over and then recruit new workers. This strategy is used more often by employers during periods of economic crisis, when the total number of workplaces shrinks. Some employers also use the strategy to pay low salaries on a long-term basis. . Furthermore, there is just one month to submit the complaint in cases of possible discrimination.

Description of the initiative

A decade ago trade unions in Latvia were involved in discussions with government and other social partners regarding the legal norm of the trial period. The trade unions held a view that employers should provide a detailed reason, as to why work relationships were discontinued during the probation period, but this regulation was not included in the Labour law. The current legislation makes it very difficult to promote workers’ rights during the probationary period and it means that people are constantly at risk of being dismissed in just a three-day period without any financial compensation. However, changes in the law have been won as the result of a campaign and an initiative involving an Action plan has produced changes.

Outcome of the initiative

The Action plan to diminish non-registered employment (2010) led to changes in Labour law, adopted on 25 March 2010. According to these amendments, employers, who are found employing irregular workers, have to pay taxes for three months for each irregularly employed worker, regardless actual length of the irregular employment. Also, employees are urged to anonymously inform the State Labour inspectorate about cases, when an employer does not provide written work contracts before the actual work relations commence.

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Interviews:

NGO Human rights centre, NGO, senior human rights expert Sigita Zankovska Odiņa
Trade Union of Public Service and Transport Employees LAKRS, legal advisor Jānis Pumpiņš

RIMI Latvia, retail chain, Human relations Administration manager Vita Fīrere

Case study 20: Measures to address irregular work in shadow economy

Sectors: Construction, Agriculture, Hotels and catering

Main theme(s) covered in the case study: National laws aimed at reducing precarious work by increasing social rights

Background/context

Undocumented employment is generally seen as the most severe problem in relation to social rights and precarious work in Latvia. This shadow economy reduces significantly the amount of tax paid into the state's budget.

The construction and building, wood processing, food processing industries, transport, agriculture, and cleaning services - all have relatively high levels of informal labour and potentially exploitative situations. However, elements of the shadow economy can be found in almost all economic sectors. Workers, who do not have a written work agreement and thus are excluded from any social guarantees in cases of work accident, would be typically seen as precarious workers.

In some cases precarious workers are formally registered as unemployed persons. The economic crisis of 2009 and 2010 caused steep rises in unemployment rates: officially registered unemployment in Latvia has soared since the beginning of the economic crisis in 2009 up to 18 per cent in 2009-2010 before falling to 11.7 per cent in September 2011. The Ministry of Welfare estimated that there were about 300,000 irregular workers in Latvia in 2010 (out of 1.48 million people of working age).

The shadow economy index (2011) shows that 14.6 per cent of respondents (employers and owners of private enterprises) hid the real number of workers in their companies in 2010. Only 11.6 per cent of the employers interviewed were paying full taxes for all employees. Despite regular checks by the State Labour Inspectorate, the state authorities have difficulties tracking and proving these cases, as often both employers

and employees are not willing to cooperate with the enforcement institutions. According to the State Labour Inspectorate based on the statistics on fines for illegal employment, in 2010 the highest levels of non-registered workers were in the building sector (716 fines), processing industries (184), art and entertainment (175), wholesale and distribution (132), individual services (124), and agriculture, forestry and fishery (104).

Description of the initiative

In 2010 the Latvian government adopted the Action plan to diminish non-registered employment. The initiative came as a response to the deep financial and economic crisis in the country, high unemployment rates, consolidation of the state budget, a need to collect as much tax as possible and to protect vulnerable employees (those employed in the shadow economy). The Action plan envisaged a more active policy for the State Labour inspectorate to fine employers who employ workers without a formal work agreement and who do not pay taxes. The Action plan stipulated that employers, who are found to be employing irregular workers, should pay taxes for three months for each irregularly employed worker, regardless actual length of irregular employment.

Government institutions, representatives of trade unions and employers' associations were all involved in the initiative with common goals aimed at curbing the shadow economy while at the same time increasing the amount of taxes paid to the state. Another aim of the employers was to ensure fair competition among companies, because those companies that avoid paying full taxes for their workers can provide their goods and services at a lower price and thus have advantage in public tendering processes. In cases, when people are self-employed but still have to carry out tasks instructed by employers, the Latvian legislation stipulates that these employers should provide work agreements and they should pay no less than a minimum wage.

The initiative to diminish irregular employment (Action plan, 2010) resulted in legislative changes with amendments in the Latvian labour law (2010). The outcome has been to equalise conditions between precarious and non-precarious workers in cases where employers are found employing non-documented workers. In these cases it is assumed that a person was employed three months and an employer has to pay all the relevant taxes in relation to the workers. Furthermore, workers can now submit a complaint against the employer and receive their official salary for three months.

Outcome of the initiative

The concept of precarious work is still unclear in Latvia and the main aim of legislative changes was to combat the shadow economy which could help to curb precarious work in the country. The State Employment agency together with the State Labour inspectorate has carried out various campaigns, targeted towards workers in a shadow economy and encouraged workers to inform anonymously on their employment situation, if they were employed without contracts.

However, in practice, there have not been any court rulings on the new law because the informal sector is large and the country is small. There are thus limited opportunities for finding alternative employment if an irregular worker does submit a complaint to the court against her or his employer. In addition, the litigation process can take several years. Also, in most cases, employers, at least partly, have paid the mutually agreed salary but have not paid any taxes. Assessments of activities to combat irregular employment are continuing. At the same time there is also no specific independent assessment regarding precarious work, presumably, mainly due to the very fact that the whole concept of precarity is new in Latvia.

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Trade Union of Construction Workers, chairman Jānis Gužāns

Building Association of Latvia, president Mārcis Nikolajevs

The Association of Hotels and Restaurants of Latvia, head of Restaurant Department of the association Elmārs Kovaļevskis

Case study 21: Targeting the pre-pension age group

Sector: No specific sector coverage

Main theme(s) covered in the case study: Government initiatives on the issue of precarious work

Background/context

According to the unemployment statistics in 2011 pre-pension age persons and young people are the largest groups among the unemployed and there is a presumption that they are more likely to be engaged in precarious work. One third of all unemployed people in Latvia are 50-54 year-old. People at pre-pension age or even in their 40s are described and treated as “too old” in Latvia and have been dismissed during the economic downturn. Besides, pre-pension age people, who studied and entered the labour market during the Soviet period, can have particular difficulties in obtaining the skills required by the current labour market (e.g., computer skills or foreign language skills) and therefore they could be inclined to accept precarious work. They may also be especially vulnerable, in relation to the physically demanding work in some economic sectors. In addition, the long term unemployment of pre-pension age people and thus the possibility that they will get involved in precarious, irregular, non-registered work relations is more pronounced in economically disadvantaged regions.

Description of the initiative

To curb long-term unemployment and increase social security networks during the economic crisis, which started in 2009, Latvia’s State Employment agency implements a specific programme of training for long-term unemployed people so as to acquire and maintain work skills where the employer is a municipality and where work experience is co-financed by the European Social Fund within the framework of the strategy for Social Security Network. In total 101,458 agreements with the unemployed who have participated in the programme, have been signed since 2009. According to data of the State Employment agency, the largest group of persons involved in this programme were 45 to 54 years old,

often with outdated education and skills (e.g., vocational training in Soviet times for specific factories).

In 2009-2010 people worked for six months, eight hours a day, mainly in manual, low skilled work. However, since the programme provided training, officially these people were not in employment relationships. It is a scholarship programme, which gives opportunities to the long-term unemployed to renew work and social skills. They received 100 lats (€140 net) in 2009-2010, which is below the state minimum monthly salary (200 lats/€280 gross). All also receive proper work safety training and they are insured against work accidents. As of 2012 the programme will last for four months and those involved in the programme will receive 110 lats/€157. Ten lats from this remuneration will not be paid directly to the individual, but saved in his/her pension fund.

Outcome of initiative

The Ministry of Welfare, the State Employment agency together with the municipalities in Latvia and the European Social Fund have carried out evaluation of the programme *Training in order to acquire and maintain work skills if the employer is municipality* and concluded that it helps the most vulnerable people to overcome the economic crisis. In addition a new provision regarding investments into a person's pension fund was added after an evaluation of the programme. Although the amount of money invested into a person's pension fund, is very small, it is a step forward to increase the social security of vulnerable older-age people.

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Trade Union of Public Service and Transport Employees LAKRS, legal advisor Jānis Pumpiņš

Building Association of Latvia, president Mārcis Nikolajevs

The Association of Hotels and Restaurants of Latvia, head of Restaurant Department of the association Elmārs Kovaļevskis

Netherlands

Case study 22: Regulation of the temporary work sector

Sector: Other sector

Main theme(s) covered in the case study: Social partner joint initiatives aimed at tackling precarious work

Background/context

The subject of this case study is the regulation of the temporary work sector and in particular the NEN-certification. The NEN-certificate is a quality certificate which ensures that a temporary work agency is bona fide. The temporary work sector in the Netherlands consists of an estimated 12,000 temporary work agencies which employ 300,000 persons a day. Around 6,000 of these agencies are not NEN-certified. The *Temporary Commission Lessons from Recent Labour Migration* (LURA) (2011) states in its final report to the House of Commons that most of these agencies are unscrupulous. They employ 100,000 persons a day, which include 15,000 (irregular) migrants from Romania and Bulgaria who are without a work permit. These unscrupulous temporary work agencies exploit people by not telling them their rights, they do not pay their pension contributions, healthcare contributions and holiday pay. They also house their employees in poor accommodation and charge large sums of money for it. Most of these kinds of agencies are '06-vans'. The 06 refers to the net numbers of mobile phones. They do not have an office and do business from their van. Workers are picked up by the van and are brought to the place of work, where they work under poor conditions. Construction, agri- and horticulture, meat-processing and the cleaning industry are places where these types of temporary work agencies are mostly found to be supplying workers to. It was to put an end to these kinds of practices that the NEN-certificate was introduced.

Description of the initiative

In 1998 the permit system for temporary work agencies was abolished by the government. The reasons for this abolition were: 'the increasing flexibility of the labour market, unscrupulous agencies working under the radar and therefore having registration and in effect with only a small risk of being caught; the cost of paying for and maintaining the permit system; and that it led to extra bureaucracy.' (LURA, 2011: 52). To put an end to the practices described above, the temporary work sector came up with the NEN-certificate. 'The aim of the standard is to limit the risk of recovery and penalties for employers from the Dutch Tax and Customs Administration and other government agencies.' (SNA, 2011: 1). By self-regulation the sector wants to put the unscrupulous agencies out of work or make sure they operate according to law. From 2012 not only will the temporary agencies, who are not certified, be fined, but so too will the companies who do business with them. This should make it less attractive for companies to do business with possible unscrupulous agencies and improve the chances of being caught.

This policy was developed in the private sector and came about as a result of publicity about the working conditions of foreign workers in agriculture and horticulture. There are several key-players when it comes to the regulation of the sector. First there is the Dutch Labour Standards Foundation (SNA). This foundation is a semi-public system which holds a register

with the agencies who are certified and hands out a kite mark called 'The Standard' which is based on the NEN-certificate. It consists of a partnership between the social partners and works closely with the Ministry of Social Affairs and Employment, the Ministry of Finance and the Tax Service. This cooperation with the other parties makes it possible for the SNA to get a better picture of the declaration and payment behaviour of the temporary work agencies and to tackle fraud concerning workers and self-employed persons who are employed in another country and work in the Netherlands. The second key-player is the Foundation for Compliance with the Collective Agreement for Temporary Employees (SNCU), also known as the temporary work police. In this foundation the social partners work together to monitor and promote the collective labour agreement of the sector. If an agency does not comply with the collective labour agreement the SNCU tries to encourage the agency to do so. As a last resort the SNCU will go to court to get the agency to comply. In the past they have successfully sued several agencies to get them to comply.

Outcome of the initiative

Since the NEN-certification was introduced 2,590 companies have been certified and audited twice a year and in total more than 4,600 companies are now in the sights of the SNA. Every year 725 companies register on a voluntary basis to get a certificate to show their clients they are bona fide (SNCU, SNA; 2011). This means that it will get harder and harder for the fraudulent and unscrupulous temporary work agencies to get a client base because of the fine their clients will get if they do business with them. On a sectoral level this means that the working conditions of the employees are better protected. They will get their pension and healthcare benefits, good housing under normal conditions and at least a minimum wage. By trying to eliminate the unscrupulousness in the sector the social partners have tried to operate through self-regulation in the form of a certification system and a private organisation that monitors and ensures the compliance of the collective labour agreement in order to close the gap between precarious workers and non-precarious workers. However, because this is still a work in progress it cannot be claimed yet to be a success. There have been improvements but the gap between precarious workers and non-precarious workers is not fully closed. The SNCU (2011) stated in a press release that it is its goal to ban all the unscrupulous agencies in the sector in two years so that there are none left.

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Case study 23: Organising workers in the cleaning sector

Sector: Other sector

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work

Background/context

This case study focuses on the organising of cleaning workers. This initiative came about due to an awareness campaign led by the Trade Union Federation (FNV Bondgenoten). In 2007 the Trade Union Federation began to campaign around the poor working conditions of cleaning workers. This is not unique for a trade union, but it represented a different approach to campaigning by the trade union, which resulted in the longest strike in the Netherlands since 1933, making it an interesting case to look at. The trade union used a grass roots organising approach, which means that it directly approached the cleaning workers, including non-members, and asked what their demands were before it started negotiating about the collective labour agreements. Training in this kind of campaigning method was given by American trade unionists who had successfully used it to increase the number of members of their union and improve their working conditions considerably. In 2010, after several years of campaigning, cleaning workers began to strike in order to get their demands met. The strike of the cleaning workers lasted for nine weeks in a row and had a positive outcome for the cleaning workers. Another unique point in this situation is that not only the employers were addressed, but also the clients of the cleaning companies. In early 2012 the workers again started a series of smaller strikes to support their demands in collective bargaining.

Description of the initiative

The initiative consisted of awareness-raising among the general public and the clients of the cleaning companies about the precarious situation of the cleaning workers. This was carried out by handing out flyers to the general public and sending letters to the employees and clients of the cleaning companies. Among the clients of the cleaning companies were very big organisations like the Railroad Company (NS), the National Airport (Schiphol), a big hospital (Erasmus MC) and several others. Including these organisations in the campaign was due to an awareness of their influence on the price of labour. Because of the high competitiveness of the cleaning market the cleaning companies were forced to offer the lowest price possible to get a contract from a client. This resulted in a much higher work pressure for the cleaning workers and they were not able to deliver the quality and amount of service they initially agreed on. For instance, a cleaning worker (who was working full-time and earning €1,250 a month) stated in a documentary that he had 1.5 minute to clean an entire toilet otherwise he did not have the time to meet his work quota. The letters sent to the clients remained unanswered, so the trade union sent a delegation of spokespersons to these companies to substantiate the demands. Their demands were a net wage of €10 per hour, access to the work place for the trade unions, better facilities for representation of the workers at the work place, better places to rest and sanitary facilities and work-pressure measurements every six months. This did not lead to any positive reaction from the cleaning companies and their clients. However, the actions of the trade unions did not go unnoticed by the media and they received a lot of publicity. Due to all the media attention the issue was well known in the country and when the cleaning workers initiated strikes, sit-downs and blockades, because the negotiations were in a deadlock, the general public supported their collective actions. After nine weeks of action the cleaning companies and their clients accepted the demands of the trade union.

Outcome of the initiative

As a result of the strike the working conditions of the cleaning workers improved. They now get paid more and over a two year period their salary will increase 3.5 per cent. A lot of cleaning workers were of migrant origin and had not learnt the Dutch language. This had made them more vulnerable on the labour market and difficult to organise. They are now able to take Dutch language lessons and receive a €750 bonus if they successfully complete the course. Another success achieved by the trade union is the creation of a fund for building the membership among the cleaning workers. This fund is sponsored by the employers. The last important gain is the shared responsibility for working conditions by the cleaning companies and their clients. For example, the workload of the cleaners has been decreased by making more realistic contract agreements. As a result of this shared responsibility the cleaning companies do not have to compete anymore on the basis of the working conditions of their employees. This new collective labour agreement of the cleaning industry has made the working conditions of the cleaning workers much better. This success story serves as an example for others on how to successfully organise difficult to reach precarious groups. They even won in 2010 a 'best strike action award' at a labour conference of the UNI Global Union (which represents 900 trade unions and 20 million workers) for the best action in five years. This strike led to more strikes in the cleaning industry for better working conditions. Not only are the employers a 'target' but also their clients. In 2011 cleaning workers at the Ministry of Social Affairs and Employment were taking industrial action for better working conditions. The Commission of Responsible Market Behaviour agreed with the notion that the work pressure at the ministry is too high and that they are also responsible for the working conditions of the cleaners who work there. This initiative made it possible for and showed how the trade unions could better organise the cleaning workers for collective actions and opened the way to enforcing chain responsibility in the cleaning industry.

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Case study 24: Promoting flexible work arrangements

Sector: No specific sector coverage

Main theme(s) covered in the case study: National laws aimed at reducing precarious work by increasing social rights; Social partner joint initiatives aimed at tackling precarious work; Government initiatives on the issue of precarious work

Background/context

In 1999 the Law on Flexibility and Security (FlexLaw) entered into force. The law aimed at catering simultaneously the interests of employers for more labour market flexibility and the interests of workers for continued security. It resulted in the so-called Dutch flexicurity model. Dutch flexicurity promotes the use of atypical, flexible types of employment, in particular fixed-term contracts and temporary agency work. It extends the possibilities of employing workers on successive fixed-term contracts to three years or a three year period. It also simplified dismissal procedures. At the same time it provides that such flexible types of employment have similar rights concerning working conditions and social security as standard employment. Also, it provided for the possibility of an increased role for unions and employers in the definition of, in particular, flexibility. They can, by collective agreement, deviate from the parameters of the law and set alternative rules concerning the number or total length of successive fixed-term contracts (reducing or increasing these). As to temporary agency work, a system was introduced in which temporary agency workers gradually built up more rights to pensions and training, and eventually to an open-ended contract. Finally, the probation period for contracts shorter than two years was reduced to one month, but can be prolonged to two months by collective agreement. Hence, increasing flexibility was matched by increased security. Regulating flexible employment was also inspired by the fact that such types of employment were getting more numerous in the Dutch labour market and had as one of its objectives the reduction of precarious employment

Description of the initiative

The FlexLaw is a typical product of the Dutch Polder Model, with its long corporatist tradition of aiming to reconcile the interests of employers and workers and of the participation of trade unions and employers' organisations in the design and implementation of social and labour market policy. It was also an outcome of the 'purple' (labour-liberal) coalition government of the 1990s which tried to combine social democratic and liberal policies through the strengthening of both competitiveness and protection. The FlexLaw was developed based on long negotiations between the social partners and an agreement made between them. This agreement provided the legitimacy for the proposing and adoption of the law. The importance of the trade unions and employers' organisations was further stressed by the leeway they received to deviate from the basic rules of the law through collective agreements.

For all three parties involved the objective was to allow for more flexible employment but in a controlled way and including improvements in the social rights of flexible workers. Hence, flexible employment was not expected to be precarious: contractual insecurity would to some extent be compensated for by better access to unemployment and pension benefits. Also, it was expected that if the law did not fit the expectations of unions or employers, they would redress this through collective agreements. Trade unions felt strong enough to control flexibilisation, especially considering the high coverage rate (around 80 per cent) of collective agreements. The space provided by the law to deviate through collective agreements has been used amply. However, as will be shown in the next section, trade unions have not been able to prevent a worsening of conditions through collective agreements in an important number of cases. This can be explained by the limited power of trade unions in a number of sectors, which is much lower than that at the national level.

Outcome of the initiative

During the period that the law has been in force, first of all it should be noted that there has been a steady increase in flexible employment in the Netherlands. Among the growing types of flexible employment are indeed fixed-term contracts, while temp agency work also seems to have grown but at the same time it is very sensitive to the business cycle. Concurrently, the likelihood of transitions from fixed-term to open ended contracts declined in the 2000s, reducing the possibilities for flexworkers to achieve stronger contractual security. Also, there is evidence that flexwork in practice has been of a lower quality than open-ended employment. Consequently there has been an increase in precarious employment in the 2000s.

More specific to the FlexLaw, a recent study shows that although the overall reform indeed was aimed at creating a new balance between flexibility and security, this has not been achieved. Trade union weakness at sectoral level has meant that sectoral agreements which use this discretion are biased towards increased flexibility. In particular, the probation period for contracts of up to two years has been increased in many collective agreements and almost 50 per cent of the employed fall under a collective agreement that has a two-month probation period. Also, in a substantial percentage of collective agreements, the number of possible consecutive fixed-term agreements (20 per cent) and the maximum period for which a worker can work on such contracts (27 per cent) have been adjusted, roughly in favour of the employer in half of the cases and in favour of the employee in the other half. This means that for a substantial number of persons on fixed-term contracts the conditions are worse than those specified by the law, which can be seen as a potential increase in precariousness.

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Poland

Case study 25: Improving the working conditions of precarious workers – the role of trade unions

Sector: Other sector

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work

Background/context

The contemporary world of work is facing increasing flexibilisation associated with dynamic changes in economy and developing processes of globalisation. The flexibilisation of the labour market entails a change in employment relationships and the number of woman and men employed on the basis of atypical forms of work is still growing. Along with others, the Polish labour market is also facing these challenges and the growth in temporary work seems to be one of them. Despite the fact that these processes would appear to be unstoppable they could be closely monitored by the social partners especially trade unions. The case presented below shows that trade unions can play important role and have the capacity to improve the situation of temporary staff in the workplace. Although the rules for the employment of temporary workers in Poland have been legally established, some employers and agencies have managed to circumvent the law with impunity. The outcomes of employer abusive behaviour have had a significant impact on the social situation of temporary workers and for many it has resulted in precarious employment and low earnings. However, companies claim that having a higher share of temporary staff is more beneficial and cost-effective. It is important to mention that the vast majority of employment practices observed in Polish labour market are strongly influenced by large multinationals. This is due the fact that Poland is a country with a high indicator of inward foreign direct investment, therefore many of big employers represent international capital. The use of temporary staff can be perceived as a consequence of human resources strategies implemented in foreign subsidiaries, aimed at the reduction of costs and the quick maximisation of profits.

Description of the initiative

The case study presents actions taken by trade union in order to increase the level of protection of temporary staff in former Polish steelworks, currently owned by one of the largest multinationals in the global steel industry. This leading producer of steel in Europe operates in 60 countries and employs 280, 000 people worldwide. Polish investment consists of seven units which are former state-owned Polish steel plants. It is noted that problems began when the employer decided to introduce flexible working arrangements. As a result of the flexibilisation of the workforce some employees were forced to go on unpaid leave and be employed through one of two temporary employment agencies. Temporary workers of one agency represent those working directly for the steel producer. The change in employment relationship was followed by changes in conditions of work. The other agency hires new workers that are not necessarily directly linked to user-company. The conditions of employment of these workers also tend to differ from those offered in the framework of

permanent employment i.e. lack of bonuses, pay rises, etc. Trade union organisation operating in these units strongly disagreed with these employment practices. The unions offered another formal solution that could increase the protection of temporary workers. As a result of negotiations workers were given two contracts. One is an open-ended contract with the user-company under which workers do not perform their work as they remain on unpaid leave. The workers however, perform their work on the basis of the contract with agency. In the course of interventions and actions taken by trade union organisation, workers who were forced to move to the agency are paid the same remuneration (as was paid by user-employer) for 24 months. Moreover, during the negotiations trade union managed to obtain three years' employment guarantees for temporary staff and the right to return to the user-company as its employees. According to union representatives similar practices on the use temporary staff occur also in other units of the Polish subsidiary.

Outcome of the initiative

A number of issues emerge from the case study. Firstly, these practices are becoming more and more popular among employers in Poland. Another interesting issue might be the fact that economic reasons for workforce flexibilisation were not dominant in this case. Taking into account the achievements of the trade union, it could be said that the company did not make a major savings by moving employees on to agency work. Their pay and working conditions were relatively comparable. It seems that the economic rationale was secondary and less important. According to president of the trade union organisation, the main purpose in the use temporary staff or in the movement of permanent employees into agency employment was explained by the fact that company had to meet some flexibility indicators. Meeting these indicators has been essential in order to provide their potential investors and shareholders with the proof that the enterprise has the capacity to react quickly to rapid changes emerging in the global economy and maintain its competitive advantage. It should be added that during the restructuring process 30,000 workplaces have been cut since 2006. Another very important issue is the role of trade union in fighting for improved working conditions for temporary staff. This is not first case when a strong trade union can act effectively on behalf of these workers. As the president of the union stated, there was an attempt to establish a trade union dedicated solely for temporary workers but in the course of organising actions the idea was abandoned. The reason for this lies in short-term nature of employment and the level of protection of trade unionists in cases of anti-union behaviour. Individuals looking to affiliate to trade unions in the end decided to join existing unions, rather than to support the creation of specialist representative unions.

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Case study 26: NGOs' actions in supporting posted workers

Sector: Other sector

Main theme(s) covered in the case study: Ngo actions around precarious work

Background/context

The study presents an example of migrant workforce exploitation and the actions taken by an NGO to improve the working conditions of Polish posted workers. Accession to the EU in 2004 provided Polish citizens with new opportunities for free movement and the possibilities of working work abroad opened up. Although it was anticipated that the accession would be followed by economic migration, the numbers taking this option exceeded expectations. Economic migration was observed especially to countries like the UK, Ireland and the Netherlands. However, Belgium, France, Germany, Norway, Sweden and Denmark also remained popular. Unfortunately, working abroad has not always meant better lives and issues of migrant workers exploitation, social dumping or even forced labour emerged. The case study presented below reflects most common characteristic of foreign labour exploitation not only in the context of freedom of movement but also freedom of services. It also presents an example as to how translational and joint action can be effectively conducted to improve the situation of precarious workers. The situation described below took place in 2007 on Dutch ship ‘the Rotterdam’, where the rights of Polish workers had been heavily abused.

Description of initiative

In 2006 the Polish media released information that the Dutch ship ‘the Rotterdam’ would be renovated in one of the Polish shipyards. However, later on, the legal status of the presence of the ship was questioned due to the fact that on its deck a large amount of asbestos had been found. The Dutch ship-owner received a writ to leave the Polish seaport while Greenpeace strongly protested against keeping the ship full of asbestos on Polish territory. The Dutch ship-owner therefore decided to remove the asbestos elsewhere and to then return to Poland in order to renovate the ship at a competitive price. However, as a result of actions taken by variety of actors, the ship had to leave the Polish seaport and finally went to the German port of Wilhelmshaven. To reduce the costs of renovation and asbestos removal, two hundred of Polish workers were posted to work on the Rotterdam’s deck, working alongside Dutch and German workers. Despite the fact that all workers performed the same tasks, the working conditions of the Polish workers were much worse than for the others. First and foremost, protective clothing and special masks that are supposed to prevent the workers from risks of work with asbestos were malfunctioning. That meant that workers might have been exposed to asbestos toxicity. According to a statement given by a Polish worker, the number of masks available to use was not adequate for the number of workers and the batteries in the masks were not charged which caused a leakage of filters and after a few hours of operation some of the masks were malfunctioning. Furthermore, the general contractor did not comply with the procedures of asbestos removal. Concentrations of asbestos in the air were not measured and workers reported that they felt forced to work not safely but quickly and in any case many of the posted workers were unaware of the risks of working with asbestos. Nor was there any adequate protection against fires. The living conditions of Polish workers also were far from decent, especially when sanitary conditions were taken into account. Inequalities in treatment were also visible at the level of payment. Although the pay of Polish workers was agreed at €11.50 per hour, in practice their salaries were paid at €2 to €3 lower. In comparison, it is understood that Dutch workers were provided with properly functioning and certified masks.

Workers eventually decided to ask for help when the consequences of exposure to asbestos toxicity become visible and some workers started to bleed. Due to language barriers and lack of language skills, they first made contact with an association of migrant workers in Poland. The association organised joint action together with local representatives of the German trade

union IG Metall. In order to exert stronger pressure on the Dutch company the media was involved in this action, as well as the Polish consulate.

Outcome of the initiative

Initially workers did not complain and accepted what they were given as for many of them it was their first job after a long period of unemployment. They also did not complain about the fact that they were paid less than had originally been agreed. This can be explained by the fact that the salary (even if reduced) was still higher than what they would have been paid in Poland. As a result of actions taken by the NGO, the trade unions and the media the situation of the workers has been improved. According to a representative of the NGO, workers were then provided with proper equipment and the company was fined for breaking health and safety rules. It emerged that there was a financial allowance for working in dangerous conditions and that the workers also should be paid it. Overall, it is possible to assert that the protection of workers was raised. According to the manager of the NGO this was one of the very rare cases where the situation of precarious workers had been improved during the completion of the contract. In most cases the association is asked for help and interventions usually when workers leave or have lost their jobs, or it is obvious that they will not continue precarious employment.

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Case study 27: The regulation of temporary agency work in Poland

Sector: No specific sector coverage

Main theme(s) covered in the case study: National laws aimed at reducing precarious work by increasing social rights

Background/context

In Poland, the share of temporary staff in the total workforce, while not as large as in some Member States, continues to grow. In the context of enlargement in 2004, Poland experienced a growth in temporary work agencies and Polish employers, like their other EU counterparts, have begun to use temporary workers in order to reduce labour costs and increase their adaptability to the dynamic changes occurring in the global economy. Atypical forms of employment, including temporary agency work, are perceived a solution to the need of short-term staffing or interim demand for a specifically skilled workforce. It is argued that it can also be beneficial to workers who can enjoy greater flexibility or acquire skills in specific areas or sectors. Moreover, temporary work agencies provide employment services and represent labour market institutions and are said to ease and facilitate transition from unemployment into employment. The case presented below shows how regulation can help to protect and regulate the employment of temporary workers.

Description of the initiative

The increase of temporary work in Poland as an instrument of labour market flexibilisation, stimulated the need for a coherent regulatory framework. Some aspects of temporary work have been addressed in the Polish legal system e.g. the definition of temporary agency workers introduced in 1994 in article 37 of the act on Employment and Unemployment Counter Action and article 298 (3) of the Labour Code under which a company that wants to use temporary workers is obliged to pass to the agency information on work content, required qualifications and working conditions. Furthermore, potential user-employers under this article are obliged to provide healthy and safe working conditions. It was considered however, that the regulatory scope of this law was rather limited, especially in the light of the growing number of atypical contracts. This stimulated the need for further legal developments in the area of temporary work. Responding to this need the Act on the Employment of Temporary Workers was introduced in July 2003, coming into force a year later. It is considered as a breakthrough in the development of a regulatory framework for temporary work in Poland and applies not just to temporary workers' employment but also covers the rules for referring to user-employers persons who are not considered as employees but who are employed by the agency on a civil contract basis. The law introduces definitions of temporary workers and temporary work. The user-enterprise is also defined, clearly stating who can and who cannot be the user employer. Moreover, the Act indicates the obligations of the user-company, for instance in the area of occupational health and safety as well as in the recording of working time. The law places obligations on employers to provide protective clothing and to protect health and safety. It sets out the obligations of agencies and sets limits on the types and length of employment contracts. According to the regulation, a temporary employee cannot work for any single employer for more than 12 months over a period of 36 consecutive months. Furthermore the law contains the principle of equal treatment, stipulating that the working conditions of temporary agency workers should be equal to those of directly employed workers. Workers who believe that their rights under the legislation have been violated can seek damages from temporary work agency.

Outcome of the initiative

The introduction of the legislative Act was a very important development. With respect to compliance with the law, audits carried out by Labour Inspectorate in 2004-2005 revealed that most abuses occurred in the area of occupational health and safety and in the recording of working time. Results of audits conducted in 2008-2010 revealed that an increasing number of persons posted to work abroad did not receive written employment contracts. There is also the issue of the misuse of civil contracts for cost reduction purposes. As temporary work had been evolving phenomenon it is expected that further developments in legal framework will occur.

A year after implementation of the legislative Act, temporary agencies indicated that the regulation concerning 12 months of employment in single user-enterprise was considered as the most onerous. Its aim had been to stimulate the user-company to employ the temporary worker after completion of the temporary contract. Unfortunately, the economic situation of the user-company did not always permit this and this created a particularly problematic situation in those regions where the user company represented the largest/only employer which meant that temporary workers affected by the legal rule would end up out of work after a year.

Despite the fact that the Act was important from the perspective of the regulation of temporary workers' employment, the social partners proposed further changes. Amendments introduced in 2010 provide for an extension of the maximum period of work from 12 to 18 months. Secondly, some bureaucracy concerning issuing the work certificates has been reduced permitting the agency to issue a certificate of employment after 12 months of service or upon worker's request. The most important change however, is in the repeal of article 3 of

the Act which sets out limits on the employment of temporary agency workers in enterprises that in last six months had conducted collective redundancies.

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Spain

Case study 28: Good practices against precariousness in the hotels sector

Sector: Hotels and catering

Main theme(s) covered in the case study: Social partner joint initiatives aimed at tackling precarious work

Background/context

The sector of hotels and restaurants in Spain is one of the most important in terms of financial turnover as well as for the number of direct and indirect jobs that it generates. Nevertheless, a significant proportion of these jobs are precarious as they are based on uncertain and conjectural variables. This reality brings about a proliferation of temporary contracts, most of which are involuntary.

The case study involves a major temporary recruitment agency which sourced workers that were predominantly of migrant origin. For example, in 2007, nearly all the waitresses and two-thirds of temporary workers in the autonomous communities of Madrid and Catalonia were migrants and while the current crisis may have reduced these proportions, migrants still represent the lion's share.

Overall, the hotels and restaurants sector employs 352,000 people, of whom nearly to 35 per cent (national statistics institute, active population survey, 3rd. quarter 2011) are in temporary jobs. Including those working in bars, restaurants and cafeterias, who have similar conditions, there are around three-quarters of a million workers, of whom 40 per cent are on temporary contracts and a quarter are part-time workers.

Description of the initiative

The federation of commerce, hotels and restaurants and tourism of CCOO (FECOHT), has promoted a number of collective agreements that reduce the share of temporary posts and better regulates part-time jobs. In this way, minimum labour conditions have been improved. The trade union's involvement resulted in the main collective agreements covering the key tourist areas adding in a number of clauses including:

1. Promoting the adoption of "the discontinuous fixed contract" as an alternative to the seasonal contracts that end every year. This improvement permits more labour stability because the employer is obliged to call on the same worker when the tourist season re-starts.
2. In order to make recruitment more transparent, new clauses have been introduced. They consist of defining the way and the priority by which workers are recruited at the beginning of the season. Moreover, guarantees about the minimum working hours have been established.
3. Specific clauses have been set up to define rate for the job in every company.

Contracts that have been made through temporary recruitment agencies have also had limits imposed on them.

Outcome of the initiative

The Hostelry agreement of the Balearic islands (Valid until 31/03/2012) is based on the “discontinuous fixed contract”. It guarantees an annual minimum period of employment based on the employment average of the three previous years. If this average is equal or over six months employees are entitled to work for at least six months. Concerning contracts signed before 1992, employees are entitled to the real average even where it goes beyond six months. Every season people are recruited and dismissed on the basis of seniority. The agreement contains a stable employment commitment which states that where companies have a workforce of between 11 and 25 workers, at least 65 per cent of them have to have an indefinite contract. In companies with more than 25 workers at least 75 per cent have to have an indefinite contract.

The Hostelry agreement of Malaga province (Valid until 31/12/2011) is also based on the discontinuous fixed contract. It provides that every working season, people are recruited and dismissed according on the basis of seniority. It contains a stable employment commitment which means that companies of between nine and 20 workers have to have at least 58 per cent on indefinite contracts; for those with between 21 and 29 workers the requirement is at least 68 per cent on indefinite contracts and for those with more than 30 workers it rises to 80 per cent. Workers recruited through temporary recruitment agencies cannot compose more than 10% of the company workforce and their contract cannot last more than one month. After this period, the worker has to be recruited directly to the company. In the case of part-time jobs, these must consist of a working day of at least four hours.

There are similar agreements covering the autonomous communities of Madrid, Teneriffe and Catalonia

Sources

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Case study 29: the impact of recent measures taken by the Spanish Government on precarious work

Sector: No specific sector coverage

Main theme(s) covered in the case study: National laws aimed at reducing precarious work by increasing social rights

Background/context

The second mandate of the government of 2008 represented a rupture with the past in the way that decisions would be taken and in the orientation of labour policy. This was a consequence of the economic downturn as well as of external political pressures that substantially influenced the activity and the decisions of the Government. It has led to a number of legislative interventions which are addressed in this case study. They are a response to the increase in precarious work and in particular unemployment of young people, low skilled women and long term unemployed.

Description of the initiative

The media tends to consider precarious work as a synonym of part-time or temporary work, but it consists of a more complex definition. For this reason it is difficult to link precarious work with measures aimed at making the labour market more flexible.

Some legislative developments demonstrate the government's new approach which has evolved from supporting the conversion of temporary contracts into permanent contracts to policies aimed at facilitating at least the temporary employment of inexperienced young people. In this context the royal decree of law 10/2011, permits the offer of temporary contracts to young workers up to the age of 30, whereas previously the limit had been set at 25 years. The same decree introduced a new contract, the "training and learning contract". It addresses young people aged between 17 and 24 years old and consists of a period spent in the company (no more than 75 per cent of the working day) with the rest of the time spent attending vocational training. Even though the contract is quite stable, it lasts at least one year, the monthly wage can be very low, €481.05 (the minimum inter-professional wage, €641.40 minus the 25 per cent of the working day).

Another area addressed is in relation to undeclared work. On the 6th of May of 2011 the law of 5/2011 came into force which contains specific measures for enrolling into the Social Security system those who were already working. Employers had a three month amnesty (from May to beginning of August) to declare workers without paying any fine. After this period, labour inspections were increased as were as the size of the sanction. This was an interesting measure because in the shadow economy there are no rights and work is very likely to be precarious. Finally, the law of 01/20, introduced on 11 February 2011, recognised the difficulties in converting an unemployed person into an unfixed-term-full-time-fully-protected worker and this convinced the government to improve part-time jobs as a transition to better jobs by reducing the social costs that have to be borne by the employer.

Outcome of initiative

First of all it is important to stress that the introduction of new decrees of law as well as global labour regulations, on their own, cannot have a direct impact on the quantity and quality of the employment, because the real problem is the Spanish productive model. It consists of two extreme tendencies. On the one side, it tends to quickly absorb relevant amounts of the labour force during moments of "bonanza", but it expels them when the downturn comes. In relation to the plan for eliminating undeclared work, the results have been limited, also because the window of opportunity for regularising workers was short, only three months. Comparing enrolment data of the previous year, the Ministry of Labour and Social Affairs estimates that around 3,000 people who were already working were enrolled in

the Social Security system. Again, with regard to temporary re-hiring the data demonstrates a limited impact as these contracts in 2011 represented 16 per cent of the overall contracts, exactly the same percentage than in 2008. On the other hand, what has really changed is the position of part-time workers, with the latest data showing that 54 per cent do not want to work so few hours as they do but they have no choice. In 2008 the proportion in this position was 33 per cent (Source: National Statistics Institute, INE).

Sources

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Case study 30: The law on the social integration of disabled people and labour market integration

Sector: No specific sector coverage

Main theme(s) covered in the case study: National laws aimed at reducing precarious work by increasing social rights

Background/context

The legal approach to disability arises from the 13/1982 act of 7th of April, which is commonly known as the LISMI (Act for the social integration of disabled people). Among other measures, it established the basis for the creation of Special Employment Centres (CEE, in Spanish). The latter are defined as: *those whose main goal is to carry out productive work, taking part regularly in the market activities and having the target to ensure a paid employment and the provision of adapted personal and social services needed by the disabled workers; at the same time, the CEEs represent a way of integration for a huge number of disabled people to the ordinary work (article 42.1.)*

CEEs, for more than two decades have been one of the key pillars of the measures for the employment of people with disabilities¹; this measure has not been without controversy with opinions both for and against them. The arguments focus on the CEEs' contribution to reducing the inactivity rate of this group by providing gainful employment, and encouraging personal development. The arguments against CEEs suggest that instead of integrating, they may contribute to the segregation of the group, to the extent that they represent a destination and not a transit to employment into the regular labour market.

¹ It has to be stressed that the Spanish legislation considers as disabled all those persons to which a degree of disability equal or greater than 33% is recognised. Starting from this threshold they are entitled to the benefits for promoting the employment of disabled people (Act 51/2003 about equal opportunities, no discrimination and universal accessibility for disabled people).

Description of the initiative

The CEEs have acquired a very relevant position concerning the employment of people with disabilities, as their number has grown from 562 centres in 1996 to 24.823 in 2008. In that year they provided jobs to 54,146 persons, many of them disabled (according to the LISMI law, at least 70 per cent of the workforce recruited must be disabled). In 2004 they accounted for 42 per cent (Borja, 2010) of the whole public budget for the labour market integration of disabled people, even though public funding is not the only resource they have. In detail, if we exclude the earnings coming from the economic activity itself, it has to be stressed that the LISMI obliges those companies that do not employ disabled people to contribute to the employment of disabled individuals, for instance through the CEEs'² financing.

For its part, the Spanish Business Confederation of Social Economy (CEPES, 2009) in its report *The Social Economy in Spain* states that according to recent data, 60 per cent of the CEEs have seen a shrinking their turnover in the first quarter of 2009, that 50 per cent have a part of their workforce not carrying out productive activities and that 40 per cent had dismissed workers in the previous year. In particular, between 2008 and 2009 the workforce was reduced by 12 per cent and for those who continued working, almost all of them (82 per cent) had a temporary contract (Cermi, 2009). Nevertheless the last available data for 2010 suggests that CEEs have again started again to employ new workers.

Outcome of initiative

The principle purpose for the introduction of CEEs has been their capacity to train and empower disabled workers for integrating them into the ordinary market. However it is unclear as to how well it has achieved this target. For example, according to an analysis of a continuous sample, disabled workers in CEEs earn less than those who work outside, and the divide widens with the age. The CEEs have nevertheless grown and their implementation and impact has considerably increased in recent years. This increase is a direct consequence of a social policy that has chosen this model mainly based on segregating and not on normalising. This is evident in the evolution of budget allocations and in the development of measures that have always prioritised the strengthening of the alternative labour market instead of launching programs and measures for access to ordinary employment.

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² This is the case of companies with more than 49 employees, in which disabled people have to cover at least 2% of the workforce. If the employer does not find suitable profiles among disabled people he/she can employ non-disabled workers, but then he/she has the choice (among others) to finance the CEEs. The M.C.V.L. is a collection of individual but anonymous micro data, taken from Social Security records. The Social Security information is completed by that provided by Tax Agency (AEAT in Spanish) and the Padrón provided by the Spanish Statistics Institute (INE).

Sweden

Case study 31: Using collective bargaining to limit the spread of fixed-term employment contracts

Sector: No specific sector coverage

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work

Background/context

There has been a growing trend in Sweden for employers in most sectors to use temporary contracts such as trainee posts, substitute posts and stand-ins as a way of circumventing the Swedish Employment Security Act, LAS. By offering a series of temporary contracts (piled contracts) one following on the other, employers can avoid redundancy pay where there is no longer a requirement for the worker to perform the work. The use of agency workers and intermittent contract work represent other features on the same subject.

Description of the initiative

From the trade unions' perspective, the use – or misuse, in their parlour – of piled fixed-term employment contracts has been a growing problem for several years. Hence, they have recently decided to try to curb the problem by acting in the field where they are normally strongest, that is, in collective bargaining. After the breakdown of the centralised collective bargaining system in the late 1980s and early 1990s, Sweden has experienced an informal system of 'pattern-bargaining'. Industry-wide collective agreements have been settled officially independently from each other, but following certain bargaining rounds about every third year. These rounds cover trade unions and employers' associations in both the private and the public sectors. Consequently, both social partners stress that there should be claims that are common to all sectoral negotiations. The 'pattern' also follows certain informal rules that state that the export industries, that is, in practice the engineering industry, should settle their agreements first, and their agreements should work as 'norms' for subsequent ones. This is particularly true in relation to pay, representing the central issue of collective negotiations. However, prior to the 2011-12 bargaining rounds, in late August 2011, the Swedish Trade Union Confederation, LO, decided that the most crucial item for its affiliated trade unions, besides wages, should be to stop the use of the piling of temporary employment contracts.

The practice is not evenly spread throughout the sectors and is more common in services and in particular in retail trade, hotels and restaurants, cleaning and all forms of health care, in particular care for elderly. Unlike in most other Member States, LO only organises manual workers and the trade union confederations for salaried employees and professionals have not formally supported the LO position, although it has had some informal support. The action is limited to the field of collective bargaining as a fundamental principle of industrial relations in Sweden is that the social partners should be free, to as great an extent as possible, to set their own agendas.

Outcome of initiative

The initiative from the trade unions affiliated to the LO is so recent that it is not possible to foresee the outcome yet. As hinted above, there is a need for changes in the labour legislation, which can obviously only be made by the Swedish parliament, and the LO initiative has not yet reached the crucial point in this political debate. The collective bargaining rounds have just begun and therefore their outcome is still unknown but there is little doubt that the most crucial item on the precarious work agenda in Sweden today

Sources

The main sources employed here are first and foremost the interviews with stakeholders made for the project, but also a continuous reading of the on-going debate in newspapers and, in particular, on the involved labour market parties' homepages. The weekly LO-tidningen, www.lotidningen.se, has been most important for the understanding of the trade union strategies.

Case study 32: Organising posted workers**Sector:**

Construction

Agriculture

Main theme(s) covered in the case study

Trade union initiatives aimed at tackling precarious work

Background/context

In June 2004, the Latvian company *Laval un Partneri* started contract work to refurbish an old school in a municipality outside Stockholm. The work was carried out by Latvian workers posted to Sweden while remaining in the employ of Laval. The Swedish Building Workers' Union (*Byggnads*) demanded that the company should follow the Swedish collective agreement and provide comparable wages and conditions to those of Swedish workers. The company refused, which led to a blockade from the trade union side. In return, Laval submitted a summons application to the Swedish Labour Court seeking a declaration of the industrial action as illegal, the immediate lifting of the action, and damages for losses incurred. The Labour Court rejected the company claim, but in April 2005, the case was referred to the Court of Justice of the European Union. In December 2007, the court delivered its final ruling, stating that the blockade had violated the freedom to provide services as defined by European Treaty. In the light of the ECJ judgment the Swedish Labour Court returned to the Laval case and on 2 December 2009 found the industrial action illegal.

Description of initiative

Even though the posting of workers had been on the trade union agenda, especially for *Byggnads*, the response to the ruling in the Laval case was to call for a coordinated action plan covering the whole labour market, but in particular construction and services. For the trade unions there are two specific issues. The first is what their response should be to the court's interpretation of the rights of companies in relation to the posting of workers and one initiative that they have taken has been to appoint individuals who speak the languages of the posted workers and who can work with them to bring them into the trade union, under a

special membership fee arrangement which recognises the temporary nature of their employment in Sweden.

Outcome of initiative

According to Byggnads, the interpreter project has been successful, even if it has not fully covered its own costs by attracting new members. The interpreters were able to contact workers, despite sometimes hostile resistance from employers including threats to dismiss workers who talked to trade union representatives. Meetings were held with the workers, although generally outside the workplace. Since both the interpreters and almost all construction workers were from countries from the former Soviet bloc, the contacts were further facilitated by the fact that Russian still works quite well as a *lingua franca* in these areas. In relation to potential changes to the law, the employers' bodies generally oppose any restrictions on their rights to organise while the government takes a different position and has declared a commitment to the maintenance of Sweden's tradition collective bargaining model.

Sources

Besides the interviews with stakeholders made for this project, material from the so-called PostER project coordinated by the WLRI has been employed, in particular interviews with 12 posted workers in construction, an employer representative and the head jurist at Byggnads. Data from Woolfson, C., Thörnqvist, C. & Sommers, J. (2010), 'The Swedish Model and the Future of Labour Standards after *Laval*', *Industrial Relations Journal* 41 (4) pp. 333-50 and Thörnqvist, C. & Woolfson, C. (2012), 'When Tender Turns Tough – Posted Workers and the Tendering Regime in the Swedish Construction Industry', *Construction Management and Economics* (forthcoming) has also been referenced

Case study 33: The debate on the issue of starter wages as a way of promoting youth employment

Sector: No specific sector coverage

Main theme(s) covered in the case study: Employer initiatives aimed at tackling precarious work; Trade union initiatives aimed at tackling precarious work

Background/context

The issue of 'starter wages' is seen as a problem of precariousness by both the social partners although from different perspectives with the trade unions stressing the need for high wages for newly employed workers to avoid wage dumping while the employer representative bodies believe that it is necessary to lower wages to provide jobs for younger people. These two strategies mean that the social partners favour different initiatives in relation to the employment of young workers.

Description of initiative

Although both employers' associations and trade unions have addressed the question of starter wages in the on-going bargaining round their different perspectives point to different strategies. For employers the argument is that even the most 'precarious' forms of work are better than no work at all, particularly for young people in the context of lowered unemployment benefits. The view is that a strategy of low starter wages will stimulate employers to hire even those inexperienced young persons who have only a basic education.

The trade union position is that this strategy is aimed at lowering wages for all workers and they have rejected the concept of starter jobs as stepping stones to better paid work. They point to the fact that while youth unemployment is a serious problem in Sweden, there are very few long-term unemployed young people. Young people do obtain employment but generally on fixed-term employment contracts and they are then laid off to be replaced by other young workers at the expiry of the fixed term. Thus young people are not continuously unemployed, but are employed for a short period, followed by a period of unemployment till they get a new short-term employment and so on.

Outcome of initiative

At present the measure of which of the two strategies will success is unclear. Swedish pattern bargaining has meant that the 2012 round has begun with the agreements for the export industries in manufacturing, which generally then function as the norms for the rest of the bargaining round. So far the engineering sector has concluded its collective agreement but for it lower initial wages was never likely to be a serious item on the industry's bargaining agenda. Whether this position remains for the rest of the sectoral bargaining round is less certain given first that some of the sectors, like services, retail, agriculture, tourism and catering are less well organised. Furthermore, while their strategies have been on targeting wage increases for the lowest paid, including those on starter wages, some sector unions have indicated that they do not support such a strategy which would disadvantage their members in better organised and more highly paid sectors. IF Metall, the most important trade union association in manufacturing and the one that concluded the agreement for the 2012 engineering industry, has clearly stated that it is not acceptable for other unions to try to get better wage agreements than the three per cent agreed in engineering; that would jeopardise the Swedish economy.

Sources

The case study has drawn heavily from debates in newspapers, on the Internet and from the interviews with stakeholders. Another important source has been the involved organisations' homepages and journals, especially to cover the positions before the bargaining rounds.

United Kingdom

Case study 34: Supporting the health and safety of precarious migrant workers – an initiative of the government Health and Safety Executive

Sector: No specific sector coverage

Main theme(s) covered in the case study: Government initiatives on the issue of precarious work

Background/context

In 2004/05 health and safety inspectors working for the government Health and Safety Executive (HSE) began noting large numbers of recent migrant workers in the workplaces they were visiting, either on regular inspections or following incidents at work, and they began to voice concern as to whether these workers might be facing additional health and safety risks. In 2005 the HSE thus commissioned a first study to explore whether migrants were being exposed to higher levels of risk. The report (McKay et al., 2006) suggested that migrants were more likely to be working in sectors or occupations where there were existing health and safety concerns and that it was their status as new workers that might place them at added risk. Subsequently, HSE implemented a range of initiatives to address health and safety issues in relation to migrant workers. It began to record the national origins of workers in cases of fatalities and deaths at work; it set up a website providing information to migrant workers and their employers, with guidance documented translated into twenty languages; and it introduced an innovative support network of specialists, themselves recruited from migrant worker communities, to assist in the protection of migrant workers. The latter initiative is the subject matter of this case study.

Description of initiative

To support its work in protecting health and safety at work, HSE has employed a team of regional outreach workers who can all speak at least one language that is known to be widely used by the migrant worker population in their region. Their role is to engage with migrant workers by:

- Providing advice and guidance directly to migrant workers;
- Liaising with appropriate stakeholders to facilitate delivery of key health and safety messages;
- Building HSE's intelligence on locations, size and ethnicity of migrant populations in their regions; and
- Using their skills, knowledge and experience to support HSE inspectors as required.

The emphasis has been on the outreach workers engaging directly with migrant workers to advise them of their health and safety rights and responsibilities, and to direct their queries to

the right source of advice. Five specialist outreach officers are currently employed, each assigned to one geographical area. In addition the HSE construction section in London employs its own outreach officers, with similar duties but focusing on the construction sector only. Outreach workers work in the areas of operational support, promotional activities and stakeholder engagement, spending a lot of their time engaging with local and regional stakeholders.

Outreach workers have the language skills to communicate with the majority migrant groups in their areas, but they also liaise with one another to ensure that they provide cross regional support and utilise their own skills effectively. All have had some training in health and safety but their primary role is to offer advice and support to migrant workers and their employers. Each outreach worker works under a senior health and safety inspector while the whole of the outreach team is co-ordinated by two HSE officials at national level. The aim is to focus on what are regarded as the most problematic areas of concern. Outreach officers conduct presentations of the HSE and its work to workers in their own languages and see their primary role as one of awareness-raising. They have been involved in a range of face to face promotional activities - for example attending community fairs and religious festivals, or simply standing outside the local church after worship in order to meet local migrants and speak to them directly. They have contributed articles in local and in language-specific newspapers, finding new ways of communicating the work of the HSE to workers.

The HSE now also publishes guides in 20 languages and its website: 'Working in Great Britain from overseas', gives a range of advice aimed at ensuring that information about the HSE and how it can help workers and employers who want to work safely is easily available. Outreach workers communicate with migrants and their employers by phone and by email; however, a major part of their work is to visit workplaces and speak to workers. HSE inspectors will contact the outreach workers whenever they come across workplaces where there is a high presence of migrant workers with whom it would otherwise be difficult to communicate, and where they think the outreach worker's intervention will benefit the workforce.

The HSE also supports a helpline which migrant workers can contact for advice and support.

Outcome of initiative

Supporting frontline inspector activity has been an area where some of the outreach workers appear to have been most effective. Some have been able to use their language skills to gather the intelligence needed to support investigations. There is no set pattern to the outreach workers' involvement, but in one recent initiative across Great Britain, the focus was on the meat processing industry, and followed on the publication of an investigation into the sector by a sister organisation, the Equality and Human Rights Commission (EHRC). In this initiative, in excess of 130 workplaces were visited by the outreach workers with the aim of speaking to migrant workers while the accompanying HSE inspector spoke to management. Issues raised by workers were communicated by the outreach workers to the HSE inspectors who then dealt with them. In the opinion of the outreach officer interviewed, the work they were doing had contributed positively to raising the profile of the HSE. It has meant that recent migrants have a better understanding of the legal protections that they have, and know that they can seek support and advice from HSE.

Another recent initiative has been on asbestos where outreach workers have been involved in bringing the campaign on the risks of asbestos to migrant workers, informing them of the risks of asbestos and encouraging them to participate in free, tailored training courses available in a range of languages, including Polish.

The outreach worker programme is overall regarded as having worked well, providing HSE inspectors with valuable additional cultural and linguistic skills that has ensured that the agency communicates better with migrant workers.

In relation to the helpline, HSE statistics show that on average 25 to 30 migrant workers use it each month to get advice and support. The available data suggests that the majority of those making contact come from Poland and Slovakia, although other national groups utilise it.

Sources

For this case study interviews were conducted with Lukasz Naprawski, Outreach Officer (Midlands) Health and Safety Executive and with Jeremy Bevan, Policy Adviser, Vulnerable Worker Health and Safety Vulnerable Workers Policy Team, Strategic Interventions Division, Health and Safety Executive.

Documents were consulted including an evaluation report on the establishment and use of outreach workers.

The HSE website on migrant workers was also consulted:

<http://www.hse.gov.uk/migrantworkers/>

Additionally, the following reports were examined:

EHRC (2011) *Inquiry into recruitment into the meat and poultry processing industry*, Equality and Human Rights Commission, London, http://www.equalityhumanrights.com/uploaded_files/Inquiries/meat_inquiry_report.pdf

McKay, S. Chopra, D., Craw, M. (2006) *Migrant workers in England and Wales: An assessment of migrant worker health and safety*, RR502, Health and Safety Executive, London. <http://www.hse.gov.uk/research/rrpdf/rr502.pdf>

Case study 35: The law on tips and the national minimum wage and the on-going campaign to protect the terms and conditions of workers in the hotel and restaurant sector

Sector: Hotels and catering -Sub sector: restaurants

Main theme(s) covered in the case study: Trade union initiatives aimed at tackling precarious work

Background/context

There are some 165,000 businesses in the hospitality, leisure and services sector, where tipping is common. These businesses employ some 1.3m workers. Restaurants, hotels and bars make up around 80 per cent of the sector.

In the UK, legislation on the national minimum wage was introduced in 1998. It provided, for the first time, for workers to have the right to be paid a minimum wage. The wage is set annually, based on the recommendations of a Low Pay Commission, and is dependent on age and on whether or not the worker is in training. When the rate was introduced it was assumed that all workers would have an entitlement to it, but in the restaurant sector, where earnings had often been dependent on customer tips, employers noted that a loophole in the legislation

would allow them to include the amount due to workers in tips in making up pay to the national minimum. Another factor was that tips paid through credit cards were in law held to be the property of the employer and there was no obligation to pass these on to the employee.

The initiative which was initiated in 2008 is described in this case study, addressed these issues, and was unique, in that it brought together a trade union and a national newspaper in an effective campaign. Unite, the largest trade union in the UK, and the Daily Mirror, a national newspaper, launched their campaign under the title 'Fair Tips' with a call on restaurants and hotels to sign a 'Fair Tips Charter' that would demonstrate their commitment to ensuring that tips and service charges were distributed fairly among staff. Employers participating were encouraged to display a sign which said that they supported the campaign.

Description of initiative

The campaign was based on a strategy aimed at persuading the then government to introduce new legislation that would review the existing provisions, to make it unlawful to use tips to pay the minimum wage. The campaign called for all employees to get at least the minimum wage, with 100 per cent of tips added on top, as a bonus, with no hidden charges. A campaign charter called on employers to:

- Reach agreement on how tips are shared with those staff directly affected;
- Make no deductions from tips or salaries to cover breakages, till shortages or customer walk-outs; and
- Make all rules for the distribution of tips and service charges available in writing for staff and customers on request.

The campaign focused strategically on a number of locations, in particular on the towns where the party annual conferences were held. It involved a range of activities, including demonstrations, newspaper coverage that called on readers to register their support, as well as stories highlighting the impact of the legislation on low-paid workers in the restaurant trade. Restaurants were approached to sign up to the campaign and their names were included in the newspaper accounts of the campaign progress. As a result a degree of momentum was built up towards a change in the law. The importance of the campaign can also be judged by the fact that in 2009 the 'Fair Tips' campaign was shortlisted as a campaign of the year at the British Press Awards. The campaign is on-going. Unite official Dave Turnbull noted in an article in the Daily Mirror in 2010:

'There are still too many employers who regard tips as a subsidy for low pay and who see the tips and service charge money left by customers as a pot of cash to which they are free to help themselves to.'

Outcome of the initiative

The initiative had a positive outcome. In May 2009 the then government agreed that it would change the law with effect from 1 October of that year. Tips, gratuities, service charges and cover charges would no longer be included in the calculation of the minimum wage. At the same time the government agreed to the introduction of a voluntary code of practice that would give consumers clarity over where the money that they left in tips was going. The intention was that all bars, restaurants and hotels would display either on their menus, the bill or on the windows or the walls, a clear explanation of the company's tipping policy. The code recommended that, where this did not happen, restaurant customers should ask why. The Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges was approved by the relevant social partner organisations, the employer representative bodies, the British Hospitality Association and the Confederation of British Industry and from the trade union side by Unite and the GMB, together with the TUC. It calls firms to ensure that workers understand the company policy on tips etc. by providing them with a written statement which states:

- How tips, etc. are distributed between the company and workers, including between the workers themselves;
- The amount of any deductions from tips, etc. and why they are made;
- Access to a written statement setting out the business's policies on tips etc. which can be provided to consumers;
- If cash and card tips are treated differently;
- What happens to earnings during leave (e.g. holidays, sick leave, parental leave etc.);
- In relation to deductions from tips etc. to cover breakages, till shortages or customer walk-outs;
- Whether tips are paid without deductions for national insurance; and
- The company's grievance procedure

There remain some outstanding areas which the campaign has addressed but which the 2009 legislation did not and for this reason the campaign continues. The Department of Business had planned a review of the code after its first year of operation, but was shelved with the government stating that it had to prioritise with reduced budgets.

While the 2009 law stated that tips could not be used to make up workers' pay to the national minimum wage, there is still nothing in law that prevents employers including tips in the calculation of wages where the hourly rate is higher than the national minimum. Furthermore tips paid through credit cards remain the property of the employer and there is no obligation to pass these on to the employee. Employers also are not obliged to make deductions for national insurance contributions from any amounts paid in tips and this may impact on workers' entitlements to some social welfare benefits. And finally the campaign reports that some restaurants make deductions for their administration costs from the tips that they pass on.

Sources

For this case study officials of the union Unite were consulted. In addition copies of the Mirror Newspaper were examined in relation to the joint campaign.

The campaign website was consulted at: <http://www.fairtips.org/>

Account was also taken of the Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges

<http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/files/file52948.pdf>

Case study 36: The Gangmasters' Licensing Authority – the background to its establishment and the work that it carries out

Sector: Construction, Agriculture, Hotels

Main theme(s) covered in the case study: Government initiatives on the issue of precarious work

Background/context

In February 2004 at least 22 workers of Chinese origin, drowned in the sea in the North of England at a town called Morecombe. The workers had been working for one or more gangmasters (labour providers) who organised the work and provided them with the transport to the location where they did the picking. They had been working through the night collecting cockles (sea products) on the edge of the sea shore but were caught when the tides came in quickly, leaving them stranded in the sea. The tides in the area are notoriously quick but none of the workers had been advised of the risks that they faced.

For some time prior to these tragic deaths, MP Jim Sheridan had been campaigning for legislation that would provide for the regulation of the activities of gangmasters but it appeared that the law would be blocked in the parliament. However, the public mood changed after the deaths and Sheridan's proposed Gangmasters' Licensing Act (GLA) was introduced in 2004 providing for the establishment of the Gangmasters' Licensing Authority (GLA). The authority now regulates the operations of those who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. These labour suppliers must be licensed on an annual basis by the GLA if they wish to operate lawfully. The penalties for operating unlawfully are significant, including criminal penalties.

Description of initiative

The legislation established the Gangmasters' Licensing Authority (GLA) which regulates those who supply labour to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. The GLA has the obligation to:

- Introduce and operate a system to license labour providers, including a publicly accessible register;
- Effectively communicate the legal requirement for labour providers to become licensed, and to operate and remain within the formal economy;
- Impose the least possible burden on labour providers and labour users;
- Develop best practice standards;
- Check license holders for continued compliance; and
- Take enforcement action against those operating illegally.

The GLA takes a robust position on the regulation of the industries it covers and in its latest annual report (2010/11) it notes:

'We will come down heavily on those who have flouted the licensing rules, be they related to vulnerable workers, the tax system, or in undercutting legitimate businesses. But in addition to pure enforcement we have provided advice to those we regulate about what is needed to comply with our Standards.'

The GLA may thus remove or refuse to grant a license to a labour provider who is not complying with the law. In 2010/11 it conducted 12 high profile operations, with 91 per cent of these operations identifying serious non-compliances. Thirty-six cases of unlicensed activity were identified; 33 cases were found for license revocation and 12 successful prosecutions were undertaken. In the same 12 month period 1,233 labour providers were registered with the GLA, while 119 license applications were cancelled.

The GLA works closely with other government agencies including: Her Majesty's Revenue and Customs (HMRC), United Kingdom Border Agency (UKBA), Serious Organised Crime Agency (SOCA), all UK Police Forces and the Employment Agency Standards Inspectorate (EASI).

An important element in the work of the GLA is in the enforcement of the National Minimum Wage. The GLA can investigate the terms and conditions of workers employed through labour providers and makes it part of the licensing provisions that proof is provided that workers are being paid at least at the minimum set down by law. The licensing provisions equally ensure that workers have the right to the breaks, maximum working hours and holidays as stipulated by law.

Outcome of initiative

The work of the GLA is acknowledged as a major factor in the reduction of precarious work in the sectors in which it operates. It's Chief Executive, Ian Livsey in a statement issued at the end of 2010 says:

'It is widely acknowledged that the GLA and the introduction of the licensing system has made an impact on protecting the most vulnerable workers and stamping out rogue operators who not only exploit workers but distort competition for legitimate businesses.'

It is thus an effective initiative against precarious work. Precarious workers in the sectors covered by the GL Act have clearly benefited from the legislation. They are employed by organisations subject to scrutiny from the regulatory authority and they must be paid at least at the national minimum rates. In an area of employment (agency work) where there was almost a 'norm' that the most vulnerable workers got paid under the legal minimum, the legislation has more or less prevented this. One of the most effective measures that the GLA can take is that it publicises a list of all those agencies that it has de-registered and who therefore cannot operate in the sector. See: <http://gla.defra.gov.uk/index.asp?id=1013374>. It also publishes regular press statements which name those agencies that it has taken action against. Publishing the names of the labour providers who are not in compliance with the legislation means that unions, workers and other relevant stakeholders, including those using the services of workers sourced through labour providers, have an effective method of deterring unlawful practices. The law also allows trade unions to refer cases to the GLA and in one case in April 2011, the GLA confirmed that it was working with the union UNITE and the main employer to ensure a full investigation into a labour provider suspected of non-compliance with the law. It is also important to note that breach of the law can result in criminal proceedings, for example, in November 2011 the GLA confirmed that four people had been arrested by the Sussex police with regard to the exploitation of Polish migrant workers, following an investigation by the GLA in collaboration with the police force, aimed at 'dismantling an organised crime operation which has been controlling and gaining illegal benefit from the work of migrant workers employed in farms and nurseries in West Sussex' (Press release, October 2011).

The one issue which arises from time to time in relation to the GLA is with regard to its areas of competence since is limited to licensing only in the specific sectors it covers. This has, according to some commentators, led to a flight of the worst providers, from the sectors covered by the GLA into other sectors not similarly regulated.

Sources:

For this case study interviews were held with a Unite workplace representative in Scotland and Hannah Reed, Senior policy advisor at the TUC. In addition information was obtained from Mick Duncan, Senior Regional Organiser for Unite. The websites of the EHRC (<http://www.equalityhumanrights.com/>), the GLA (<http://gla.defra.gov.uk/>), the TUC (<http://www.tuc.org.uk/>) and of Unite (<http://www.unitetheunion.org/>), as well as that of the UK Department for Business, Skills and Enterprise (BIS) (<http://www.bis.gov.uk/>) were also consulted.

GLA (2011) *Annual report and accounts 2010-2011*, <http://www.official-documents.gov.uk/document/hc1012/hc12/1221/1221.pdf>

GLA (2011) *Arrests in West Sussex migrant workers exploitation enquiry*, Press release, 2 November 2011: http://gla.defra.gov.uk/embedded_object.asp?id=1013879

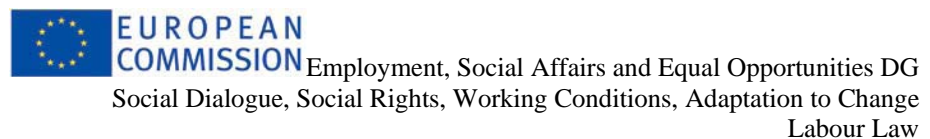


Annex C: Literature review

A review of recent literature for the Study on precarious work and social rights (Tender no: VT/2010/084) Annex C

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Precarious work and social rights – a review of recent literature

The growth of insecurity in the world of work has been described as ‘one of the most important trends over the past decades (ACTRAV, 2011). Precarious work has been the subject of a large number of studies over the last decade, however, it remains a contested terrain, with differing views as to what it is, what its causes are and what its impact has been on the labour market, on workers and on societies more generally within the European Union; with the concept widely analysed in some disciplines while rarely explored in others (Waite, 2009). As Kretsos (2010) notes the term is controversial comprising a combination of precarious elements that can be found in every job and work environment, with some jobs being considered as more precarious and some social groups and age groups being more inclined to find precarious jobs. It has been contended that an adequate assessment of the causes and consequences of precarious employment and labour market insecurity demands attention to the intersection of economic, social and institutional factors and is above all, a problem that demands an inter-disciplinary perspective (McDowell et al. 2009). This is identified and addressed in this review of the literature.

Concern regarding the impact of precariousness on the labour market and more widely in societal terms is not limited to academic debate. The European Commission itself, in the Green Paper on *Modernising labour law* (2006), accepts:

‘There is evidence of some detrimental effects associated with the increasing diversity of working arrangements. There is a risk that part of the workforce gets trapped in a succession of short term, low quality jobs with inadequate social protection, leaving them in a vulnerable position.’

ACTRAV (2011) defines non-precarious work as work providing a ‘wage that enables workers to support their household, basic social security protection, contractual stability, protection from unjustified termination of employment, and effective access to freedom of association and collective bargaining and states that work is precarious where it involves a shift in risks and responsibilities on to workers; is performed in the formal and informal economy; is characterised by variable levels and degrees of legal status, with characteristics of uncertainty and insecurity. It also highlights the lack of clarity as to the identity of the employer.

The literature identifies seven different paradigms of precariousness and these are addressed in the review of the literature. They are:

- Precariousness is an increasingly dominant form of employment which must be addressed by measures that establish general rights;
- Precariousness is a new phenomenon which requires new forms of regulation;
- Precariousness is the absence of job security;
- Precariousness is the absence of choice and of alternative forms of work;
- Precariousness is identified with particular groups of workers – women, young workers, migrants, the disabled and therefore should be addressed with measures that protect these groups specifically;
- Precariousness is a constant feature of labour markets and it is so called ‘standard’ forms of employment which appear not to foster precariousness that are outside the norm;

- Precariousness may be an acceptable form of employment, for some groups or at some stages in their lives – therefore the issue of which rights should apply to them is not necessarily essential to the debate.

Methodology

This review focuses primarily on academic papers, articles and policy documents published in the period 2007 to 2011 although of necessity it also takes account of some of the earlier seminal works. A search of the main academic journals over the period was undertaken, looking for articles that referred to 'precarious work', 'precariousness' or 'precariat' in the title. In addition all of the literature presented in the weekly *Flexwork Newsletters*¹ was searched, looking, in addition at papers that made reference to 'flexibility', 'flexicurity' or 'flexible work' in their titles.

Additionally, the 24 legal and industrial relations experts working on the project were asked to provide information on papers known to them which might be relevant for the literature review. In some cases these were papers produced in languages other than English and in these cases the experts provided a short resume of the main points in the articles.

Finally, a search was conducted on the European Commission's own websites, again looking for the words 'precarious' or 'precariousness'.

These sources provided around 100 relevant articles and form the core of the review that follows.

Defining precariousness

The review begins by exploring the literature looking at the origins of the term 'precariousness' and its associated vocabulary – 'precarious'/'precariat' to identify the extent to which particular conceptions of precariousness may have contributed to the difficulties in coming to an accepted account of what it actually covers. Precarious work also has a multi-factored dimension, as to define it appropriately account also needs to be taken of a combination of factors such as gender, type of contract and welfare state rights and any definition of precarious work will exhibit different results in focusing on these combined factors.

Most of the literature identifies the origins of the term 'precarious', as embedded in French sociology, which, in the 1970s, began to link 'precarité' to poverty, only later using the concept to describe work relationships (Barbier et al., 2002). Thus the concept of precarity, from a sociological perspective, took into account a wider context, beyond the employment contract, as can be seen in the work of Pitrou (1978). He defined precariousness in terms of: scarcity or absence of labour market skills; absence of career prospects; scarce and irregular finances; unstable/unsatisfactory housing; health problems; uncertainty about family size; and lack of social contact – with employment thus having overall a relatively minor position. Bourdieu (1998), also from this perspective, argued that 'precarité' was the 'root of problematic social issues'. More recently, Kalleberg (2009) asserted that sociologists were indeed well-positioned to explain, offer insight and provide input into public policy about such changes and the state of contemporary employment relationships. Similarly, Anderson (2010) has defined precarious work as atypical and insecure employment that has implications beyond employment 'pointing to an associated weakening of social relations' while Clement et al. (2010) restate the need to define precariousness by going beyond work 'to look at the intersections of labour market, welfare state, household and the underlying reproductive bargain', arguing that 'no single social characteristic universally determines precariousness. The intersection of individual factors, household dynamics, labour market structures and welfare states shape precariousness'. The focus is on what they term 'new social risks, in the

¹ Produced by the Flex Work Research Centre based in The Netherlands

sense that they were marginal during the post-war era and, unlike old risks, they affect larger groups of people'. For Clements et al. old social risks had more to do with retirement insecurity and illness and were likely to affect people later in life. They suggest that this has changed and that now:

'Precarious lives include precarious employment and the social conditions in which it is embedded. These social conditions include household structures, kinship networks, and access to welfare services, independent of labour market status. We define 'precarious' as being in a situation that is not autonomously sustainable, where the situation includes the labour market, the social support system and conditions affecting both entries into and exit out of the labour market. Social vulnerability potentially includes such things as divorce (a change in household circumstances), responsibility for children or dependent adults, or issues concerning shelter or health. All these vulnerabilities interact with precarious employment — that is, non-sustainable jobs or forms of contingent employment.'

Regarding the definition of precariousness, Clements' notion (2010) appears to be the most holistic one as it constructs the idea of precariousness from a perspective which includes more clearly self-employment and the lack of collective rights. Moreover, it re-enforces concepts developed by Porthé et al (2010) on disadvantage in terms of power relations, as well as those of Fudge (2009) on the lack of access to social benefits and Peruli (2003). McDowell and Christopherson (2009) differentiate the concept of 'precarious work' from that around the term 'precarity' which they view as capturing 'a different, more theoretically oriented debate' associated particularly with Negri (1989) in Italy. He argued that the break-up of the traditional factory has created new social subjects (socialised workers) whose value is no longer tied to their skill and around whom new solidarities might be constructed. More recently Standing (2011) called for a revisiting of the concept of a 'precariat' which for him 'has class characteristics, consisting of people who have 'minimal trust relationships with capital or the state' but without any of the 'social contract relationships of the proletariat, whereby labour securities were provided in exchange for subordination and contingent loyalty'. This goes beyond definitions of precariousness as associated either with forms of contract, security or even poverty, to encompass a notion of disassociation between citizen (or resident non-citizen) and the state. Standing's analysis has, however, been forcefully challenged, most recently by Seymour (2012) who argues that precarity is not the expression of a new class of workers but 'is built into neoliberal capitalism in which growth is predicated on financial risk and indebtedness, in which labour markets are weakened and social protections rolled back.' These essentially sociological definitions, which understand individuals as located in their wider social relationships, are contrasted with the definitions more usually applied by economists, who link the term to labour market flexibility and insiders and outsiders (Barbier, 2011) and who are more likely to define precariousness in terms of the form that the contract takes. Similarly lawyers more usually link the term to the absence of legal regulation or exclusion from the regulation that exists. These latter two perspectives point towards definitions that are dependent on forms of contract and on contractual relationships. The German Federal Statistical Office defines precarious employment as an employment relationship that is not appropriate to secure the livelihood of a person in the long run, including social security (Federal Statistical Office Germany, 2009). Waltermann (2010) points out that this situation is not exclusively confined to atypical employment and/or solo self-employment (one-man/one-woman business). In Germany, thus precarious working conditions might also occur in full-time employment in low- wage sectors, because there is no general minimum wage.

Forms of contract

Definitions of precariousness based on the form of the employment contract, such as part-time, temporary or fixed term, represented the dominant way of describing precarious work from the 1980s onwards. The forms of contract have grown, with temporary work increasing its share of overall paid employment in the EU 27 countries, from 8.3 per cent to 14.7 per cent. In all temporary work represented 30 per cent of all paid jobs created between 1987 and 2007. As it increased it

increasingly has been 'involuntary' with 61.7 per cent of Europe's temporary workers indicating that they could not find permanent jobs (ACTRAV, 2011). Anderson and Rogaly (2005) identified undeclared work; short-term; temporary or casual contracts; working for an agency or third party rather than being a direct employee; providing a contracted-out service; and working for low wages that prevent the achievement of a decent standard of living, as all being within the definition of precarious work. On the basis of that definition, they estimated that about one in five UK workers were working under what were termed precarious contracts. Similarly, Broughton et al. (2010) in their development of the concept of 'very atypical' contractual relationships group these around forms of contract, based on notions of 'standard' and 'non-standard' work. While both 'atypical' and 'very atypical' work are categorised as 'non-standard', 'very atypical' work comes into the category of precarious work comprising: very short fixed-term contracts of less than six months' duration; part-time work of fewer than 10 hours a week; non-written contracts; and zero hours or on-call working. Reinert et al. (2007) in their paper on identifying occupational health and safety risks, also associated non-standard work with precariousness, but on the basis that these forms offered low levels of control over work, low levels of income and low social protection. They proposed the following definition:

'By atypical employments we mean limited work contracts, marginal employment, part-time work, sub-contracted labour and temporary work. Atypical employments carry a high uncertainty potential and are often connected with an income which does not safeguard one's living and are clearly poorer paid than identical or work of equal value. In addition many social rights and employees' rights do not apply or apply only in a limited form, e.g. protection against wrongful dismissal, social insurance protection, the right to maternity protection and co-determination rights. Setting-up of a family, building one's own home or planning phases for qualification are mostly unknown concepts for people in atypical employments.'

Munck et al. (2011) note that 'while informalisation of the relations of production and the precarisation of work were once assumed to be the exception, this is no longer the case'. In their ongoing study three country study² – PRECARIAT - they examine precarious work and social movements in the context of international migration, labour market restructuring, changing national frameworks of citizenship and emerging human and migrants' rights regimes globally. At the heart of the project lies the theoretical and empirical development of the concept of "precariat" designed to capture the vulnerability of casual or "flexible" labour and a truncated citizenship. Thornley et al. (2010) similarly present a multi-dimensional picture of the spread of precarious employment while Neilson et al. (2008) went even further to question whether indeed it should be Fordism that is seen as the exception and precarity as the norm. Ross (2009) has in turn questioned whether the dream of a secure job with full benefits and a decent salary is no longer realisable, at least for growing numbers of workers, using the concept of 'precarious livelihoods' to describe new patterns of work and life. His work points to an emerging pattern of labour instability and uneven development on a massive scale.

The above definitions take as their model (whether in the past or still existing) the so-called 'standard' employment relationship – permanent, full-time work - with the potential to continue for the whole of the individual's working career, so that the notion of permanence and full-time dominate the view of what is acceptable decent work. Barbier (2011) argues against this position. For him:

'Putting all "non-permanent" employment relationships in the same category amounts to assuming that the divide "permanent-non permanent" has a universal meaning; it not only relies on the

² The study covers Sweden, South Africa and Turkey

assumption that the distinction between what is permanent and what is not has any meaning at all, but also upon the assumption that “non-permanent forms” can be seen as homogeneous’

Waltermann (2010) points out that atypical employment and precarious employment are not congruent. The freely-chosen part-time contract to reconcile work and family life, does not fall under his notion of precarious employment if the family’s total income is sufficient to secure a livelihood. Other studies too, conclude that it is necessary to look both at forms of employment but also at other factors that combined might identify precarious work. Indeed, increasingly the literature points to a combination of factors, sometimes emphasising one above another, but rarely asserting that precarious work derives from one consideration only. Evans and Gibb (2009) combined a mix of forms of contract and job insecurity, referring to forms of work characterised by atypical employment contracts; limited or no social benefits and statutory entitlements; high degrees of job insecurity; low job tenure; low wages; and high risks of occupational injury and disease. From the workers’ point of view, precarious work was thus related to uncertain, unpredictable and risky employment. Jonsson and Nyberg (2010) moved further by asserting that all work has the potential to be precarious and precariousness is merely a gradation from very precarious to weakly precarious. They suggest that work can be divided into three categories: highly precarious work — no rights to the social security system (undocumented workers); moderately precarious work — basic rights to the social security system (housewives entitled only to lower social rights); and least precarious work — full rights to the social security system. Seymour (2012) takes a similar position, arguing that the restructuring of the economy and the long-term expansion of the ‘reserve army of labour’ that comes with it brings the majority of workers into precariousness.

Thus the literature identifies, either as additional or exclusive of forms of contract, the following four main typologies:

- Job insecurity – this can be as a result of time (length of contract); uncertainty (unpredictability);
- Pay – low pay; lack of opportunity to improve pay;
- Sub-ordinate employment – exclusion from social and welfare rights; exclusion from employment protection laws;
- Absence of rights to representation – no coverage by collective bargaining; difficulty in accessing legal rights.

In general it is combinations of these that identify precarious work, but studies have also focused on the particular weight that can be attributed to each of them in defining precarious work.

Job insecurity

The assertion that precariousness is about insecurity was advanced by Rodgers and Rodgers (1989) who defined precariousness as involving ‘instability, lack of protection, insecurity and social or economic vulnerability’ and suggested that it was ‘some combination of these factors which identifies precarious jobs, and the boundaries around the concept are inevitably to some extent arbitrary’. Rodgers’ definition still provides a model for the study of precarious work (Kretsos, 2010). Similarly the European Commission³ has suggested job security as the first of three indicators of precarious work the other two being access to training and career prospects and pay and productivity. The International Labour Organization (ILO) defines precarious employment as a ‘work

³ Employment in Europe report, 2011

relation where employment security, which is considered one of the principal elements of the labour contract, is lacking. This term encompasses temporary and fixed term labour contracts, work at home and sub-contracting' ILO, 2011). For Porthé et al. (2010) too, precarious workers are disadvantaged in terms of power relations, with fewer rights than apply to permanent workers so that consequently employment relations are governed by control based on uncertainty.

Precariousness can thus be associated with insecurity (Kretsos, 2011) particularly in those cases where the contractual form of the employment relationship is regarded as atypical, for example 'uncertain employment that is not predictable and is risky from the workers' point of view (Kalleberg, 2009). Fullerton et al. (2011) note that while precariousness has been related to job insecurity, the context in which it occurs is important. Using data from the 2006 Euro barometer survey, together with country-level data from a variety of sources, they found that insecurity was higher in those countries with high unemployment, low union density, low levels of part-time and temporary employment, relatively little social spending on unemployment benefits and in post-socialist countries. This caused them to note that 'flexible employment practices do not necessarily cause workers to feel insecure in their jobs'. In relation to Spain, Polavieja (2005) found that when flexibility was introduced in a context of both high unemployment and high dismissal costs, temporary contracts generated a process of the polarisation of employment chances within both manual and professional occupations. Thus in some cases this was a route to future job security, whereas in other it established a greater level of job insecurity.

Low pay

The level of pay is generally included as a factor of precarious work, with precarious jobs defined as 'low paid, low tenure jobs which do not pay social security contributions and offer little paid annual leave' (Kolev, 2003). Fudge (2009) looking at the dimensions of precarious work highlights the level of wages as one of the characteristics of precarious work, along with lack of access to benefits; the degree of job control; the presence of regulatory protection, income and employment security; less than 12 months job tenure; being in and out of work; company uncertainty; no extended medical benefits; no dental benefits; no pension plan; no disability/life insurance; not covered by a union contract; and firm size being less than 20. Comi and Grasseni (2012) analysing the wage gap between temporary and permanent jobs in Europe found that workers with the same characteristics as temporary workers would receive higher wages if they worked on permanent contracts.

Sub-ordinate employment

O'Connor (2010) describes an absence of the three elements that characterise the traditionally conceived standard employment relationship: job security, income security and social protection. He suggests that the combination of these elements indicates that the problem of precariousness is broader than insecure employment. This would mean that a context characterised by an active labour market policy committed to transition security and a social protection system attuned to labour market failure would not be conducive to precarious employment. Extending this analysis, Benach and Muntaner (2007) raise the issue of power relationships. They suggest precariousness is a consequence of:

'Lack of regulations that support the standard employment relationship, making workers more vulnerable. Precarious workers are likely to work under different power relationships than those in standard jobs, with limited rights at work. In fact, the popular meaning of control under precarious employment relationships can go beyond the notion of "decision authority" and create new types of uncertainty in expectations regarding issues such as future work, income, benefits or schedules. Precarious work is thus located on a continuum, with the standard of social security provided by a (full-time, year-round, unlimited duration and with benefits) employment contract at one end and a high degree of precariousness at the other.'

Thus precariousness here is defined by what is not there, rather than by what is and for O'Connor (2010) this indicates that the problems which precariousness produces cannot be seen as short-lived but have 'long-term consequences for the individual concerned and her/his dependents'. Perulli (2003) examined the gap between the legal category of employee/worker and the self-employed, focusing on that dimension within the employment relationship that was not bogus but which nevertheless represented a form of what he calls 'economically dependent workers' - those doing primarily personal work with continuity over time and for a single client. These are workers who exhibit some elements of self-employment but whose relationships are dependent on an employer of their services:

'one factor is common to all, i.e. the existence of a (subordinate) employment relationship depends on a number of objective conditions being present at the same time; in other words on the way the workers and the employer have established their respective positions, rights and obligations, and on the actual services due. It does not depend on the interpretation that either or both of them give to the relationship'.

This definition therefore places at the centre what the parties actually do and how their work relationship is observed, rather than what they say they do, or how they describe the relationship. The model therefore is one where rights and obligations are determined by the actual nature of the relationship. Perulli reflects on this issue due to the failure of the legislation to adapt to a model that is other than binary – that is neither employment nor self-employment. Yet it is clear that such relationships exist and what is more that they may be increasing, but the failure of the law to address them meant that they fall beyond the regulatory frameworks which offer forms of protection to employees.

A recent 27 country study on the impact of new forms of labour similarly suggests that the 'distinctions between old and new forms of labour is very relative and that the boundary between employment and non-employment relationships is fading. It found uneven labour law protection, a long list of differentiations created by national laws and ineffective EU regulation as indicating precarious work. Legal relationships were stated as grouped around: 'atypical, almost standard/atypical, miscellaneous regulated/special non-employment'. Thus the study identifies the form of the contractual relationship and its regulation as determining whether employment is, or is not, precarious (Contreras et al., 2009). The suggestion here again is that it is the 'standard' relationship that is now outside the norm.

The above attempts to come to a definition of what precarious work actually encompasses has led some studies to conclude that in reality it is not possible to have a fixed definition. In the early 2000s a study in five EU countries came to this conclusion stating that the different national contexts made it difficult to come up with a Europe-wide definition of precarious work (Barbier, 2011). Duell, who also worked on the ESOPE project with Barbier, similarly raised this difficulty in a project report in 2004, stating:

'The difficulty with assessing the extent of precarious employment in an international comparison lies in the different forms of employment relationships which can be considered as precarious in the national context. They are strongly influenced by labour market policy (especially employment subsidies and the level of unemployment benefits) labour market regulation (e.g. employment protection, see in particular UK vs. Spain) and social values.'

O'Connor (2010) also came to the conclusion that precarious work could only be examined through comparative case studies rather than by means of cross national comparisons, as the former might be better placed to pursue a more nuanced analysis of the consequences of economic, employment and social policy.

Workers subject to precariousness

The literature identifies specific groups as more likely to be working in precarious conditions. Most frequently nominated are **young** workers (Kretsos, 2010; Bradley and van Hoof, 2005; Pizzuti, 2009), **women** workers (Fudge and Owens, 2006; Jonsson and Nyberg, 2010; Scarponi, 2010; Sheen, 2010, Bradley and Healy, 2008), **agency workers** (Elcioglu, 2010), **older workers** (D'Amours, 2010) and **migrants** (Bhalla and McCormick, 2009; Porthé et al., 2009). An example is the 2011-12 work programme of the European Sector Social Dialogue Committee on Temporary Agency Work which focuses on women, migrants, low skilled and older people 'as representing those who, in the temporary agency work sector, might be in a precarious situation'. Elcioglu (2010) conducted her fieldwork in the office on a temporary staffing agency and suggested that agency work reproduced and maintained vulnerability in the labour market. So that while agencies may provide transitional mobility for jobseekers, in the long run they created a core of permanent temporary workers separate from the periphery of surplus workers.

In relation to **older workers**, D'Amours (2010) found that while, for a minority of older workers (retirees with a good retirement income), taking non-standard work did not result in job precariousness, others in the study who had left work after the age of 50 and taken a precarious job, had experienced both job insecurity and a lack of social protection. She speculated that state policies encouraging the postponement of retirement age or extending the period of contributions required for entitlement to a full pension, 'could have disastrous consequences for these precarious older workers'.

Sheen's (2010) study of **women** workers who were economically disadvantaged found that what made their economic situation worse and drove them into precariousness was the lack of security and poor quality of the jobs they worked in. So for her, a low paid job 'could be satisfactory if it offered long term security' and also offered some pathways for advancement as a genuine entry level job or at particular stages in an individual's life where there are choices and pathways out. At the same time she argued that labour market flexibility as the foundation for jobs growth had then:

'Served to entrap certain groups in an invidious web of precarious employment from which there are limited exits. The result is a social system in which some groups, such as the women in the studies reported here, have very high exposure to insecurity and risk, as well as low wages and difficult work conditions, compared to others. This most certainly undermines social solidarity.'

Precarious work has been particularly associated with female employment and **women** remain over-represented among precarious workers, as the 2010 report to the European Parliament on [Precarious women workers](#) demonstrates (European Parliament, 2010). Women across Europe are more likely to work part-time than are men, but are also more likely to be working as involuntary part-time workers. The subsequent resolution calls on member states to take measures to end zero hours contracts, to put an emphasis on decent and green jobs and to incorporate gender balance (European Parliament, 2010). Women's work has also been subjected to radical change over the last 20 or more years, affected by new migration processes, educational expansion, transnational labour markets, technological advances and an increasingly globalised labour market (Scott et al. 2008). Women workers may have their health disproportionately damaged by precarious employment, according to Menendez et al. (2006). Important questions are also raised in relation to how social disadvantage is understood in relation to gender. A study by Oxfam International and the European Women's Lobby (2011) documents evidence of precarious working conditions for women; of increasing discrimination in the labour market with a subsequent shift to informal work; of rising levels of poverty; of reduced access to services; and of rising levels of domestic violence, accompanied by cuts in vital support services. The evidence points to recession having a significant negative effect on the lives of women, not only in relation to the labour market, but also, crucially, beyond it.

Among the category of **migrants**, undocumented migrants are usually most associated with precarious work (Bhalla and McCormick, 2009). Porthé et al. (2009) in their study of undocumented workers in four Spanish towns found that undocumented migrants perceived their work as including 'high job instability; disempowerment due to lack of legal protection; high vulnerability exacerbated by their legal and immigrant status; perceived insufficient wages and lower wages than co-workers; limited social benefits and difficulty in exercising their rights; and finally, long hours and fast-paced work'. Dorantes and Rica (2007) found differences in the employment assimilation of various immigrant groups occupational attainment gap between other non-EU15, African and Latino immigrants and their native counterparts, providing evidence of discrimination on the grounds of ethnic origin.

Precariousness with respect to **young workers** has been addressed in a number of studies. Indeed the demand for a 'youth guarantee', made by the European Youth Forum and supported by the Commission on Youth and Precariousness (2011) calls on Member States to guarantee to all young people a job or a place in further education, be it general or professional, within four months of leaving school. In response the Commission has called on Member States to 'consider implementing reforms to improve the quality of education and vocational training systems, as well as increasing recognition of other non-traditional forms of education'.

Sectors and precariousness

Precariousness is also identified as being associated with particular sectors and types of job, notably the media and cultural work where temporary contracts and sub-contracted work is highly evident (Rosalind and Pratt, 2008; Hesmondhalgh, 2009; Ross, 2009). But there are also long-term associations of precarious work within sectors like construction (bogus self-employment); agriculture and hospitality (seasonal work); and food processing (fixed-term work).

Precariousness as a stage of employment

Some authors thus suggest that the issue is not whether or not there is precarious employment but whether it represents a complete pattern of life employment or reflects a particular stage in an individual's work history. Thus Barbier (2011) argues that it is crucial to take account of what is considered suitable and what is acceptable at different points of time and in different situations:

'Different national normative systems are legitimated (and de-legitimated) and prevail in each society for periods of time' admitting that political cultures including norms and values are essential to identify what will be "precarious" or "acceptable" is important; yet one should be aware that these political cultures and norms are not rigidly established: on the contrary they keep changing over time.'

Fantone (2007), basing her analysis on Italian feminist literature on precarity, argues precariousness has been understood through the model of male employment and that for young women, it 'can be transformed and retooled to oppose traditional values that Italian society still imposes on young women'. This leads her to suggest that 'a precarious existence is not solely a negative phenomenon for the generation of women in their twenties and thirties who chose to do creative work, to teach or to emigrate'. Barbier (2011) promotes the notion of the labour queue model. This is based on the notion that precariousness may represent a point of entry into primary jobs, so that all, in turn, queue and eventually find their passage from temporary and precarious work into permanent jobs and suggests that this has been the case for young workers in France. But others suggest that the queue, while a theory that might be suited to some labour markets, cannot be generalised to apply with respect to all young workers in all EU member states. Bossfield and Buchholz (2008), in a study examining the labour market chances of young adults in the US and in ten European societies over

the past three decades, through an analysis of their early career phase, discussed whether flexible employment relationships in younger cohorts were a temporary phenomenon at the very beginning of people's careers. They concluded that the labour markets of modern societies were fundamentally changing because flexible employment relationships were becoming the dominant form of entry into the labour market with the entry of new cohorts. Barbieri and Scherer (2009), in their study of young workers in Italy, found that non-standard employment still had a clearly negative impact on future career prospects and that this was true both with regard to their employment chances and the possibility of accessing stable employment. They found 'no support' 'for the atypical push hypotheses'. Instead precarious employment risked trapping individuals within it and suggests that every period of non-employment increased with every successive episode of non-standard employment, 'confirming the picture of an increasingly segmented labour market'.

Whether precarious work can act as 'stepping stones' into non-precarious work may also be related to the situation of the individual her/himself. For example, both Greun et al. (2011) and Mosthaf (2011) suggest that work for low wage workers can operate as a stepping stone favouring employment integration over time. Mosthaf suggests that low-wage jobs may be stepping stones to high-paid jobs for low qualified workers. de Graaf-Zijl et al. (2009) found that temporary agency work in the Netherlands increased the probability of finding permanent employment. However, the same results are not found for workers with a university degree, for whom low-wage jobs are associated with negative signals with regard to future employment. In contrast Cockx and Piccinio (2010) in their study of Belgian long-term unemployed school-leavers, found that those who accepted a short-term job were more likely, within a two year period, to find a long-term job. A separate issue is whether precarious work (if defined in terms of the income that it attracts) can lead to non-precarious (higher income work). A study of temporary employment in Germany and the UK (Gebel, 2010) found that in neither country was temporary employment associated with long-term wage penalties. The results showed that German temporary employed entrants suffered from higher initial wage penalties and risks of temporary employment cycles, but that all differences, compared to entrants with permanent contracts, diminished after five years. For the UK employment losses were primarily related to further education and varied by education groups and gender. Across the board, however, temporary contracts were associated with greater initial but vanishing wage penalties for tertiary-level graduates.

The causes of precarious work

Not only do the definitions of precariousness vary significantly there is also a considerable variety of opinion as to its causes. Rodgers and Rodgers (1989) suggested the causes of precarious work were in the deterioration of labour market conditions; rising unemployment; and changes in the mechanisms of job access. Waltermann (2010) also identifies the relaxation of legislation in Germany and in other EU countries since the early 90s as a reason for the increase in precarious employment. In order to combat unemployment and to diversify the number of employment relationships, temporary agency work, fixed-term employment, marginal employment, as well as part-time work increased. Thus, politics complied with the long-standing request by the economic system to deregulate the labour market. Barbier (2011) suggests that the picture is generally oversimplified and that the real situation is one of 'increasing and multifarious inequalities in societies' which vary according to the available social protection. Outsourcing and sub-contracting are identified as encouraging precarious work, creating economically dependent workers (Perulli, 2003). McDowell and Christopherson (2009) suggest that it is found in the specific characteristics of a service dominated economy and project-oriented work, as well as consequent on the claims of employers that casual workers are required to deal with peaks in production, pointing to what they describe as 'the growth of complex organisations and inter-organisational networks of co-production'. Kalleberg (2009) suggests that the focus has to be on those new workplace arrangements that generate precarious work and worker

insecurity. This therefore places a focus on changes within the structure and organisation of work. He identified six significant causes:

- The neoliberal and globalised economy which increased competition between companies and led to outsourcing to lower cost countries while created a new 'labour pool through migration';
- Technological advances forced and assisted companies into becoming more competitive;
- Changes in legal and other institutions;
- Weakening of union power and therefore the weakening of institutional protection for workers;
- Individualism and a new ideological trend shifting towards the personal responsibility for work and family life; and
- The growth in service-based industries leading 'to an information-based economy organized around flexible production.

The main drivers of precarious work for Evans and Gibb (2009) were:

- 'Low-road' approaches to competition whereby cost-cutting is achieved at the expense of product and job quality, wages and a clean environment;
- 'New forms of subcontracting and outsourcing', facilitated by falling costs of coordination and transportation afforded by new information and communication technologies;
- New management and contractual forms, which loosen the traditional ties between workers and employers, as indicated by the increase in low wage jobs, temporary employment and self-employment, often taking the form of disguised employment.

Kretsos (2010) argues that an increase in economic inequalities and growing disparities in social participation and citizenship rights have resulted in workers (and in particular young workers) working in 'more insecure, unpredictable and risky work'. Additionally he shows that there is a historic link between unemployment and precarity. These changes in the structure of the labour market 'have modified power relations between capital and labour' and contribute to the growth of precarious work (Porthé et al. 2010), a position supported in the European Youth Forum Position paper on the Youth Guarantee. Crouch (2010) has taken this even further in arguing that the needs of economies for both flexible workers and confident consumers lead to a separation of insecure workers from 'confident consumers' through the externalisation of problems on to the minorities within a given community. Similarly Rubery and Urwin (2011) locate the provision of quality social care with a requirement for strong human resource policies and 'good quality' employment relationships as encouraging of externalisation. For Frade and Darmon (2005) the:

'Structuring of service activities as insecurity-and-risks transfer chains, based on the use of intermediary actors (call centre companies, domiciliary care providers, and possibly cultural management agencies), has led to the widespread use of non-standard forms of employment relationships, stripped of nearly all the dimensions which are not strictly to do with labour management. In terms of the regulation of employment, this amounts to introducing commercial law into labour law. The use of various forms of precarious employment contracts (temporary contracts,

on-call contracts, changing and low volumes of working hours, or the resort to bogus self employment) is justified by a reference, not to the organization as a whole, but to specific assignments taken as separate entities. This reduction of employment to work tasks amounts to what we have called a 'recommodification of labour'.

As well as these structural changes, recent research has also focused on economic recession as a cause of an expanded precarious workforce, specifically 'low road' approaches to competition; new forms of subcontracting and outsourcing; and new management and contractual forms (Evans and Gibb, 2009). The recession, along with a hardened mass of unemployment and the rapid spread of low wage sectors in many European countries, as well as an increase in atypical work, have all been identified as leading to precarious work situations.

For McDowell et al. (2009) there is a potential link between the continued expansion of forms of insecure work and the impact of rising numbers of economic migrants. They identified competition between foreign-born workers for jobs as being recast by changes in the jobs available; in the forms of precarious labour market attachment; and in new patterns of migration. But here the social characteristics of the migrants themselves (nationality, gender and skin colour) together with their different sets of legal entitlement also result in them being differently placed in the competition for low quality jobs and this results in turn in those with less or no legal entitlement and those who are visibly different being relegated to the most precarious forms of employment. Anderson (2008) as well as Porthé et al. (2010) also focus on the relationships between migration and precarious work and although their perspectives differ both identify migration with precarious work. Anderson argues that immigration controls 'are a mould constructing certain types of workers through the requirements and conditions of immigration statuses. Thus migrant workers enter precarious work because the restrictions imposed through the operation of immigration controls force them to locate themselves within work spaces that are precarious and 'immigration controls thus reinforce the temporary aspect of migration'. Porthé suggests that the presence of available migrant labour may serve to encourage the casualisation of labour

Labour market flexibility or in some cases 'excessive flexibility' (ETUC, 2006) is also suggested as contributing to precarious work, as is the 'fragmentation' of the labour market in all member states (Conteras et al., 2009; Reinert et al., 2007). Tangian (2008), basing his analysis on the Fourth European Survey of Working Conditions, 2005, found a statistical dependence between flexibility and precariousness at work, suggesting that employment flexibility has the strongest negative effect on employability. Indeed he argued that 'flexicurity cannot be consistently implemented as proposed by the European Commission' specifically due to its relationship with precarious employment. In contrast Keune and Jepsen (2007) suggest that flexicurity might be seen as constituting 'an alternative to the bankrupt neo-liberal view of the labour market which dominated the debate during much of the 1980s and 1990s' although, in later work, Burroni and Keune (2011) go on to conclude that the concept itself should either be abandoned or substantially improved.

The consequences of precarious work

For the labour market

Precarious work may have significant and negative consequences for the labour market, including a shift in the employment status of workers, a rise in forms of involuntary work and an increase in low paid jobs. Duell (2004) claimed that the 'segmentation lines had deepened with no bridge to stable employment for the groups of workers who have anyway to face higher unemployment risks (low or "wrong" skills, immigrants, elderly worker) in a number of countries' It is the involuntary nature of forms of work that can turn them into precarious work. A study of part-time work in Spain and the Netherlands, for example, found that overall, part-time employment in Spain seemed to be much

more related to the difficulty part-timers accounted in finding full-time jobs whereas in the Netherlands workers seemed to be more likely to have voluntarily chosen to work part-time. In Bulgaria, for example, there has been an increase in self-employment which is linked to the growth of precarious work (Kolev, 2003). A government commissioned survey in the Netherlands found that workers in segmented parts of the labour market, alternating between temporary contracts and unemployment experienced lower earnings and earnings lower than their earning capacity, based on their qualifications and experience. They also suffered from a lower quality of life, more unfavourable living conditions and had more difficulty in accessing healthcare and education of their choice (SEO, 2010).

The ETUC Congress of 2011 stated that flexibility did not create jobs but simply promoted 'precarious work, drives out good jobs and creates high and rising inequalities'. In its view it has been flexibility, encouraging precarious work practices that were at the heart of the economic crisis. Seifert et al. (2007), basing their findings on the Fourth Survey of Working Conditions, similarly locate employment flexibility with 'the strongest negative effect on employability' with empirical evidence that high employability can be hardly attained under flexible employment.

Immigration controls, which as noted above, encourage precarious work, contribute to producing particular types of relations between employers and workers and the labour market, notably third party relationships, through agency work (Wright and McKay, 2008). Support for the contention that the rise in precarious work is 'one of the most challenging and threatening features of the new global economy' and that the economic crisis that plunged the global economy into one of the most serious recessions in history in 2008 may well have exacerbated this problem, as employers continue to pursue strategies that "flexibilize" employment and undermine the very concept of job security can be found in the work of Evans and Gibb (2009). The report of the Social Protection Committee (2011) to the Council notes that the crisis had also affected the quality of employment and that jobs commensurate with the prevailing skill levels, full-time, secure open-ended contracts are being replaced with more precarious, short-term forms of labour.

For workers

The evidence suggests that precarious work is likely to have a negative effect on workers, as the 2011 manifesto of the Geração à Rasca group in Portugal, proclaimed:

'We, who have up to now been complacent about the conditions laid upon us, stand here, today, to contribute to a qualitative change in our country. We stand here, today, because we can no longer accept the situation that we have been dragged into. We stand here, today, because every day, we strive hard to be deemed worthy of a dignified future, with stability and safety in all areas of our lives.'

Workers, and in particular young workers, have been affected negatively by the growth in precarious work. In Greece, one of the changes brought about as a result of the economic crisis was the termination of the contracts of around 50,000 young workers (stagiaires) in the public sector (Kretsos, 2011). The prospect of insecurity means that for many workers, subjective fears have increased even where precarious work (defined by job status) has not increased. Broughton et al. (2010) note that 'very atypical' workers experience feeling of lack of job security, lack of a career plan, fewer training and career opportunities and greater difficulties in reconciling work and personal life. They have lower rates of pay and a higher risk of ill health. There is also what has been termed a 'loosening of the ties' between workers as a result of sub-contracting, outsourcing and the growth in self-employment (Evans and Gibb, 2009).

Health and precariousness

The issue of whether there is a relationship between precariousness and poor health is addressed in some of the literature. Benach and Muntaner (2007) suggest that:

'Temporary workers are often exposed to strenuous and tiring positions, intense noise and repetitive movements, have less freedom to choose when to take personal leave and are seldom represented in health and safety committees. There is also evidence that non-permanent workers have less information about their work environment, enjoy less job autonomy and control over schedules than workers on permanent contracts, are likely to be occupied in less skilled jobs and experience worse health outcomes compared with permanent workers.'

A number of recent studies have related precarious work with poor health outcomes. A 2011 report by the European Commission staff working paper on the impact of Council Directive 91/333/EC concluded that fixed-term and temporary workers were still comparatively more exposed to occupational health and safety risks than workers with other types of contracts (European Commission, 2011). How health risks might be quantified is considered by Vives et al. (2010) who suggest that the health consequence of precarious work can be measured by use of an Employment Precariousness Scale (EPRES) which is a theory-based, multidimensional questionnaire specifically devised for epidemiological studies among waged and salaried workers, describing it as 'a promising tool for the measurement of employment precariousness in public health research. This might be one way of assessing health impacts. Other studies have mainly been based on qualitative or quantitative data on forms of work and health and provide differing consequential analyses. Kawachi (2008) found that even after taking account of the characteristics that might influence health outcome, non-standard work was likely to be damaging to workers' health. Here however, Kawachi focused on forms of employment relationship, defining non-standard work as part-time, temporary agency-based work, fixed term contingent work and independent contracting. However, Guest and Isaksson (2010) found the opposite to be the case in relation to worker psychological well-being, stating that temporary workers reported higher well-being than permanent workers. Clarke et al., (2007) used the concept of 'employment strain' to describe the characteristics of different employment relationships and how they impacted on health outcomes. Although they found limited evidence of differential health effects between workers in precarious jobs by age, they did find conditions under which precarious employment did appear to increase stress and tension and concluded that a combination of an individual's desire for more permanent employment, the expectation that it will be found and the support that they receive from various sources are vital in understanding the health effects of precarious work. This suggests that there is a more complex relationship between forms of work and health and that it is the expectations that individuals have from work and the realities that they experience that determine their health impacts. Precarious work contracts have also been associated with poor mental health, not only through employment insecurity but also through the negative effects on the ability to do one's job and take pride in ones work, as well as weakening the interpersonal relationships on which successful work depends (Siefert et al. (2007). Hesmondhalgh (2009) looked specifically at young television researchers working on talent shows and noted the poor health consequences of precarious work in that industry. He analysed how the power to provide exposure or not to individuals is 'registered in the form of stress, anxiety and sometimes poor working relations among project teams of young television researchers (a matter of working conditions and experiences)' He also found that 'additional pressures are borne by these workers because of the requirements to undertake emotional labour, involving the handling of strong emotions on the part of talent show contributors, and to maintain good working relations in short-term project work, requirements generated by the need to ensure future employment'.

Porthé et al. (2009) in their research on undocumented workers in Spain found while their informants reported they had no serious health problems they did, nevertheless, describe physical and mental problems associated with their employment conditions and legal situation which, in the view of the researchers were likely to lead to a worsening health situation for the workers concerned. Kinnunen et al. in a recent study (2011) of university teachers and researchers at two Finnish universities suggest that it is perceived employability that promotes more favourable health outcomes. In their study of those with permanent, temporary and involuntary temporary contracts it was the latter who exhibited the strongest negative in terms of job exhaustion and psychological symptoms. The 2010 resolution of the European Forum on precarious women workers also drew attention to the fact that studies have shown that precarious employment, in which minimum health and safety standards often are ignored, carries higher injury rates and a greater risk of disease and exposure to hazards and called on the Commission and the Member States to enhance their monitoring of minimum health and safety requirements in the workplace, paying particular attention to the specific risks of female workers.

Health effects can also be observed in other ways. Pham et al. (2011) in a study of medication errors over the period 2000 and 2005 found that temporary staff were more likely than permanent staff to cause errors which reached the patient and which resulted in either temporary harm or in some cases were life threatening. They concluded that, in relation to emergency departments, medication errors associated with temporary staff were more harmful than those associated with permanent staff.

For society

Precarious work creates a higher risk of poverty (Broughton et al., 2010) as well as of ill health and this has negative implications for society more generally, not just for the workers directly affected or indeed for the workforce. Poverty impacts on family stability and denies to families the opportunity to fully develop their abilities and to construct value-filled lives. Furthermore it results in 'greater economic inequalities and growing disparities in social participation and citizenship rights' (Kretsos, 2010). Golsch (2002) also points to employment security as being the pathway to adult transition. Societies can respond in one of two ways. For Conteras et al. (2009) 'the temptation to downwardly reform some national labour markets to adjust them to the misunderstood requirement of modernisation could further deepen social divergences and lack of cohesion between Member States and developing European regions'. Fritz (2010) suggests that higher shares of self-employment are strongly associated with inequalities. Neilson and Rossiter (2008) go further by arguing that there is a relationship between precarity as a political concept and the erosion of the welfare state and that that is why 'the discourse on precarity does not translate on a global scale as a descriptor of contemporary labour'. Waltermann (2010) examines the effects of precarious employment with regard to the threat of poverty in old age and calls for the introduction of a statutory minimum wage in Germany.

Data on precarious work

The fact that there is no single definition of precarious work means that it is difficult to extract statistical data that attempts to quantify the number of workers in precarious employment within the Member States. Some of the literature already referred to defines precarity very widely, embracing a majority of workers. Jonsson and Nyberg (2010) argue, this way of conceptualizing precarious work results in an overestimation of the numbers as well as an overestimation of its prevalence. On the other hand, where definitions are narrowly drawn these also have a consequential effect on estimates on the size of the precarious workforce.

That young people, migrants and above all women generally run a higher risk than others to be included in these categories is accepted in most of the literature, however, it is not the case that these population numbers can be extracted to provide an estimate of the size of the precarious population. The European Commission (2006) noting that fixed term contracts, part-time work, on-call and zero hour contracts, hiring through temporary employment agencies and freelance contracts have become an established feature of the European labour market, states that these categories account for 25% of the EU labour force, but again not all in all situations fall into the definition of precarious work. Barbier (2011) makes the point that given that the definition diverges significantly across countries and political cultures this makes it difficult to fully identify precarious work as a political and social policy category. Broughton et al. (2010) indicate a high variety throughout Europe with different proportions of precarious workers. Perulli's (2003) focus on economically dependent workers suggests that around 15 per cent of all employment may be within the category that falls between self-employment and subordinate employment and for him this is where precarious work is located. Another category, where there are some estimates (although again contested) is with respect to undeclared work, with estimates of somewhere between seven per cent and 19 per cent of all work for wages being undeclared, with variations between Member States, depending on how the tax and benefits system works (McDowell and Christopherson, 2009). The wide variation in this estimate indicates how provisional it is. The question has also been raised as to whether the precariat represents a majority of workers, rather than a minority. This of course is directly related to how the group is defined but Pollert and Charlwood (2009) suggested that what they termed 'vulnerable' workers consisted of a group that was much larger than conceptualised by the state and that it indeed covered 'a large proportion of low paid, unrepresented workers' at risk of being denied their employment rights, simply because they either do not have the capacity or knowledge to exercise them or are dissuaded from doing so through fear or victimisation'.

It is possible to provide some statistical data where precariousness is identified with groups of workers and Kretsos (2010) has done this in relation to young workers in Greece, using OECD and Eurostat data and found dramatic increases among the young, in relation to part-time and temporary work. If the existence of precarious work leads to migration then he also cites a 2010 survey which found that more than 70 per cent of young graduates would leave the country if they had a chance. Additionally, using Eurostat and OECD data he also found that, with regard to earnings, 'Young workers experience lower levels of wages and higher levels of unemployment despite the fact that they are more qualified than older workers'. He also noted from the European Commission report on *Undeclared Work in Europe* (2007) that:

'While amongst the youngest age (15-24 years old) almost every tenth respondent performed undeclared work during the reference period, the share is only 4% for those aged 40-54 years and declines to 2% among aged 55 years or more as much as two-thirds of the 'undeclared workers' consist of people younger than 40 years.'

Looking at national data, Forde and Slater (2005) in relation to the UK, estimate the figure at around ten per cent. Agency work is estimated at 4.2 per cent, with 58 per cent of vacancies advertised through the government job seeking services, being in employment agencies (cited in Anderson, 2010). Additionally one in four agency workers are migrant and in some sectors (like food processing) 90 per cent are in that category. O'Connor (2010) states that for Ireland the several forms of precarious work cannot be quantified due to data deficiencies, compounded by inadequate enforcement of existing laws and policies, most acutely reflected in the under-resourcing of the Labour Inspectorate. What she does confirm is that a 'clear theme emerging from the previous analysis is the over-representation of women and migrant workers in precarious employment.' From Spain, Parjares (2007) reports that migrant workers were more likely to be employed under temporary contracts and in the sectors of hospitality and construction, which are considered as

providing poor working conditions. McInnes (2009) notes that 'polarization has occurred because the introduction of temporary contracts has been virtually the *only* major change to Spanish labour market regulation since the dictatorship' but warns against 'seeing the solution to Spain's extremely high level of precarious employment lies in making insiders' jobs more precarious. It does, however, mean finding a way out of the two-tier labour market impasse that has emerged' (see also: Sala and Silva (2009) and Lasierra (2007)). In Poland atypical forms of employment, in particular part-time, fixed term and temporary agency contracts have been associated with employer flexibility (hab. Zbigniew Hajn, 2005) leading to the demand 'for movement towards the situation in which atypical (flexible) employment and employment in security are not treated as two sides of the same coin'.

Legal and social protection

The literature suggests that it is not just the nature of work that makes it precarious. It is also the conditions under which work is performed, and in particular the legal and social protection framework in operation. The existing protections are still formulated around a model of standard, full-time permanent work and for Vosko (2010) regulatory approaches have not adapted accordingly. The result is that most precarious forms of work are left intact, beyond the reach of regulatory systems. One of the challenges identified in the literature is the great diversity in both labour conditions and social security and protection within Europe and moreover the erosion of previously existing rights (Cremers, 2010). This absence of a robust framework of protection can result in precarious work and Cremers suggests that without this, 'the price of the erosion of income security and job quality as a consequence of intensified competition will be very low incomes and a poor standard of living for a meaningful length of time for the most vulnerable and disadvantaged citizens'. Legal policy regulating labour bases itself on the commodified ideal of labour, rather than on a human rights approach and this has important negative consequences in particular in relation to training and family friendly policies (Espring-Anderson, 1990). There is also limited legal regulation (Sciarra et al. 2004).

Where regulatory intervention has been identified, it has been generally in the area of social security especially the extension of pension rights to persons who fail (fully or in part) to qualify on the basis of the traditional distinction between subordinate employment and self-employment' (Perulli, 2003). He argued for intervention at EU level by 'prescribing flexible rules and leaving Member States free to adapt them to their national contexts' leaving it then 'up to the social partners to produce appropriate rules and to provide a network of appropriate protection for the economically dependent self-employed. More recently, Njoya (2011) took a similar position, supporting an approach that would facilitate negotiation and bargaining between the parties.

Perulli, however, also argued specifically for legal regulation to cover 'quasi-subordinate employment contracts', and for the attribution to the latter of a series of rights in terms of contractual formation, basic working conditions such as pay, contractual suspensions, the provision of 'notice' or 'justified reasons' in case of termination, the right to training and to trade union activities. These rights would come as an addition to the rights to health and safety at work, pensions, and training, but, crucially, would not amount to a full extension of labour laws to cover economically dependent workers (Countouris, 2010). Ross (2009) however, provides a more pessimistic assessment holding little hope for change through labour rights and other strategies based on quality of life and suggests that 'this new precarious and indefinite life and the pitfalls and opportunities that accompany it is likely here to stay and must be addressed in a systematic way'. Whether this has the potential to lead to collaboration between workers in different sectors of employment experiencing precariousness is a question that he also addresses.

In some studies it has not been the absence of regulation, but the inability to enforce it that determines that work is precarious. Kretsos (2011) refers to the weakness of traditional forms of regulation and of union representation which have meant that it has not been possible to 'restrict the widespread phenomenon of labour law violation and the inclination of employers, especially in the service sector, to use precarious forms of work and pay'. Conteras et al. (2009) proposed harmonisation around: equal treatment principles; the elimination of factors that affect non-standard workers negatively in their working and private lives; the principle of adequacy; minimum levels of economic security and sufficiency; combating the discriminatory use of non-standard contracts; offering ways of enforcing rights; and support to workers during their transitions in the labour market.

An alternative model is in the Spanish social partner agreement of 2006. This provides that after more than 24 months on a fixed-term contract in the same enterprise and doing the same job, over a reference period of 30 months, the worker's contract becomes one of indefinite duration. It also provides for cuts in employer social security contributions while providing extended unemployment benefits for older workers. Reflecting specifically on the condition of young workers, the European Youth Forum (EYF) (2010) advanced the proposal for a Youth Guarantee which would ensure that youth labour market inactivity would not exceed a period of four months. The policy would, according to the EYF, help young people keep in touch with the labour market and keep updating their skills and competences, thus contributing to their employability at a later stage. An alternative perspective is to reduce social rights and in a number of Member States this has already occurred or is in progress. However, as a Declaration of European Lawyers, of November 2007 noted:

'The protective framework of labour law is to be weakened, with the consequence that there will be more precarious jobs, lower protective standards, and all this without any positive effect on the level of employment.'

Equally, for Perulli, it 'cannot be left to the market to sort out' for this would 'risk creating or intensifying social inequalities and discrimination and, in the European context, increasing social dumping. More recently, the concept of a single contract, where employment rights increase over time, has been promoted in Spain and in Italy. Giannetti and Madia analyse the advantages and disadvantages of adopting such flexicurity measures and suggest that such contractual arrangements can improve labour market efficiency by reducing unemployment and increasing worker performance.

What should a basic floor of rights include?

At the core of the arguments about precarious work is the issue of the social, political and employment rights that should appertain to those in precarious work. The ILO's 2004 *Economic Security for a Better World* study grouped basic rights around three areas: job, skill and representational security. Perulli, in his 2003 study called for 'the reshaping of protection measures with national legislation to provide for the provision of written contracts that set out the criteria for determining pay; payment times; suspension of the relationship in cases of sickness or maternity; termination; continued training; basic trade union rights'. Barbier (2011) noted that the flexicurity in the Danish model draws its strength from 'strategies [that] may reconcile highly generous welfare provision, flexibility and macro-economic orthodox policies, hence the absence of 'employment precariousness' or 'atypicality'.

Conteras et al. (2009) divide rights into five categories: contractual, labour market, social protection, enforcement and collective, but acknowledge that 'the concept of core rights is in itself far from clear and it can have many different meanings, dependent on the context and the users' priorities. For the

signatories to the declaration 'For a labour law which really protects workers (November 2007) the following declaration related to a basic floor of rights:

'The signatories of this Declaration demand that the European Institutions must take all necessary economic and financial measures to reduce mass unemployment strengthen the existing protective regulations in labour law and in fundamental rights, and extend their field of application to all kinds of work, including so called "independent work", in which workers are in reality economically, legally and personally dependent on their contracting employers; strengthen the right to collective representatives of the workers, in particular the rights of the trade unions, so that the unions can defend workers' rights against unsocial flexibility and casualisation; give priority only to those flexibility measures that are in the interest of the workers.'

Evans and Gibb (2009) also support calls for the extension of rights, in particular for the application of employee status to all precarious workers; for better methods of enforcement and for access to justice; and for a statutory agency with the role of enforcing employment rights. Countouris (2010) in commenting on Supiot's 2000 work on new subordinated labour describes this as:

'Envisaging the creation of a new two-tier labour law system The first limb is constituted by a number of universal social rights, including rights to social security, to continuing vocational training, to participating in the defining the object of the contract, and a right to professional stability, to be guaranteed to everyone irrespective of the type of work and whether salaried or non-salaried. The second limb is supposed to introduce, with the help of collective negotiation, a number of 'special rights' applying to each kind of employment relationship. It should be noticed that these rights are supposed to be attached to the individual irrespective of her position in the market, and that they are supposed to accompany her all through her working life, no matter how many interruptions from periods of unemployment and changes of occupation'

Some of the literature supports a position for a basic floor of rights that targets categories of workers. For example, on women workers, the European Women's Lobby (2010) has called for gender sensitive universal social protection standards, including access to good quality education, health care and income security, to be established in all Member States 'to address the needs of women, men and children facing poverty and social exclusion'. The resolution on 'Precarious women workers', passed by the European Parliament in December 2010, states that the directives covering forms of atypical work 'do not adequately address the precarious nature of employment' and calls for additional measures including introducing binding minimum social standards for employees and granting all employees equal access to social services and benefits, including maternity leave, health care and retirement pensions, as well as to education and training, regardless of employment conditions. The resolution recognises that the 'over-representation of women in precarious work is a key contributing factor to the gender pay gap'. It also states that 'improving job quality for women will reduce the gender pay gap.' Member States are asked to take legislative measures to put an end to zero-hour contracts and to introduce controls to regulate all types of false training, which conceal actual employment without proper payment or protection. The Commission and the Member States are requested to develop strategies on precarious work in order to emphasize decent work and green jobs, and incorporate gender balance; and to take action in order to reduce the double burden of work on women. Similarly, with respect to young workers there are specific demands for personalised career counselling and guidance, scholarships for education and training, recognition of qualifications gained, help in finding first employment, and work placements with adequate income and social security protection.

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