



EXECUTIVE SUMMARY

Study on Precarious work and social rights

Carried out for the European Commission

(VT/2010/084)

**Working Lives Research Institute
Faculty of Social Sciences and Humanities
London Metropolitan University**

Address: 31 Jewry Street,
London EC3N 2EY, UK
Phone: 00 44 207 320 3042
Fax: 00 44 207 320 3032
Email: s.mckay@londonmet.ac.uk
s.jefferys@londonmet.ac.uk
a.paraskevopoulou@londonmet.ac.uk
j.keles@londonmet.ac.uk

Sonia McKay
Steve Jefferys
Anna Paraksevopoulou
Janoj Keles
April 2012

Disclaimer: The information contained in this publication does not necessarily reflect the position or opinion of the European Commission

Listed below are the national experts who contributed to the study

Scientific Committee of legal experts

Country	Name of Committee Member
Bulgaria	Krassimira Sredkova
France	Christophe Vigneau
Germany	Reinhard Vorbau Tjark.Messen
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

Our thanks to the staff members at DG Employment, Social Affairs and Inclusion, Employment and Social Legislation, Social Dialogue, Labour Law for their support and helpful comments; to the more than 150 individuals who agreed to be interviewed as part of the study; to the 36 organisations who assisted the research team in conducting the case studies; and to the more than 260 respondents to the survey questionnaire.

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.