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CONTENTS

	Page
Executive Summary	9
1. Introduction	29
1.1. Background	29
1.2. Purpose of the study	29
1.3. Elaboration and demarcation	30
1.4. Research questions	33
1.5. Research approach	34
1.6. Structure of this report	35
2. Atypical work in the European Union	37
2.1. Introduction	37
2.2. Perspectives on atypical work	37
2.2.1 Flexibilisation	37
2.2.2 The proliferation of atypical work	39
2.2.3. Socio-economic perspectives on atypical work	39
2.2.4 Deprivation of atypical workers	41
2.2.5 This study's perspective on atypical work	42
2.3. Atypical vs. typical workers in labour law and social protection	42
2.4. The incidence of atypical work in the EU	50
2.4.1 Atypical work in Belgium	50
2.4.2 Atypical work in Denmark	51
2.4.3 Atypical work in Germany	52
2.4.4 Atypical work in Greece	53
2.4.5 Atypical work in Spain	54
2.4.6 Atypical work in France	55
2.4.7 Atypical work in Ireland	56
2.4.8 Atypical work in Italy	57
2.4.9 Atypical work in Luxembourg	58
2.4.10 Atypical work in the Netherlands	59
2.4.11. Atypical work in Austria	60
2.4.12 Atypical work in Portugal	61
2.4.13 Atypical work in Finland	62
2.4.14 Atypical work in Sweden	63
2.4.15 Atypical work in the United Kingdom	64
3. Preface to chapters 4-7; atypical working times	65

4. Part-time work	71
4.1. Definitions of part-time work	71
4.1.1. Part-time work in the EU	72
4.2. The formal position of part-time workers in labour regulation	73
4.2.1. Dismissal protection	73
4.2.2. Salaries	74
4.2.3. Paid holidays	74
4.2.4. Continuation of payment in case of illness	75
4.2.5. Maternity/paternity leave	75
4.2.6. Working hours	76
4.3. The formal position of part-time workers in social protection	77
4.3.1. Unemployment benefit	77
4.3.2. Pensions	78
4.3.3. Health cost insurance	79
4.4. Miscellaneous	79
4.5. Conclusions	81
5. Temporary work	85
5.1. Definitions of temporary work	85
5.2. Temporary work in the EU	87
5.3. The formal position of temporary workers in labour regulation	88
5.3.1. Dismissal protection	88
5.3.2. Salaries	89
5.3.3. Paid holidays	89
5.3.4. Continuation of payment in case of illness	90
5.3.5. Maternity/paternity leave	90
5.3.6. Working hours	90
5.4. The formal position of temporary workers in social protection	91
5.4.1. Unemployment benefit	91
5.4.2. Pensions	91
5.4.3. Health cost insurance	92
5.5. Miscellaneous	92
5.6. Conclusions	94
6. Seasonal work	97
6.1. Definitions of seasonal work	97
6.2. Seasonal work in the EU	97
6.3. The formal position of seasonal workers in labour regulation	97
6.3.1. Dismissal protection	97
6.3.2. Salaries	98
6.3.3. Paid holidays	98
6.3.4. Continuation of payment in case of illness	98

6.3.5. Maternity/paternity leave	98
6.3.6. Working hours	98
6.4. The formal position of seasonal workers in social protection	99
6.4.1. Unemployment benefit	99
6.4.2. Pensions	99
6.4.3. Health cost insurance	99
6.5. Conclusions	100
7. Casual work	103
7.1. Definitions of casual work	103
7.2. Casual work in the EU	104
7.3. The formal position of casual workers in labour regulation	104
7.3.1. Dismissal protection	104
7.3.2. Pensions	104
7.3.3. Paid holidays	104
7.3.4. Continuation of payment in case of illness	104
7.3.5. Maternity/paternity leave	105
7.3.6. Working hours	105
7.4. The formal position of casual workers in social protection	105
7.4.1. Unemployment benefit	105
7.4.2. Pensions	105
7.4.3. Health cost insurance	106
7.5. Conclusions	106
8. Preface to chapters 9-12; atypical working place and/or status	109
9. Homework	113
9.1. Definitions homework	114
9.2. Homework in the EU	114
9.2.1 . Homework in the EU; persons who usually work at home	114
9.2.2. Homework in the EU; persons who sometimes work at home	117
9.3. The formal position of homeworkers in labour regulation	118
9.3.1. Dismissal protection	118
9.3.2. Salaries	119
9.3.3. Paid holidays	119
9.3.4. Continuation of payment in case of illness	119
9.3.5. Maternity/paternity leave	120
9.3.6. Health and safety	120
9.3.7. Homework in the EU	121
9.4. The formal position of homeworkers in social protection	121
9.4.1. Unemployment benefit	121
9.4.2. Pensions	121
9.4.3. Health cost insurance	122

9.5. Miscellaneous	122
9.6. Conclusions	122
10. Telework	127
10.1. Definitions of telework	127
10.2. Homework in the EU	127
10.3. The formal position of homeworkers in labour regulation	128
10.3.1. Dismissal protection	128
10.3.2. Salaries	129
10.3.3. Paid holidays	129
10.3.4. Continuation of payment in case of illness	129
10.3.5. Maternity/paternity leave	130
10.3.6. Health and safety	130
10.3.7. Homework in the EU	130
10.4. The formal position of homeworkers in social protection	131
10.4.1. Unemployment benefit	131
10.4.2. Pensions	131
10.4.3. Health cost insurance	132
10.5. Miscellaneous	132
10.6. Conclusions	133
11. Self-employment	139
11.1. Definitions of self-employment	139
11.2. Self-employment in the EU	139
11.2.1. The self-employed without employees	140
11.2.2. The self-employed with employees	141
11.3. Formal position of self-employed in labour regulation	142
11.3.1. Continuation of payment in case of illness	142
11.3.2. Maternity/paternity leave	143
11.4. Formal position of self-employed in social protection	143
11.4.1. Unemployment benefit	143
11.4.2. Pensions	143
11.4.3. Health cost insurance	143
11.5. Miscellaneous	143
11.6. Conclusions	144
12. Family work	147
12.1. Definitions of family work	147
12.2. Family work in the EU	147
12.3. Formal position of family workers in labour regulation	149
12.3.1. Dismissal protection	149
12.3.2. Paid holidays	149
12.3.3. Continuation of payment in case of illness	149

12.3.4. Maternity/paternity leave	149
12.3.5 Health and safety	150
12.3.6. Working hours	150
12.4. Formal position of family workers in social protection	150
12.4.1. Unemployment benefit	150
12.4.2. Pensions	150
12.4.3. Health cost insurance	150
12.5. Conclusions	151
13. Final remarks	155
Appendix 1: List of references	159
Appendix 2: List of participating experts	161

Executive summary

Atypical work in the EU - main conclusions

In this report insight is provided regarding the nature and extent of discrimination against atypical workers in the EU Member States. We show the numbers of the different kinds of atypical workers, both male and female, for the different Member States of the EU. Their formal position is analysed vis-a-vis the position of the 'typical' employee, and differences between these positions are assessed, both in terms of the nature of these differences and the extent to which these differences may result in (indirect) discrimination against women.

Atypical workers in the EU are less protected and have less rights to benefits. The nature of these differences in formal positions, such as unemployment benefit, paid sickness leave, pensions and health insurance is mainly a matter of thresholds before an atypical worker is entitled to rights or benefits and exclusion from rights and benefits.

Because women are over-represented in part-time work, temporary work, family work and, to a lesser extent, homework they are more affected by those forms of atypical work than males. However, it should be emphasised that discrimination against atypical workers includes more than those caught in statistics. The discrimination is also the result of more than the atypical workers' formal position alone. Therefore, the discrimination concluded can only be referred to as the tip of a possible iceberg.

About this study

The aim of the study is to provide insight into the nature and extent of discrimination against atypical workers in the EU Member States. From this overall goal three sub-goals have been distinguished:

- to provide insight into the different types of atypical work in the EU Member States;
- to provide insight into the formal positions in terms of labour and social protection regulations; and
- to provide insight into the (effects of the) differences between these positions and the positions of full-time employees.

We have focused our study on a limited number of relatively well understood forms of atypical work:

- part-time work;
- temporary (or fixed term) work;
- seasonal work;
- casual work;
- homework;
- telework;
- self-employment;
- family work.

These types of atypical work have not been defined in the study. Instead we have circumscribed:

- the type of labour relation or work arrangement the term refers to, and

- national definitions in the relevant regulations that are also partly responsible for the nature of the distinction that is made between different labour types when it comes to their formal positions.

It is accepted that the formal position with regard to labour and social protection regulation is mainly constituted by two sources: legal regulation (labour law and social security law) and collective agreements (more or less voluntary agreements between the social partners). Other constituting factors (such as jurisprudence) are not accounted for in the comparison.

Regarding these fields where we have examined differences in treatment, we have selected the issues **as** indicated in the table below.

Table 1.1.: Focal issues for the study of discrimination

<i>Labour regulation</i>	<i>Social protection regulation</i>
<ul style="list-style-type: none"> • dismissal protection • termination payments • salaries • paid holidays • continuation of payment in case of illness • maternity/paternity leave • training and education • health and safety • working hours 	<ul style="list-style-type: none"> • unemployment benefit • pensions • health costs insurance

We have regarded distinctions and differences **as** discrimination, assuming that the only reason for the distinction lies in the nature of the working arrangement itself (which is also in line with the position taken by the European Parliament itself)¹. A special focus in the research project will be the position of women, i.e. the number and percentage of women that are affected by such discrimination.

Next, given that we will focus on 'distinction' and 'differences in treatment' rather than on 'discrimination', we have defined a number of ways in which 'difference in treatment' may occur:

- Proportional or 'pro rata' differences (e.g. a lesser wage which is proportional to the lesser amount of hours worked, in the case of part-time work (this is in principle not discriminatory)).
- Threshold differences (e.g. unemployment benefit only after having worked for a certain number of weeks).
- "False" equality (e.g. equal (i.e. not further specified) rights to a safe workplace is an irrelevant privilege for a home- or teleworker).

¹ The European Parliament considers only one type of atypical work **as** exempt from the non-discrimination principle: working on the basis of a short running, temporary and one-off contract (Legal and contractual limitations to working time in the European Union, European Foundation for the Improvement of Living and Working Conditions, 1997, p.6).

- Exclusion from labour and social regulations.

For as far **as** possible we have analysed, categorised and described differences in treatment according to these categories.

The research project had to contend with a large amount of variables: number of Member States, forms of atypical work, potential discrimination issues, but also different sectors, often more than one collective agreement per sector. For that reason we have used an approach in which we have combined a secondary analysis of existing studies and overviews with consultation rounds with both national and overall subject matter experts.

The research approach we have used therefore contained three elements:

- ***collection of material (fact finding)***

Main sources are comparative and analytical reports, statistical sources and overviews, individual and national reports.

- ***national checks by national experts***

National experts have been asked to check and add relevant information gathered from their respective countries (see appendix 2 for an overview of these national correspondents).

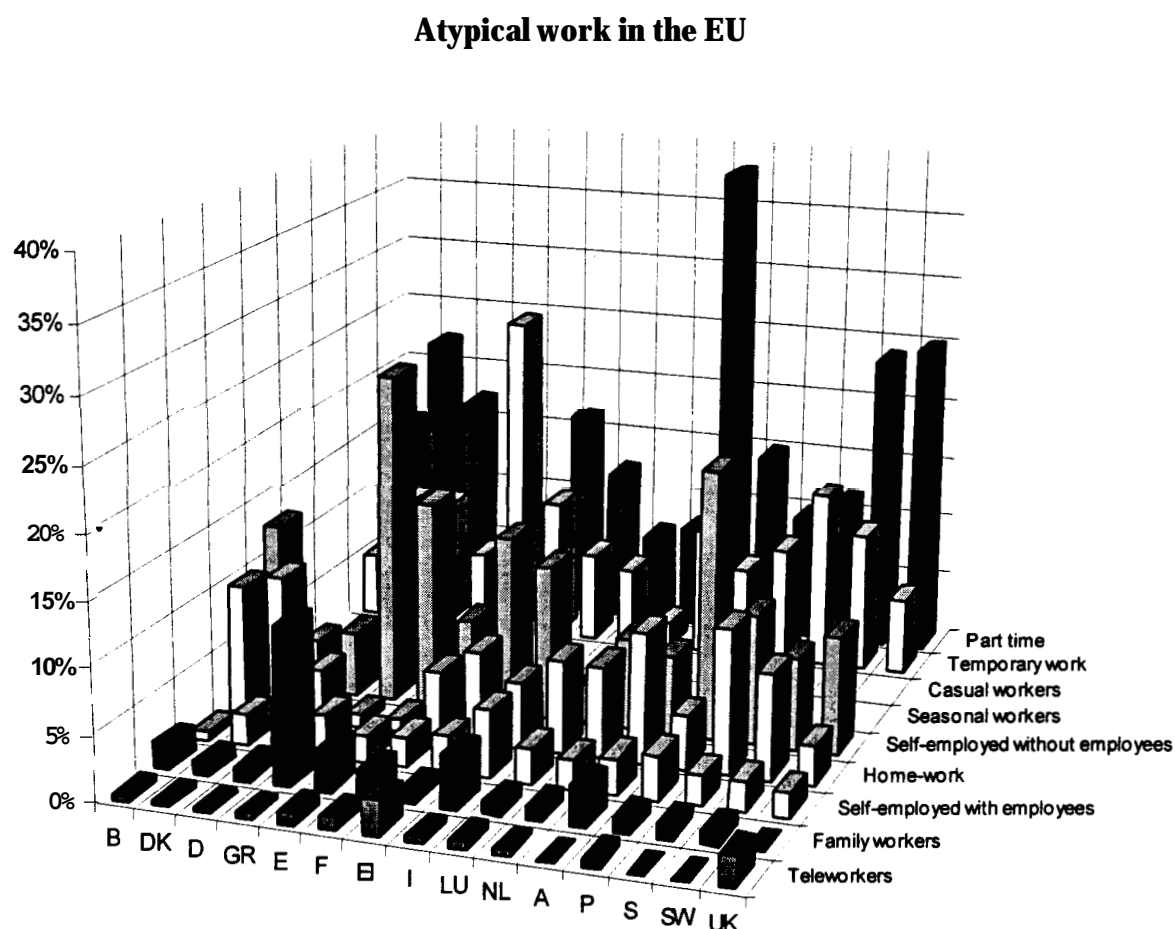
- ***overall comparison and assessment by board of experts***

A board of experts has helped to guide and direct the fact finding and to draw the main conclusions, partly from the gathered material and partly from their own knowledge (see appendix 2 for an overview of the members of this board).

Atypical work in the EU

To envisage the magnitude of atypical work we present the relative employment figures of seven different forms of atypical work for all Member States (see Figure 1).

Figure 1: 'Sky line' of atypical work (*source: Eurostat, 1998*)



Part-time work

A statutory definition of part-time work is non-existent in Belgium, Denmark, the Netherlands, Portugal, Finland, Sweden and the UK. Since there is no (legal) difference between part-time and full-time workers (and provided such legal difference has not been created on a case by case basis, like it seems to be the case in the UK), part-time workers are entitled to the same statutory rights as full-time workers in these countries. Most statutory employment rights are now dependent on a part-timer being able to establish the fact that they have the status of employee, working under a contract of employment.

Below is presented the labour market share of (male and female) people who perform part-time work, as a percentage of the labour market.

Figure 2: Labour market share of males and females who perform part-time work, as a percentage of total employment (source: Eurostat, 1998)

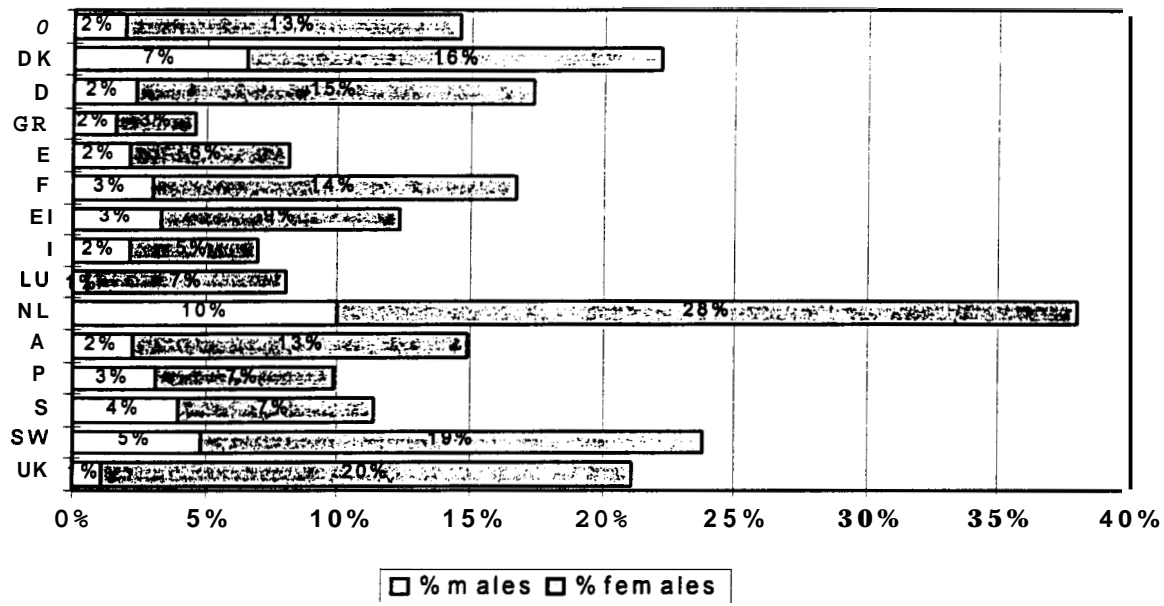
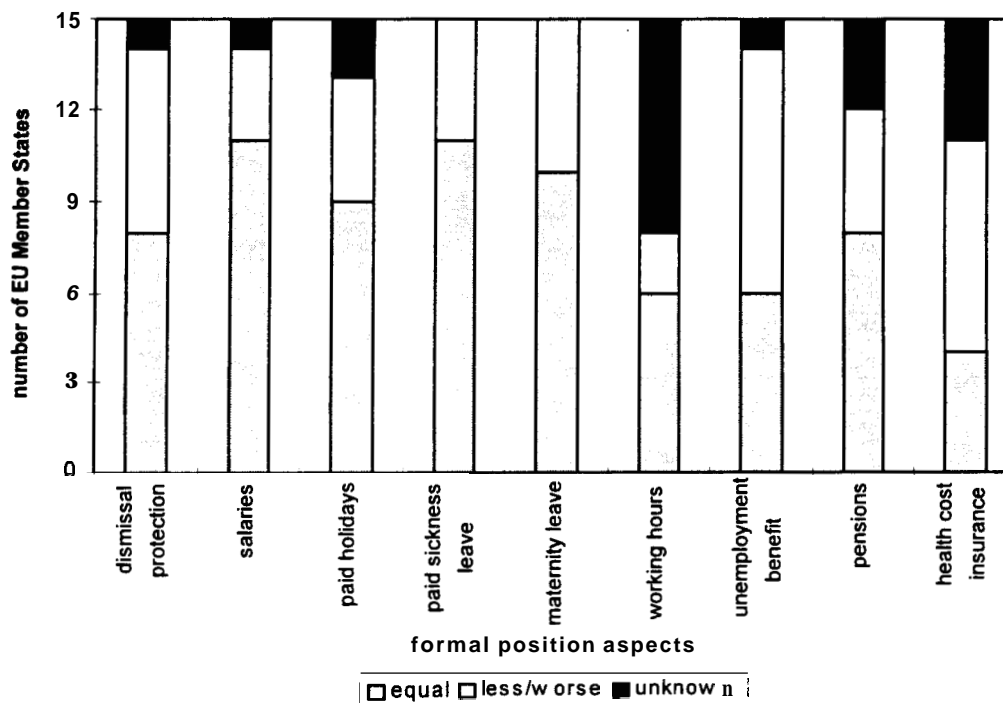


Figure 3 presents a brief overview of the formal position of part-time workers in the EU. It shows the number of Member States in which the formal position is the same as, or inferior of company-based employees (and the number for which it is unknown).

Figure 3: The formal position of part-time workers in the EU



Part-time workers are confronted with a large number of threshold conditions in the different Member States before they enjoy protection from labour and social regulations. This is particularly

the case for dismissal protection, paid holidays, continuation of payment in case of illness, maternity leave, unemployment benefit and health cost insurance (see Figure 2). The issue of working hours can hardly be a matter of discrimination against part-time workers since working time is in itself the distinguishing criterion between full-time and part-time work. But (forced) over-work on the other hand can be an infringement on the private life of the part-time worker. Given the fact that these distinctions are not functionally relevant for the nature of their (part-time) work and the fact that most part-time work in the EU is carried out by women, the current situation can be seen as discriminating against women.

Temporary work

There are close connections between temporary work, work on fixed term contracts and casual work (and to seasonal work for that matter) both in terms of definitions and in the way these types of work are regulated. The terms have different meanings in different Member States up to the point where States refer to different things with the same words and to the same thing with different words.

The next page presents the labour market share of both male and female people, who perform temporary work, as a percentage of the labour market.

Figure 4: The labour market share of males and females who perform temporary work (as a percentage of total employment) (source: Eurostat, 1998)

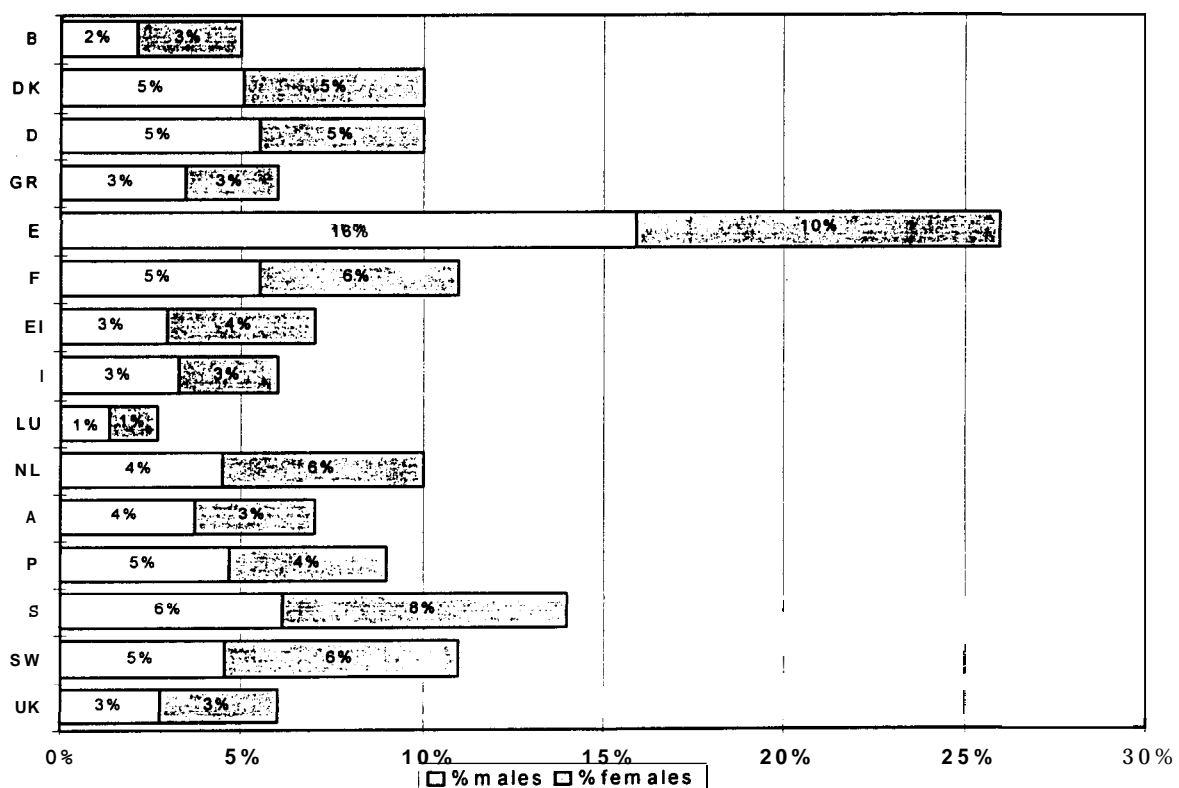
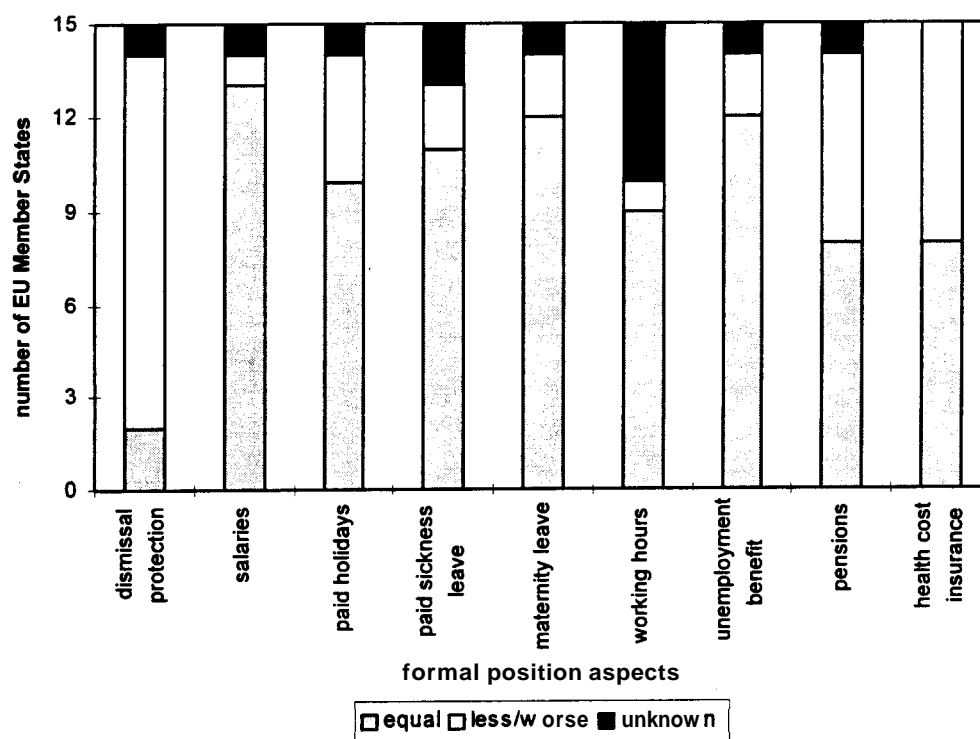


Figure 5 presents a brief overview of the formal position of temporary workers in the EU. It shows the number of Member States in which their formal position is the same as, and the number in which it is inferior, than the formal position of company-based employees.

Figure 5: The formal position of temporary workers in the EU

Temporary workers are faced with less legally guaranteed protection from labour law and social protection in countries where there is no regulation on fixed term contracts. Depending on collective agreements, fixed term contract workers may still find themselves enjoying the same rights as permanent workers. In many countries temporary workers are protected from 'illegal' temporary contracts through mechanisms by which these contracts are automatically converted into a permanent contract. Temporary work is not a particularly female phenomenon.

With respect to dismissal protection, the position of temporary workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle already part of the working contract. A general thesis may be that the attractiveness of fixed term contracts for employers is in itself in the lack of protection against dismissal vis-a-vis the sometimes strict protection of employees on a non-fixed term contract.

Most differences between Member States stem from different national regularities and collective agreements on a national basis. Fixed-term contracts are regulated in most countries in terms of the circumstances in which they may be used and the frequency of renewal.

Examining the total of labour market shares of temporary workers of the European Member States (see Figure 3), we see that only in Spain (26%) and to a lesser extent in Finland (14%) do temporary workers constitute a considerable part of total employment. In the bulk of Member States the share of temporary work is limited to 10%. Females are over represented but not to such a large extent that an indirect discriminatory effect can be expected.

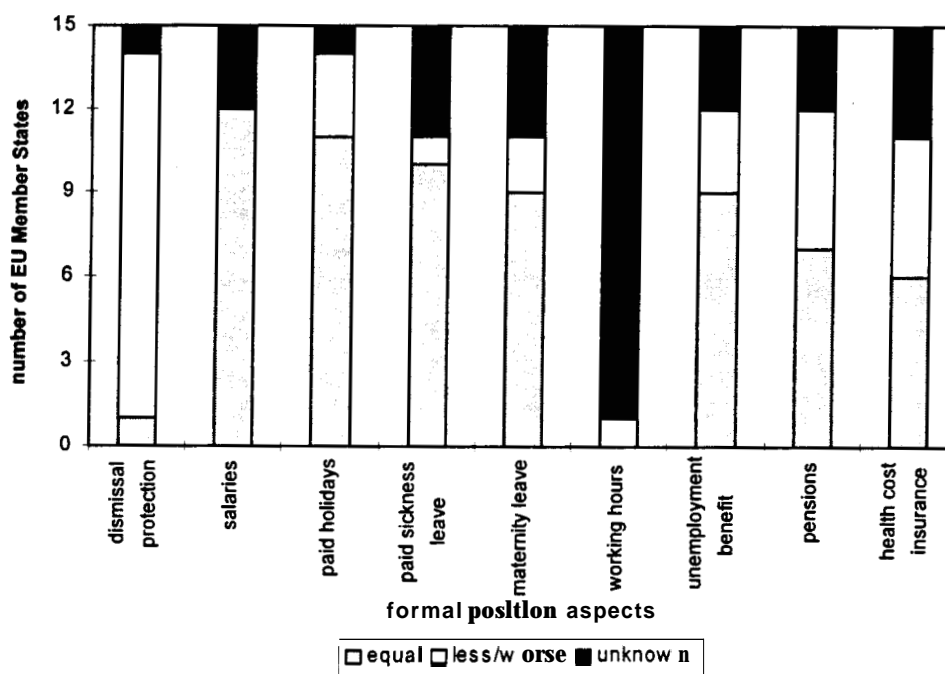
Seasonal work

Seasonal work is usually defined as '*work performed to meet an enterprise's 'discontinuous' labour requirements*'. Distinct from temporary work or casual work, these short-term requirements are not

due to unforeseeable reasons, nor do they occur on only isolated occasions; they derive from the actual pattern of the enterprise's activity and recur regularly at certain periods in the year (seasons). The worker is employed under a self-contained fixed-term contract which is refreshed for each period.

Figure 6 presents a brief overview of the formal position of seasonal workers in the EU. It shows the number of Member States in which the formal position is the same as, or inferior of company-based employees and the number for which it is unknown.

Figure 6: The formal position of seasonal workers in the EU



The same differences in treatment which occur in the comparison between temporary workers and "typical employees" occur with seasonal workers. This is the case with regard to paid holidays, the continuation of payment in case of sickness, maternity leave, unemployment benefit, pensions and the right to benefits in the event of illness. With respect to dismissal protection the position of seasonal workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle already part of the working contract. A general thesis may be that the attractiveness of fixed term contracts for employers is in itself in the lack of protection against dismissal vis-a-vis the intermittent strict protection of employees on a non-fixed term contract. However, in some Member States the employer has the obligation to rehire staff next season.

Eurostat cannot provide us with statistical figures concerning the total of labour market shares of seasonal workers of the European Union Member States. However it is to be expected that seasonal workers make up for a small part of the total amount of temporary workers. In the bulk of Member States, the share of temporary work is limited to 10%, so the percentage of seasonal work is likely to be much lower.

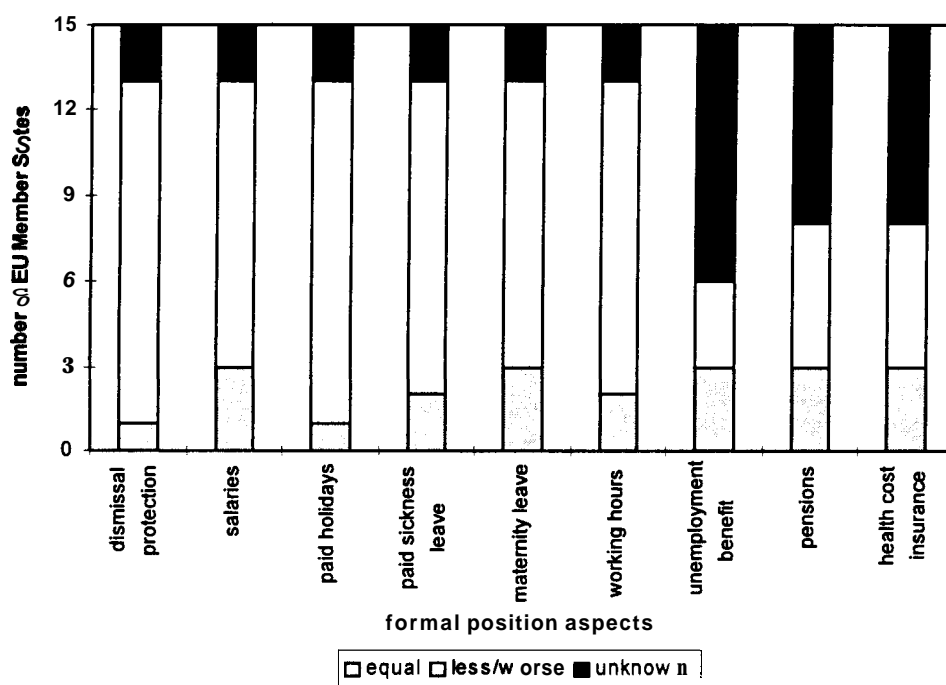
Casual work

Generally speaking, the word 'temporary work' tends to be used more frequently for a more stable and regulated part of the labour market whereas 'casual work' generally refers to a less regulated,

sometimes even partly illegal, type of work where the employment is not stable and continuous. Casual work can be defined in more or less a similar way: "work which is irregular or intermittent with no expectation of continuous employment". This is a working definition; but it cannot be found in law.

Figure 7 presents a brief overview of the formal position of casual workers in the EU. It shows the number of Member States in which the formal position is the same as, or inferior of company-based employees.

Figure 7: The formal position of casual workers in the EU



The lack of job security, the lower skill levels and the fact that casual workers have greater difficulty in organising themselves as a group mean that their terms and conditions of employment are usually inferior of those of permanent employees and that they are in most cases not covered by labour legislation and collective agreements.

In several Member States the requirements for payment of an old-age pension and health cost insurance are a minimum period of insurance and a minimum number of contributions. The fact that casual employees can have periods without occupational activity (quite apart from the low wage they may receive) can have an effect on the level of their pensions. In some Member States casual workers have the opportunity to insure themselves voluntarily with private insurance companies.

Homework

Legislation on homework varies from country to country in the European Union. Some countries have a special law for homeworkers which provides some protection. In other countries laws exist (mainly intended to prevent the rise of homework as a type of social dumping) but are not known to be effective. Other countries have little legislation and homeworkers are only covered by the employment and social security protection, if first proven that they have employee status. Otherwise they are considered to be self-employed.

Below we present the labour market share of (male and female) people who perform homework, as a percentage of the labour market. Figure 8 concerns the statistical category of people who usually perform homework, Figure 9 concerns the category of people who sometimes perform homework.

Figure 8: Labour market share of (male and female) people who usually perform homework, as a percentage of the labour market, 1997 (*source: Eurostat*)

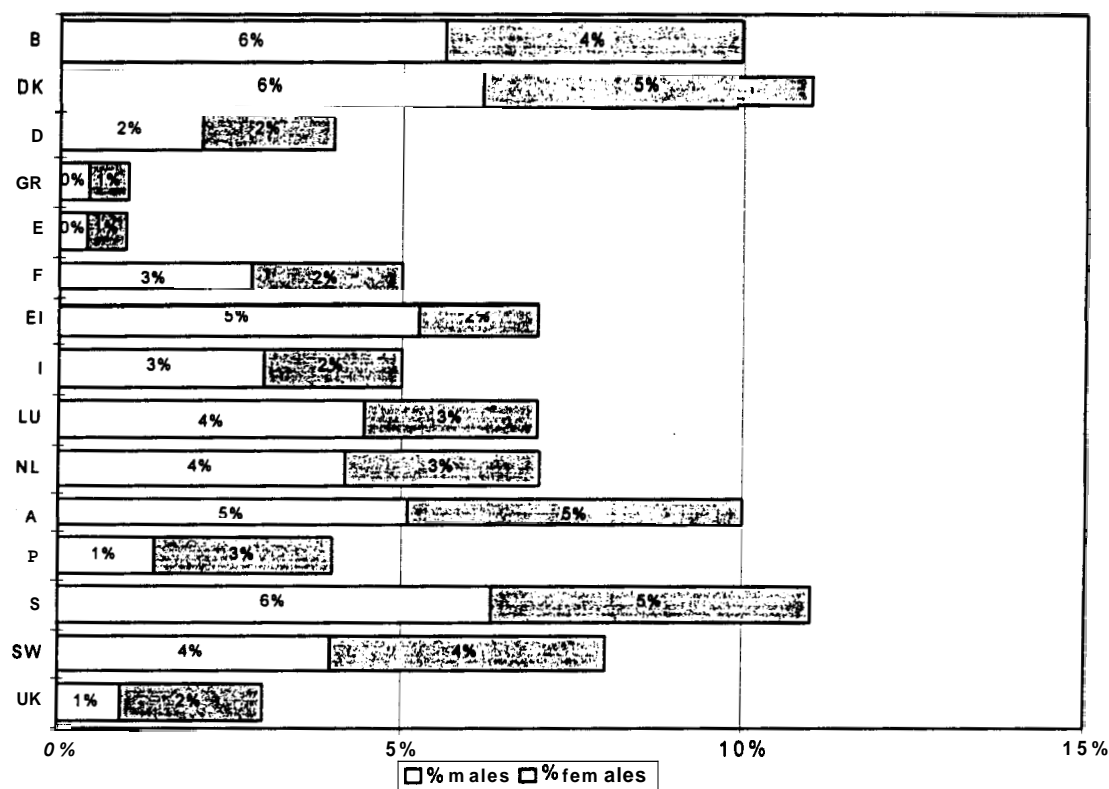


Figure 9: Labour market share of (male and female) people who sometimes perform homework, as a percentage of the labour market, 1997 (source: Eurostat)

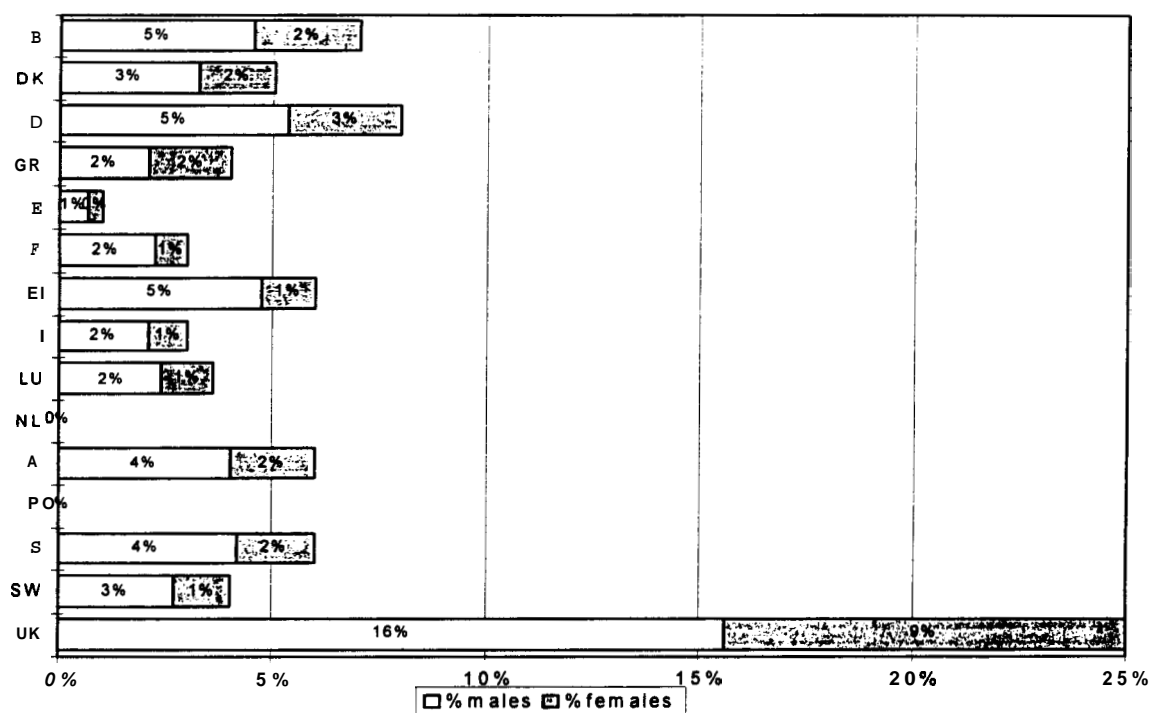
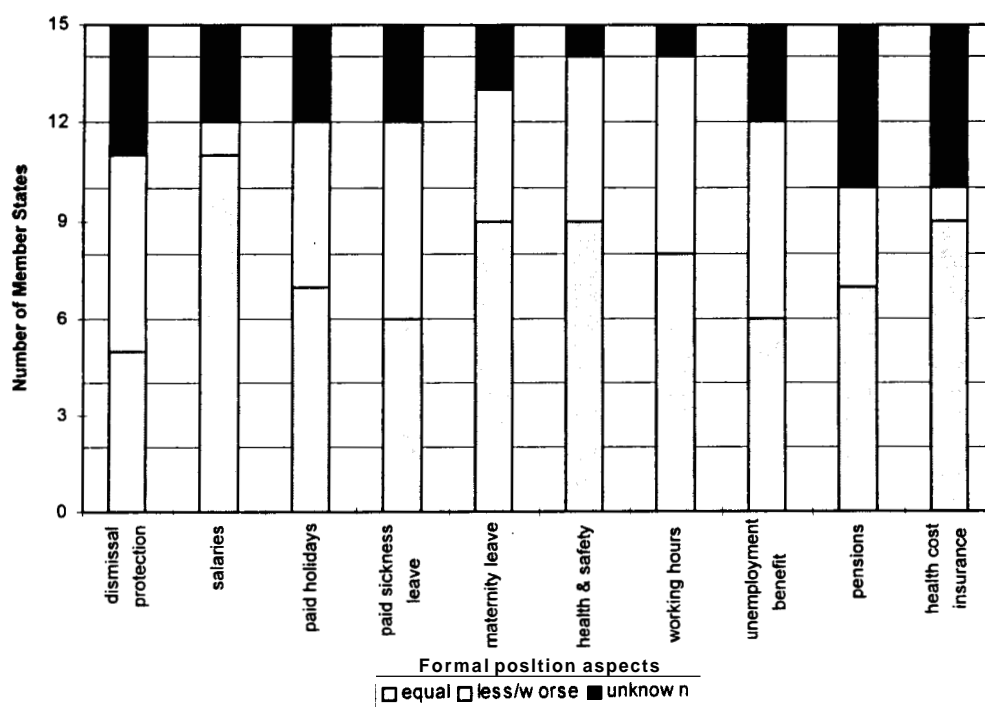


Figure 10 presents a brief overview of the formal position of homeworkers in the EU. It shows the number of Member States in which the formal position is the same as, or inferior of company-based employees.

Figure 10: The formal position of homeworkers in the EU



Homeworkers in many Member States either face thresholds to enjoy certain rights from labour law or social protection or they face the requirement to prove that they are in fact employees with a work contract. If they fail to do so they are excluded from these rights. This is particularly the case with regard to dismissal protection, paid holidays, paid sickness leave, working hours and unemployment benefit. It is not exactly clear to what extent these limitations are functionally relevant, nor to what extent it is the particular female parts of the labour force who face non-functional limitations. Thresholds are not the main cause of the more inferior position, however. More often homeworkers are simply excluded from certain rights.

According to Eurostat figures (see Figures 7 and S) the division between male and female homeworkers is almost 50/50. Nevertheless, the composition of homeworkers may vary considerably as to the type of work that they do. Piece rate (female) homeworkers should not be seen as the same as professional homeworkers (or even most of the times) work at home. Against some of these groups there may well be serious (indirect) discrimination.

Telework

Telework is not a legal category. In some countries teleworkers are considered to be a special type of homeworker. In many Member States, however, the ICT connection to a specific employer makes it quite easy - easier than with other types of homeworkers - to **look** at teleworkers as employees. Teleworkers who work for more than one commissioning organisation and who do not work in a clear hierarchical mode are considered to be self-employed.

In Figure 11 we present an estimate of the number of teleworkers in Europe.

Figure 11: Estimate of the number of teleworkers in Europe, 1994 (* 1000)
(source: Korte, 1996; correspondent information on Finland, 1998)

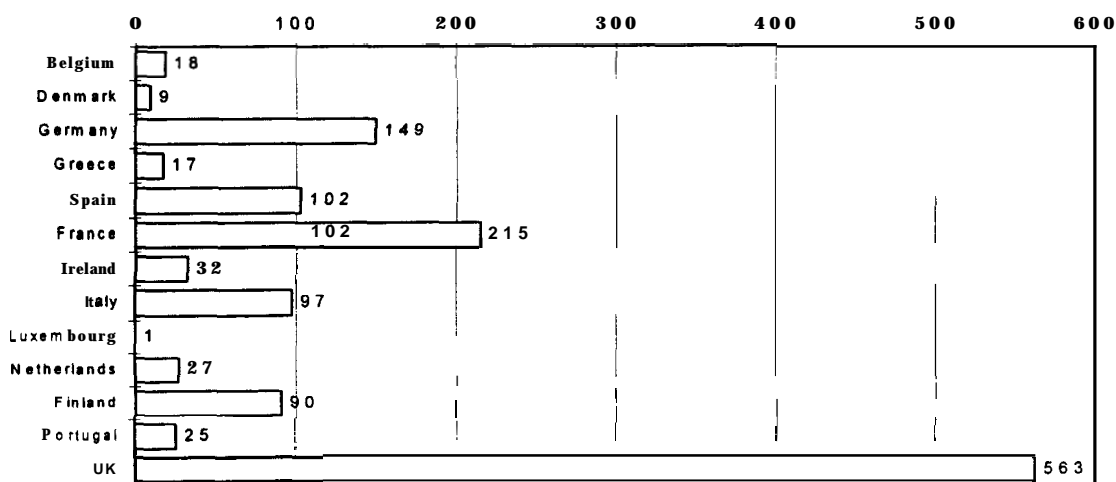
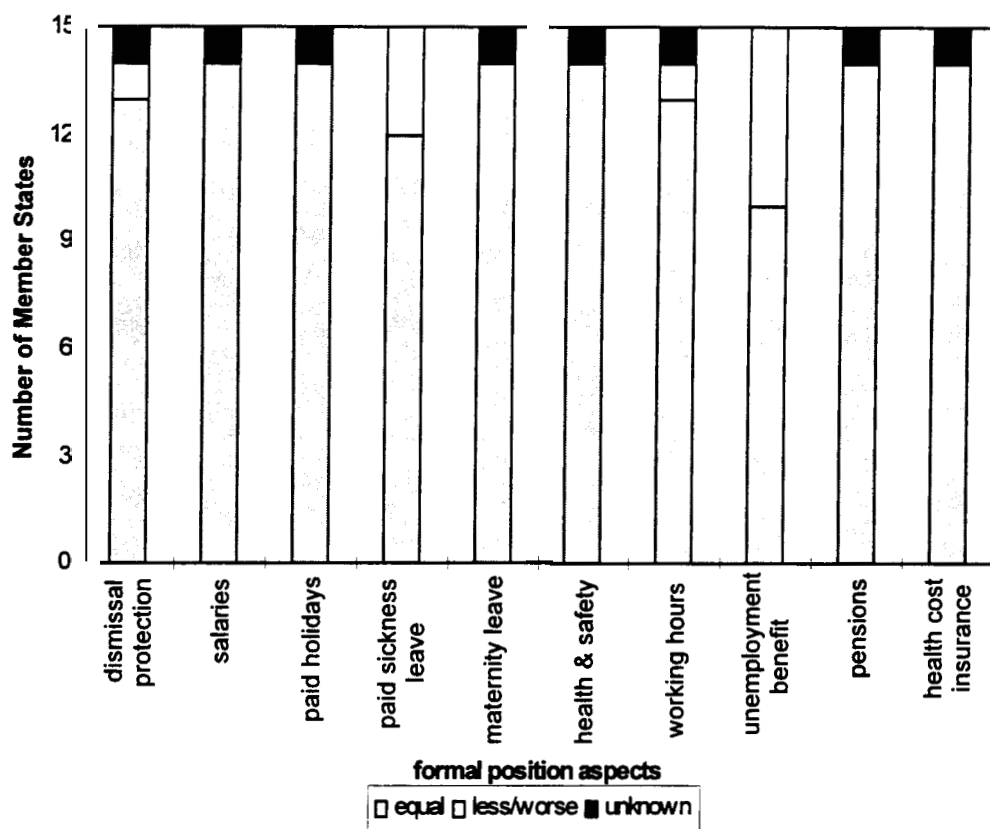


Figure 12 presents a brief overview of the formal position of 'teleworkers as employees' in the EU. It shows the number of Member States in which the formal position is the same as, or inferior of company-based employees.

Figure 12: Formal position of teleworkers as employees in the EU

There is only a small difference between the formal position of teleworkers and the formal position of company-based employees, provided these teleworkers can prove they are employees. There are, however, a number of thresholds in labour and social protection regulation in some Member States that limit the access of teleworking employees to these rights. For example, in some Member States unemployment benefit is limited to employees who have been working for a certain period or who have paid contributions for a certain period. Depending on the nature of their employment and pay conditions it may be difficult for teleworking employees to meet these requirements.

Certain aspects of the formal position of employees, like dismissal protection or salaries, are not relevant for teleworkers who are *self-employed*. On some other aspects which are still relevant, self-employed teleworkers have considerably less rights than employees. Self-employed teleworkers are excluded from unemployment benefits in many Member States. Self-employed teleworkers have the same position as other types of self-employed - which is the category of atypical workers we are going to deal with next, below.

Self-employment

The position of the self-employed is legally recognised in all Member States. However, not all individuals who consider themselves self-employed are accepted as such by the State. Many people can be defined as 'phantom self-employed' (people who are in a quite dependent position from a commissioning organisation, often their former employer).

Below we present the labour market share of (male and female) people who are self-employed, as a percentage of the labour market. Figure 13 concerns people who are self-employed without employees, Figure 14 concerns people who are self-employed with employees.

Figure 13: Labour market share of (male and female) self-employed without employees, as a percentage of the labour market, **1997** (source: Eurostat)

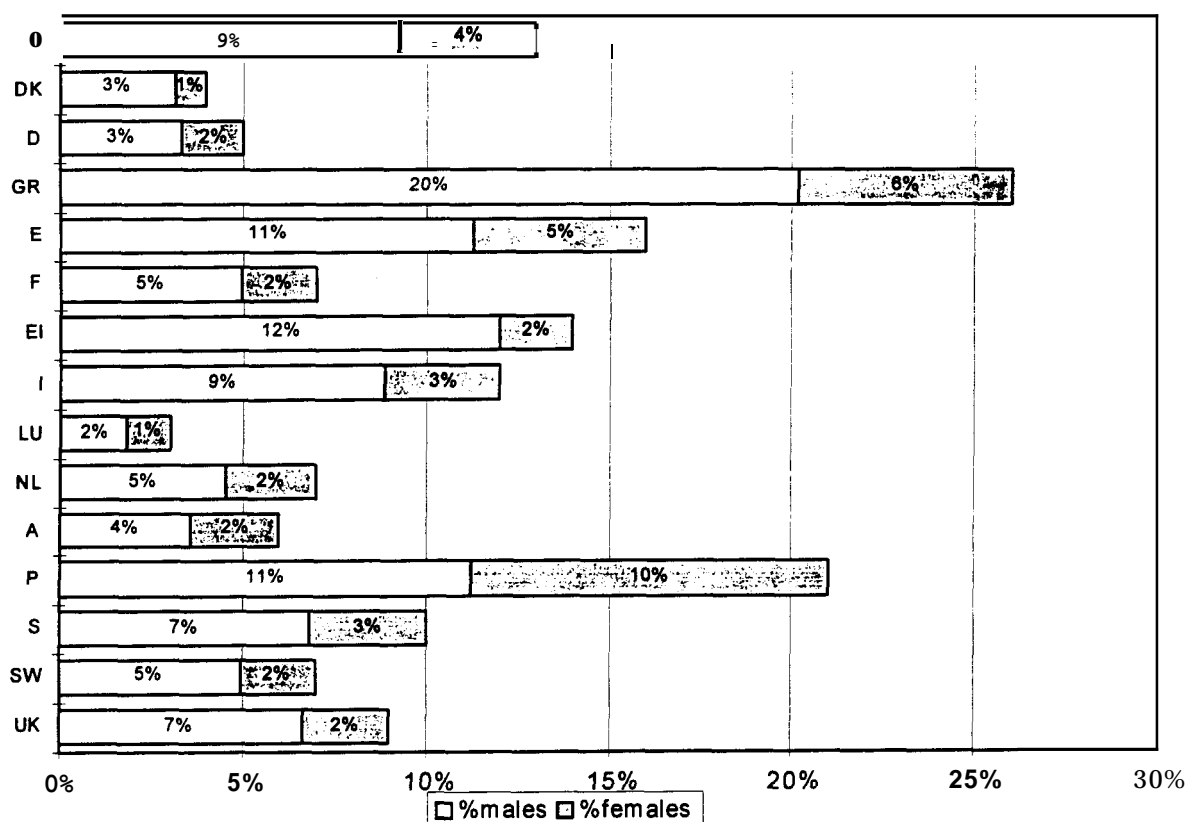


Figure 14: Labour market share of (male and female) self-employed with employees (as a percentage of the labour market), 1997 (source: Eurostat)

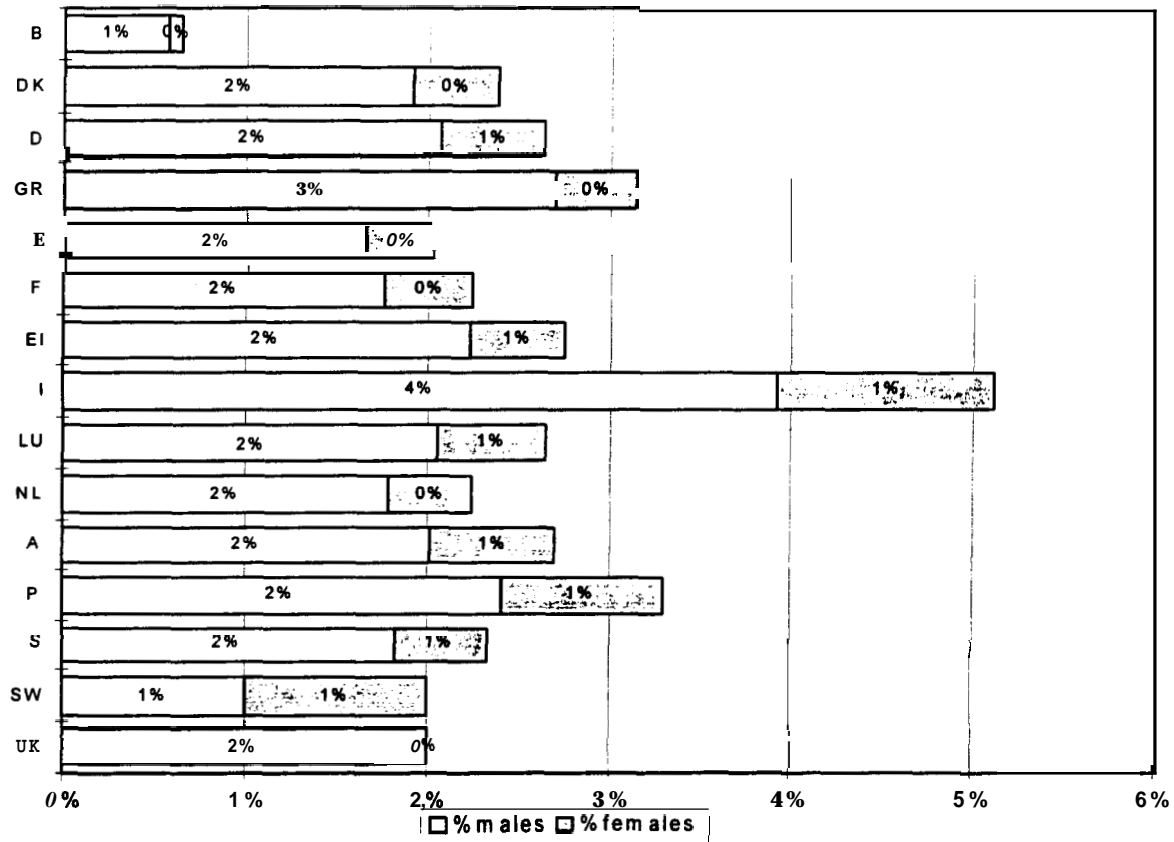
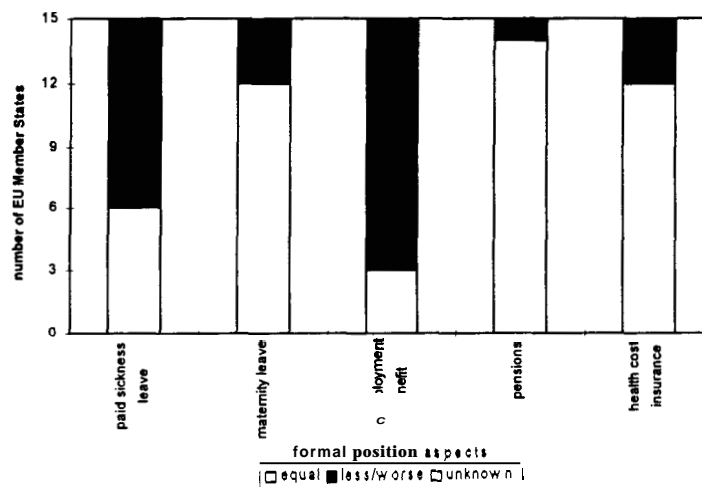


Figure 15 presents a brief overview of the formal position of self-employed in the EU. It shows the number of Member States in which their formal position is the same as, or inferior of company-based employees.

Figure 15: The formal position of self-employed workers in the EU



Certain aspects of the formal position of employees, such as dismissal protection or salaries, are not relevant for the self-employed. Regarding other aspects which are still relevant, the self-employed have considerably less rights than employees. In particular, the self-employed are excluded from unemployment benefits in many Member States. **Only** in some countries is unemployment benefit also open for the self-employed, In several countries the self-employed are also excluded from paid

sickness leave. In other countries persons who perform professional activities for remuneration by someone else are entitled to sick pay, irrespective of whether they are employees or self-employed. In some other countries these rights are limited, though there is no full exclusion of the self-employed. With regard to maternity leave, the self-employed are only excluded in Ireland.

In no Member State are the self-employed excluded from pensions and health cost insurance rights. In some countries cover is provided on a voluntary basis. In most other Member States, however the self-employed enjoy the same pension and health cost insurance rights as employees.

In many Member States special programmes are in operation which aim to help the self-employed to start their own business, to encourage them to employ personnel and to assist them in several specific needs (capital needs, training and education, technical assistance). Although these programmes can be very beneficial to the self-employed's chances to survive economically and to improve his or her business, they do not replace or substitute the labour and social protection legislation from which the self-employed are excluded.

In all Member States more males than females are self-employed (both in absolute and in relative terms; see Figures 13 and **14**). Consequently, no direct or indirect discrimination against women occurs **as** a result the formal position of the self-employed.

Family work

Most EU Member States do not recognise family workers **as** a specific legal category. Individuals who perform family work are either seen **as** employees (in the case of remuneration, work contract and sufficient distance in family terms from the employer) or they are excluded from rights stemming from labour and social protection and have no legal status at all. Only in Belgium does there exist a specific legal category of 'assistant to the self-employed' (which is also excluded from most labour and social protection rights and is treated as self-employed for some other rights).

The next page presents the labour market share of (male and female) people who are family workers, **as** a percentage of the labour market.

Figure 16: Labour market share of (male and female) family workers, as a percentage of the labour market, 1997 (source: Eurostat, 1998)

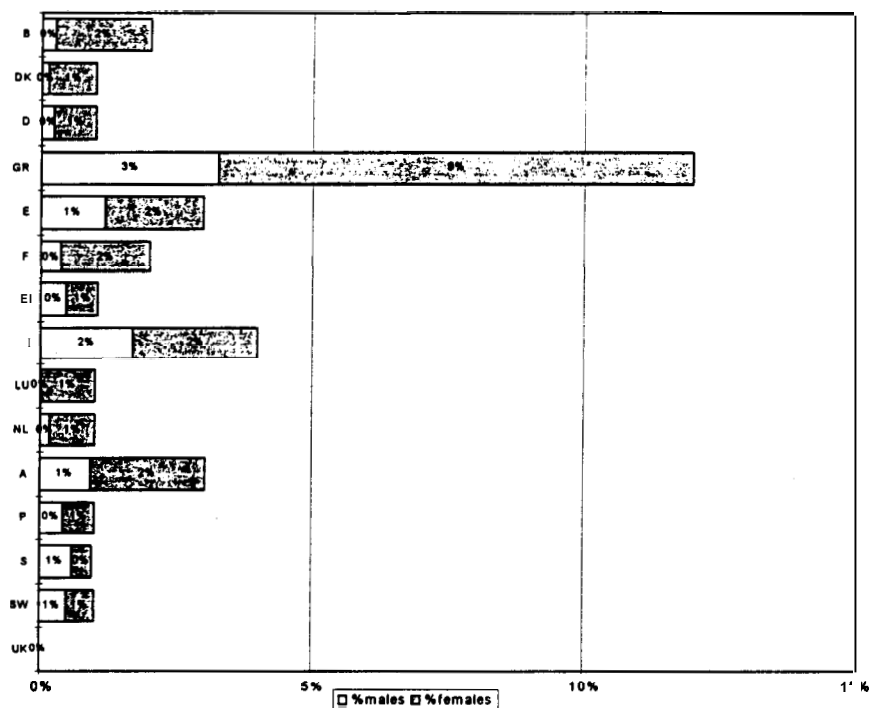
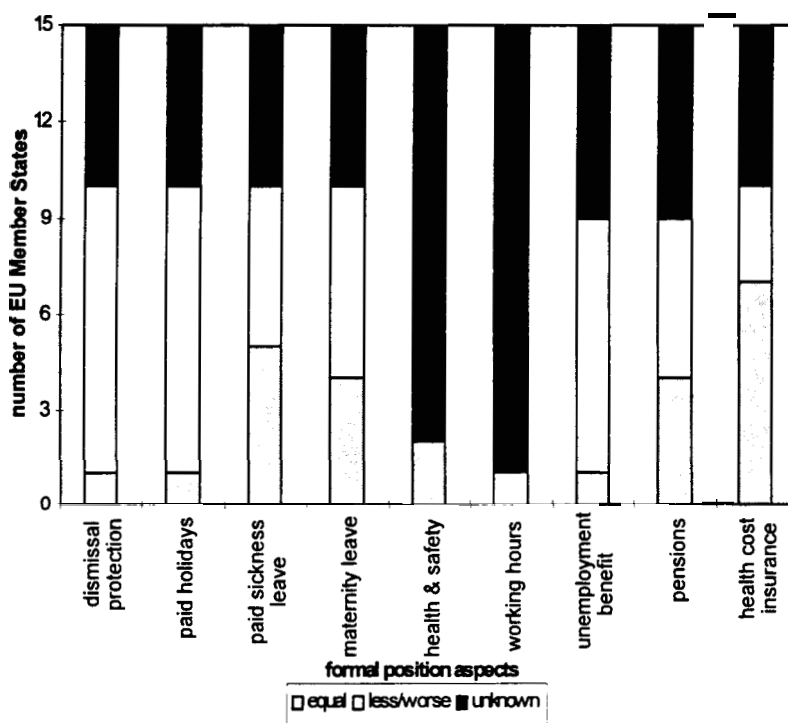


Figure 17 presents a brief overview of the formal position of family workers in the EU. It shows the number of Member States in which their formal position is the same as, or inferior of company-based employees.

Figure 17: The formal position of family work in the EU



In many Member States family workers enjoy far less protection than wage-earning employees. In many Member States family workers are basically excluded from most labour and social protection legislation. Dismissal protection, paid holidays and unemployment benefit are not available for family workers in most Member States. In some Member States family workers are also excluded from maternity leave, paid sickness leave, pensions and health cost insurance.

In some Member States and on some aspects the level of protection depends on the kind of family relation the worker holds with the employer. **So**, family workers do enjoy dismissal protection, the right to paid holidays, to paid sickness leave and to maternity leave, except when they are family members who work in private agricultural companies and who share a household with the employer.

Although there are differences between the different EU Member States in the way they provide protection to family workers, these differences are hardly a matter of principle. They **are** mostly the result of the smaller or wider circles that are drawn around a core family member (the employer); those who are within the closer family circle are excluded or can benefit from the protection of the core family member.

When we look at these findings in the light of the fact that in all Member States most of the family workers are female (see Figure 15) it is clear that the poor protection of family workers in labour and social protection regulation mainly affects women. In the particular case of family work this poor protection intensifies the wife's economically dependent position from her husband.

Final remarks

As can be concluded from this report there is a large group of (in some cases especially female) workers who are either, by their **own** wish or forced by circumstances, performing 'atypical' work and hence have trouble to prove their employee-status. They also face serious limitations to their level of social protection without any functional relevance and sometimes even while they are obliged to contribute to the financing of this protection. In some of these cases we can speak of a violation of basic human rights (rights on non-discrimination). When there is a violation of basic human rights, effective action from the legislative side is called for. This role can and should be played at a national level by the governments of the different Member States. There are, however, different traditions in the regulation of labour issues in the different EU Member States with some Member States giving a more important role to collective agreements than others. One could argue, however, that the issue of (potential) discrimination requires primarily legally binding regulation because of the human rights involved. This would be the basis to argue **for** national legislation and/or EU directives.

As to the content of such legislation or directives, primarily a critical re-examination of existing laws and regulations is required regarding: a) underlying assumptions on the permanency and company-based character of the work and on the division of roles between employer and employee (compare for example many health & safety regulations - including the European framework directive - which only address employers and employees, and hence do not concern the self-employed); b) thresholds that may have unintended and indirect discriminatory effects.

A serious question arises as to whether attempts to create more security for atypical workers are prone to produce unintended effects. In Chapter 2 of this report the example of the *Flexibiliteit en Zekerheid* Act in the Netherlands is given which led to further segmentation of the atypical labour force. **Also** given the diversity of atypical workers and the plurality of motives that are at play, there are serious risks that in many cases substantive regulations will cause such side-effects. Well

thought out legislation based on sound analysis can surely contribute to the position of atypical workers, yet an open eye for side-effects is required. Moreover, the need for tailor-made solutions and flexible adaptation to specific situations on the labour market may also call for other than standard substantive rules which entail uniform operational details. One can also think of framework agreements which specify substantive standards and which also involve *procedural* rules as regards the way in which employer and employee (or employee representatives) can make additional agreements in their local situation. This type of regulation may be more responsive to the local needs and requirements of workers and employers. Additional measures to address a representation gap for atypical workers may, however, be required.

This report has only been able to point at a possible tip of the iceberg where the discrimination of atypical workers is concerned. Meanwhile, however, the conclusion that formal regulation in itself indirectly discriminates against a substantial part of the labour force of the European Union, calls for immediate action by all parties concerned within Europe.

1. Introduction

1.1. Background

Atypical work is a type of work that is performed by what is often referred to as the flexible workforce. This is a large and growing group of workers, most of whom are women (over **80%** of the flexible workforce). Examples of atypical workers include part-timers (**21** million people in the EU), those on fixed term contracts (**14** million), homeworkers (**10** million), or those in a large number of other arrangements, such as seasonal work, casual work, telework, family work, or self-employment. The main common characteristic of all such groups is that their working arrangements differ from those of the 'typical employee' (an imaginary person working full-time on an indefinite contract).

Atypical work can provide considerable economic and social benefits. It opens up the labour market to people for whom full-time employment is unfeasible or unattractive. It also provides more flexibility, mobility and dynamism to the labour market, which in turn may contribute to an innovative culture, improved economic performance and efficiency. However, since many labour and social protection laws and institutions are still based on the profile of the imaginary 'typical worker', atypical workers often find that regulations and criteria are - for no good reason - less favourable for them, and/or not tailored to their situations. As a consequence, atypical work often does not *turn* out to be an economic and social opportunity, but a position in which reduced working hours are combined with inferior working conditions and lower pay; a fate which - as was already stated - mostly concerns women (although women have a stronger presence in some types of atypical work (e.g. part-time work) than in others (e.g. self-employment)).

The disadvantaged position of atypical workers in the EU has been on the political agenda for a number of years. In the early 1990s, the European Parliament issued a resolution seeking the abolition of all forms of discrimination against atypical workers. The European Foundation for the improvement of Living and Working Conditions issued a communication to the same effect. The European Commission accepted the same general purpose, although the provisions of the Maastricht and Amsterdam Treaties left the issue to negotiations between the social partners.

Such an agreement was reached in June **1997**. It was severely criticised by several commissions of the **European** Parliament. Points of criticism concerned the time it took to reach the agreement (20 months), the fact that it only dealt with part-time work, and that it allowed for 'objective grounds' to justify differences in treatment (read: discrimination) between full-time and part-time workers. The European Commission was urged to undertake further action to reach an effective ban on all discrimination against atypical workers in the EU.

It is because the European Parliament is not content to leave the matter where it is, and is considering further action, that it has commissioned this study to provide an overview of the position and the extent of discrimination against atypical workers in the EU.

1.2. Purpose of the study

Given the background described above, it is clear which purpose the study must serve for the European Parliament.

It is the aim of the study to provide insights into the nature and extent of discrimination against atypical workers in the EU Member States.

Within this overall goal three elements can be distinguished:

- to provide insights into different types of atypical work in the EU Member States;
- to provide insights into the formal positions in terms of labour and social protection regulations; and
- to provide insights into the (effects of the) differences between these positions and the positions of full-time employees.

Following from this threefold purpose, we have taken this report to serve a double function. On the one hand, it should provide an overview of the different aspects of the formal position of different kinds of atypical workers. **As** such it should perform a kind of 'reference guide' function. We have therefore chosen a certain style of reporting, that at times duplicates information (for instance in cases where the formal positions of different types of atypical workers is practically similar - e.g., with temporary workers and seasonal workers), but that allows for quick and clear consultation when seeking specific information. On the other hand, it should follow a clear path of reasoning which leads to clear conclusions, for the European Parliament to base its policy measures upon. We have therefore added the necessary background information and connecting prefaces and chapters, and presented several overviews that make clear what specific conclusions are to be drawn.

It must be stressed with some emphasis that the findings and overviews presented in this study can **only** provide a 'snapshot'. They represent the situation **as** it was found and analysed on the basis of knowledge and reports that stem from **1998** and before (closing date: **14 February 1999**). Developments that have taken place after that period may have made rendered parts of the report incomplete or obsolete.

Below we will first of all deal with the demarcation of the domain on which we will focus our exploration. **Also**, we will clarify some concepts. Next, we elaborate the research questions which will be answered in this study.

1.3. Elaboration and demarcation

A number of specific concepts need further elaboration and operationalisation in order to clarify the domain of this study. Therefore we will discuss below what is meant by:

- atypical work;
- the formal position of atypical workers;
- discrimination against (female and other) atypical workers.

Atypical work

This study deals with atypical work, a concept that refers to a wide variety of different kinds of working arrangements. This wide variety can be clustered within a certain number of unifying characteristics (atypical working times, working places or statuses). We will discuss this clustering further in the next chapter. We will **not** define atypical work and the different types of atypical work that can be distinguished (which would by nature be a negative definition: **not typical** work). Instead, we will focus our study on a limited number of relatively well understood forms of atypical work:

- part-time work;
- temporary (or fixed term) work;
- seasonal work;
- casual work;
- homework;
- telework;

- self-employment;
- family work.

These types of atypical work will not be defined in the study. Instead we will examine;

- the type of labour relation or work arrangement the term refers to, and
- look for national definitions in the relevant regulations that are also partly responsible for the nature of the distinction that is made between different labour types when it comes to their formal positions.

The formal position of atypical workers

It is taken that the formal position with regard to labour and social protection regulation is mainly constituted by two sources: legal regulation (labour law and social security law) and collective agreements (more or less voluntary agreements between the social partners). Other constituting factors (such as jurisprudence) will not be accounted for in this comparison.

A complicating factor for the analysis of the formal position of atypical workers lies in the fact that, even when we restrict our analysis to legal regulations and collective agreements, the formal position may be constituted by a very large number of collective agreements, each regulating the formal position of a specific type of atypical work for a specific sector, branch, profession or function. A comprehensive overview would therefore be hard to produce and hard to digest. Moreover, where protection against the violation of basic human rights is concerned (such as the case of anti-discrimination), it makes little sense to have this secured through collective agreements, which, by their nature, only concern certain sectors and/or certain types of workers. Basic rights are first and foremost, secured by legal regulations guaranteeing equal treatment for all. Therefore a further demarcation to this study has been made, to include collective agreements in the analysis only by means of illustration (presented in a 'miscellaneous' section in each chapter), without any pretence of completeness or comprehensive coverage.

With respect to the fields where we have examined differences in treatment, we selected the issues as indicated in the table below.

Table 1.1.: Focal issues for the study of discrimination

<i>Labour regulation</i>	<i>Social protection regulation</i>
<ul style="list-style-type: none"> • dismissal protection • termination payments • salaries • paid holidays • continuation of payment in case of illness • maternity/paternity leave • training and education • health and safety • working hours 	<ul style="list-style-type: none"> • unemployment benefit • pensions • health costs insurance

Most of these issues are regulated by law in all Member States, including certain clauses as to who is to benefit or derive rights from these legal provisions. In cases where these legal regulations are seen as incomplete, unjust or otherwise in need of further provisions, additional rights can be agreed upon in collective agreements. With respect to three of the issues mentioned above, however, legal regulations play a different role with regard to the position of atypical workers:

- **Termination payments;** These payments are mostly governed by jurisprudence, and are hardly or non-regulated by law. Therefore the comparison of conditions and level of these payments is largely out of the scope of this report.
- **Training and education;** In scarcely any case does there exist a legal regulation that specifies training and education rights for specific types of workers. As a rule such provisions are agreed upon between employee and employer representatives in collective agreements, concerning specific branches or sectors. Therefore, standard rights to training and education do not exist even for "typical" workers.
- **Health and safety;** In all Member States the same kind of basic health and safety regulation is in place (following the European Framework Directive), which provides rights and obligations for all employers and employees. Therefore in all types of atypical work where the atypical worker is an employee who works under 'supervision' of the employer (part-time, temporary, seasonal and casual workers), no specific rules apply for the atypical worker in any Member State. Only in cases where a difference in place or status of the atypical worker gives rise to special health and safety circumstances there may be additional regulations.

In cases where no specific legal 'basic rights' exist, which may be different for typical and atypical workers, we will leave these aspects of the formal position out of our analysis. Any special remarks that are possible or necessary will be made in the miscellaneous section of the respective chapters. One should note, incidentally, that the focal issues that have been selected only concern the substantial rights of workers. No attention is paid in the analysis to equal or unequal treatment of atypical workers with respect to procedural rights. We will return to this issue in our final chapter.

Discrimination against (female) atypical workers

When it comes to the assessment of discrimination, the central assessment factor is 'differences in treatment' on the basis of some criterion of distinction. The question of whether or not we look at such differences in treatment or such distinctions as legitimate or as discrimination, depends on the grounds on which the distinction is made (following the general non-discrimination principle, as it is for instance laid down in the European Treaty for Human Rights, and which *in principle* forbids all forms of discrimination). Only where the underlying grounds for the distinction are legitimate and prevalent over the non-discrimination principle are such distinctions *not* to be regarded as discrimination. Moreover, the related differences in treatment are only legitimate when they are in direct relation and clearly necessary for the above mentioned purpose.

A common distinction exists between notions of 'direct' and 'indirect' discrimination - a notion that is particularly relevant in the case of atypical work because of the fact that a large proportion of atypical workers consists of women. As a consequence, direct discrimination against atypical workers constitutes indirect discrimination against women. Though they are not treated unequally as a direct consequence of their femininity, the *effect* of discrimination against atypical workers is a (further) weakening of the position of women on the labour market.

Besides this type of indirect discrimination, other forms of indirect (or even direct) discrimination may occur, for instance as a consequence of distinctions that are based on the number of productive

years of the atypical worker (age discrimination) or the birthplace or nationality of the atypical worker (discrimination on the grounds of nationality).

As far as the distinction between atypical work and 'typical work' is concerned, as well **as** the differences in treatment that are related to this distinction, we will not embark on detailed deliberations **as** to whether such distinctions and differences are legitimate or not. Nor will we elaborate on the differences between direct and indirect discrimination. We will, on the contrary, regard any such distinctions and differences **as** discrimination, assuming that the only reason for the distinction lies in the difference of the working arrangement itself, which is also in line with the position taken by the European Parliament itself. **A** special focus in the research project will be the position of women, i.e. on the number and percentage of women that are affected by discrimination.

Next, given that we will focus on 'distinction' and 'differences in treatment', rather than on 'discrimination', we have defined a number of ways in which 'difference in treatment' can occur:

- Proportional or 'pro rata' differences (e.g. a lesser wage which is proportional to the lesser amount of hours worked, in the case of part-time work (this is in principle not discriminatory)).
- Threshold differences (e.g. unemployment benefit only after having worked for a certain number of weeks).
- "False" equality (e.g. equal (i.e. not further specified) rights to a safe workplace is an irrelevant privilege for a home- or teleworker).
- Exclusion from labour and social regulations.

We will attempt to analyse, categorise and describe, **as** profusely **as** possible, the differences in treatment according to these categories.

One final remark must be made with respect to the issue of discrimination. **An** unintended effect of our formal classification of differences in treatment, may be the impression that *equal treatment* or '*pro rata*' differences constitute a fair and just situation. Apart from the fact that we can only make such statements on formal grounds (there are more grounds that constitute the material position of the atypical worker; we will deal with this topic in the following chapter), we should also be aware that the formal position of '*typical*' workers differs widely between the different EU Member States. As a consequence, equal treatment in the national context may still mean stark differences within the EU. In the next chapter we will describe some comparative aspects of the position of typical workers, in order to provide insight into these differences, and to serve as a reference for the comparative position of atypical workers ('the zero situation').

1.4. Research questions

Following from the way we defined the issue above, the study will be conducted in order to answer the following research questions:

1. What is the number of (the different kinds **of**) atypical workers in the EU Member States (to be sub-divided between female and male atypical workers)?
 - A. part-time work
 - B. temporary work
 - C. seasonal work
 - D. casual work

² The European Parliament considers only one type of atypical work as exempt from the non-discrimination principle: work on the basis of a short running, temporary and one-off contract (A4-0352/97, p.6).

- E. homework
 - F. telework
 - G. self-employment
 - H. family work
2. What is the formal position of these groups in labour and social protection regulation vis-a-vis the position of the 'typical' employee?
- A. What is the statutory definition of the different types of atypical work?
 - B. What is the formal position of atypical vis-a-vis 'typical' workers in labour regulation *[and collective agreements]*, concerning:
 - a. dismissal protection;
 - b. *[termination payments]*;
 - c. salaries;
 - d. paid holidays;
 - e. continuation of payment in case of illness;
 - f. maternity/paternity leave;
 - g. *[training and education]*;
 - h. *[health and safety]*;
 - 1. working hours?
 - C. What is the formal position of atypical vis-a-vis typical workers in social protection regulation *[and collective agreements]*, concerning:
 - 1. unemployment benefit;
 - 2. pensions;
 - 3. health cost insurance?
3. In which respects are atypical workers discriminated in comparison with full-time employees on indefinite contracts?
- A. What are the differences between the respective positions and regarding the different types of atypical work?
Differences can be assessed as
 - 1. Proportional differences;
 - 2. Threshold differences;
 - 3. "False" equality ;
 - 4. Exclusion from labour and social regulations.
 - B. What differences and effects are of particular relevance to women and to other groups on the labour market, given their particular dominance in certain types of atypical work?

1.5. Research approach

The research project has to contend with a large amount of variables: the number of Member States, forms of atypical work, potential discrimination issues, and also with different sectors, often more than one collective agreement per sector. For that reason we have used an approach, in which we have combined a secondary analysis of existing studies and overviews with consultation rounds including both national and overall subject matter experts.

The research approach therefore incorporates three elements:

- *collection of material (fact finding)*

Main sources are comparative and analytical reports, statistical sources and overviews, individual and national reports.

- ***national checks by national experts***

National experts have been asked to check and add to the facts gathered for their country (see appendix 2 for an overview of these national correspondents).

- ***overall comparison and assessment by board of experts.***

A board of experts has helped to guide and direct the fact finding and to draw the main conclusions, partly from the gathered material and partly from their own knowledge (see appendix 2 for an overview of the members of this board).

1.6. Structure of this report

In the following chapters we will present the main findings of our study in detail. The most important elements of these findings are presented in the executive **summary** at the beginning of this report.

In the next chapter the factors are discussed that are connected with atypical work in general. The historical and social-economical context in which the flexibilisation of labour is constituted will be briefly discussed. Also, the relation of the content of this report (about the formal position of atypical workers) with the real world (the material position of atypical workers) is pointed out. As a reference, we will describe some relevant aspects of the formal position of 'typical' workers. Next, for all the Member States a brief statistical overview on forms of atypical labour will be given.

After this, Chapters 3 to **12** focus on the different forms of atypical work. We will present the different types of atypical work in two clusters, both of which are preceded by a preface chapter describing the broader regulatory context and the relations between the different sub-types of atypical work.

Text box 1: The chapters

Chapter 3	<i>Preface to chapter 4-7; atypical working times</i>
Chapter 4	Part-time work
Chapter 5	Temporary work
Chapter 6	Seasonal work
Chapter 7	Casual work
Chapter 8	<i>Preface to chapter 9-12; atypical workplace and or status</i>
Chapter 9	Homework
Chapter 10	Telework
Chapter 11	Self-employment
Chapter 12	Family work

Each of the following chapters deals with a specific type of atypical work, following the order indicated in Text box 1. These chapters are structured in a similar way. Each chapter opens with a discussion of the definition of the particular type of atypical work by the relevant bodies in the different Member States, and on the international level. The following two sections present the

formal position of this type of atypical worker in the different EU Member States. These two sections respectively concern the formal position in labour regulation and in social protection regulation, and deal in sub-sections with the different aspects of these positions. Next, an overview table is presented which contains all aspects of the formal position of this type of atypical workers **in** the different EU Member States at a glance. The main findings are summarised and concluded upon in a final section.

After all types of atypical work have been discussed, in the final Chapter 13 a number of final remarks are made about discrimination against female atypical workers **in** the EU, and measures that may effectively ban this discrimination.

The two appendices to the report contain the list of references and the list of consulted experts.

2. Atypical work in the European Union

2.1. Introduction

We will start our discussion of the formal position of atypical workers **in** the EU by looking into the position of atypical work in the EU from different perspectives. This allows us, at the end of the next section (2.2), to clarify this study's perspective on atypical work, and to explain further the relation between the content of this report (about the formal position of atypical workers) and the real world (the material position of atypical workers).

Secondly, we focus on the formal position of 'typical workers' in the different Member States, **as** a starting point for the comparative description of the formal positions of the different types of atypical workers (section 2.3.).

Finally, for all the Member States a brief statistical overview on forms of atypical labour will be given, **as well as** some other figures on labour market characteristics in these States (section **2.4**).

2.2. Perspectives on atypical work

2.2.1. Flexibilisation

The growing flexibilisation of the European labour market is a development that forms the general context and that gives relevance to the study presented here. Atypical work has always been present in the countries of the European Community. However, its role has changed dramatically in magnitude and character in recent years. In addition to more traditional forms of atypical work several new forms of labour have developed and have spread throughout the EU.

Table 2.1. illustrates the increase of 'flexible' employment in the various Member States of the EU - defined **as** employment outside regular full-time jobs (self-employed, part-time workers, workers with a temporary contract) - in the period 1985 - 1995. **In** this period, flexible employment in the EU increased **by** 15%.

Table 2.1.: Development of the flexible workforce (*) in the European Union, 1985 and 1995 (EU 1985 = 100) (source: De Grip, Hoevenberg and Willems, 1997; based on Eurostat data)

Flexible workforce (*)		
	1985	1995
Belgium	85	93
Germany	87	98 (**)
Denmark	126	114
Greece	168	132
Spain	121 (***)	174
France	76	107
Ireland	95	116
Italy	92	103
Luxembourg	58	57
The Netherlands	106	162
Austria	-	86
Portugal	126	117
Finland	88	115
Sweden	126 (***)	134
United Kingdom	107	119
European Union	100	115

(*): Self-employed, part-time and employed on fixed-term contracts; (**): Western Germany; (***): 1987 data.

Several macro trends are behind this development. Certain technological and economic developments force individual entrepreneurs and employees to become more and more flexible and 'atypical'. Among the technological developments are new production forms, which reduce the necessity of a simultaneous and physically combined input of capital and labour. On the one hand, new information and communication technologies allow for new forms of standardisation, and an increased freedom to perform productive labour in a place and at a time of one's own choosing on the other.

Relevant economic trends range from new forms of competition and labour market relations to new management strategies like lean production, outsourcing and franchising.

Political and regulatory developments are yet another factor. In a reaction to the employment crisis that dogged most countries of the EC in the 1980's, public authorities, employers and (to a lesser extent) trade unions held the opinion that labour flexibility was the road to full employment and optimal economic adjustment. The majority of Member States of the European Union embarked on policies of deregulation of labour markets based on the neo-classical concept of the market economy (Schoman, Rogowski and Kruppe, 1998). The recent period of job-creation and falling unemployment in some EC-countries has not led to a significant decrease in forms of atypical work such as part-time work and temporary work (Meulders, Plasman and Plasman, 1994).

Finally, some socio-cultural trends may have supported the rise in atypical work. Among these we may include the increasing participation of women in the labour market and the increasing levels of education. Emancipation and individualisation are behind this, which make traditional forms of working - a life long career with one employer for a male bread-winner - more and more obsolescent.

2.2.2. *The proliferation of atypical work*

The growth of atypical work that occurred as a consequence of these background factors can be typified by some aspects that are 'classic' to modernisation: a growing decoupling of work and production in time and space, and a consequent differentiation of forms and statuses of work. Work is no longer necessarily performed during working hours that are fixed for the whole labour force, during the day, the week and the year. It is no longer necessary for the work to be performed in a common workshop or the office. Finally, there is no longer a rigid distinction between worker and employer, between labour and capital.

It is a mistake however, to regard atypical work **as** consisting predominantly of *new* forms of work. In a way it is a highly traditional characteristic of work to be performed at home and with family members, or to follow the seasons, **as well as** for workers to be self-employed. Also, casual work is not so much a new form of work, **as** it reminds us of the poorly regulated forms of labour under earlier capitalism. However, next to (remnants *of*) these traditional types of work, a revival of similar work types can be witnessed that constitute a modern variation to these old forms, such **as** seasonal work in the tourist industry or homework with a connection to the central office by modem and fax (Blanpain, Koler, Rojot, 1997). Moreover, there *are* new forms of labour, such **as** part-time work and temporary work through agencies. Other types of occupation are also proliferating, including volunteer work, dual job-holding, zero-hour contracts and contract work (cf. Meulders, Plasman and Plasman, 1994).

Looking at this proliferation of work types, one can almost speak of a societal search process, in which experiments with different time and place arrangements are taking place in order to fit new economic, technological, regulatory and cultural conditions. Given the large amount of old, revived and new forms of work, it is clear that this report focuses on a limited number of - important and wide-spread - types of atypical work.

2.2.3. *Socio-economic perspectives on atypical work*

As regards the concrete drives and motives for embarking on different forms of atypical work, employers and employees (~~as well as~~ **as well as** their representative organisations and the State) act for many, occasionally positive or negative, reasons. Given the dominance of technological and economic trends behind the increase in atypical work, the positive reasons appear to be more present and perceivable at the macro level and on the employers' side.

On the macro-level it is believed that atypical work can stimulate the EU economy and can be beneficial to both employers and employees. In socio-economic terms it is believed to provide efficient allocation (full employment both in the short-term **as well as** in the long-term) and a fair distribution of employment and income. On the meso- and micro-level flexibility (and deregulation) of labour is an efficient instrument for employers to adjust to changing product demands and high labour costs (Delsen, 1995a). The OECD, in particular, took this position when it argued in favour of deregulation **as** a means to relieve - what it called - the 'rigidity of the labour market'. It has been pointed out by others, however, that the present standard of regulation of the labour market in many Member States expresses a common interest in equity vis-a-vis efficiency.

For **some** employees, atypical work can be an attractive way to embark on a career and to combine this with child-care and an equal division of household tasks between the partners. Also, not infrequently a certain form of atypical work is combined with (or compensated by) another type of - typical or atypical - work, either by one and the same person (an employed professional with a small own-account consultancy practice), or between two partners in one household.

As an interesting example of many of the employers' motives, Smith, Fagan and Rubery (1998) listed a number of factors influencing employers' demands for and use of part-timers (see Text box 2).

Text box 2: Factors influencing employers' demands for and use of part-timers (*source: Smith, Fagan and Rubery, 1998*)

Production system requires non-standard or flexible hours

- To extend operating hours beyond the standard week.
- To schedule hours to meet regular, periodic peaks in production on a daily, weekly or annual basis, such as lunchtime cover.
- To cover irregular and temporary changes in labour demands, for example, to substitute for absent employees or to meet unexpected orders.
- To draw out more effort per hour in jobs where productivity is increased through short and intense work periods.

Competitive conditions in the product market

- The extent of competitive pressures to adopt flexible practices in order to compete on product price or extended service hours, for example, between large and small retail firms in relation to opening hours.
- Variation in the volume of labour hours required in times of economic boom versus recession.

Labour regulation (statutory and collectively bargained)

(a) Working time system

- Statutory and collective working-time restrictions on the use of full-timers to provide flexibility through overtime, shift patterns and other variable hours schedules

(b) Wage and social protection system

- Regulations concerning working time premia for shifts, overtime and antisocial hours.
- The structure of non-wage costs for employers, such as hours or earnings thresholds for social insurance contributions or other conditions of employment

Government and trade union activity

- Work-sharing policies to reduce unemployment
- Policies to enable parents to reconcile work and family life
- Government's personnel policies in the public sector

Labour market conditions

(a) Labour supply

- Family responsibilities within the household and the Welfare State system influence labour supply according to the generational and gender relationships. For example, a strong 'male breadwinner' model of family life encourages women to work part-time rather than full-time.

(b) Labour demand

- The type of flexibility practices implemented by employers are 'gendered' because they are contingent on the sex of the current or desired workforce, so part-time schedules are more usually available in feminised areas than in male-dominated jobs.
- Employment shortages encourage people who want full-time work to accept part-time work.

Unfortunately, there is also a dark side to flexibility of labour and the growth of atypical work. On a micro-economic level the segregation (Brouwer e.a., 1992) and marginalisation (Delsen, 1995 a, b) of atypical workers is common practice and may result in a deprived situation for atypical workers.

2.2.4. Deprivation of atypical workers

One of the main reasons for the segregation and marginalisation of atypical workers lies in the fact that many labour and social protection laws and institutions are still based on the profile of the imaginary 'typical worker'. As a consequence, atypical workers often find that regulations and criteria are - for no good reason - unfavourable and/or not tailored to their situations. Additionally, social partners have responded to these issues only very recently and to an insufficient extent. Provisions in collective agreements to counter these problems are scarce³. Besides, such provisions are always of the nature of 'social reparations', not of 'basic equal rights'. Thus, atypical work often does not turn out to be an economical and social opportunity, but a position in which reduced working hours and social isolation are combined with inferior working conditions and lower pay; a fate which - as was already stated - most often concerns women (although women have a stronger presence in some types of atypical work, such as part-time work, than in others, such as self-employment).

Given what was said before about the possible combinations of jobs and/or of incomes in a household, the effects of this poorer position do not necessarily have to be disastrous. In economic terms, and also in legal terms, certain people may want or prefer to be in this situation. As one example, for some people the insecurity of not knowing when and how to have the next temporary assignment may imply 'freedom', for instance the opportunity to refuse a temporary job (without future negative consequences) when it does not suit or appeal. In a way flexibilisation also effects (further) segmentation of the labour market. Stronger parties in the labour market (professionals, artisans) often find their freedom and prosperity increased in an atypical worker's position. Parties that were already weak suffer a further weakening of their position under conditions of flexibilisation (Brouwer, 1992).

The problematic formal position of many atypical workers has already attracted attention in some Member States. It has brought about some attempts to improve the position of atypical workers by means of legal regulation, but sometimes with adverse and unintended effects. An interesting example is the 'Flexwet' (Law on flexible labour) in the Netherlands, that was introduced in the beginning of 1999 and in reality promoted further segregation of the labour market.

It needs to be stressed, furthermore, that the often-deprived position of atypical workers is not only caused by labour and social protection regulation (constituting 'the formal position of atypical workers'). Here, we merely note some other aspects:

- The equal treatment of atypical workers to 'typical workers' can in practice result in low payments, sick benefits and pensions, resulting in poor living standards.
- Due to the specific characteristics of atypical work with respect to the time and place of work, it is often difficult if not impossible to implement and monitor the execution of labour and social protection laws, just as it is hard to track down, prosecute and correct offenders.
- Equally, some forms of atypical work are in part carried out illegally (casual work, homework), and hence do not respond to specific legal conditions.

³ As a consequence a complete overview of collective agreement provisions in this report is irrelevant and will not be given.

- The nature of the atypical work that is carried out is often of a less skilled and more repetitive nature (though not always: telework is often high-skilled, professional work).
- The atypical nature of the work itself can be a cause of marginalisation (out-of ordinary working hours (anti-social working hours) that hinder social contacts in working life and in private life; isolated working places).

These factors clearly indicate that the formal position of atypical workers can be an important reason, but is certainly not the only reason for the deprivation of atypical workers. This report only deals with the formal position of atypical workers. **As** such it can only be seen **as** indicating the 'tip of the iceberg'. For a more thorough understanding of the actual socio-economic position atypical workers are in, either by free will or by force majeure, further research is necessary. This research should also focus on the aspects listed above.

Thus, notwithstanding our attempts to be complete in our overview of the formal position of atypical workers, this report can only paint a part of the picture. In the following chapters we will point at differences in the formal position of atypical workers vis-a-vis 'typical' workers. The difference in 'real' positions, however, may be painfully bigger.

2.2.5. This study's perspective on atypical work

To conclude **this** section, we will summarise the perspective of this study:

- The aim of this study is to provide insights into the nature and extent of discrimination against atypical workers in the EU Member States.
- Atypical work will be looked at in 8 specific forms; the formal position will be operationalised in 12 labour and social protection aspects.
- The formal position of atypical workers will mainly be described **as** it is constituted by labour and social protection laws. Collective agreements will be included by means of illustration, and without pretence of completeness or comprehensive coverage. Jurisprudence and other constituting factors are left aside for the moment.
- Discrimination against (female) atypical workers is studied in this report, purely **as** 'distinction' and 'different treatment' of atypical workers, without building a concrete case that this constitutes discrimination.
- With its focus on the formal position of atypical workers, this report paints an excessively positive picture of the actual position of atypical workers, which for many reasons can be assumed to be inferior.

2.3. Atypical vs. typical workers in labour law and social protection⁴

In this paragraph a brief comparative overview will be presented of the position of typical workers in the different EU Member States regarding labour law and social protection. This is to serve at least three purposes.

- First of all, it makes clear which (in some cases enormous) differences exist between the different Member States. One implication of this is that even when there is no discrimination against atypical workers within the EU, there will still be a wide disparity in their formal positions throughout the EU.

⁴ The information presented in this section is derived from the following sources: Eyraud, 1993; Katz, 1993; Lecher, 1995; Blanpain, Köhler and Rojot, 1997; Traxler, Kittel and Lengauer, 1997; Kalisch, Aman and Buchele, 1998; OECD, 1998.

- Secondly, it gives some insight into the different systems within the EU along which the protection of workers and social protection is organised. These different systems are often the starting point of the problem (or solution) of discrimination against atypical workers in the EU.
- And thirdly, it provides the reader with a **frame** of reference against the background of which the relative deprivation of atypical workers can be understood. To know what it means for atypical workers not to have a certain right, at all or for some part, one must know what original right atypical workers are being denied.

We will focus our discussion on a number of aspects of the formal position of workers that allow for a general comparison over the EU. These aspects are:

- salaries
- paid holidays
- paid sickness leave
- maternity/fatherhood leave
- working hours
- unemployment benefit
- pensions
- health cost insurance

Salaries

The level and composition of salaries are not easy to compare between the different EU Member States. Different countries have different ways of dividing between basic wages and other direct monetary premiums, time-based and piece-rate based wages, monthly and annual bonuses related to enterprise productivity, and indirect benefits (like pensions, health insurance, etc.; *see* below); the latter is possibly provided for by state intervention.

In all Member States the actual determination of wages takes place at three levels of collective bargaining, i.e. national, sectoral and plant level collective bargaining, and is, up to a certain point, regulated by the State. The actual importance of these three levels differs from country to country. Some countries, such **as** Austria, Denmark and Sweden, have a strong tradition of centralised bargaining. However, in these countries sectoral and branch agreements are becoming more important. In other countries, such **as** in Germany, branch agreements are more important, although their importance may be in their determination of the general wage-level or in the setting of minimum wages, which is only of direct relevance for a small part of the working population. Finally, in most countries the actual wage determination takes place in plant and individual agreements. In some countries, such **as** France, Italy and the UK, this level is by far the most important level for the setting of most wages.

Roughly, three groups **of** countries can be distinguished. The first **group** concerns the Member States with a centralised bargaining system (Austria, Sweden, Denmark and Finland). The second group consists of States with a decentralised bargaining system (France, UK and Italy). And the third **group** consists of the countries in-between, to which the bargaining systems are neither centralised nor decentralised (Germany, Netherlands and Belgium). **At** the same time, in all countries a certain decentralisation in bargaining practices can be witnessed.

In all Member States the state itself plays an important role in the actual practice of wage setting. It does so in order to maintain the macro-level equilibrium, to secure social justice, and to regulate the wages of its own personnel. In all countries state influence on the level **of** wages is mainly exercised through political and communicative means. Two additional ways for the state to

influence wage setting are important to mention here. The first one is the system of minimum wages. Countries differ in their actual level of minimum wage, as well as in how this minimum is actually set. In most cases minimum wages are set by the government unilaterally or following consultations with, or recommendations by, a tripartite body (France, Portugal and Spain). Belgium and Greece have a hybrid system: the minimum is set through a national agreement between the social partners, but is legally binding in all sectors. The second one is the procedure for extending collective agreements to also cover 'non-organised' employers and employees. In some Member States this is a legal possibility and an actual habit (Belgium, Luxembourg, Germany, the Netherlands and Greece), in others it is a possibility which is hardly ever used (Italy, France and Spain), and in some there is no real possibility for government to extend collective agreements (Denmark and the UK).

Paid holidays

All countries in the EU recognise the principle of public paid holidays. Between the different Member States the number varies considerably. In most countries there are legally determined paid holidays: Austria **13**; Belgium **10**; Greece **5** for the private sector (which can be upgraded to **10** by collective agreement) and **13** for the public sector and banks; Luxembourg **10**; France **11** (by collective agreement, by law only **1** is paid); Ireland **9**; the Netherlands **6** (plus **1** every **5** years); Portugal **12** (plus **2** optional days); Spain **14**. In Germany, the number varies from **10-14** depending on the **Länder**, while in Italy there are **4** national holidays and **11** holidays (**plus 1**); **5** have been abolished, but have been replaced by days of compensatory rest.

Collective bargaining may, and generally does, add to legally determined holidays. In Belgium, for example, bank employees have **4** additional days, and in Germany banks have **1** additional holiday.

Denmark and the UK have no general legislation on public holidays. In these countries paid holidays are regulated by collective agreement or by custom and practice.

Regulation also exists on annual vacations. In all EU countries a substantial period of rest, with pay, has been provided for, mostly in proportion to the length of service carried out during the previous year. The length varies from around **4** to **5** or even **6** weeks per year, with a legal minimum that is sometimes lower. For example, in Ireland, **3** weeks is the legally mandated period for a large group of employees under the Act, but collective agreements often provide for a fourth week. Annual vacation is often calculated in days per month or year: for instance **2.5** days per month in France and Denmark, **24** days per year in Belgium, and **25** by collective agreements in the Netherlands. In the UK, there is no legislation on annual holiday entitlements, but it is reported that the steady increase in vacation with pay has continued into the **1990s**.

Paid sickness leave

In all EU countries a right to continuation of payment in case of illness exists. The extent of this right and the level of payment differs considerably between the different countries. Also, in recent years these rights have been, and are still being, changed frequently, mainly in the course of attempts to reduce costs and to spread the risks of health related problems over parties who are in a position to do something about them.

One of these frequently changing aspects concerns the question who is to pay the sickness benefit. In several Member States an employers' duty has been introduced to pay for at least a first period of absence due to illness. For instance in Austria the employer provides full wages for the initial

4-12 weeks of illness, in Belgium the employer is responsible for meeting the first **30** days of costs for most employees, and in Germany the benefit is payable by the employer for the first 6 weeks.

A second aspect concerns the level of payment. This level is usually related to the normal income of the employee. For instance in Greece, the main scheme for employees (~~IKA~~) pays no benefit for the first three days of absence due to sickness. Thereafter, benefit is **25%** of the reference wage for the following **15** days and **50%** of the reference wage for the next **15** days. A clear example of the frequent changes in these rights comes from Sweden, where in **1991** a system was introduced in which compensation was set at **65%** for the first three days, **80%** for days **4-90**, and **90%** thereafter. In **1993** a waiting period of one day was introduced, and the compensation was reduced to **70%** after one year. In **1994** compensation was reduced to **75%** for days **2-3**, **90%** for days **4-14**, and **80%** for days **15-365**. In **1995** compensation was reduced to **75%** for days **4-14**. In **1996** compensation was reduced to **75%**, before being increased to **80%** the following year.

Basically, sickness benefit is granted to all employees. In some countries, however, certain groups of employees can enjoy extended rights. For instance, in Denmark no one-year time limit applies for people who have applied for an early retirement pension, who are in the process of rehabilitation or who are waiting to start on a rehabilitation programme.

Maternity/fatherhood leave

In all **EU** countries pregnant employees and mothers are entitled to a period of rest before and after confinement. The duration and the character of the rest differs from country to country. In Belgium, Germany and the Netherlands the expectant mother is entitled to **6** weeks' leave before confinement, in Austria and Greece to **8** weeks. In Belgium, Germany and the Netherlands **8** weeks of **this** rest is optional for the employee, as is the case in Luxembourg. In Belgium, Germany and the Netherlands mothers are entitled to **8** weeks' rest following confinement. This rest period is obligatory. In Greece and Luxembourg, the rest period following confinement is **8** weeks. In Spain, the rest period is **16** weeks and it is up to the employee to choose how she wants to spread the time of rest. In Ireland the rest period is **14** weeks with at least **4** weeks before the confinement and **4** weeks after. In Denmark, there is general legislation on the one hand and specific legislation for white-collar workers on the other. In the **UK**, the Employment Protection (Consolidation) Act **1978**, as amended, provides that a woman who has been in continuous employment with the same employer for **2** years, working **16** hours or more a week, is entitled to return to her job, with some exceptions, at any time before the end of a period of **29** weeks, beginning with the week in which the date of her confinement falls. Additionally, the Trade Union Reform and Employment Rights Act of **1993** has created an actual right to **14** weeks maternity leave for all employees regardless of length of service or weekly hours of work. An 'adequate allowance' will be paid by Social Security during that period.

In some countries, independently of parental leave, the spouse may also benefit from legislation. In Denmark, for example, during the **14** weeks following confinement the mother may take a **further** **10** weeks. However, these weeks may be shared by her spouse or the spouse may take them all.

In a number of countries employees are entitled to parental leave. However, there are wide variations. In addition to the above-mentioned rights in Denmark, under certain conditions parental leave is granted to parents of children aged up to **8** years old, for a duration of between **13** weeks and **52** weeks, with the employers' agreement. Other kinds of parental leave rights exist in Greece, Spain and Sweden. In the UK there is no statutory right to paternity leave.

Working hours

When considering the different limitations on working time in the different EU Member States, one notes first of all that the extent of the limitations vary from country to country. In some cases they apply generally to all employees and employers (e.g. in the Netherlands), in other cases only in the private sector (Austria), and in yet others only civil servants are excluded (France). Secondly, differences exist in the nature of these limitations. One should, therefore, distinguish between those related to the duration of work; those related to certain periods or days when one cannot work; and those which concern certain persons. Thirdly, there are, on the one hand 'normal' or 'regular' limitations, and on the other hand exceptions to these normal limitations.

In most countries maximum daily normal working time is limited to 8 hours a day. This is the case for instance in Austria, Belgium, Germany, Greece (for a 5-day week and 6 hours and 40 minutes for a 6-day week), Luxembourg and Portugal (for industry and agriculture). There are however exceptions. In the Netherlands, the normal maximum working-time is fixed at 8,5 hours, in Portugal it is 7 hours a day for white collar workers, in Spain 9 hours and in France 10 hours. In Italy, the daily limit is derived from the weekly limit of 48 hours: therefore it amounts to 9 hours a day without overtime pay. In Ireland, two kinds of limits apply: after a given hour up to 9 hours per day. In Sweden there is no statutory rule limiting daily working hours other than the provision that all employees should get time off for nightly rest. This period is defined as being between midnight and 5 a.m.

However, these are only general principles which are sometimes quite dated. Thus, occasionally they do not apply to all employees and are sometimes superseded by collective agreements which either increase or reduce the duration.

In two countries, there are no general legal limits: the UK (apart from special groups, such as miners and lorry drivers) and Denmark; in these countries the main source of daily hours' regulation is collective bargaining.

For all EU countries exceptions allowing more hours per day exist. These exceptions are too numerous to report here.

In most countries legislation sets normal weekly working hours. Thus, normal weekly working time is, for instance, 39 hours in France, 40 hours in Austria, Belgium, Luxembourg, Finland, Sweden and Spain. However, differences may exist for (sometimes large) categories of employees, and wide variations can be detected between countries. In the UK, legislation does not intervene.

In most countries, traditionally, there are no special and detailed rules concerning the monthly or annual duration of working time. It seems, however, that the idea of annualisation of working time - combined with an element of flexibility - is gaining ground.

Unemployment benefit

All EU countries provide unemployment insurance benefits to people who satisfy prior employment or coverage qualifications. These qualifications differ widely in their nature and in their exact specifications between the different countries. In some cases, benefits are related exclusively to prior earnings (e.g. Austria, Belgium, Denmark, Greece, Italy and Luxembourg), but several countries provide flat-rate unemployment insurance benefits (e.g. Ireland and the UK), or provide both earning-related and flat-rate unemployment insurance benefits (Finland, France, Germany, the Netherlands, Portugal, Spain and Sweden). These benefits are time-limited, but the duration of

payment may also depend on the prior employment or contribution history, or the age of the unemployed person. In Luxembourg, for example, payment duration is longer if the person is judged to have poor employment prospects in the region. The earnings-related benefit may be capped. Denmark provides an earnings-related benefit which provides 90 per cent of previous earnings but **up** to a ceiling of 525 kroner a day.

Pensions

For the description of pension provisions in the different EU Member States, a distinction between four types of pensions is helpful:

- flat-rate basic public pension schemes (intended to ensure a minimum level of income for the elderly);
- earnings-related public pension schemes (intended to raise the income to an 'adequate' or 'desirable' level);
- corporate private pensions;
- personal savings

In each EU Member State the whole structure of pension provisions consists of a combination of a number of these types of pensions.

Flat-rate basic pension schemes

Some countries (**for** example Denmark) have flat-rate basic pension schemes funded by general taxation but separate **from** general social assistance schemes. These schemes are all means-tested in some way or another. Eligibility requirements for the benefit generally include a certain length of residence in the country.

Nordic countries, except for Denmark, **as** well **as** the Netherlands, have schemes which accept contributions, but do not require any proof of prior contributions when providing the benefit. Ireland and the UK have a totally different style of basic flat-rate pension scheme than those of other countries. They are regarded **as** the basic pension, but unlike the other schemes mentioned above, the elderly cannot receive this benefit if they do not accumulate contributions before they retire. These countries do not use residence criteria, **as** they already have contribution requirements, and the basic flat-rate pensions are not means-tested (although there is also a tax-financed, non-contributory pension in Ireland and the UK which is means-tested).

Other than the above four categories of basic pension programmes, there are other schemes which are not old-age pensions *per se* but have functions similar to them within the social security system; namely *social pensions*. All of them are means-tested and function as the last resort of the State to secure minimum income for the elderly. **In** the Netherlands, social assistance may supplement the basic flat-rate pension for those with insufficient insurance coverage. **In** Italy, the social pension was amended in January 1996 to provide higher benefits with a stricter means test for new recipients.

The programmes in the EU display a great variety of practices with respect to both the funding and the entitlement in schemes which assure the minimum income for the elderly. Pensionable age is often around 65 years, with eligibility requirements often linked to residence periods and/or means testing. **In** most cases, the government is responsible for the full cost of the scheme or, where there are contributory requirements, the government usually covers any funding deficit.

Earnings-related pensions

All EU Member States, except for Ireland and the Netherlands, have some form of public earnings-related pension programme. The countries which do not have a scheme of flat-rate basic pension (apart from social assistance measures) have generally followed a different path in terms of the development of earnings-related pension programmes (e.g. Germany and France). In countries with only earnings-related pension benefits, social assistance schemes usually guarantee minimum income levels for older people.

The majority of the Member States have set the pensionable age at 65 years old at least for men (Finland and Sweden). There are also gender differences; about one third of OECD member countries still set different pensionable ages between men and women (for instance Austria, Finland and Greece).

A certain portion of the working population - self-employed persons in most cases - is not covered in about half of the OECD Member States. Other countries exclude very low income earners from coverage (e.g. Austria, Finland and the UK).

The method by which final benefits are calculated according to prior earnings vary considerably between countries, and are often very complicated. To mention some differences:

- some schemes base the final payment on a percentage of average earnings over the entire contributory history (e.g. Luxembourg), other countries only include part of the covering period. Yet other countries use a two-step calculation method;
- some other countries first produce a base amount determined by the government, which is then multiplied by 'pension points' calculated for the individual (e.g. Germany and Sweden);
- some countries have provisions to deliberately exclude a limited number of low or no earning periods from the benefit calculation;
- many earnings-related schemes have some element of income redistribution in the benefit calculation.

Private pension schemes

The form of private savings for pension arrangements and their interactions with public pensions can vary significantly between and within countries. Private pension schemes may be largely limited to particular occupational groups or industries, or alternatively some form of private pension scheme may be legislatively mandated for all except very temporary employees. The nature of the direct interaction between public and private pensions may also vary, as private savings may be available to supplement a public pension available to all; alternatively it may substitute for public pension benefits. Private pensions do not necessarily mean no involvement of government, as private pension savings usually receive some form of government financial subsidy (generally through the *tax* system) and/or regulatory protection. The majority of the private pension schemes are on the basis of voluntary participation, although countries such as Denmark have mandatory requirements which cover most of the workforce. The age of eligibility for final benefits is often lower than the statutory ages for public pensions. They predominantly provide a supplement to public pension schemes, although this appears to be changing with some schemes replacing more of the public benefit.

Health cost insurance

In the different EU Member States health care is financed by social insurance, by taxation or by both, and is provided privately, publicly or by a mix of public and private providers. Table 2.2. provides an overview of the different ways of financing in the different EU Member States.

Table 2.2: Dominant financing system of health cost insurance (source: OECD; Kalisch, Aman and Buchele, 1998)

	Financed through social insurance	Financed through social insurance and taxation	Financed through taxation
Private providers	The Netherlands (compulsory social insurance)		
Mixed public and private providers	Austria, Belgium, France, Germany, Luxembourg	Greece (taxation funds a major portion)	
Public providers		Italy	Denmark, Finland, Ireland, Portugal (moving towards social insurance), Spain, Sweden, United Kingdom

Generally speaking, in countries where the health care system is funded through taxation, health care is provided independently of professional status (for instance Denmark and Finland). In case of funding through social insurance, employees (and employers) contribute (via wages) to the insurance system, whereas government assumes the risk pool of other groups (e.g., **Austria**, Belgium and Germany). In most countries individuals or families can cover extra spending on health care on a voluntary basis.

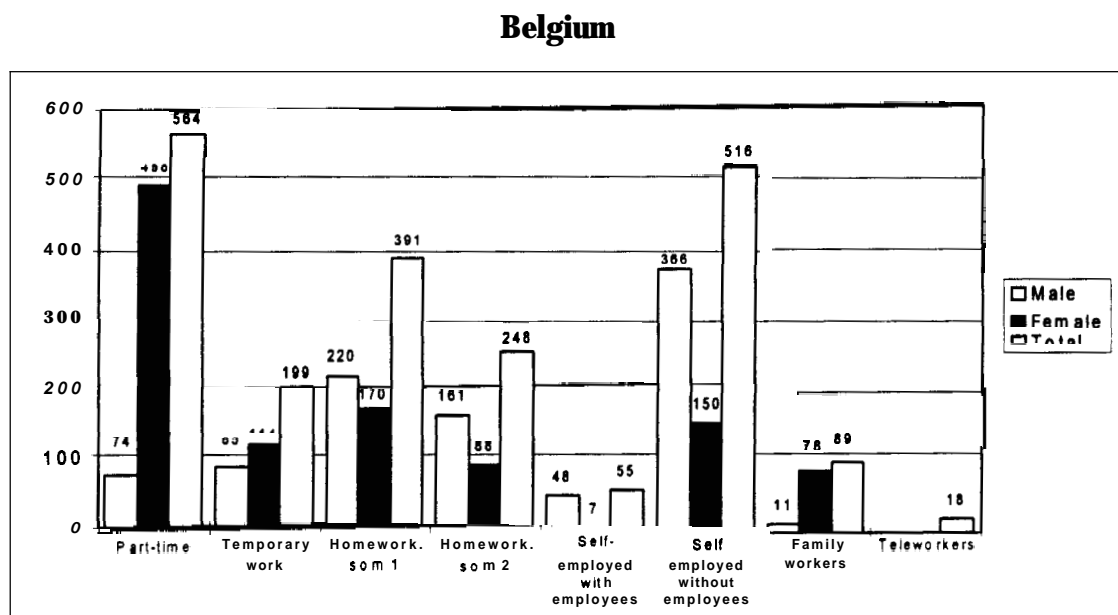
2.4. The incidence of atypical work in the EU

2.4.1. Atypical work in Belgium

Key employment indicators 1996:

	(000s)
Total population:	10,157
Population of working-age (15-64)	6,695
Total employment	3,791
Average annual change in employment 1990-1996 (%)	+ 0.7
Change in employment in 1996 (%)	- 0.1
Total male employment	2269
Male employment rate (% working-age population)	67.3
Total female employment	1522
Female employment rate	45.8

Figure 22.: Atypical work; numbers (x1000) of males, females and totals



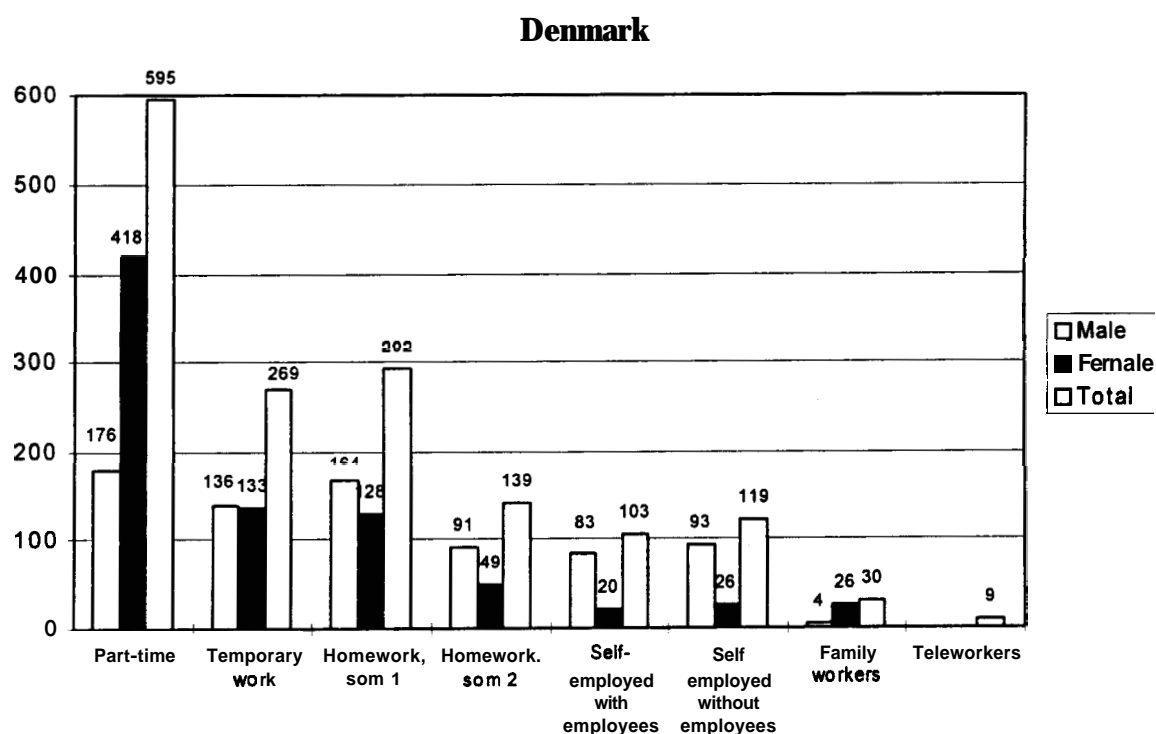
Belgium is characterised by a relatively low employment rate, reflecting poor levels of female participation. Relative to other Member States, Belgium has a small number of self-employed with employees.

2.4.2. Atypical work in Denmark

Key employment indicators 1996:

	(000s)
Total population:	5,263
Population of working-age (15-64)	3,512
Total employment	2,652
Average annual change in employment 1990-1996 (%)	- 0.1
Change in employment in 1996 (%)	+ 1.3
Total employment (men)	1,460
Employment rate (men) (% working-age population)	82.3
Total employment (women)	1,192
Employment rate (women)	68.6

Figure 2.3.: Atypical work; numbers(x1000) of males, females and totals



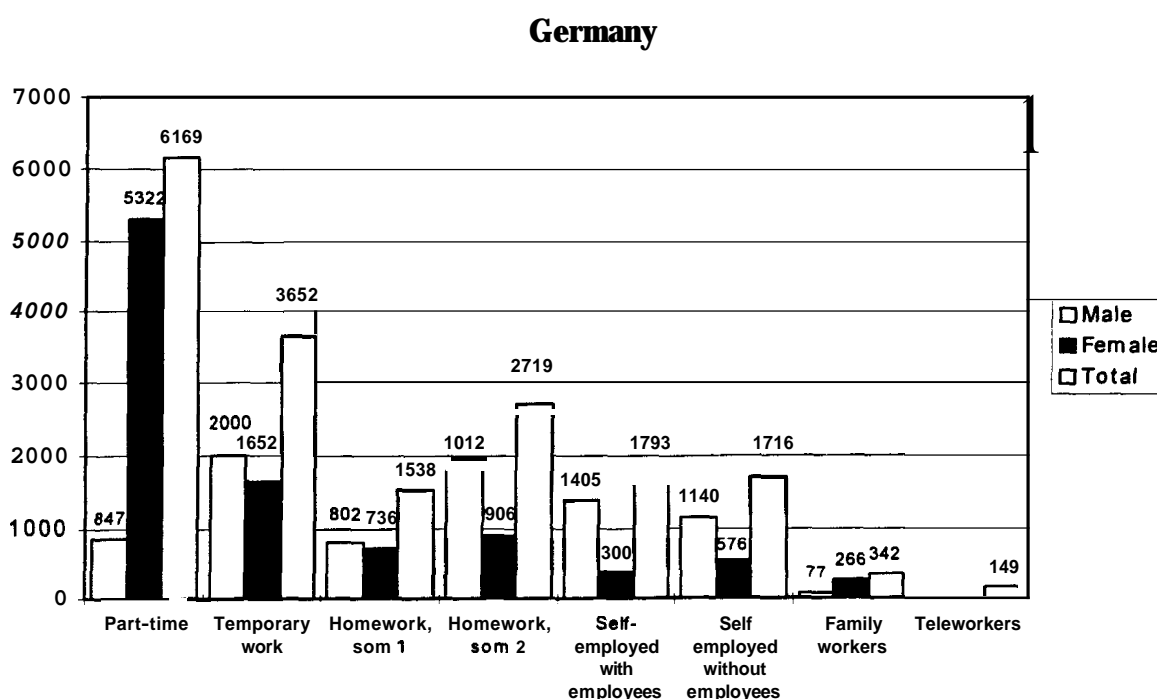
Denmark displays (relative to other Member States) less imbalance between male and female atypical workers.

2.4.3. Atypical work in Germany

Key employment indicators 1996:

	(000s)
Total population:	81,923
Population of working-age (15-64)	55,042
Total employment	34,465
Average annual change in employment 1990-1996 (%)	- 0.5
Change in employment in 1996 (%)	- 1.1
Total male employment	19,798
Male employment rate (% working-age population)	71.3
Total female employment	14,667
Female employment rate	53.8

Figure 2.4.: Atypical work; numbers (x1000) of males, females and totals



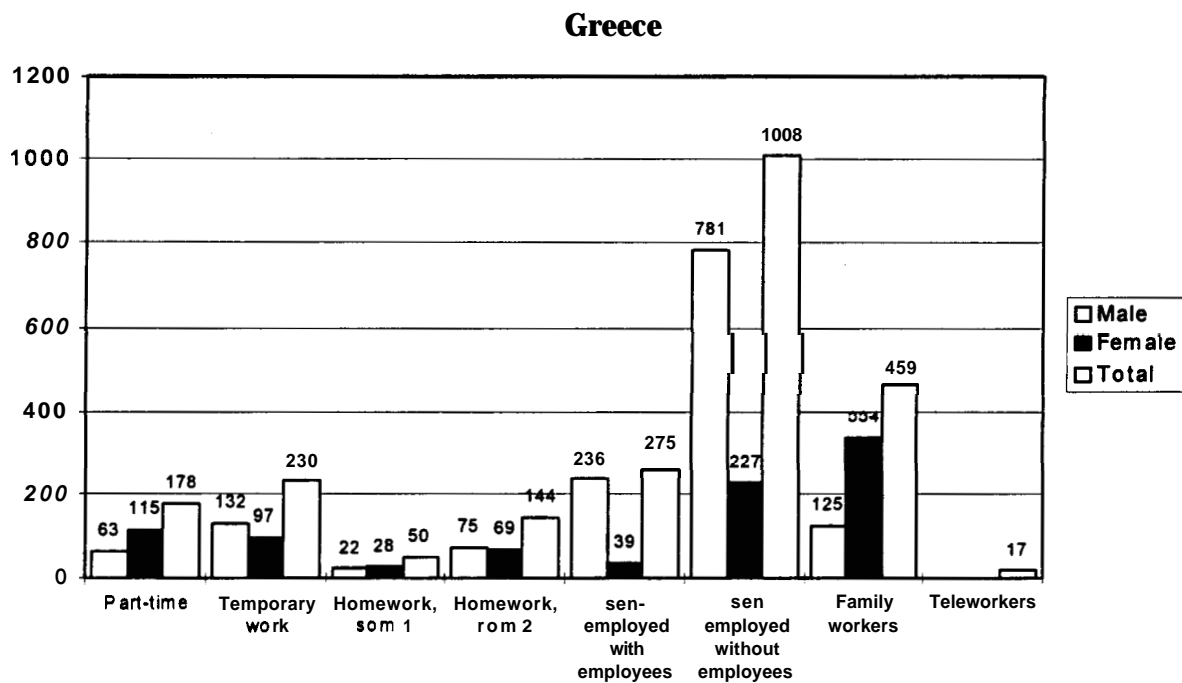
Germany has a high proportion of temporary workers. The key weakness in the German labour market has been the very poor job creation record of the last 6 years. This might explain the relatively high number of temporary workers.

2.4.4. Atypical work in Greece

Key employment indicators 1996:

	(000s)
Total population:	10,475
Population of working-age (15-64)	6,796
Total employment	3,868
Average annual change in employment 1990-1996 (%)	+ 0.7
Change in employment in 1996 (%)	+ 1.2
Total male employment	2,467
Male employment rate (% working-age population)	75.4
Total female employment	1,401
Female employment rate	39.7

Figure 25.: Atypical work; numbers (x1000) of males, females and totals



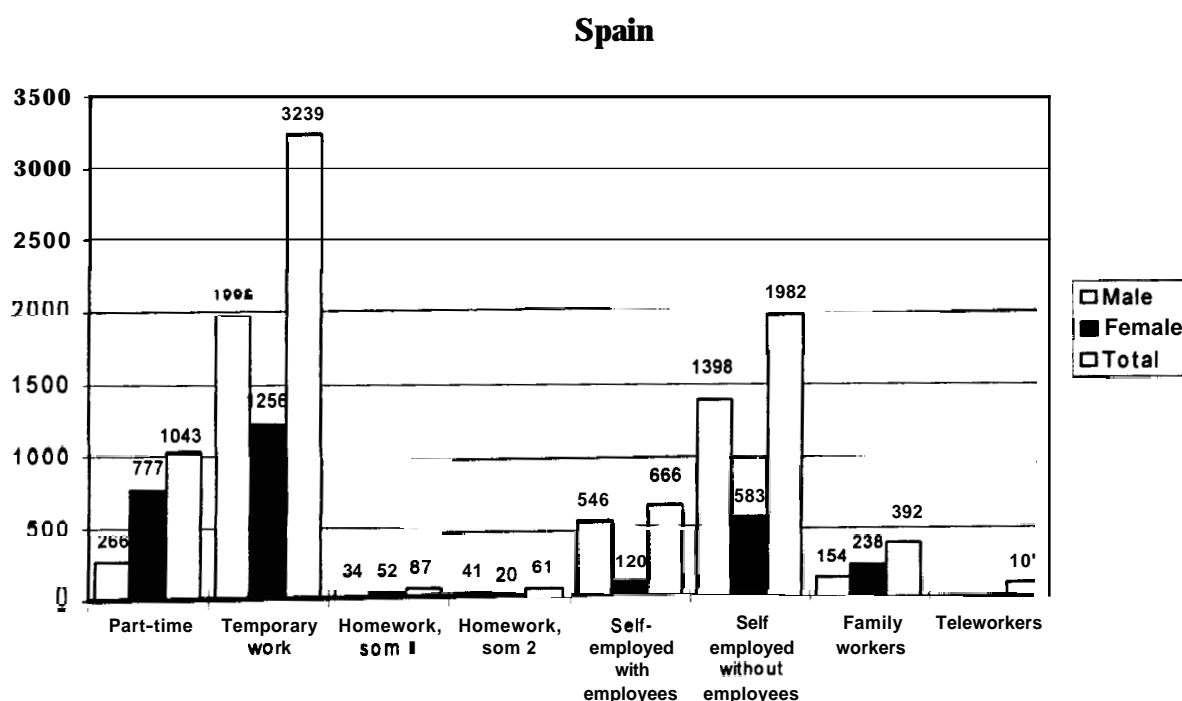
Greece shows some improvement in the employment indicators, however there are still worryingly high levels of gender inequality in the (atypical) labour market.

2.4.5. Atypical work in Spain

Key employment indicators 1996:

	(000s)
Total population:	39,270
Population of working-age (15-64)	26,253
Total employment	12,396
Average annual change in employment 1990-1996 (%)	- 0.2
Change in employment in 1996 (%)	+ 2.9
Total male employment	8,062
Male employment rate (% working-age population)	62.1
Total female employment	4,334
Female employment rate	32.6

Figure 26.: Atypical work; numbers (x1000) of males, females and totals



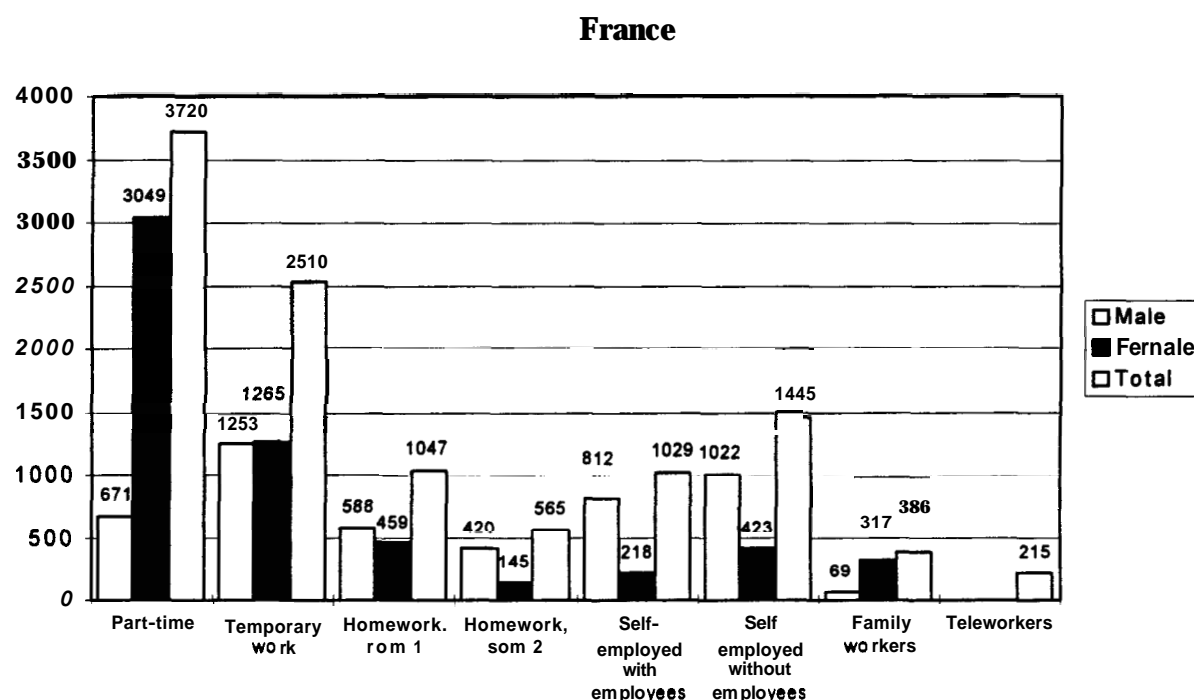
Although the rate of employment growth has been amongst the highest in Europe over the last six years, severe structural problems remain that are reflected in continuing poor levels of participation in employment. The relative share and absolute number of temporary workers are the highest of all Member States.

2.4.6. Atypical work in France

Key employment indicators 1996:

	(000s)
Total population:	58,375
Population of working-age (15-64)	36,968
Total employment	22,287
Average annual change in employment 1990-1996 (%)	- 0.1
Change in employment in 1996 (%)	- 0.0
Total male employment	12,381
Male employment rate (% working-age population)	68.0
Total female employment	9,906
Female employment rate	52.8

Figure 27.: Atypical work; numbers (x1000) of males, females and totals



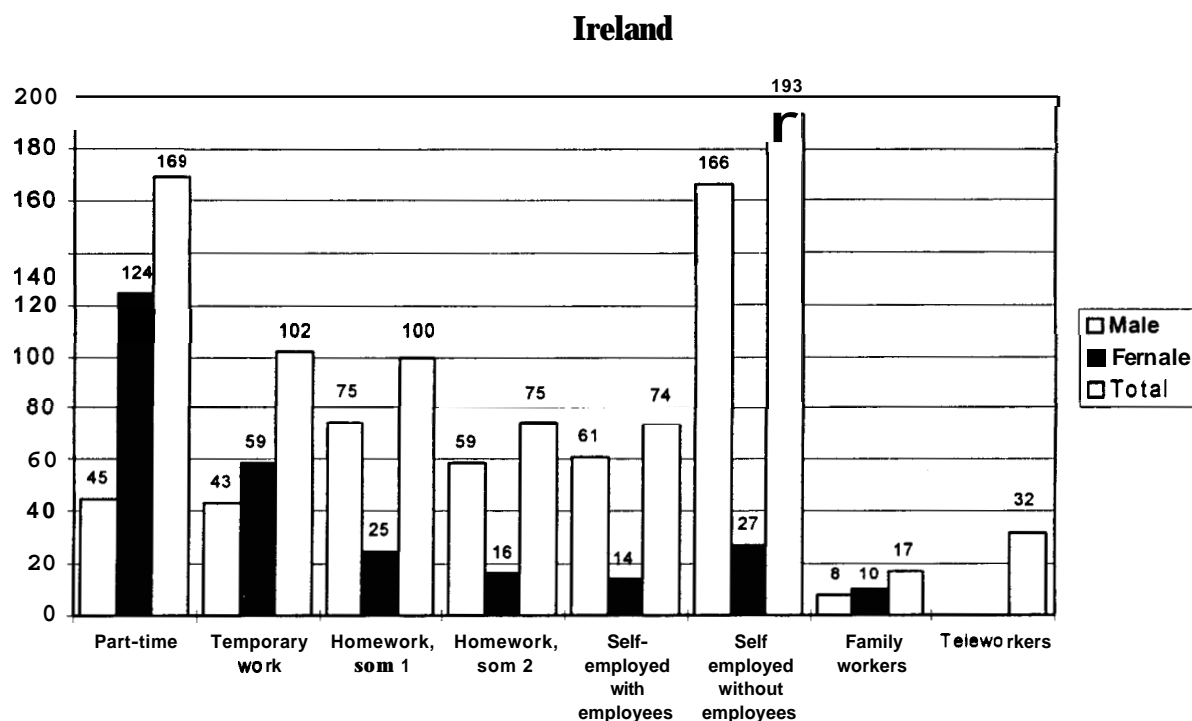
The employment situation in France has been quite stable. There are (relative to other Member States) many temporary workers among whom the numbers of men and women are similar.

2.4.7. Atypical work in Ireland

Key employment indicators 1996:

	(000s)
Total population:	3,629
Population of working-age (15-64)	2,324
Total employment	1,308
Average annual change in employment 1990-1996 (%)	+ 2.4
Change in employment in 1996 (%)	+ 3.6
Total male employment	807
Male employment rate (% working-age population)	69.1
Total female employment	501
Female employment rate	43.3

Figure 2.8.: Atypical work; numbers (x1000) of males, females and totals



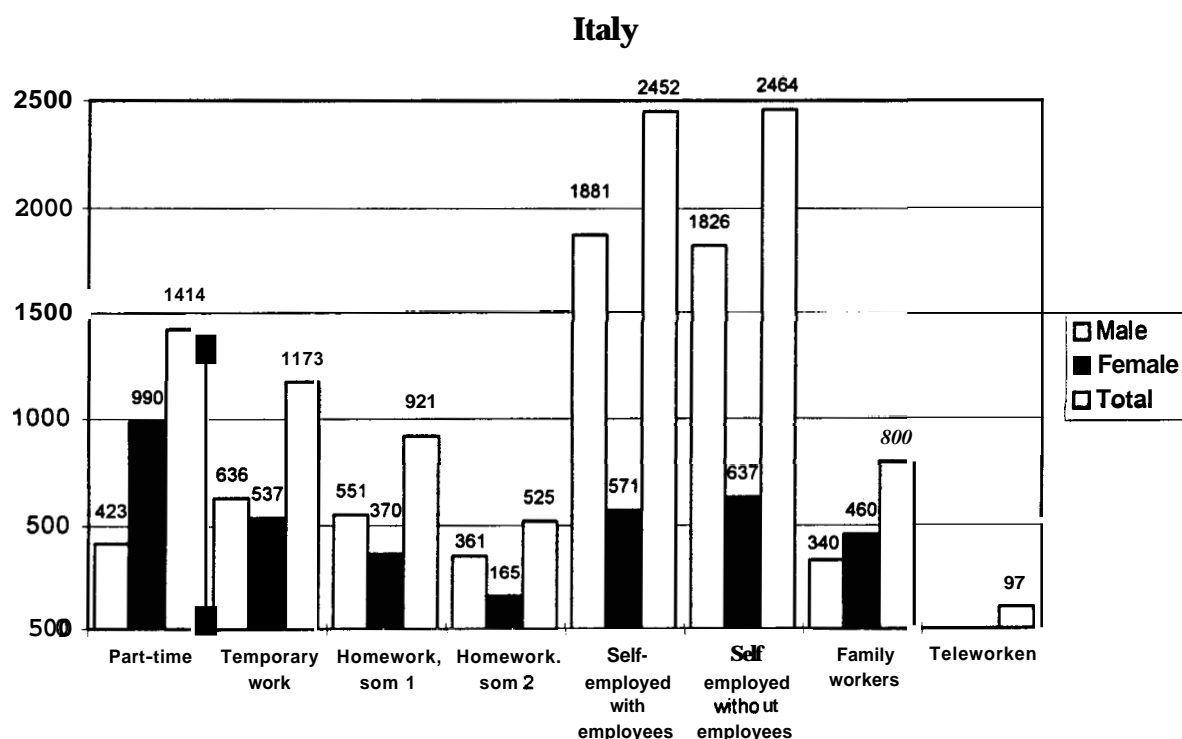
The most important development in Ireland has been the rate of job creation over the period 1990-1996. In 1996 Ireland had the highest employment growth in Europe. In Ireland there is a relatively high proportion of self-employed without employees.

2.4.8. Atypical work in Italy

Key employment indicators 1996:

	(000s)
Total population:	57,399
Population of working-age (15-64)	38,978
Total employment	20,037
Average annual change in employment 1990-1996 (%)	- 0.6
Change in employment in 1996 (%)	+ 0.5
Total male employment	12,844
Male employment rate (% working-age population)	66.5
Total female employment	7,193
Female employment rate	36.6

Figure 2.9.: Atypical work; numbers (x1000) of males, females and totals



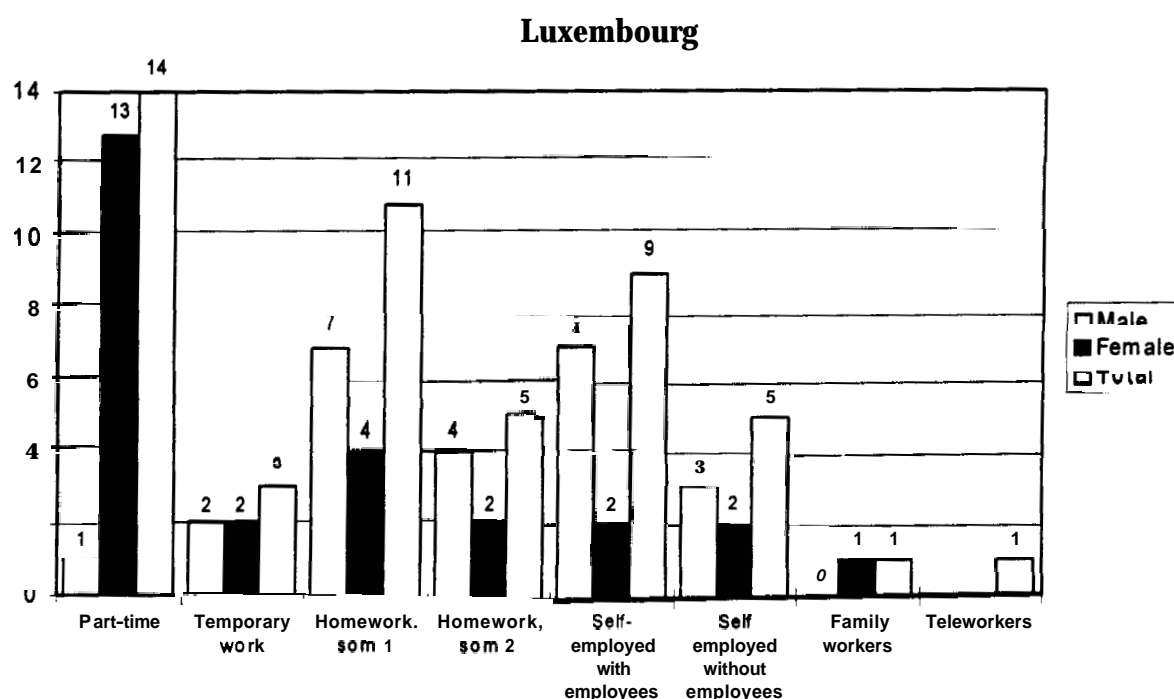
Italy has seen an overall decrease in employment over the period 1990-1996. In 1996, however, an increase of 0.5% can be seen. The atypical figures in the graph show a low share of part-time workers and a relatively high share of self-employed and family workers.

2.4.9. Atypical work in Luxembourg

Key employment indicators 1996:

	(000s)
Total population:	416
Population of working-age (15-64)	277
Total employment	219
Average annual change in employment 1990-1996 (%)	+ 2.7
Change in employment in 1996 (%)	+ 2.6
Total male employment	139
Male employment rate (% working-age population)	75.0
Total female employment	80
Female employment rate	43.8

Figure 2.10.: Atypical work; numbers (x1000) of males, females and totals



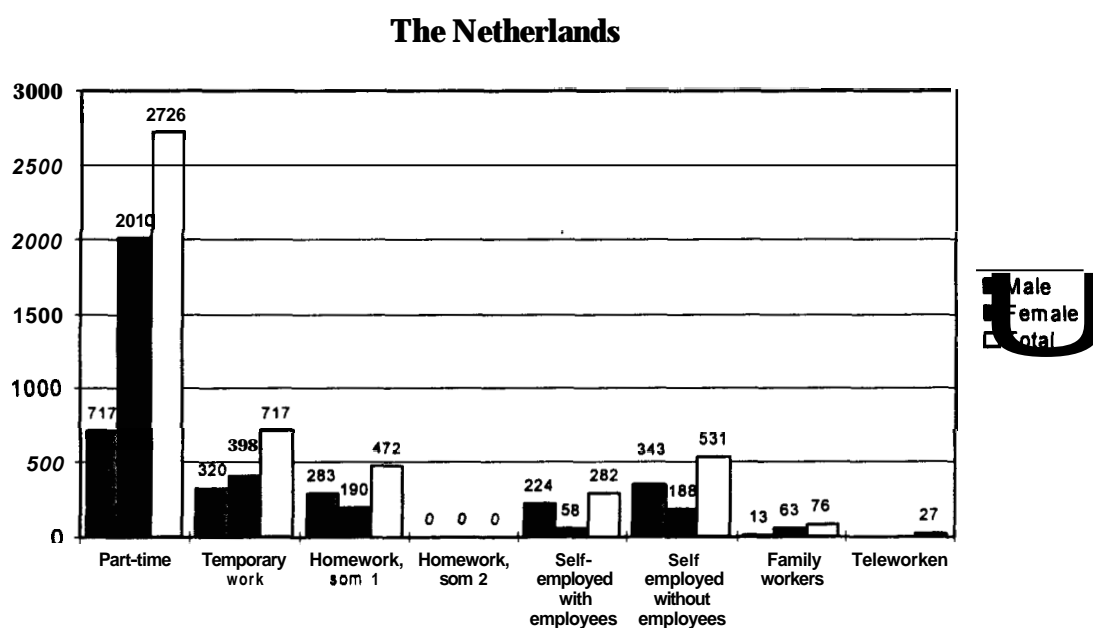
Luxembourg shows a mixed profile. Employment figures indicate outstanding performances in terms of employment growth. On the other hand, women have a very low level of participation in the labour market. Luxembourg has a relatively high share of homework. Exceptionally, most of those who perform homework are men.

2.4.10. Atypical work in the Netherlands

Key employment indicators 1996:

	(000s)
Total population:	15,528
Population of working-age (15-64)	10,509
Total employment	6,846
Average annual change in employment 1990-1996 (%)	+ 1.4
Change in employment in 1996 (%)	+ 2.1
Total male employment	4,035
Male employment rate (% working-age population)	15.1
Total female employment	2,811
Female employment rate	54.3

Figure 2.11.: atypical work; numbers (x1000) of males, females and totals



The Dutch labour market has performed well in terms of job creation. The share of part-time workers is the highest in Europe.

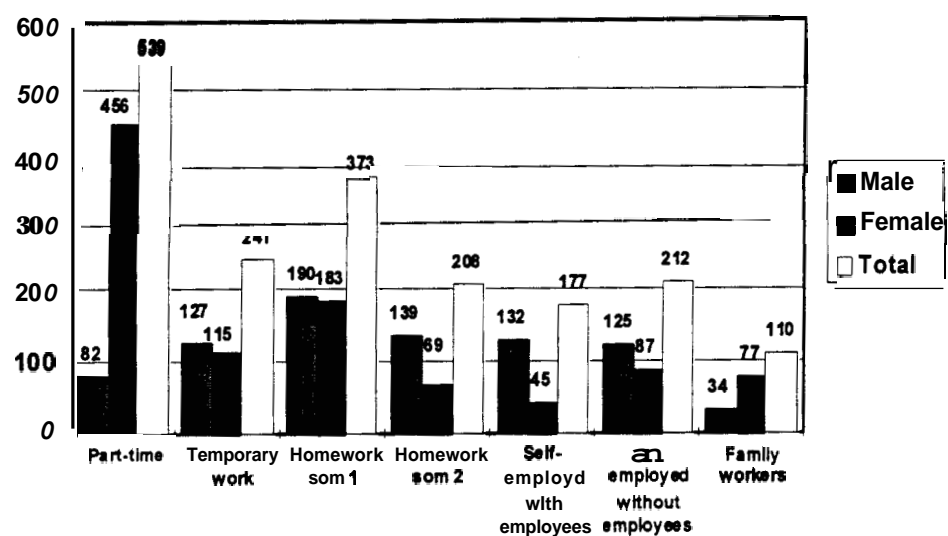
2.4.11. Atypical work in Austria

Key employment indicators 1996:

	(000s)
Total population:	8,061
Population of working-age (15-64)	5,314
Total employment	3,710
Average annual change in employment 1990-1996 (%)	+ 0.6
Change in employment in 1996 (%)	- 1.4
Total male employment	2,098
Male employment rate (% working-age population)	78.9
Total female employment	1,612
Female employment rate	60.7

Figure 2.12.: Atypical work; numbers (x1000) of males, females and totals

Austria



Austria has a good employment record over the years 1990-1996.

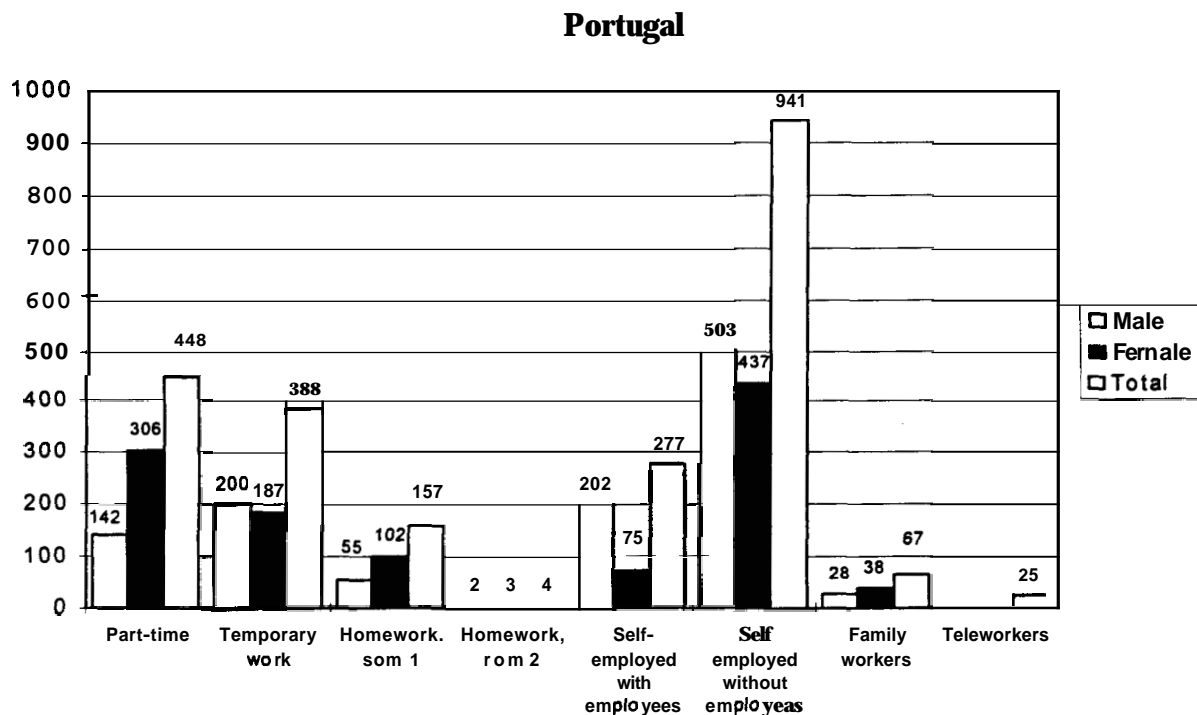
Part-time work and family work are in Austria dominated by women. Self-employment (with and without employees) is dominated by men. The employment rates for both women and men are high compared to most other EU Member States.

2.4.12. Atypical work in Portugal

Key employment indicators 1996:

	(000s)
Total population:	9,928
Population of working-age (15-64)	6,728
Total employment	4,443
Average annual change in employment 1990-1996 (%)	- 0.2
Change in employment in 1996 (%)	+ 0.7
Total male employment	2,461
Male employment rate (% working-age population)	75.8
Total female employment	1,982
Female employment rate	56.9

Figure 2.13: Atypical work; numbers (x1000) of males, females and totals



Over the period 1990-1996, there has been a decrease in employment, but the last year shows an increase. Portugal has a relatively low proportion of part-time workers and a relatively high proportion of self-employed without employees.

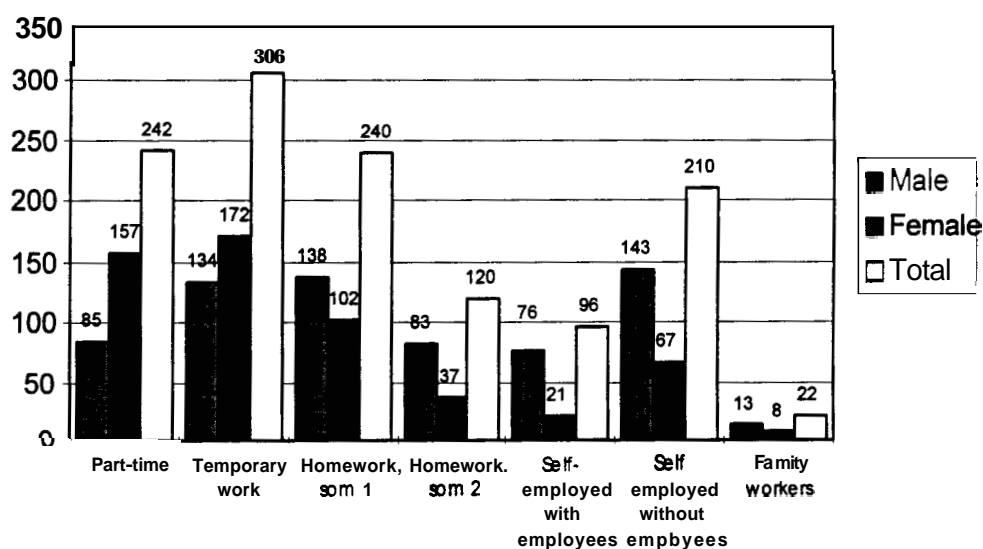
2.4.13. Atypical work in Finland

Key employment indicators 1996:

	(000s)
Total population:	5,125
Population of working-age (15-64)	3,384
Total employment	2,087
Average annual change in employment 1990-1996 (%)	- 2.7
Change in employment in 1996 (%)	+ 1.4
Total male employment	1,089
Male employment rate (% working-age population)	63.8
Total female employment	998
Female employment rate	59.5

Figure 2.14.: Atypical work; numbers (x1000) of males, females and totals

Finland



Over the period 1990-1996 Finland has seen a decrease in employment, although the last year has seen an increase. Temporary work is more common than part-time work in Finland.

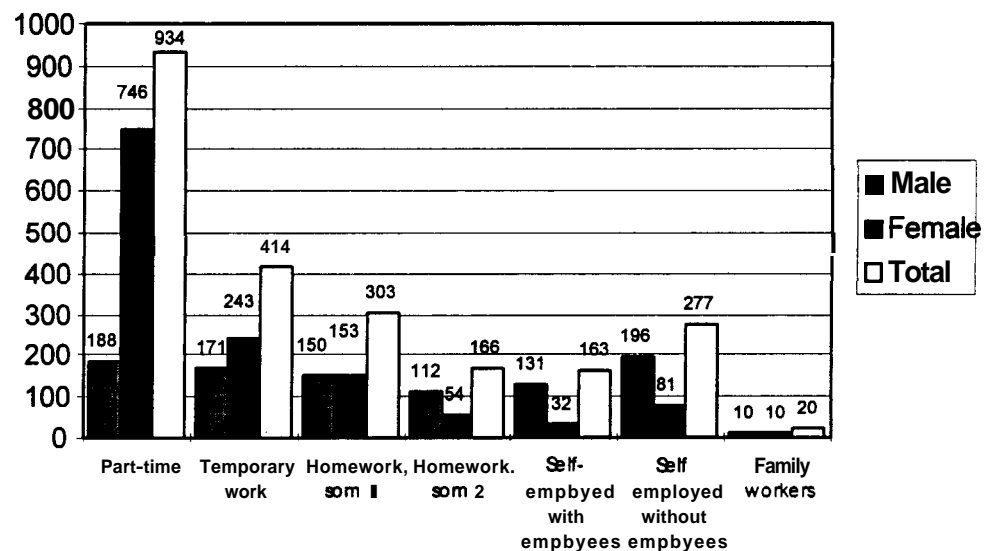
2.4.14. Atypical work in Sweden

Key employment indicators 1996:

	(000s)
Total population:	8,841
Population of working-age (15-64)	5,636
Total employment	3,963
Average annual change in employment 1990-1996 (%)	- 2.0
Change in employment in 1996 (%)	- 0.6
Total male employment	2,051
Male employment rate (% working-age population)	71.6
Total female employment	1,912
Female employment rate	69.0

Figure 2.15.: Atypical work; numbers (x1000) of males, females and totals

Sweden



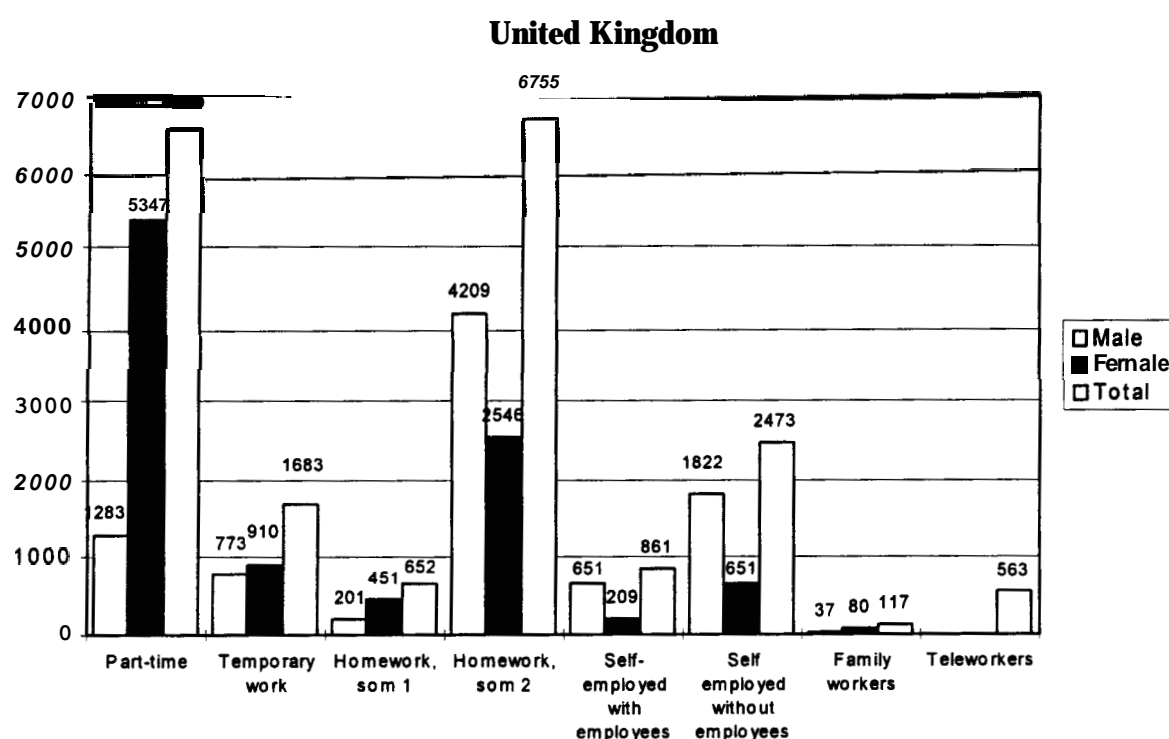
Indicators of employment are negative for Sweden in the period 1990-1996. The share of atypical work is dominated by part-time work.

2.4.15. Atypical work in the United Kingdom

Key employment indicators 1996:

	(000s)
Total population:	58,784
Population of working-age (15-64)	37,511
Total employment	26,177
Average annual change in employment 1990-1996 (%)	- 0.4
Change in employment in 1996 (%)	+ 0.9
Total male employment	14,423
Male employment rate (% working-age population)	76.4
Total female employment	11,754
Female employment rate	63.1

Figure 2.16.: Atypical work; numbers (x1000) of males, females and totals

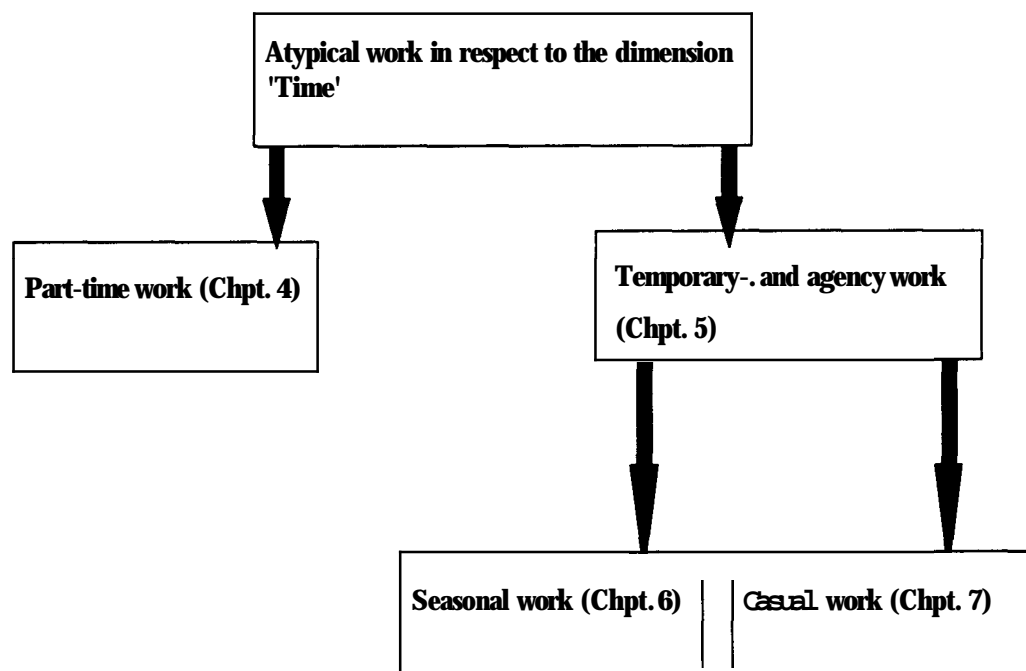


The UK has a very large population of homeworkers, the majority of which are men.

3. Preface to chapters 4-7; atypical working times

This preface is to outline the similarities and differences of the four forms of atypical work that are described in the following four chapters. Part-time work, temporary work, seasonal work and casual work all differ from "typical work" in the way workers schedule their "working time". The fact that these forms of atypical work differ on the same dimension **from** "typical work" means that they share in some cases the same legal positions. In this sense it is useful to distinguish part-time work and temporary work. Seasonal work and casual work, which are described in chapter 6 and 7 can be seen **as** forms of temporary work. Theoretically seen, these specific forms of temporary work should inherit similar properties, or to be more specific, should inherit the same legal positions from the general form of temporary work that is described in chapter 5, but in practice seasonal work and (to an even greater extent) casual work are less well regulated in most Member States.

In the next figure these interrelations between the different forms of atypical work within the context of "(working) time" are depicted.



The difference between part-time work and temporary work is that the former has a limited duration in hours worked per week (as compared to "typical work") and the latter has a limited duration in the period of which a working relation is established (fixed term contracts). The combination of a shorter working week with a fixed term contract does also occur and is characterised by the (lack of) formal positions of both forms of atypical work.

Legal categories of atypical working times

Not all types of atypical work have their own legal recognition and definition (in all EU Member States). Consequentially, people who perform a certain type of atypical work may be considered a 'normal' employee, another **kind** of atypical worker, or even not a worker at all in the eyes of the law. Below, we will briefly discuss the legal categories of the four types of atypical work that will

be discussed further in the rest of this report. At the end of this section we will provide a schematic overview (see Figure 4).

Part-time work

A statutory definition of part-time work is non-existent in Belgium, Denmark, the Netherlands, Portugal, Finland, Sweden and the UK. Since there is no (legal) difference between part-time and full-time workers, part-time workers are entitled to the same statutory rights as full-time workers in these countries. Most statutory employment rights are now dependent on a part-timer being able to establish the fact that they have the status of employee, working under a contract of employment.

Temporary work

There are close connections between temporary work, work on fixed term contracts and casual work (and to seasonal work, for that matter), both in terms of definitions and in the way these types of work are regulated. The terms have different meanings in different Member States, up to the point where states refer to different things with the same words, and to the same thing with different words (temporary work in Ireland is the same **as** casual work in Spain and Germany, that is: work carried out on the basis of a fixed term contract).

Seasonal work

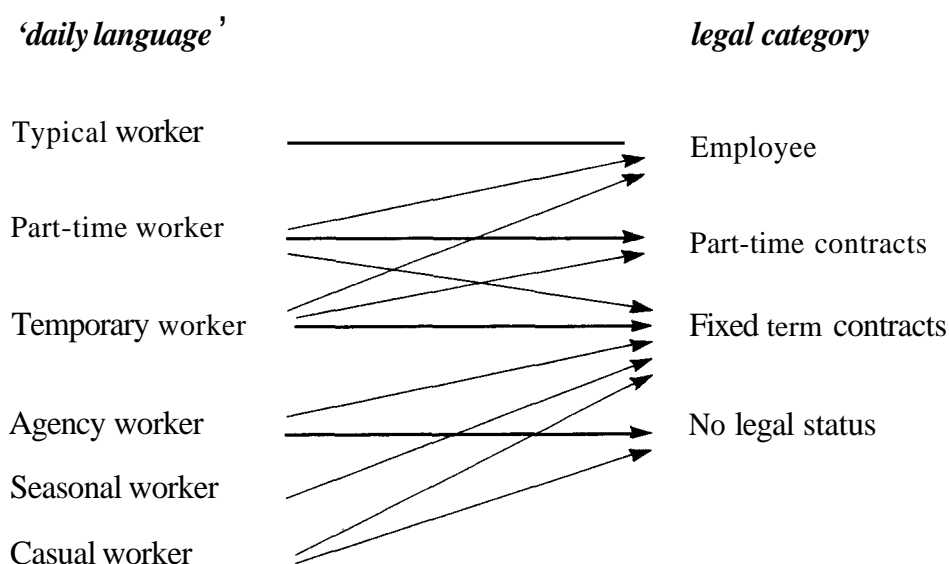
Seasonal work is usually defined **as** "work performed to meet an enterprise's 'discontinuous' labour requirements" (for instance: Greece, Spain, Germany, France and the UK). **As** distinct from temporary work or casual work, in the case of seasonal work these short-term requirements are not due to unforeseeable reasons, nor do they occur on only isolated occasions; they derive from the actual pattern of the enterprise's activity and recur regularly at certain periods in the year (seasons). The worker is employed under a self-contained fixed-term contract which is refreshed for each period.

Casual work

Generally speaking, the word 'temporary work' tends to be used more frequently for a more stable and regulated part of the labour market, whereas 'casual work' generally refers to a less regulated, sometimes even partly illegal (Italy) type of work, where the employment is not stable and continuous. In Spain, Ireland, Austria and the UK casual work is defined in a more or less similar way: "work which is irregular or intermittent, with no expectation of continuous employment". This definition is a working one; it cannot be found in law.

In Figure 3.1. we provide a schematic overview of these connections of types of atypical work to specific legal categories.

Figure 3.1.: Atypical work working times: legal categories



Relevant aspects of labour and social protection regulation

Several aspects of the formal position in labour law and social protection lack relevance for certain kinds of atypical workers. Which aspects are relevant or not, for the different types of atypical workers, are represented in Table 3.1.

Table 3.1.: Relevant aspects of formal positions

	part-time	temporary	seasonal	casual
dismissal protection	√			
salaries	√	√	√	√
paid holidays	√	√	√	√
paid sickness leave	√	√	√	√
maternity leave	√	√	√	√
working hours		√	√	√
unemployment benefit	√	√	√	√
pensions	√	√	√	√
health cost insurance	√	√	√	√

The issue of working hours can hardly be a matter of discrimination against part-time workers, since working time is in itself the distinguishing criterion between full-time and part-time work. With respect to dismissal protection the position of temporary workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle already part of the working contract.

Agreements by the European Social Partners on Part-time and Fixed term contracts

Some Member States do not have a distinction in employment law between "part-time" and "full-time" employees or between "temporary" and "permanent" employees. However, in practice the requirement that an employee has worked for an employer for a certain amount of time before qualifying for various employment rights means that many temporary and part-time workers are excluded from the main employment law protections. This can lead to discrimination. The European social partners⁵ have tried to eliminate discrimination by reaching agreements on part-time work (reached on the 6th of June 1997) and on fixed term work (still under construction, the central EU-level social partners reached a ~~draft~~ framework agreement on fixed-term employment contracts on 14th January 1999).

The agreement on part-time work

The stated purpose of the agreement is

- the removal of discrimination against part-time workers and the improvement of the quality of part-time work;
- to facilitate the development of part-time work on a voluntary basis and contribute to the flexible organisation of working time in a manner which takes account of the needs of employers and workers.

The outcome of the agreement does not rule out all forms of discrimination of the part-time worker. The three main flaws are:

1. The agreement applies to part-time workers who have a contract of employment or employment relationship **as** defined by national legislation (ergo, no general definition is made);
2. Thresholds can apply **as** per national legislation (e.g. qualification periods, earnings thresholds etc.);
3. Employers still have "objective reasons" for excluding certain workers.

The agreement has not yet been implemented by all Member States and the agreement itself does not abolish differences in treatment of part-time workers and full-time workers; nor does it create equal treatment of part-time workers in the Member States (see Chapter 4).

Draft framework agreement on temporary work

The stated purpose of the drafted agreement is

- to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;
- to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships;
- to establish a specification for a maximum duration of (successive) fixed-term employment contracts.

For the purpose of the agreement a fixed-term worker is defined 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 conditions such as reaching a specific date, completing a specific Task-Force "Charter of Fundamental Rights" or the occurrence of a specific event".

⁵ The European social partners consist of the European Trade Union Confederation (ETUC), the Union of Industrial Employers' Confederations of Europe (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP).

The social partners state that the agreement is intended only to set a framework of minimum requirements, recognising that their detailed application needs to take account of different national, sectoral and seasonal situations. The agreement applies to fixed-term workers with the exception of those placed by temporary work agencies.

So far no agreement **has** been reached and it has yet to be seen if all Member States will adopt and implement such an agreement. If adopted by all Member States, such legislation could have an impact on the duration and the number of times a fixed-term contract can be renewed. The **same** (threshold) differences **as** outlined in the comment on the agreement on part-time workers can apply for the agreement on fixed-term work (e.g. qualification periods, earning thresholds etc.). Chapter **5, 6** and **7** show the current lack of regulation and the existing differences with "typical work" on the given legal positions.

4. Part-time work

4.1. Definitions of part-time work⁶

A statutory definition of part-time work is non-existent in Belgium, Denmark, the Netherlands, Portugal, Finland, Sweden and the UK. Since there is no legal difference between part-time and full-time workers, part-time workers are entitled to the same statutory rights **as** full-time workers in these countries. Most statutory employment rights are now dependent on a part-timer being able to establish the fact that they have the **status** of employee, working under a contract of employment. For the sake of statistical information the above mentioned countries can use a definition that is described in this section.

A widely accepted definition of part-time work is that given by the International Labour Organisation (ILO): *"Part-time work is regular, voluntary work carried out during working hours distinctly shorter than normal"*. "Voluntary" work in this sense does not mean work without pay, instead referring to individuals choosing to work. The ILO definition is applicable, even if not literally adopted, by most Member States (Belgium, Denmark, Germany, Spain, Greece, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland and the UK).

In some countries the definition is specified **as** *"a working day which is shorter than normal or for a number of days per week or per month which are fewer than normal"* (Spain, Italy). This specification would not, however, narrow or widen the circle of people who are considered to be working part-time. The words "normal" and "activity" are not easy to define in practice. That is why in Spain these criteria have recently been abandoned in favour of a more flexible definition: i.e. the hours worked less than those in the corresponding period (day, week, month or year) usually carried out in that sector.

If the definition of part-time work relies on spontaneous response it may also reflect the societal system that the workers find themselves in. For example, in Italy there are few people who regard themselves as part-time but there is a relatively high share who work less than 30 hours a week.

Only in France and in Ireland is part-time work defined differently. In French law part-time work is defined as *"Work for which the working hours are at least one fifth less than the statutory working week (39 hours) or the collectively agreed working hours"*. And in Ireland part-time work is defined ~~as~~ *"Someone who has worked at least 13 weeks for the same employer and is normally expected to work at least 8 hours a week for that employer"*. According to **this** definition, some persons who would be considered part-time workers in other Member States (with working hours distinctly, but less than one fifth, shorter than normal) are not seen **as** such in France. Those who work less than 35 hours per week are considered **as** part-time workers in Sweden. ~~In~~ Austria, since 1992, the special rules of the Working Time Act have tried to ensure equal rights for part-time workers. Employment relations in Finland are regulated by the Employment Contracts Act (320/1970), which applies to all work done in an employment relationship regardless of the employee's working hours and whether the work is performed in a normal or atypical employment relationship. In the UK, there is no single definition of "full-time" or "part-time" work, but a

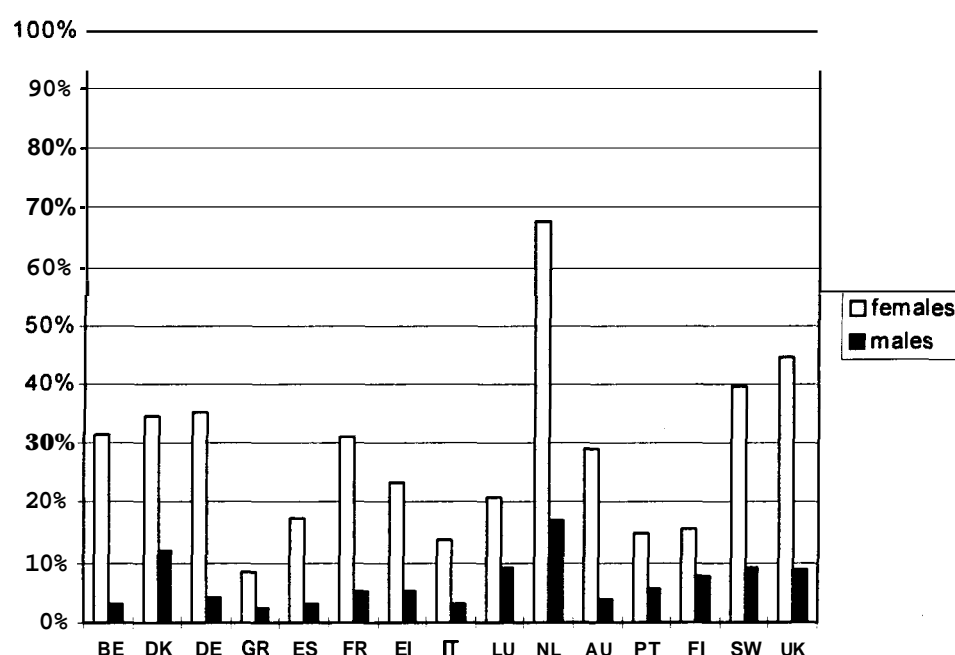
⁶ The main sources used in this section are: Bulletin of European Studies on Time (BEST), 1995; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

multiplicity of definitions. For statistical purposes, people working less than 30 hours per week are classified as part-time workers. Special forms of part-time work in several Member States include job sharing and annual working time arrangements such as sabbatical leave.

4.1.1. Part-time work in the EU⁷

The following figures show the relative proportion of part-time workers in labour markets of the different EU Member States. The data used for these figures are derived from Eurostat's European Labour Force Survey Database. Eurostat works with an operationalisation of part-time⁸ work that is even less restricted than the versions discussed in the previous section. The following pages present the figures for all Member States with respect to male and female part-time workers as a percentage of total male and total female employment, and concerning male and female part-time workers as a percentage of the total labour market.

Figure 4.1.: Labour market share of males and females who usually perform part-time work (as a percentage of male and female employment) 1997⁹ (source: Eurostat, 1998)



In most Member States, **30-40%** of the female labour force works part-time with the exception of Greece, Spain, Italy, Portugal and Finland where the figure is below 20%, and the Netherlands where more than two thirds of the female labour force works part-time. In comparison to the female

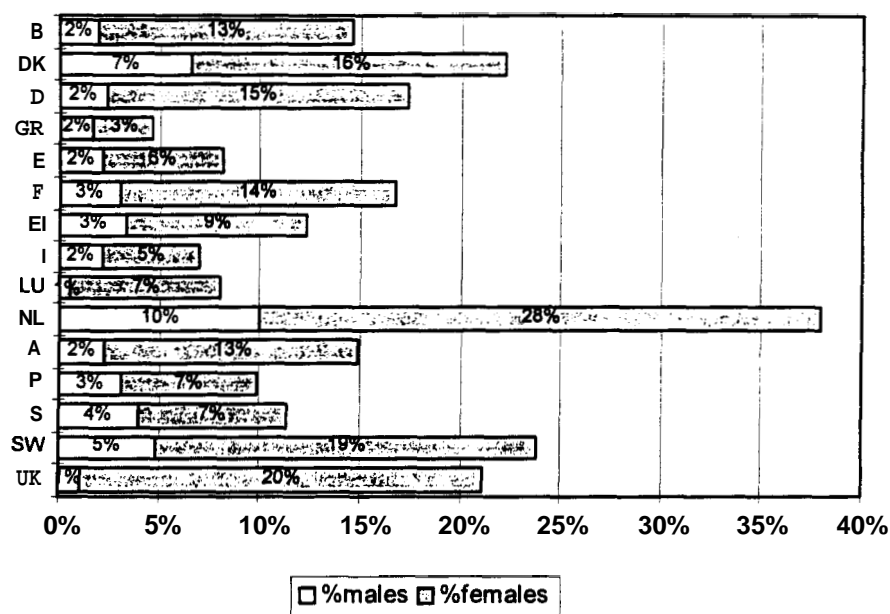
⁷ Eurostat and Working-age population and other employment details are from the Community Labour Force Survey (LFS).

⁸ The distinction between full-time and part-time work should be made on the basis of a spontaneous answer given by the respondent. It is impossible to establish a more exact distinction between part-time and full-time work, due to variations in working hours between Member States and also between sectors of industry. By checking the answers with the number of hours usually worked, it should be possible to detect and even to correct implausible answers, since part-time work will hardly ever exceed 35 hours, while full-time work will usually start at about 30 hours.

⁹ Note that the labour market share is calculated on the basis of the number of employees, not on the basis of the number of full-time equivalent jobs.

workers a much lower percentage of the male labour force works part-time. Only Denmark and the Netherlands have percentages above 10 percent.

Figure 4.2.: Labour market share of males and females who perform part-time work (as a percentage of total employment) (source: Eurostat, 1998)



In Denmark, the Netherlands, Sweden and the UK, the labour market share of part-time work (both male and female) is more than 20% of total employment. In Spain, Greece, Italy and Luxembourg, the labour market share of part-time work (both male and female) is less than 10% of total employment.

4.2. The formal position of part-time workers in labour regulation''

4.2.1. Dismissalprotection

In a number of Member States no distinction is made between full-time and part-time employees, with regard to dismissal, for instance in Belgium, Greece, Italy, the Netherlands, Finland and the UK¹⁰. Other Member States have relevant distinctions in place:

In Denmark this threshold is 15 hours per week, in Germany 18 hours per week, in Spain 12 hours per week, in France and the Netherlands there is no threshold and in Ireland the threshold is 12

¹⁰ The main sources used in this section are: Schbmann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Knauth P. and Hornberger S. 1993; InforMISEP Policies No. 59, 1997; O'Reilly, 1998. Additional information regarding separate countries has been provided by our national correspondents (see appendix 2).

¹¹ As from 1995 all distinctions in UK employment protection legislation based on the number of hours worked per week were removed. Part-time workers are therefore entitled to the same statutory rights as full-time, provided that they meet the relevant qualifying period of service, if any. Most statutory employment rights are now dependent on a part-timer being able to establish the fact that they have the same status of employee working under a contract of employment ("Atypical work", Atypical work in Europe; part one; 16 EIRR 282, July 1997).

hours per week, in Luxembourg 16 hours per week, in Austria 12 hours per week, in Sweden 17 hours a week and in the UK the threshold is 57 pounds per week.

In Germany the disadvantageous treatment of part-time employees is prohibited; labour law is in principle fully applicable to them (Improvement of Employment Opportunities Act). However, part-timers working less than 10 hours per week or **45** hours per month are not covered by this Act with regard to unfair dismissal and are not covered by social security payments. The Dismissal Act only applies to firms with five or more employees working 10 or more hours per week.

According to The Worker Protection Regulation (part-time) Employees Act, 1991, Irish employees, who work less than **8** hours a week and who have not been in continuous service with their employer for at least 13 weeks, are excluded from protection against unfair dismissal.

4.2.2. Salaries

No distinction¹² is made between part-time and full-time workers, with respect to salaries, in Belgium, Germany, Spain, Greece, France, Luxembourg, the Netherlands, Austria, Finland and the UK.

In Denmark there are no rules in legislation on the remuneration of employees engaged on a part-time basis. This question must, therefore, be settled by agreement either individually or collectively.

In Ireland, the Payment of Wages Act 1991 provides that every employee has a right to a readily negotiable mode of wage payment. The act applies to any person employed under a contract of employment, employed through an employment agency or through **a** subcontractor.

In Italy it is established that the resultant reduction of pay from working lesser hours is not necessarily proportional (it can even be less than proportional) and is not compensated by intervention from the Wages Guarantee Fund **as** provided for in job-security agreements/ job-creation agreements.

In Portugal, the Working Hours Act (LDT) establishes that the remuneration received by part-time workers cannot be inferior to the corresponding remuneration for the same period in full-time work.

However, in the UK in some collective agreements part-time work is not uniformly treated. Some agreements contain different hourly wages for full-time **and** part-time employees; **most** however envisage the same hourly wages.

4.2.3. Paid holidays

No distinction is made between part-time and full-time workers, with respect to paid holidays, in Belgium, Germany, Spain, Ireland, Italy, the Netherlands, Austria and Portugal.

In Greece, the right to paid holidays is granted to **an** employee who has performed a year of continuous service in the same company.

In France, to have any right to a paid annual vacation, employees must have been employed in the same enterprise during the year of reference for a minimum of 1 month of actual work.

¹² It may be illegal to pay full and part-timers in the same occupation differently, but the segregation of workers means that the hourly pay of part-timers is overall lower than for full-timers, especially in the UK.

In Finland, holiday compensation in lieu of annual holiday is earned after an employment relationship lasting six hours. The holiday compensation is 8.5% in short-term employment relationships (i.e., less than a year).

Until the working time directive is fully implemented in the UK there is no right to paid holidays for part-time workers that work less than 8 hours a week.

4.2.4. Continuation of payment in case of illness

In Belgium, in order to qualify for sickness benefit an employee must have worked for 120 hours over a 13-week period.

In Denmark the whole population has claim to benefit in kind in the event of illness or pregnancy, this being dependent, however, on the working income. These benefits can amount to up to 90% of the former income. The majority of part-time employees are covered by these provisions, since even with a working week of four hours, the employee has a right to some benefit, no matter how small it may be. However, in order to qualify for sickness benefit an employee must have worked for 120 hours over a 13-week period.

No distinction is made between part-time and full-time workers, with respect to continuation of payment in case of illness, in Germany, Greece, Spain, France, Ireland, the Netherlands, Portugal or Sweden.

In Austria a part-time employee can be included in state insurance schemes governing sickness provided that he/she is paid a monthly wage of at least ATS 3,470 (approx. EUR 250).

In Finland, the part-time worker is only entitled to full sick pay if the employment relationship has lasted continuously for one month before the worker falls ill.

In the UK, part-timers who work less than 16 hours (or eight hours if they have at least five years' continuous service) have no access to paid sickness leave.

4.2.5. Maternity/paternity leave

No distinction is made between part-time and full-time workers, with respect to maternity leave, in Belgium, Denmark, Germany, France, Italy, Portugal, Finland and in the UK (concerning the latter, that is, if the law on employment protection rights, that was accepted in 1995, also extends to maternity leave).

In Greece, each parent is entitled to up three and half full time unpaid leave for children. Maternity allowance up to total salary is paid for. To qualify for maternity allowance, the parent must have worked a minimum of 200 hours in the last 2 years.

In Ireland part-time employees have a right to 14 weeks maternity leave but only after 13 weeks of employment.

In Luxembourg, there are no regulations concerning part-time work and maternity leave.

In the Netherlands those working 20 hours or less are not entitled to parental leave

In Austria, parents who qualify for leave under the terms of the Unemployment Insurance Act are entitled to a parental allowance which is financed from unemployment funds. Workers in part-time employment receive a proportionally reduced allowance.

Benefits in the event of pregnancy are remuneration based, but all who have been resident in Finland (or in EU) for a minimum of 180 days prior to giving birth are entitled to a minimum benefit of **EUR** 10 per day during parental leave.

Parental leave in Sweden is not fully compensated (75%) but it can be taken in one block or as part-time leave until the child is eight years old.

To qualify for maternity pay in the UK an employee must have earned at least **€**4 a week (rising to **€**6 from April 1999) for the qualifying period and therefore have paid contributions to the social security system (known as National Insurance).

4.2.6. Working hours

The issue of working hours can hardly be a matter of discrimination against part-time workers, since working **time** is in itself the distinguishing criterion between full-time and part-time work. Forced over-work on the other hand can be an infringement on the private life of the part-time worker.

In some Member States there are regulations in place that either promote or limit the creation of part-time work.

In Belgium, the weekly working hours of a part-time worker may not be less than one third of the weekly working hours of the full-time employee belonging to the same category within the company. If no such full-time employees are present in the same category in the company, working hours should be restricted to those applicable to the branch or sector to which the company belongs.

Part-time workers in Denmark are not usually considered to be doing overtime unless they work longer than the "normal" working hours of a full time worker.

In Spain, the general limit on overtime hours worked is **80** hours per year. This is in proportion to their working time also applicable to part-time workers.

In Greece, a part-time worker has the right to refuse to do overtime hours if he or she has another job or has family responsibilities.

In Italy, part-time workers are not allowed to work extra hours, except where collective bargaining provides otherwise (Law **No.** 863/1984).

In Luxembourg, work carried out beyond the working time fixed in the employment contract has to be considered as overtime and must be paid as such.

In the Netherlands, the employer has to take into consideration, within reasonable limits, the wishes regarding working hours and patterns of the individual employees in his/her work-planning.

The working hours act (**AZG**) in Austria regulates normal working hours, maximum working hours, rest breaks and rest periods. AZG prohibits discrimination against part-time workers. Extra hours

are only allowed if agreed upon on collective agreements, if an increase in the workload is evident and only if the extra hours cause no infringement on the part-time worker.

In Finland, the employer should organise the work in such a way that enables the employee to switch into part-time work if he/she so wishes due to social or health reasons. Flexitime is becoming typical for more than half of the workforce in Finland. There is also a great deal of irregularity in working hours, for instance seasonally due to employers' needs, employees' needs and the type of work.

4.3. The formal position of part-time workers in social protection¹³

4.3.1. Unemployment benefit

In Belgium voluntary part-time employees can claim unemployment benefit when they work at least 12 hours or at least one third of the usual working hours of a full-time employee.

In Denmark part-time employees who work between 15 and 30 hours can join the voluntary unemployment insurance system. The maximum insurance payment they can receive corresponds to two thirds of the payments which can be made to full-time employees. Furthermore it depends on the time a part-time employee has worked and the contribution he/she has made to unemployment insurance funds (an average of 34 hours a week for at least 52 weeks within the past three years).

Those in Germany who have worked at least 18 hours per week can claim unemployment benefit. In principle, a claim to unemployment benefit exists only when full-time employment is sought. Part-timers who work less than 18 hours are excluded from unemployment insurance.

No distinction is made between part-time and full-time workers, with regards to unemployment benefits, in Greece, Spain, France, Italy, the Netherlands or Austria. In these countries part-time workers receive social security benefits proportional to those of full-time workers, without any threshold.

In Spain, in order to promote part-time work, the 1984 law calls for the application of the principle of equality and proportionality between part-time and full-time workers.

In Ireland, unemployed part-time employees receive a lower rate of unemployment benefit as compared with employees who are in full-time employment. The Irish social-welfare system does not provide cover for employment that involves less than 18 hours per week or incomes below a certain limit.

In Luxembourg, individuals who have worked less than 20 hours a week do not receive any unemployment benefit.

¹³ The main sources used in this section are: Schömann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; Bulletin of European Studies on Time (BEST), 1995 number 8, p. 10; Kravaritou-Manitakis 1988, Euzeby 1988. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

In Finland, a working week of at least **18** hours is required in order to be entitled to unemployment benefit. Additionally, a person must have completed a **43** week period in remunerated work during the preceding **24** months.

In Sweden, there are certain rules which demand that a person has worked for at least **6** months and at least 70 hours per month during a year, or at least **450** hours over a period of six months, including at least **45** hours per month.

Part-time employees in the UK can obtain unemployment benefit under the following conditions: their remuneration must be above a limit of GBP **64** per week (rising to GBP **66** from April **1999**) and they must have paid at least 50 weekly contributions. In that case they receive unemployment benefit for twelve months.

4.3.2. Pensions

Germany, Italy and Spain operate schemes under which older workers nearing retirement can reduce their working time allowing employers to recruit unemployed people to make **up** the shortfall. This encouragement is not directly related to the position of the part-time worker but it has relevance to the role of part-time work in employment expansion.

In the majority of Member States, the requirements for payment of an old-age pension are a minimum period of insurance and a minimum number of contributions. The fact that part-time employees do not work the full number of hours and also have periods without occupational activity (quite apart from the low wage they receive) naturally has an effect on the level of their pensions. Pension systems are better for part-timers where contributors are able to use their best 15-20 years, rather than a **40** year average, **as** this can counteract the lower pay of part-time work.

No distinction is made between part-time and full-time workers, with regard to pensions, in Belgium, Germany, Greece, Ireland or Sweden. In these Member States, the level of pensions depends on the duration of working life and on remuneration. The pensions for part-timers will therefore be low.

In Denmark, the basic pension is the same for everyone and is financed out of public funds.

In Luxembourg, all individuals whose income is below a certain limit are excluded from pension insurance schemes.

In the Netherlands, workers with wages and working time below a certain minimum level are excluded from participation in the main pension funds (PGGM and ABP).

In Finland, the level of pension depends on remuneration (a minimal yearly income of EUR **628** (FIM **3,736**) is required, as of **1998**. Thus, the income threshold is very low).

In the UK a threshold of 30 hours exists below which part-time workers are excluded from the occupational supplementary pension. This is of major importance in Great Britain since no more than a minimal basic pension is paid. It is not clear, however, if this threshold is still in place. The **30** hour limit for occupational pensions in the UK has been ruled unlawful, but was never part of the law, being a matter of custom in those organisations where there are occupational pensions. It is, however, most definitely true that a second pension is necessary for a reasonable income in retirement.

4.3.3. Health cost insurance

Employees in atypical forms of work rarely have the right to benefits in the event of illness or pregnancy. Where such claims apply, the benefits paid and calculated on the basis of previous income are in all cases lower than those for "typical" employees.

In Belgium, there is a minimum amount of insurance that has to be paid in order to be entitled for the right to medical attention.

In Denmark, the entire population may claim to benefit in the event of illness or pregnancy - this is dependent, however, on the working income.

In Germany, part-timers working less than 15 hours per week or earning less than DEM 620 per month are not included in the health insurance system (this amount is lower in the former East Germany). New legislation (01/01/99) in Germany has now changed the income threshold.

In Spain, for workers working less than 12 hours per week, health cost insurance is limited.

In France, all employees have access to the health insurance system, it is however essential to furnish proof of 200 hours of work within a period of three months. Atypical workers who do **not** satisfy these conditions have the opportunity to insure themselves voluntarily with private insurance companies.

No distinction is made between part-time and full-time workers, with regard to health cost insurance in the Netherlands.

In Austria, workers working less than 12 hours per week and earning less than ATS **3,600** per month are only insured for the purposes of accidents at work.

In Portugal health care is independent of professional activity.

In Sweden thresholds to sickness insurance are so low that even part-timers with a low number of hours or a low income are included.

In Finland, health benefits are based on remuneration (a minimum yearly income of **EUR** 895 is required).

In the UK, part-timers earning less than **GBP 64** a week are not included in the health insurance system. About two fifths of part-time workers earn below this threshold (Spring 1998, Labour Force Survey).

4.4. Miscellaneous

Social security schemes, despite some adjustments, hinder the expansion of part-time working. Some of these obstacles to part-time employment stem from the method of financing social security, and especially of calculating contributions; others have to do with the qualifying conditions for benefits and the methods of calculating their amount. In the latter case there is a possibility of discrimination in the form of a threshold; atypical employees **are** often not in a position to fulfil the minimum requirements which most social security systems specify.

Much of the regulation on the position of part-time workers is currently arranged between the social partners at the level of collective agreements. It is not within the scope of this study to comment on all collective agreements that bear relevance to atypical work. In the past, trade unions considered part-time work a threat to the number and quality of regular jobs. Collective agreements exhibit major differences in respect of the conditions for part-time work in most Member States. Levels of unionisation are lower amongst atypical workers (compared with typical workers).

Health and safety

In Belgium, Italy and the Netherlands employers are legally obliged to apply the same safety regulations and measures at work for both part-time and full-time workers.

Health and Safety regulations in the UK will apply equally to part-timers as well **as** full-timers but the limited collective organisation of part-timers could mean that infringements may go unchecked.

Training and education

~~In~~ Belgium only full-time employees are entitled to paid training.

In the UK part-time employees are less likely than full-time employees to receive training. Excluding students, only 23% of part-time employees receive job-related training compared with 29% of full-time employees (Spring **1998**, Labour Force Survey).

4.5. Conclusions

Table 42: The formal position of part-time workers **as** compared to full-time workers; overview

	dismissal protection	salaries	paid holidays	paid sickness leave	maternity leave	working hours	unem- ployment benefit	pensions	health cost insurance
Belgium	+	+	+	---	+		---	+	---
Denmark	---	---	---	+a	+a	---	---	+	+a
Germany	---	+	+	+	+		---	+	---
Greece	+	+	---	+	---	++	+	+	
Spain	---	+	+	+	+	+	+	+	---
France	+	+	---	+	+		+	+	---
Ireland	---	+	+	---	---		---	+	
Italy	+	---	+	+	+	++	+		
Luxembourg	---	+		+	---	+	---	---	
Netherlands	+	+	+	+	---	+	+	---	+
Austria	+	+	+	---	+	+	+		---
Portugal		+	+	+	+				+
Finland	+	+	+	+	+		---	---	---
Sweden	---			+	+		---	+	+
United Kingdom	+	---	---	---	---	---	---	---	---

+

no difference (pro rata) with full-time employees

++

extra protection for part-time workers

-

(negative) difference with full-time employees

0

not covered, excluded

blank

no information available

+a

independent of professional activity

From the overview presented in this table a number of overall conclusions can be drawn regarding the formal position of part-time workers in the EU, particularly with regard to:

- differences in treatment **as** compared to full-time workers;
- differences in treatment in different Member States;
- specific protective regulations for part-time workers
- the (indirect) discriminatory effects, given the amount of males and females who perform part-time work in the different Member States.

Differences in treatment **as** compared to full-time workers

The main source of difference in treatment of part-time and full-time workers is the threshold. All sorts of thresholds apply for the part-time worker before he or she is entitled to benefits or protection. This is the case for dismissal protection, paid holidays, the continuation of payment in case of sickness, maternity leave, unemployment benefit and the right to benefits in the event of illness.

Proportional differences in wages between part-time and full-time workers are made with respect to salaries in most Member States. Only in three Member States there is a negative difference. This is because in these countries part-time workers are excluded from regulations on salaries. This question must, in these countries, be settled by agreement, either individually or collectively.

The issue of working hours can hardly be a matter of discrimination against part-time workers, since working time is in itself the distinguishing criterion between full-time and part-time work. But (forced) over-work on the other hand can be an infringement on the private life of the part-time worker. For that reason in the table there is an "++" if the part-time worker is protected against extra hours by the right to refuse over-time. This is the case for three Member States. In two Member States there is a "false" equality because part-time workers and full time workers are treated equally concerning working hours. This is not an asset for part-time workers because, with respect to working hours, they want to have a different position, namely no extra hours!

In seven Member States, the requirements for payment of *an old-age pension* are a minimum period of insurance and a minimum number of contributions. The fact that part-time employees do not work the full number of hours and also have periods without occupational activity (quite apart from the low wage they receive) naturally has an effect on the level of their pensions.

In some Member States part-time employees do not have *the right to benefits in the event of illness*. Where such claims apply, the benefits paid and calculated are on the basis of previous income and are in all cases lower than those for full-time employees. Health cost insurance is in most Member States dependent on thresholds in working hours or earnings. In some Member States part-time workers have the opportunity to insure themselves voluntarily with private insurance companies.

Differences between treatment in the Member States

Most differences between Member States stem from different national regulations and collective agreements on a national basis. However, a general division of States into three groups appears to be possible, between (1) countries where protection is largely based on the recognition of part-time workers as employees - if not, a more inferior position results (e.g., Belgium, Portugal and the UK); (2) countries where protective regulation is also open to the position of part-time workers, with (e.g., Denmark and the Netherlands) or without thresholds (France and Spain); and (3) countries where special laws apply to the part-time workers' particular positions (Germany and Austria).

Specific protective regulations for part-time workers

In Italy and Greece part-time workers are protected against overtime hours. Some countries have encouraged part-time working as a way of boosting employment. For example, Germany, Italy and Spain operate schemes under which older workers nearing retirement can reduce their working time, allowing employers to recruit unemployed people to make up the shortfall. This encouragement is not directly related to the position of the part-time worker and is as such not reflected in the table but it has some relevance for the older part-time worker.

(Indirect) discriminatory effects

When we compare the formal position of part-time workers to the relative amount of part-time workers on national labour markets, and the division of part-time workers over the sexes, we note a couple of Member States where this position may have the more serious consequences. In most Member States 30-40% of the female labour force works part-time with the exception of Greece, Spain, Italy, Portugal and Finland where the figure is below 20%, and the Netherlands where more than two thirds of the female labour force works part-time. In comparison to the female workers

a much lower percentage of the male labour force works part-time. Only Denmark and the Netherlands have percentages above 10 percent.

From the above it is clear that part-time work is most often performed by women. Discrimination against part-time workers leads, to a certain extent, to discrimination against women. It should be noted, however, that discrimination against those who perform part-time work includes more than those caught in statistics. This discrimination is also the result of more than just the formal position of part-time workers. Therefore, the description above can **only** be referred to **as** the tip of a possible iceberg.

5. Temporary work

5.1. Definitions of temporary work¹⁴

There are close connections between temporary work, work on fixed term contracts and casual work (and to seasonal work, for that matter), both in terms of definitions and in the way these types of work are regulated. The terms have different meanings in different Member States, up to the point where States refer to different things with the same words, and to the same thing with different words (temporary work in Ireland is the same **as** casual work in Spain and Germany, that is: work carried out on the basis of a fixed term contract).

From a regulatory point of view it does, however, make sense to distinguish between temporary work (and seasonal work **as** a specific form of it) on the one hand, and casual work on the other. The word 'temporary work' tends to be used more frequently for a more stable and regulated part of the labour market, whereas 'casual work' generally refers to a less regulated, sometimes even partly illegal (e.g. Italy) type of work. We will deal with casual work in chapter 7, with seasonal work in chapter 6, and with temporary work in this chapter.

In the draft framework agreement on fixed term contracts, the central EU-level social partners - the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Trade Union Confederation (ETUC) - defined a fixed-term worker **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 conditions such as reaching a specific date, completing a specific Task-Force 'Charter of Fundamental Rights', or the occurrence of a specific event"*.

This draft **has** now to be approved by the respective bodies of UNICE, CEEP, and ETUC. Should it find approval, the social partners can ask the Commission to present the agreement to the Council of Ministers, for implementation through a directive, thus making the terms of the agreement legally binding for all the Member States.

A general definition of temporary work can for instance be found in Greece, the Netherlands, Spain, Ireland or the UK. Here, temporary work is seen **as work that is performed for certain periods in the year, with self-contained contracts of employment being concluded on each occasion with the same employer or a different employer**. One may look, in that respect, at temporary work **as** a form of part-time work. The important distinction, however, lies in the fact that part-time work is performed regularly within the framework of a single contract of employment (either fixed-term or of indefinite duration).

In several Member States temporary work is only (legitimately) seen **as** such when it is *performed under a fixed-term contract, and under specific circumstances that allow for the hiring of temporary work*. For instance, in Belgium temporary work is theoretically only allowed to be carried out **as** (1) a replacement for a permanent employee, (2) helping to cope with a temporary increase of

¹⁴ The main sources used in this section are: (EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations) (Delsen, 1995); Survey of fixed term contracts (Clauwaert (ETUI), 1998). Additional information on separate countries has been provided by our national correspondents (see appendix 2).

workload, or (3) enabling special work to be carried out (similar rules apply in Italy). Some Member States, such as Portugal and Spain, also allow for reasons that are related to labour market policies, such as the hiring of first-time job-seekers and the long-term unemployed.

Fixed term contracts are defined **as contracts whereby the parties enter their commitment to each other for a period that is specified in advance, the duration of the contract being fixed at the same time**. The duration or term of the contract is fixed either by stating a date or by referring to a future undertaking to take place on a date known in advance. **As** the fixed term expires, the contract terminates automatically. This type of definition is used in Belgium, Greece, Austria and Portugal.

In Denmark, Portugal and Sweden, there are no general definitions of “temporary work” either in the legislation or in collective agreements.

In Luxembourg, a temporary contract may be renewed twice, after which the contract has to be changed to one with an indefinite ending.

In some Member States (especially in Germany and Italy), the concept of temporary work is very closely linked to the hiring-in of temporary work through specialised agencies. The definition used in the Directive 91/383 is: **“Relationship between a temporary employment business (agency) which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services”** (triangle relationship).

In this type of work very different forms of contractual relations are established. Technically, this relationship is established through the conclusion of two separate contracts: a contract for services between the leasing enterprise (temporary employment agency) and the user, in which the former, in return for a fee, places one or more workers temporarily at the disposal of the latter; and a contract of employment between the leasing enterprise and the temporary worker being hired out. The special nature of this lies in the fact that the worker undertakes to perform work in user enterprises. In Portugal, France, the Netherlands and Spain, this type of work is referred to **as** temporary employment agency work. This system is totally ignored by law in Greece. It was previously ignored or even forbidden, but is now regulated in Italy, Luxembourg and Austria. It does not exist in the UK.

The Eurostat definition is as follows:

“A job may be regarded as temporary if it is understood by both employer and the employee that the termination of the job is determined by objective conditions such as reaching a certain date, completion of an assignment or return of another employee who has been temporarily replaced. In the case of a work contract of limited duration the condition for its termination is generally mentioned in the contract.”

Included in these groups are:

- those with a seasonal job;
- those engaged by an employment agency or business and hired out to a third party for the carrying out of a ‘work mission’;
- those with specific training contracts.

With respect to the minimum and maximum duration period of fixed-term contracts there are many differences between Member States. According to the European Trade Union Institute (ETUI) there are countries with contracts:

- without a maximum duration (Greece, Ireland, Italy, the Netherlands and Austria);
- with a generally applicable maximum duration (Spain, France, Luxembourg, and Portugal)
- or with a maximum duration for specific situations or categories (Belgium, Germany, Sweden and Finland).

According to the **ETUI** only a few countries mention a minimum duration period either in general (Portugal) or for specific situations or contracts (Spain, Luxembourg).

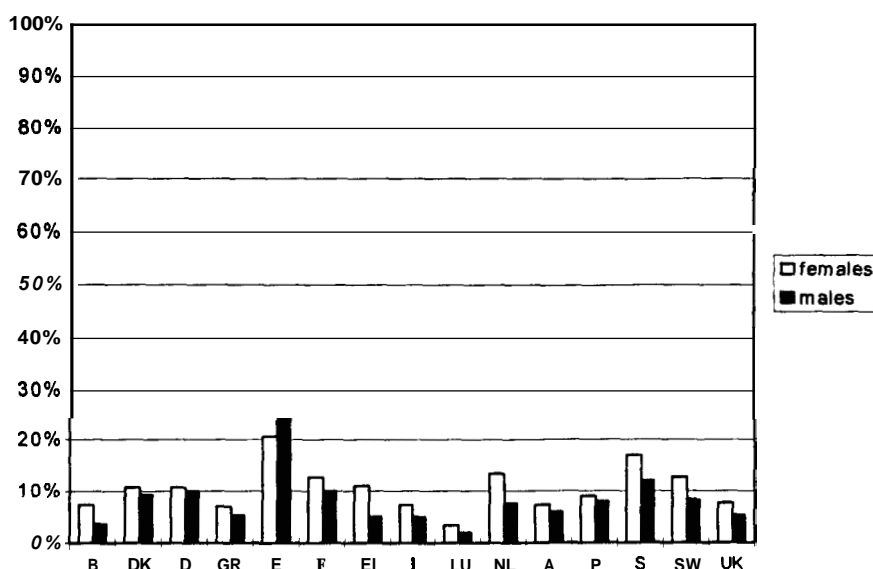
According to the **ETUI**, there are also a lot of differences between the Member States regarding the possibility of the renewal of a fixed-term contract.

Some countries have no maximum duration for contracts but place limits on the number of renewals either in general or in specific situations (Belgium (apprenticeships), Denmark, Greece, Austria and Sweden). Some countries have a maximum duration for contracts and limit the number of renewals (Spain, France, Luxembourg and Portugal). A number of countries have no limits of this kind (Ireland, the Netherlands and the UK).

Temporary work in Austria has been covered by law since **1988**. Temporary work with regard to this law is characterised by the difference between the employer and the receiver of work. The law is valid for employees and workers **as well as** for other dependent working persons, even if they do not have a working contract.

5.2. Temporary work in the EU

Figure 5.1.: Labour market share of males and females who usually perform temporary work 1997¹⁵ (source: Eurostat, 1998)

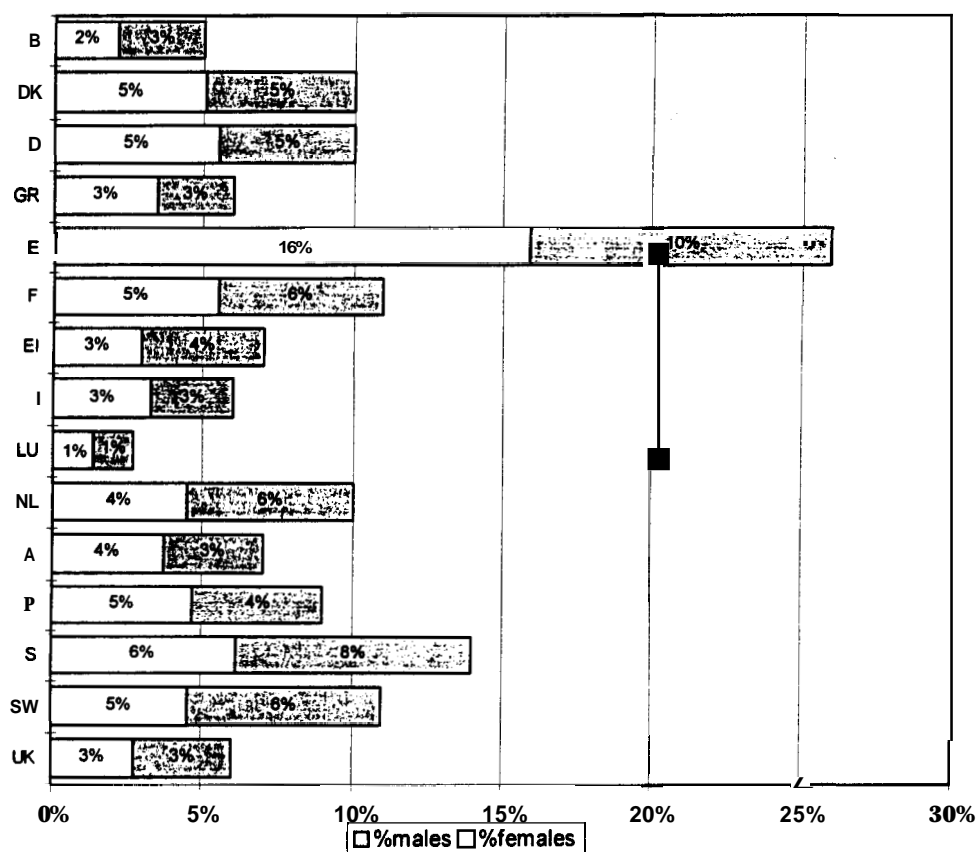


¹⁵ Note that the labour market share is calculated on the basis of the number of employees, not on the basis of the number of full-time equivalent jobs.

The labour market share of females who perform temporary work is relatively small (i.e. less than 10%) in most European Union Member States. **Only** in Spain is the labour market share of females performing temporary work over 20 percent.

The labour market share of males who perform temporary work is even less significant (i.e. less than 10%) in most European Member States. **Only** in Spain is the labour market share of males performing temporary work over 20 percent.

Figure 5.2: Labour market share of males and females who perform temporary work (*source: Eurostat, 1998*)



Examining the total of labour market shares of temporary workers of the European Member States, we see that **only** in Spain (26%) and to a lesser extent in Finland (14%), do temporary workers constitute a considerable part of total employment. In the bulk of Member States the share of temporary work is limited to 10%.

5.3. The formal position of temporary workers in labour regulation¹⁶

¹⁶ The main sources used in this section are: Schömann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994; Survey of fixed term contracts (Clauwaert (ETUI), 1998); (Neathey and Hurstfield, 1996); "The Dutch Miracle", (Visser and Hemerijck, 1997). Additional information on separate countries has been provided by our national correspondents (see appendix 2).

5.3.1. Dismissal protection

With respect to dismissal protection the position of temporary workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle already part of the working contract. A general thesis may be that the attractiveness of fixed term contracts for employers is in itself in the lack of protection against dismissal vis-a-vis the sometimes strict protection of employees on a non-fixed term contract.

In Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Austria, Portugal, Finland and the UK, no protection against dismissal for temporary workers exists.

In Belgium, the temporary worker is entitled to the remuneration of the full period that has been agreed upon in the case of a preliminary dismissal.

In Denmark, fixed-term workers with contracts up to three months are exempted from the obligatory four weeks' notice period required by the Act on White Collar Workers, but in the event of unlawful dismissal, the Act grants the same amount of compensation as for permanent workers. However, white-collar workers with these contracts are generally excluded from receiving compensation for unlawful dismissal because it is only granted after one year's continuous employment.

With respect to intermittent dismissals, a certain threshold period is required to acquire rights against unfair dismissals, such as in Ireland (one year; Unfair Dismissal Act) and Italy (a probation period, normally not more than three months).

In the Netherlands a specification of the fixed-term contract is of relevance. When the fixed-term contract draws to an end it expires by force or by law and none of the various protection regulations against dismissal are operative. However, when notice is required either by individual or by collective agreement, then all the legal protections against dismissal can be invoked.

In the Netherlands employees working more than 24 months have a right to continuous employment and pensions (see Visser and Hemerijck "The Dutch Miracle" 1997, p.44).

In the UK, temporary employees can legally be asked to sign away their rights to unfair dismissal at the end of the contract period; this does not affect a intermediate dismissal, but in most cases employees must work for at least two years before they are entitled anyway (cases based on race, sex and pregnancy are excluded).

5.3.2. Salaries

No distinction is made between full-time workers and temporary workers, with respect to salaries, in Belgium, Denmark, Germany, Greece, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal or Finland.

In Belgium and France, the temporary worker is entitled to the remuneration of the full period that has been agreed upon in case of a preliminary dismissal.

Evidence from a survey of flexible workers in the UK found that temporary workers were more likely to be excluded from pensions, performance related pay, sick pay holiday entitlement and even promotion.

5.3.3. Paid holidays

No distinction is made between temporary workers and full-time workers, with respect to paid holidays, in Belgium, Denmark, Germany, Greece, Spain, Ireland, Italy, Luxembourg, Austria or the UK.

In France, a threshold of one month's contract exists.

In the Netherlands, short temporary workers are excluded from supplementary rights such as additional paid holidays.

Seasonal and temporary workers and those on fixed term contracts who have not worked a full year are entitled to 2 days working days' leave for each full month worked.

In Portugal, unlike open-ended-workers, fixed-term contract workers with contracts under one year are entitled to two days' paid holiday per month worked.

In Finland, holiday compensation in lieu of annual holiday is earned after an employment relationship lasting six hours.

5.3.4. Continuation of payment in case of illness

There is no difference concerning paid sickness leave with respect to typical workers in Belgium, Denmark, Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Austria or Portugal.

In Germany, there is a threshold of four weeks before sickness leave is paid, and in *Italy*, there is no provision at all for sickness.

In Finland, workers in employment relationships of under one month are entitled to sick pay comprising of 50 percent of their normal wages. The worker is only entitled to full sick pay if the employment relationship has lasted continuously for one month before the worker falls ill.

Employees in the UK must make enough national insurance contributions to qualify for sick pay; employees with contracts of less than three months are excluded from sick pay.

5.3.5. Maternity/baternity leave

There is no difference concerning Maternity/paternity **leave** with respect to typical workers in Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands or Portugal.

In Ireland a contract of more than six months is required to qualify for maternity leave.

In Austria, the period of temporary work can not be terminated during the period of maternity leave. The remaining period is suspended until the moment of ending the maternity leave.

Employees in the UK must make enough national insurance contributions to qualify for maternity pay; employees with contracts of less than three months are excluded from maternity pay.

5.3.6. Working hours

There is no difference concerning working hours with respect to typical workers in Belgium, Denmark, Germany, Greece, France, Italy, Luxembourg Austria and Portugal.

In the UK, working time is generally not regulated, except for pregnant women and Sunday working.

5.4. The formal position of temporary workers in social protection”

5.4.1. Unemployment benefit

There is no difference concerning unemployment benefit with respect to typical workers in Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Finland or Portugal.

In Ireland temporarily employed persons receive a lower rate of unemployment benefit **as** compared to employees who have contracts for an unlimited duration. The Irish social-welfare system does not provide cover for employment that involves less than 18 hours per week or incomes below a certain limit.

Temporarily employed individuals in the UK can obtain unemployment benefit under the following conditions: their remuneration must be above a limit of **64** pounds per week (rising to **66** pounds in April 1999) and they must have paid at least **50** weekly contributions. In that case they receive unemployment benefit for twelve months.

5.4.2. Pensions

In the majority of Member States the requirements for payment of an old-age pension are a minimum period of insurance and a minimum number of contributions. The fact that temporary employees can have periods without occupational activity naturally has an effect on the level of their pensions.

In Belgium, Germany and Luxembourg all persons whose income is below a certain limit are excluded from pension insurance schemes.

In Denmark the basic pension is the same for every one and is financed out of public funds, but some individuals may require more than the basic pension.

In Spain there **is** a **24** month service requirement before a temporary worker is entitled to pension contributions).

There is no difference concerning pensions with respect to typical workers in France, Greece Italy, Luxembourg, Austria, Portugal or the UK.

In the Netherlands there is an income independent pension system (AOW) and a wage dependent system (*pensioen*). Workers with wages and working time below a certain minimum level are excluded from participation in the main pension funds (PGGM and ABP).

¹⁷ The main sources used in this section are: Schomann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

In Finland, as of January 1, 1998, pension coverage in the kind of short-term employment relationships that do not fall within the Temporary Employees' Pensions Act (LEL) is provided in accordance with the Freelance Employees' Pensions Act (TaEL). Central and local government provide their own coverage for short-term employment relationships.

5.4.3. Health cost insurance

Employees in atypical forms of work rarely have the right to benefits in the event of illness or pregnancy. Where such claims apply, the benefits paid and calculated on the basis of previous income are, in all cases, lower than those for "typical" employees.

In Belgium, there is a minimum amount of insurance that has to be paid to be entitled for the right to medical attention.

In Denmark, the entire population has claim to benefit in kind in the event of illness or pregnancy - this is dependent, however, on the working income.

In Germany, temporary workers working less than 15 hours per week or earning less than DEM 630 per month are not included in the health insurance system (this amount is lower in the former East Germany).

In France, all employees have access to the health insurance system, it is however essential to furnish proof of 200 hours of work within a period of three months. Atypical workers who do not satisfy these conditions have the opportunity to insure themselves voluntarily with private insurance companies.

No distinction is made between part-time and full-time workers, with regard to health cost insurance in the Netherlands.

In Austria, workers working less than 12 hours per week and earning less than ATS 3,600 per month are only insured for the purposes of accidents at work.

In Portugal, health care is independent of professional activity.

In Sweden, thresholds to sickness insurance are so low that even temporary workers with a low number of hours or a low income are included.

In Finland, health benefits are based on remuneration (a minimum yearly income of 895 EURO is required).

5.5. Miscellaneous

When a working relationship is continued after the contractual maximum, the fixed term contract can automatically be converted into a permanent contract. This can also be the case if the fixed term contract was illegal or unlawful. The countries in which this instrument exists are Belgium, Denmark, Spain, Germany, France, Greece, Italy, and Portugal.

In Greece, there is no general statutory regulation concerning the number of times a fixed-term contract may be renewed. However the following is to be noted:

- Conclusion of successive fixed-term contracts may not represent an endeavour to circumvent the protective regulations concerning the termination of open-ended contracts.
- The tacit renewal of contracts is a particularly interesting issue. A contract is considered to have been tacitly renewed when the worker continues to perform his duties after expiration of the contract and this is tolerated by the employer. Such contracts are considered to have been extended for an unlimited duration.

In Luxembourg, fixed-term contracts are possible for a total length of up to 4 years, split up in 2 or 3 fixed-term contracts, after which the fixed-term becomes a permanent contract.

In Sweden there are restrictions **as** to the situations in which fixed-term contracts are allowed, i.e. the special nature of the work. Fixed-term contracts necessitated by the special nature of the work may only last up to **12** months within a period of 3 years. An employer may only recruit **5** employees at the same time with this kind of contract.

According to the ETUI, in almost all Member States, fixed-term contract workers have no right to be informed of job vacancies for which they are qualified.

Only in some countries (Portugal and Sweden (if employed for 12 months or more)), do fixed-term contracts workers get a preferential right to claim vacant posts for which they are qualified.

Training and education

It should be noted, according to the ETUI, that fixed term contract workers have less access to vocational training.

In Finland, the Study Leave Act gives workers the right to at least five days' study leave if they have worked at least three months for the same employer in one or several periods.

Health and safety

A Directive of 25 June 1991 provides that workers with a fixed-duration or temporary employment relationship are afforded the same level of protection, regarding health and safety, **as** other workers in the enterprise hiring them. In addition, the Directive of 14 October 1991, on the employer's obligation to inform employees of the conditions applicable to the contract of employment relationship, contains provisions directly applicable to temporary work.

Point of view of trade unions in relation to fixed-term contracts

The majority of trade unions in the different Member States mention that the use of fixed-term contracts should be limited and that a maximum quota of temporary workers per factory or per sector should be agreed on.

Current trends on temporary work in the Member States

- Belgium: Since 1993 the government has stimulated the use of successive fixed term contracts within the context of greater flexibility, but without much success.
- Germany: Under the Employment Promotion Act (**1985**) fixed-term contracts may be concluded without any objective reason being given. This Act has been extended to the year 2000.
- Spain: Fixed-term contracts are being used as an instrument for improving employment by giving young workers work experience.
- France: The 1997 Law made provision for "insertion contracts" for young workers and certain categories of unemployed to enable them to gain some initial work experience.

- Italy: Several discussions are currently underway. New measures were introduced following an agreement between the government and the three trade unions.
- The Netherlands: A new "Flex Law" has come into force in 1998. This lays down new provisions in relation to the trial period in fixed-term contracts (a maximum of two months (there are exceptions)). Secondly the option of concluding successive fixed term contracts will be extended (to a maximum of 3 contracts and with no compensation pay).
- Portugal: In 1996 a new law was adopted which requires that the reason for concluding a fixed term contract must be specified in the contract.
- Finland: New measures were introduced in order to clarify the position of fixed-term contract workers, but they have led to greater complexity and more uncertainty.
- Sweden: Since January 1997 there has been a new law on "agreed temporary employment". This law gives the employer the right of a total of 5 fixed term workers for a total of 12 months in a 36-month period. These workers are not entitled to all the rights of employment protection worker.
- United Kingdom: The courts seemed to be moving towards a view that continuity of employment could be deemed to have been achieved if an worker has worked for the same employer on a series of fixed-term contracts. Employers are now getting around this by formally dismissing the worker at the end of each contract period.

5.6. Conclusions

Table 5.3: The formal position of temporary workers as compared to permanent employees; overview

	dismissal protection	salaries	paid holidays	paid sickness leave	maternity leave	working hours	unemployment benefit	pensions	health cost insurance
Belgium	+	+	+	+	+	+	+	—	—
Denmark	—	+	+b	+b	+	+	+b	+b	+a
Germany	—	+	+	—	+	+	+	—	—
Greece	—	+	+	+	+	+	+	+	+
Spain	—	+	+	+	+		+	+	—
France	—	++	—	+	+	+	+	+	—
Ireland	—	+	+	+	—		—	—	—
Italy	—	+	+		+		+	+	+
Luxembourg	—	+	+	+	+		+	+	+
Netherlands	+	+	0	+	+		+	—	+
Austria	—	+	+	+	++	+	+	+	+
Portugal	—			+a	+		+	+	0
Finland	—	+	+	+	+		+	+	—
Sweden									+
United Kingdom	—	—	—	—	—		—	—	+

- + no difference (pro rate) with permanent employees
 ++ extra protection for temporary workers
 (negative) difference with permanent employees
 0 not covered, excluded
 blank no information available
 a independent of professional activity
 b depending on applicable collective agreement

From the overview presented in this table, a number of overall conclusions can be drawn regarding the formal position of temporary workers in the EU, particularly with regards to:

- differences in treatment **as** compared to permanent workers;
- differences in treatment in different Member States;
- specific protective regulations for temporary workers
- the (indirect) discriminatory effects, given the amount of males and females who perform temporary work in the different Member States.

Differences in treatment as compared with employees with a permanent contract

The main source of difference in the treatment of temporary and permanent workers is a threshold of a certain kind that prevents temporary workers from the same benefits and rights **as** permanent workers. All sorts of thresholds apply for the temporary worker before he or she is entitled to benefits or protection. This is the case for paid holidays, the continuation of payment in case of sickness, maternity leave, unemployment benefit, pensions and the right to benefits in the event of illness.

With respect to dismissal protection the position of temporary workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle already part of the working contract. A general thesis may be that the attractiveness of fixed term contracts for employers is in itself in the lack of protection against dismissal vis-a-vis the sometimes strict protection of employees on a non-fixed term contract.

In several Member States, the requirements for payment of an old-age pension and health cost insurance are a minimum period of insurance and a minimum number of contributions. The fact that temporary employees can have periods without occupational activity (quite apart from the low wage they may receive) can have an effect on the level of their pensions. In some Member States temporary workers have the opportunity to insure themselves voluntarily with private insurance companies.

Differences in treatment in different Member States

Most of the differences between Member States stem from different national regulations and collective agreements on a national basis. Fixed-term contracts are regulated in most countries in terms of the circumstances in which they may be used and the frequency of renewal. In Denmark, Ireland and the UK there is no regulation on fixed-term contracts. In these countries there are no restrictions in the duration of the fixed-term contract and the numbers of times it may be renewed. Temporary workers in Ireland and the UK are therefore in an inferior position than permanent employees.

Specific protective regulations for temporary workers

When a working relationship is continued after the contractual maximum, the fixed term contract can automatically be converted into a permanent contract. This can also be the case if the fixed term contract was illegal or unlawful. The countries in which these protective regulations exist are Belgium, Denmark, Spain, Germany, France, Greece, Italy, and Portugal.

(Indirect) discriminatory effects

Examining the total of labour market shares of temporary workers of the European Member States, we see that only in Spain (26%) and to a lesser extent in Finland (14%) do temporary workers constitute a considerable part of total employment. In the bulk of Member States the share of temporary work is limited to 10%. Females are over represented, but not to such a large extent that an indirect discriminatory effect can be expected.

It should be noted, however, that discrimination against those who perform temporary work includes more than those caught in statistics. This discrimination is also the result of more than just the formal position of temporary workers. Therefore, the description above can only be referred to as the tip of a possible iceberg.

6. Seasonal work

6.1. Definitions of seasonal work

Seasonal work is usually defined as "*work performed to meet an enterprise's 'discontinuous' labour requirements*" (for instance in Greece, Spain, Germany, France and the UK). As distinct from temporary work or casual work, in the case of seasonal work these short-term requirements are not due to unforeseeable reasons, nor do they occur on only isolated occasions; they derive from the actual pattern of the enterprise's activity and recur regularly at certain periods in the year (seasons). The worker is employed under a self-contained fixed-term contract which is refreshed for each period. In Italy the types of activity that justify the creation of seasonal work are described by law.

In some Member States (Greece, France (special form of fixed-term contract) and Austria), seasonal work is seen as a special form of temporary work with the same legal positions.

6.2. Seasonal work in the EU

Eurostat has no statistics on seasonal workers in the European Union. The majority of seasonal workers can be found in tourism and agriculture and can therefore be most expected in those countries where these sectors are strong (Greece, Spain, Italy, Austria and Portugal).

6.3. The formal position of seasonal workers in labour regulation'

Regarding the formal position in labour regulation, much of what applies to the temporary worker also applies to the seasonal worker. If in a Member State there is no special regulation for seasonal workers, then the seasonal worker is treated according to the regulation that applies to the temporary worker.

6.3.1. Dismissal protection

With respect to dismissal protection the position of seasonal workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle, already part of the working contract. A general thesis may be that the attractiveness of fixed term contracts for employers is in itself in the lack of protection against dismissal vis-à-vis the sometimes strict protection of employees on a non-fixed term contract.

In Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Austria, Portugal and the UK, no protection against dismissal for seasonal workers exists.

In some countries (France, Spain, Italy and Greece) there are regulatory provisions for seasonal workers working in the tourist industry; there is the obligation to rehire staff the next season.

¹⁸ The main sources used in this section are: Schömann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

With respect to intermittent dismissals, a certain threshold period is required to acquire rights against unfair dismissals, such ~~as~~ in Italy (probation period, normally not more than three months) and in Ireland (one year; Unfair Dismissal Act) and the UK (two year threshold).

In the Netherlands a specification of the fixed-term contract is of relevance. When the fixed-term contract draws to an end it expires, by force or by law, and none of the various protection regulations against dismissal are operative. However, when notice is required either by individual or by collective agreement, then all the legal protections against dismissal can be invoked.

6.3.2. Salaries

No distinction is made between workers with ~~a~~ permanent contract and seasonal workers, with respect to salaries, in Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria or Finland.

In Belgium and France the seasonal worker is entitled to the remuneration of the full period that ~~has~~ been agreed upon in case of a preliminary dismissal.

6.3.3. Paid holidays

No distinction is made between temporary (i.e. seasonal) workers and full-time workers, with respect to paid holidays, in Belgium, Denmark, Germany, Greece, Spain, Ireland, Italy, Luxembourg, Austria or Portugal.

In France, a threshold of one month's contract exists.

In the Netherlands, short temporary (i.e. seasonal) workers are excluded from supplementary rights such ~~as~~ additional paid holidays.

In Finland, holiday compensation in lieu of annual holiday is earned after an employment relationship lasting six hours.

Until the working time directive is fully implemented in the UK there is no right to holidays; seasonal workers may be excluded ~~from~~ holidays (Neathey and Hurstfield 1995).

6.3.4. Continuation of payment in case of illness

There is no difference concerning paid sickness leave with respect to typical workers in Belgium, Denmark, Greece, Spain, France, Ireland, Luxembourg, the Netherlands, Austria or Portugal.

In Germany, there is a threshold of four weeks before sickness leave is paid in and in Italy there is no provision for seasonal workers in case of sickness.

6.3.5. Maternity/paternity leave

In Ireland a contract of more than six months is required to qualify for maternity leave.

There is no difference concerning maternity/paternity leave with respect to typical workers in Belgium, Denmark, Greece, Spain, France, Italy, Luxembourg, the Netherlands or Portugal.

6.3.6. Working hours

Because seasonal workers are hired for periods in which the workload can be very high, working hours can exceed that of the typical employee.

In Belgium, firms with seasonal workers may hire people to work on Sundays.

6.4. The formal position of seasonal workers in social protection''

6.4.1. Unemployment benefit

There is no difference concerning unemployment benefit with respect to typical workers in Belgium, Denmark, Germany, Greece, Spain, Italy, Luxembourg, the Netherlands or Portugal.

In France, seasonal workers have no right to unemployment benefit.

Temporarily employed persons in the UK can obtain unemployment benefit under the following conditions: their remuneration must be above a limit of 57 pounds per week and they must have paid at least 50 weekly contributions. In this case they receive unemployment benefit for twelve months. This excludes most (if not all) seasonal workers.

6.4.2. Pensions

In Belgium, Germany and Luxembourg, everyone whose income is below a certain limit is excluded from pension insurance schemes.

In Denmark, the basic pension is the same for everyone and is financed out of public funds.

There is no difference concerning pensions with respect to typical workers in Greece, Spain, France, Italy, Luxembourg, Portugal or the UK. But it is unlikely (if not impossible) that seasonal workers will make enough contributions to be entitled to a pension.

In the Netherlands, workers with wages and working time below a certain minimum level are excluded from participation in the main pension funds (PGGM and ABP).

6.4.3. Health cost insurance

There is no difference concerning health cost insurance with respect to typical workers in Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg or the Netherlands or the UK.

In Portugal and the UK health care is independent of professional activity.

¹⁹ The main sources used in this section are: Schömann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

6.5. Conclusions

	dismissal protection	salaries	paid holidays	paid sickness leave	maternity leave	working hours	unemployment benefit	pensions	health cost insurance
Belgium	—	++	+	+	+	—	+	—	+
Denmark	—	+	+	+	+		+	+a	+
Germany	—	+	+	---	---		+	---	+
Greece	—r	+	+	+	+		+	+0	+
Spain	—r	+	+	+	+		+	+0	+
France	—r	++	—	+	+		—	+0	+
Ireland	—	+	+	+	—		—	—	+
Italy	—r	+	+		+		+	+0	+
Luxembourg	—	+	+	+	+		+	—	+
Netherlands	+	+	—	+	+		+	—	+
Austria	—	+	+	+					
Portugal	—		+	+	+		+	+0	+a
Finland	—	+	+						
Sweden									
United Kingdom	—		—				—	+0	+

+ no difference (pro rata) to employees with permanent contract

--- (negative) difference with employee with permanent contract

0 not covered, excluded

blank no information available

r obligation to rehire staff the next season

+0 no difference (pro rata) with employee with permanent contract but due to small contributions will never earn a substantial pension

From the overview presented in this table, a number of overall conclusions can be drawn regarding the formal position of seasonal workers in the EU, particularly with regards to:

- differences in treatment **as** compared to permanent workers;
- differences in treatment in different Member States;
- specific protective regulations for temporary workers
- the (indirect) discriminatory effects, given the amount of males and females who perform seasonal work in the different Member States.

Differences in treatment as compared to employees with a permanent contract

The same differences in treatment which occur in the comparison between temporary workers and "typical employees", occur with seasonal workers. This is the case for paid holidays, the continuation of payment in case of sickness, maternity leave, unemployment benefit, pensions and the right to benefits in the event of illness.

With respect to dismissal protection the position of seasonal workers is a peculiar one. Apart from intermittent dismissals, the final moment of dismissal is in principle, already part of the working contract. A general thesis may be that the attractiveness of fixed term contracts for employers is in

itself in the lack of protection against dismissal vis-a-vis the sometimes strict protection of employees on a non-fixed term contract. However in Greece, Spain, France and Italy the employer has the obligation to rehire staff next season.

In several Member States, the requirements for payment of an old-age pension and health cost insurance are a minimum period of insurance and a minimum number of contributions. The fact that seasonal employees can have periods without occupational activity (quite apart from the low wage they may receive) can have an effect on the level of their pensions. In some Member States seasonal workers have the opportunity to insure themselves voluntarily with private insurance companies.

Differences in treatment in different Member States

Most differences between Member States stem from different national regulations and collective agreements on a national basis. Seasonal work is most widespread in Member States with strong agricultural and tourism sectors, like Greece, Spain, France and Austria. It is in these countries that extra provisions (such as the obligation to rehire **staff**) for seasonal workers exist. Fixed-term contracts are regulated in most countries in terms of the circumstances in which they may be used and the frequency of renewal. In Denmark, Ireland and the UK there is no regulation on fixed-term contracts. In these countries there are no restrictions in the duration of the fixed-term contract and the numbers of times it may be renewed. Seasonal workers in Ireland and the UK are thus in an inferior position than permanent employees.

Specific protective regulations for seasonal workers

When a working relationship is continued after the contractual maximum, the fixed term contract can automatically be converted into a permanent contract. This can also be the case if the fixed term contract was illegal or unlawful. The countries in which these protective regulations exist are Belgium, Denmark, Spain, Germany, France, Greece, Italy and Portugal.

Indirect discriminatory effects

Eurostat can not provide us with statistical figures concerning the total of labour market shares of seasonal workers of the European Member States. However it is to be expected that seasonal workers make up for a small part of the total amount of temporary workers. In the bulk of Member States the share of temporary work is limited to **10%**, so the percentage of seasonal work will be considerably less.

It should be noted, however, that discrimination against those who perform seasonal work includes more than those caught in statistics. This discrimination is also the result of more than just the formal position of seasonal workers. Therefore, the description above can only be referred to as the tip of a possible iceberg.

7. Casual work

7.1. Definitions of casual work²⁰

As was described in chapter 3, there are close connections between casual work, temporary work and work on fixed term contracts. In different Member States these words refer, in different ways, to similar types of work. Generally speaking, however, the word 'temporary work' tends to be used more frequently for a more stable and regulated part of the labour market, whereas 'casual work' generally refers to a less regulated, sometimes even partly illegal (Italy) type of work, where the employment is not stable and continuous. In Spain, Ireland, Austria and the UK casual work is defined in a more or less similar way: "work which is irregular or intermittent, with no expectation of continuous employment". This is a working definition; it cannot be found in law.

During the negotiations on agreements on part-time work by the social partners, the Union of industrial and Employers' Confederations of Europe (UNICE) stressed the importance of the availability of exceptions from the principle of non-discrimination "for objective reasons", arguing that there are some cases where equal treatment is either impossible, does not make sense or is not viable. This is prominent in the case of casual work. During these same negotiations it was clearly impossible to find a definition of "casual workers" at European level, so it was decided to leave this up to the national legislation or to collective agreements. Secondly, employers argue that there could also be objective reasons for setting a threshold (level of pay, time worked) for access to certain rights or benefit.

In some Member States, casual work can only occur under specific conditions of fixed-term contracts (in Germany and the Netherlands; and in France on some occasions). This means that it has to be performed under specific circumstances that allow for the hiring of casual work. In these States, casual workers hold the same position as temporary workers.

In Belgium, casual workers are those that are employed by a corporation of employers that work with greenhouses.

In Germany, casual work is often referred to individuals receiving work experience and students and schoolchildren that are employed (often during holidays). They are not covered by labour law.

In Ireland, casual work is often seasonal (for that matter closely related to seasonal work, see Chapter 6) for instance, work related to the tourist industry, or students working as tour guides. Such work may last for a few days or for a few weeks. Some of the casual workers are hired by the day. Casual work, by its nature, does not come under the umbrella of employment protection legislation since casual workers generally do not fulfil the service requirements.

Temporary work in Austria has been covered by law since 1988. Temporary work with regard to this law is characterised by the difference between the employer and the receiver of work. The law

²⁰

The main sources used in this and the next section are: Schömann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39. April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

is valid for employees and workers **as well as** for other dependent working persons, even if they do not have a working contract.

In the UK, traditionally the major casual industry was the docks, which were "de-casualised" in **1997**, although it is now claimed (by trade unions) that the abolition by the government of **1989** of certain protections on dock working may reintroduce casual work into this industry.

7.2. Casual work in the EU

In Spain, casual labour involved a relatively high percentage of those in employment, i.e. **8.8** percent. The percentage of women was **49** percent, and **30** percent of the casual labour force was concentrated in agriculture.

In Ireland, there has been a drop in this type of employment between **1976** and **1984**. Women accounted for **67.4** percent of casual workers but this percentage seems to have declined.

In Italy, where mainly unregistered workers do casual work, this form of employment is declining in every sector. There is also a decline in the percentage of women in the share of agriculture but an increase in the share in services.

In Portugal, casual employment accounted for **1.2** percent of those in employment. 42 percent of casual workers were women working mainly in agriculture and the services.

7.3. The formal position of casual workers in labour regulation"

7.3.1. Dismissal protection

In the case of a casual worker who has a fixed-term contract, all the legal protections against dismissal (that exist for temporary work) are invoked (see section **5.3.1**). Most casual workers, however, have no contract. In that case they are excluded from (most) rights and benefits.

7.3.2. Salaries

Because casual workers often lack experience and have to bargain directly with the employer about payments, wages are for most casual workers lower than for workers with a permanent contract.

7.3.3. Paid holidays

In Finland, holiday compensation in lieu of annual holiday is earned after an employment relationship lasting six hours.

7.3.4. Continuation of payment in case of illness

There is no difference concerning paid sickness leave with respect to typical workers in France or the Netherlands.

²¹ The main sources used in this section are: Schomann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

7.3.5. *Maternity leave*

No distinction is made between casual workers and workers on a permanent contract, with respect to maternity leave, in Denmark and Portugal. In these Member States, casual workers can obtain maternity leave.

In Belgium, Germany, Spain, Greece, Italy and the Netherlands, casual workers are excluded from maternity leave.

7.3.6. *Working hours*

Working hours of casual workers are not regulated and are the result of (informal) agreements between employer and employee.

7.4. The formal position of casual workers in social protection²²

7.4.1. *Unemployment benefit*

There is no difference concerning unemployment benefit with respect to typical workers in the Netherlands. Even workers with a very short fixed-term contract pay social security and have rights to benefit.

In France, there is no right for unemployment benefit for casual workers.

In Germany, casual work is often referred to individuals receiving work experience and students and school children that are employed (often during holidays). They are not covered by labour law and are therefore excluded from unemployment benefit.

Temporarily employed persons in the UK can obtain unemployment benefit under the following conditions: their remuneration must be above a limit of GBP 57 per week and they must have paid at least 50 weekly contributions. In that case they receive unemployment benefit for twelve months. This excludes most (if not all) casual workers.

7.4.2. *Pensions*

In Germany and France, casual workers can enter voluntary insurance.

Casual workers in Belgium and Luxembourg are excluded from pension insurance.

In Denmark, the basic pension is the same for every one and is financed out of public funds.

There is no difference concerning pensions with respect to typical workers in the UK. But it is unlikely (if not impossible) that casual workers will make enough contributions to be entitled to a pension.

²² The main sources used in this section are: Schornann, Rogowski and Kruppe, 1998; Part-time work in the Netherlands, Ministry of social affairs and Employment, No. 39, April 1997; EFILWC, 1991; Part-Time Work in the European Community: Laws and Regulations; Delsen, 1995; InforMISEP Policies No. 59 (1997); Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our national correspondents (see appendix 2).

7.4.3. Health cost insurance

There is no difference concerning health cost insurance with respect to typical workers in Germany, France or the Netherlands.

In the Netherlands, even casual workers with a minimal labour relation (0-hour contracts) can have health cost insurance.

In Denmark and Portugal, health care is independent of professional activity.

7.5. Conclusions

The formal position of those workers that are informally called "casual workers" can range from virtually no legal status to the same position **as** a temporary worker with a fixed-term contract. In the table we attempt to envisage the formal position of those workers that do not have a position **as** a temporary worker **as** defined in chapter 5.

Table 7.1.: Formal position of casual workers as compared to permanent employees; overview

	dismissal protection	salaries	paid holidays	paid sickness leave	maternity leave	working hours	unemploy- ment benefit	pensions	health cost insurance
Belgium	0	n.r.	0	0	0	n.r.	+	—	—
Denmark	0	n.r.	0	0	0	n.r.			+a
Germany	—	+	+	—	+	+	+	—	—
Greece	0	n.r.	0	0	0	n.r.			
Spain	0	n.r.	0	0	0	n.r.			
France	—	++	—	+	+	+	+	+p	+p
Ireland	0	n.r.	0	0	0	n.r.			
Italy	Oi	i	Oi	Oi	Oi	i	Oi	Oi	Oi
Luxembourg	0	n.r.	0	0	0	n.r.			
Netherlands	+	+	0	+	+	n.r.	—	+P	+
Austria	0	n.r.	0	0	0	n.r.			
Portugal	0	n.r.	0	0	0	n.r.			0
Finland									
Sweden									
United Kingdom	0	n.r.	0	0	0	n.r.	0	0	0

+ no difference (pro rata) with permanent employees

+a no difference with permanent employees and not dependent on professional activity
(negative) difference with permanent employees

0 not covered, excluded

blank no information available

Oi (excluded and) illegal

n.r. not regulated

p possibility to voluntarily insure oneself by private insurance

r obligation to rehire staff the next season

+P no difference (pro rata) with employees with permanent contract but due to small contributions will never gain a substantial pension.

From the overview presented in this table, a number of overall conclusions can be drawn regarding the formal position of casual workers in the EU, particularly with regards to:

- differences in treatment as compared to permanent workers;
- differences in treatment in different Member States;
- specific protective regulations for temporary workers;
- the (indirect) discriminatory effects, given the amount of males and females who perform casual work in the different Member States.

Differences in treatment as compared to employees with a permanent contract

The lack of job security, the lower skill levels and the fact that casual workers have greater difficulty in organising themselves as a group mean that their terms and conditions of employment are usually inferior than those of permanent employees and that they are, in most cases, not covered by labour legislation and collective agreements.

In several Member States, the requirements for payment of an old-age pension and health cost insurance are a minimum period of insurance and a minimum number of contributions. The fact that casual employees can have periods without occupational activity (quite apart from the low wage they may receive) can have an effect on the level of their pensions. In some Member States (France and the Netherlands) casual workers have the opportunity to insure themselves voluntarily with private insurance companies.

Differences between treatment in the Member States

In some Member States, casual work can only occur under specific conditions of fixed-term contracts (in Germany, the Netherlands; and in France on some occasions). This means that it has to be performed under specific circumstances that allow for the hiring of casual work. In these States, casual workers hold the same position **as** temporary workers.

In Denmark, Ireland and the UK, there is no regulation on fixed-term contracts. In these countries there are no restrictions in the duration of the fixed-term contract and the numbers of times it may be renewed. Thus, casual workers in Ireland and the UK are in a more inferior position than permanent employees.

Specific protective regulations for seasonal workers

When a working relationship is continued after the contractual maximum, the fixed term contract can automatically be converted into a permanent contract. This can also be the case if the fixed term contract was illegal or unlawful. The countries in which these protective regulations exist are Belgium, Denmark, Spain, Germany, France, Greece, Italy, and Portugal.

Indirect discriminatory effects

Eurostat can not provide us with statistical figures concerning the total of labour market shares of casual workers of the European Member States. However, it is to be expected that casual workers make up for a small part of the total amount of temporary workers. In the bulk of Member States the share of temporary work is limited to 10%, so the percentage of casual work will be substantially lower.

It should be noted however that the discrimination of people who perform casual work includes more than those caught in statistics. In the preceding chapter it is made clear that casual work is not very well regulated and a lot of casual work is done in an informal and sometimes even illegal relation with an employer. Therefore, the description above can only be referred to as the tip of a possible iceberg.

8. Preface to chapters 9-12; atypical working place and/or status

In the following chapters we will discuss the formal position of homeworkers, teleworkers, self-employed and family workers. All of these workers have in common that their work differs to that of 'typical employees' in that they work in different places than inside the typical 'company' (at home, or on another place of their own choosing). Additionally they have a different status and/or a different relationship with the person who commissions their work. Homeworkers do not usually work under direct supervision; the self-employed are their own boss and carry out commissioned work instead of 'hiring out their labour force'; and family workers have a direct family relationship to their 'employer', who in principle is self-employed him (or her-)self.

In this preface chapter we discuss several general issues connected to work that is carried out in atypical working places or with atypical statuses and relations. We will discuss:

- the types of work that we refer to, and the way they are interconnected;
- the legal types of labour that are connected to these types of work, which are the 'sources' of the formal position of these workers;
- typical similarities and differences in formal positions of the four types of atypical workers;
- the relevant aspects of the formal position of these workers.

Labour with atypical work place and/or status

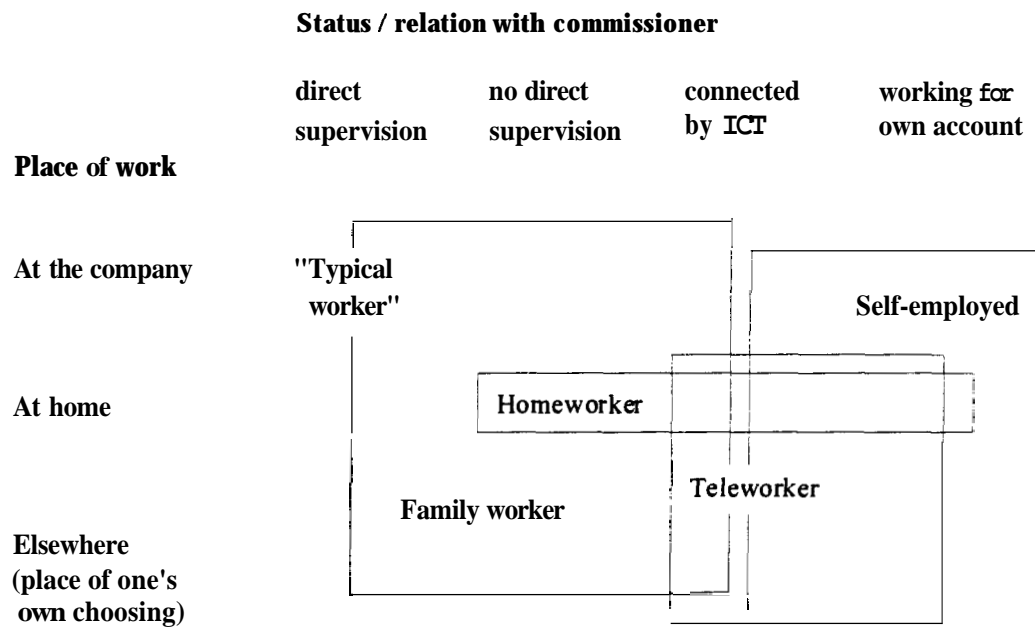
To indicate the differences, **as** well **as** the overlap between the different types of atypical work that we are dealing with in this part of the report, we have depicted these types of labour in one Figure. Depending on the place of work and on the status of the worker, and his or her relationship with the person who commissions the work, the worker can be a homeworker, a family worker, a teleworker, self-employed, or several of these kinds of workers at the same time (see Figure 3 at the end of this section).

The picture makes clear that the distinction between these four worktypes - **as** they are referred to in daily language use - is rather vague. It is not at all impossible that a person is a homeworking teleworking family worker, or a homeworking teleworking self-employed. On the other hand, people can also be just one of these kinds of workers, and clearly not one of the others.

The clearest syntactic distinction is the one between family worker and self-employed. A self-employed person is - roughly speaking - someone who works for his or her own account, whereas a family worker is someone who works for a family member (which latter one usually is the person who is self-employed).

A homeworker is someone who 'works at home', and, more or less by implication, out of the direct supervision of the 'employer'. A teleworker is also working beyond direct supervision (hence 'tele'), but not necessarily at home. Typical for the teleworker is his or her connection through information and communication technology with the person who commission's the work. Homeworkers and teleworkers can be employed, self-employed or family workers.

Figure 8.1.: Work types with atypical work place or status



Legal categories of these types of atypical work

Not all types of atypical work have their own legal recognition and definition (in all EU Member States). Consequently, people who perform a certain type of atypical work may be considered a 'normal' employee, another kind of atypical worker, or not even a worker at all in the eyes of the law. Below we will briefly discuss the legal categories in which the four types of atypical work may fall. These are the types that we will discuss further in the rest of this report. At the end of this section we will provide a schematic overview (see Figure 4).

Homework

Legislation on homework varies from country to country in the European Union. Some countries, such as Germany, have a specific law for homeworkers which provides some protection. In other countries laws exist (mainly intended to prevent the use of homework as a type of social dumping, for instance in Italy and Spain) but are not known to be effective. Other countries have little legislation and homeworkers are only covered by employment and social security protection if it is first proven that they have employee status. Otherwise they are considered to be self-employed.

Telework

Telework is not a legal category. In some countries teleworkers are considered to be a special type of homeworkers. In Germany, the formal position of teleworkers is regulated through the Homeworking Act. In many Member States, however, the ICT connection to a specific employer makes it quite easy - easier than with other types of homeworkers - to look at teleworkers as employees. Teleworkers who work for more than one commissioning organisation and who do not work in a clear hierarchical mode, are considered to be self-employed.

Self-employment

The position of the self-employed is legally recognised in all Member States. However, not all individuals who consider themselves self-employed are accepted as such by the State. 'Pseudo self-

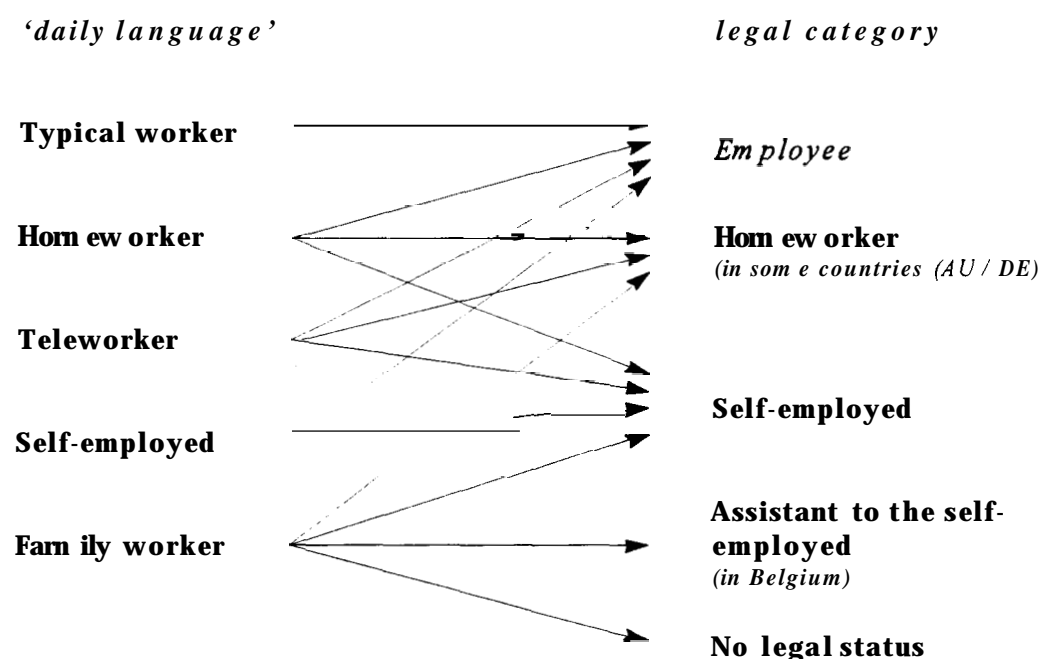
employed' exist, i.e., people who are very much dependent from one commissioning organisation (not seldom their former employer). In some Member States these individuals are legally considered to be employees.

Family workers

Most EU Member States do not recognise family workers as a specific legal category. Individuals who perform family work are either seen **as** employees (in case of remuneration, work contract and sufficient distance in family terms from the employer), or they are excluded from rights stemming from labour and social protection **and** have no legal status at all. Only in Belgium is there a specific legal category of 'assistant to the self-employed' (which is also excluded from most labour and social protection rights, and is treated **as** self-employed for some other rights).

In Figure 2 below, we provide a schematic overview of these connections of types of atypical work to specific legal categories.

Figure 8.2: Atypical work place and status: legal categories



The formal position of these types of atypical workers

From the legal categories described above, it follows that there are clear patterns in the formal position of the four types of atypical workers. The formal position of homeworkers in different Member States will be the consequence of either specific legislation that exists for homeworkers, or of certain provisions in labour and social protection law (exclusive definitions, thresholds, ways of calculation or of proving) that have particular relevance for homeworkers.

The formal position of teleworkers will either be the **same as** the formal position of self-employed, or will be regulated by the same type of legislation as is the case for homeworkers - although, of course, different clauses and definitions may apply.

The formal position of the self-employed will be relatively homogenous within each Member State, since self-employment is in every State, a reasonably clear legal category.

Finally, the formal position of family workers will, in some cases and in some aspects, be more or less non-existent, effectively bringing about exclusion from certain rights.

Relevant aspects of labour and social protection regulation

Finally, we must recognise that several aspects of the formal position in labour law and social protection lack relevance for certain kinds of atypical workers. Hence, these will not be treated in the following chapters. Which aspects are relevant and which are not for the different types of atypical workers, is represented in Table 8.1.

Table 8.1.: Relevant aspects of formal positions

	homework	telework	self-employment	family work
dismissal protection	<i>J</i>	<i>J</i>		<i>J</i>
termination payments	<i>J</i>	<i>J</i>		<i>J</i>
salaries	<i>J</i>	<i>J</i>		
paid holidays	<i>J</i>	<i>J</i>		<i>J</i>
paid sickness leave	<i>J</i>	<i>J</i>	<i>J</i>	<i>J</i>
maternity leave	<i>J</i>	<i>J</i>	<i>J</i>	<i>J</i>
training and education	<i>J</i>	<i>J</i>		<i>J</i>
health & safety	<i>J</i>	<i>J</i>		<i>J</i>
working hours	<i>J</i>	<i>J</i>		<i>J</i>
unemployment benefit	<i>J</i>	<i>J</i>	<i>J</i>	<i>J</i>
pensions	<i>J</i>	✓	<i>J</i>	✓
health cost insurance	✓	<i>J</i>	<i>J</i>	✓

The main category of atypical worker for which several aspects of the formal position are not relevant, consists of the self-employed. Given the fact that they work for themselves, and hence cannot be dismissed, decide - in a way - on their own salaries and the organisation of their own work, aspects like dismissal protection, termination payments, salaries, paid holidays, training and education, health and safety and working hours are either meaningless to them, or are decided upon in full individual discretion.

For family workers the aspect of salaries is irrelevant, as their circumstances typically attracts no remuneration except in kind (board, lodgings, etc.).

9. Homework

9.1. Definitions of homework²³

Two general definitions of homework (also known as 'outwork') come from the ILO: **"Homework is the production of a good or provision of a service for an employer or a contractor under an arrangement whereby the work is carried out at a place of the worker's own choosing, often the worker's own home, where there normally is no direct supervision by the employer or contractor"** and from the Council of Europe: **"A homeworker or outworker is a person performing manual or intellectual work at a stable place and in a situation of subordination to but outside the control of the employer"**.

Homework is, according to these definitions, characterised by two aspects: the location where it is performed and consequently, the different relationship with the employer or contractor. The consequence of the fact that, as the ILO puts it, there is normally no direct supervision by the employer or contractor, may be that even the aspect of subordination is doubtful in practice. In that respect, the distinction between homeworkers as employees and homeworkers as self-employed may be vague and dependent on specific circumstances (e.g. economic dependence). It is clear that the Council of Europe's definition only refers to homeworkers as employees. The same holds true for Germany, where, according to the definition, "homeworkers are individuals who, in a workplace of their own choosing e.g. in their own home, undertake paid work, either alone or with the help of family members, for traders or homework subcontractors, but leave the gainful utilisation of the finished result of their work to the trader who directly or indirectly commissions it from them, whether the materials required are procured by themselves or by the trader". Underlying this definition is the assumption that homeworkers do not run a business, they undertake work in return for payment, but not necessarily with the intention of doing so over the long term. Although it is acknowledged that homeworkers are not employees and are not subordinate to an employer's right to issue instructions, in German law (the Homeworking Act) they are classed as persons treated similar to employees.

Also in Belgium, homeworkers are by definition employees (**wet op de arbeidsovereenkomsten**). Likewise in Austria a Homeworking Act (**Heimarbeitsgesetz**) exists, which makes homework a specific legal category of work with its own rights and duties. According to this law, a homeworker is a person who performs, in his own home or in another place of his or her own choosing, and without being a business person in the sense of the Austrian Business Act, productive, processing, repair or packaging work, commissioned by or for the account of persons who commission homework.

Some EU Member States, however, take both types of workers to be homeworkers (for instance Italy, Portugal, Spain, UK and the Netherlands). When remuneration is calculated on a fixed rate basis French law takes homeworkers to be employees.

²³ The main sources used for this section are: Council of Europe, 1989; International Labour Organisation, 1990; European Commission, 1995a; Van der Heijden, 1997; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our correspondents (see appendix 2).

9.2. Homework in the EU

The figures in this section present the relative amount of homeworkers on the labour markets in the different EU Member States. The data used for these figures are derived from Eurostat's European Labour Force Survey database. When looking at these figures, it's important to note the limited reliability of the data, due to the specific nature and (sometimes even illegal) character of **homework**²⁴. Just by way of an illustration of this problem, below we present the Eurostat data²⁵ and corresponding estimations produced by the Council of Europe.

Table 9.1.: Eurostat data and estimates of the Council of Europe compared (sources: *Eurostat, 1998; Council of Europe, 1989*)

Member State	Eurostat Data		Estimates of the Council of Europe	
	Number	Year	Number	Year
Greece	50.000	1997	225.000	1986
Spain	87.000	1997	490.000	1986
France	1.047.000	1997	59.881	1985
Ireland	100.000	1997	5.741	1984
Italy	921.000	1997	700.000	1985
Netherlands	472.000	1997	7.978	1981
Austria	373.000	1997	9.000	1985
Portugal	157.000	1997	50.000	1983
United Kingdom	652.000	1997	229.800	1981

Leaving aside for the moment the question of whether the number of homeworkers has increased over time, the disparity between the two sets of data is striking. In particular the difference between, on the one hand, data on France and the Netherlands, where Eurostat data are 20 to 60 times as high as the Council of Europe estimates, and data on Greece and Spain, where Eurostat data are 4 to 6 times lower, provides clear illustrations of the limited reliability of statistics on homework in the EU.

Eurostat works with an operationalisation of homework that is closely connected to the 'ambiguous' definition of homework as discussed in the previous section, i.e. a definition in which homework

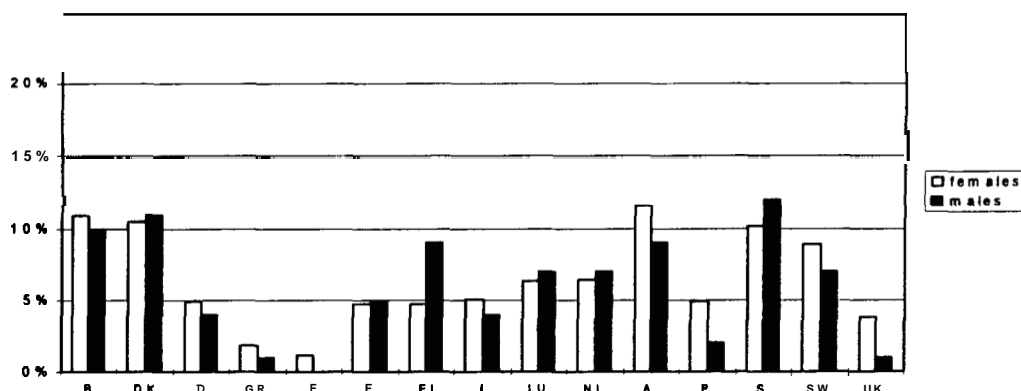
²⁴ To quote J.P. Durand: 'It's a truism to state that statistics underestimate homeworking; illegal activity no doubt doubles, triples and even quadruples the official figures in certain sectors such as the clothing industry. Nobody knows, and nobody is prepared to hazard a guess' (in: Meulders, Plasman and Plasman, 1994).

²⁵ Only representing 'persons who usually work at home'.

may be either a case of employment or of **self-employment**²⁶. Furthermore, Eurostat distinguishes between 'persons who usually work at home' and 'persons who sometimes **work** at home'. We present the figures for these two groups for all Member States, firstly with respect to male and female homeworkers **as** a percentage of male and female employment in general, and next concerning male and female homeworkers **as** a percentage of the total labour market.

9.2.1. Homework in the EU; persons who usually work at home

Figure 91: Labour market share of males and females who usually perform homework (as a percentage of male and female employment)²⁷, 1997 (source: Eurostat)



According to Eurostat data on average between **6%** and **7%** of the female labour force in the Member States usually performs homework. In the Mediterranean countries these numbers are consistently below average (Spain 1%, Greece **2%**, Portugal and Italy 5%), whereas they are considerably above average in the Scandinavian countries (Denmark 11%, Finland **10%**, Sweden **9%**) and in Austria (**12%**) and Belgium (11%).

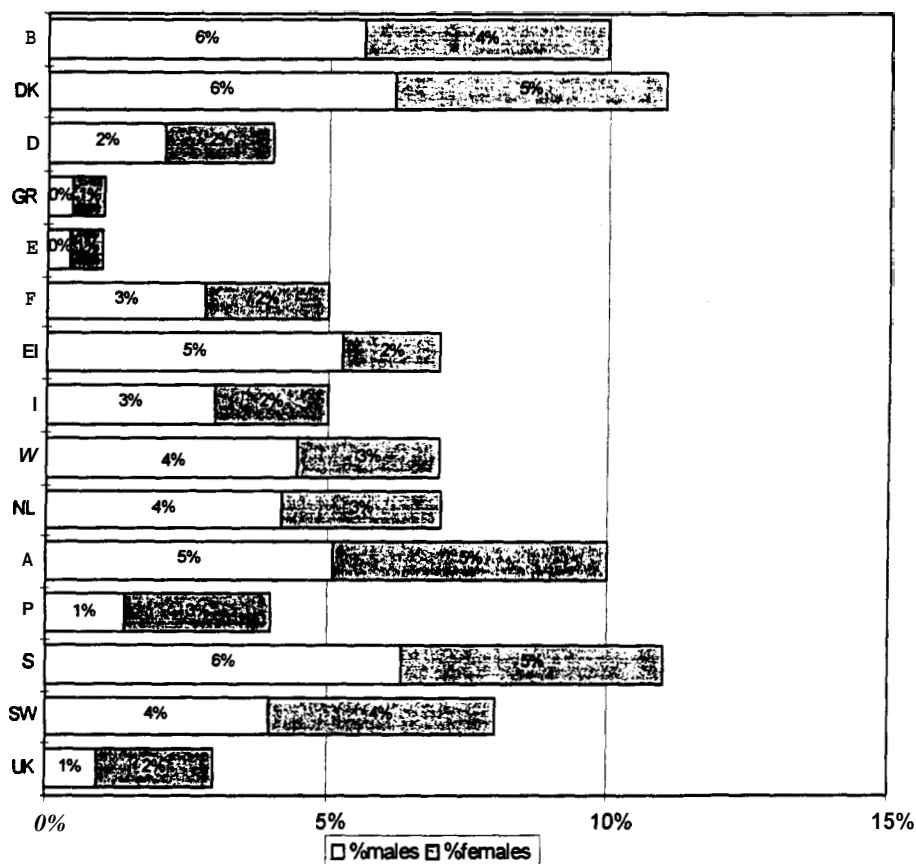
In comparison with female workers, on average a slightly lower percentage of the male labour force (around **6%**) performs homework in the EU Member States. The same national patterns are visible, i.e., a lower than average percentage of people who usually perform homework in the Mediterranean

²⁶ Eurostat uses the following operationalisation of homework: "This concept applies to many self-employed people, for example in artistic or professional activities, who work wholly **or** partly at home, often in a part of their living accommodation set aside for that purpose. However, if the place of work comprises a separate unit (for example, a doctor's surgery or **tax** consultant's practice) which is adjacent to the person's home but contains a separate entrance, then work performed there should not be considered to be done "at home". Similarly, a farmer is not **to** be regarded as working "at home" when he is occupied in fields or buildings adjacent to his house. In the case of employees, "working at home" should be interpreted strictly in terms of formal working arrangements, where it is mutually understood by the employee and the employer that a certain part of the work is to be done at home. Such **an** arrangement may be explicitly included in the terms of employment, or may **be** recognised in other ways (for example, if the employee explicitly notifies the employer of this work by completing a time sheet, **or** by requesting additional payment **or** other form of compensation). This arrangement is also recognised if an employee is equipped with a computer in his home in order to perform his work. Other typical examples of "working at home" include travelling salesmen who prepare at home for appointments with clients which are then held at the clients' offices **or** homes, **or** persons who do typing or knitting work which on completion is sent to a central location. "Working at home" does not cover cases where employees carry out tasks at home (because of personal interest **or** pressure of time), which under their working arrangements might equally have been performed at their place of work".

²⁷ Note that the labour market share is calculated on the basis of the number of employees, not on the basis of the number of full-time equivalent jobs.

countries, and a higher than average percentage in Scandinavia, Austria and Belgium (and for males also in Ireland).

Figure 9.2.: Labour market share of (male and female) people who usually perform homework, 1997 (source: Eurostat)



Taking into account the total figures of those who usually perform homework, the same pattern can be perceived with respect to the Mediterranean countries (below average) and Finland, Denmark, Austria and Belgium (above average).

In percentages of the total labour market, the usual performance of homework does not appear to be a particularly male or female phenomenon in the EU, according to the Eurostat data. This is a somewhat puzzling finding, given that reports from other studies tell us that the relative number of female homeworkers is very **high** (Meulders, Plasman and Plasman, **1994,154**; Council of Europe, **1989**). According to the ILO (1990), 'Homework is women's work, almost by definition'.

An explanation **for** this disparity may be that the Eurostat figures on homework may encompass more than what is understood by homework by the ILO or the Council of Europe²⁸. By the Eurostat definition, telework, artistic work and handicraft are among the examples of homework-types *of* labour that are not carried out by women more than by men. Besides, it was found that in different

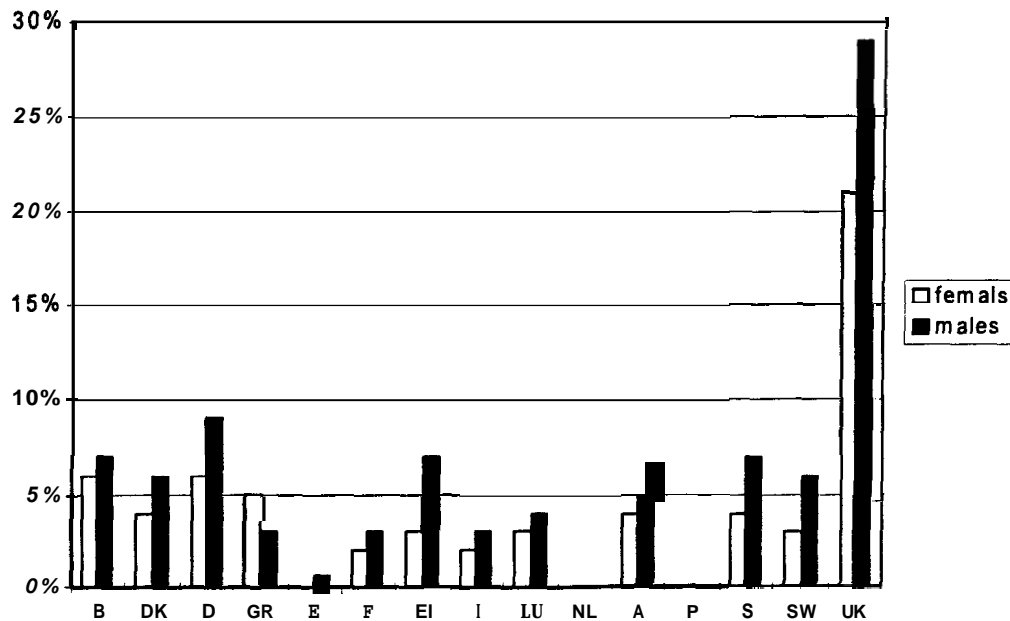
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Information kindly supplied by Mrs. Ana Franco, Eurostat Luxembourg.

countries different interpretations were given to the Eurostat definitions of homeworkers²⁹, as a consequence of which the data may lose international comparability.

9.2.2. Homework in the EU; persons who sometimes work at home

Figure 9.3.: Labour market share of males and females who sometimes perform homework (as a percentage of male and female employment)³⁰, 1997 (source: Eurostat)



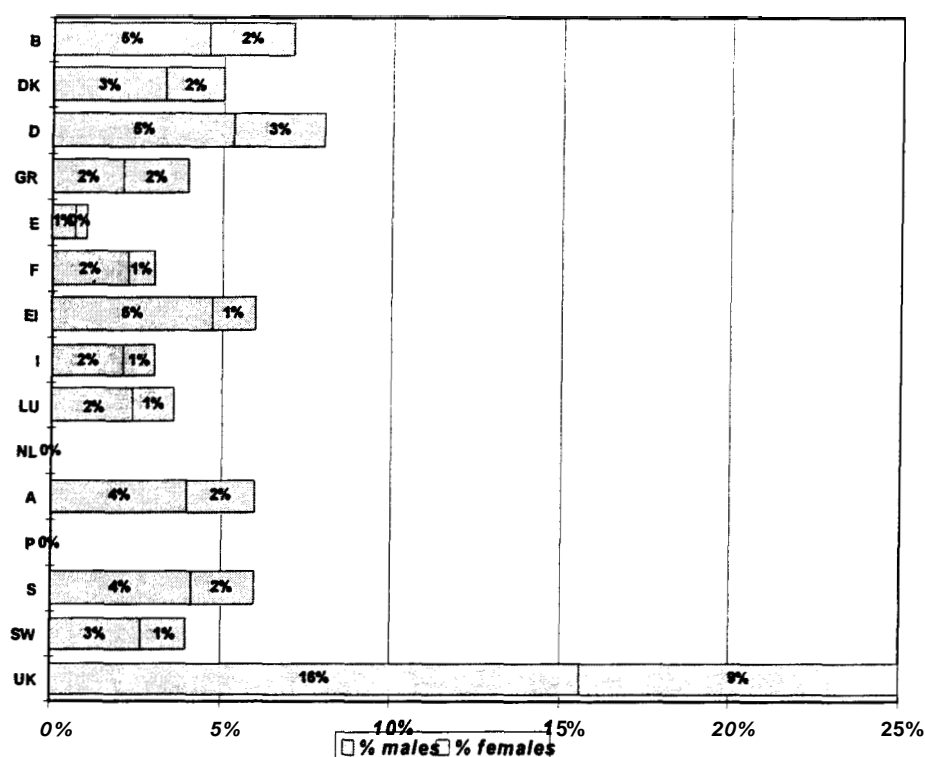
On average, in the EU Member States, a smaller percentage of female workers occasionally perform homework, compared to women who usually perform homework. On average 3% of the female labour force, excluding the UK, sometimes performs homework, whereas 6% to 7% usually performs homework. If we include the UK this figure becomes considerably higher (4.2), as the UK appears to be an exceptional case in this respect. It is unclear whether this exceptional position is caused by particular British conditions or by methodological defects.

On average, a considerably larger proportion of the male labour force occasionally performs homework than their female colleagues (4% to 5% without the UK, around 6% with the UK). This percentage is still lower, however, than the percentage of men who usually perform homework. Again the UK is an exceptional case.

²⁹ Examples of such interpretations concern the question whether farmers / crop growers are homeworkers, and whether teaching professionals can be seen as such. It turned out that different countries hold quite different interpretations to this question (information Eurostat).

³⁰ Note that the labour market share is calculated on the basis of the number of employees, not on the basis of the number of full-time equivalent jobs.

Figure 9.4: Labour market share of (male and female) people who sometimes perform homework (as a percentage of the labour market), 1997 (source: Eurostat)



The most striking aspect of the general overview of males and females who sometimes perform homework is the relative male dominance over this type of work. From the previous figures this dominance may be explained both by the male dominance over the labour market and the slightly larger proportion of male workers who occasionally perform homework. Four countries are exceptional with respect to the proportion of the labour force that sometimes performs homework: the UK (exceptionally high) and Spain, Portugal and the Netherlands (exceptionally low).

9.3. The formal position of homeworkers in labour regulation³¹

9.3.1. Dismissal protection

No distinction is made between homeworkers and company-based workers, with respect to dismissal protection, in Belgium, Spain, France, Italy and Luxembourg.

In other Member States, however, there are differences.

- In Denmark, protection depends on the way the agreement concerning working hours has been negotiated with the employer (different from wage-earners).
- In Germany, special rules apply for ordinary termination with notice in the homework employment relationship. Homeworkers are not covered by the provisions of general protection against dismissal.

³¹

Main sources used for this section are: Meulders, Plasman and Plasman, 1994; European Commission, 1995a, 1995b; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our correspondents (see appendix 2).

- In Greece, homeworkers are protected against unfair dismissal, provided they do not have employees, and they do not live in a municipality with more than 6,000 inhabitants; in those cases they are excluded from dismissal protection.
- In Austria, the Homework Act contains specific provisions concerning the dismissal of homeworkers. For instance, the homework contract ends by nature 30 days after the last assignment has been fulfilled. The general dismissal protection for workers does not apply for homeworkers.
- In Portugal, homeworkers are excluded from dismissal protection except in the case of a work contract.
- In the UK, homeworkers have the same rights **as** other employees, providing they can prove their employee status³².

9.3.2. *Salaries*

No distinction is made between homeworkers and company-based workers, with respect to salaries, in Belgium, Germany, Spain, France, Ireland (concerning overtime work), Italy (the law refers to piece work, the price of which is to be established in collective agreements), Luxembourg, the Netherlands, Austria, Portugal (in Madeira) or the UK (providing they can prove their employee status).

In Denmark the level of payment of homeworkers depends on the way the agreement concerning salaries has been concluded with the employer.

In Greece, homeworkers do not hold a right to equal payment.

9.3.3. *Paid holidays*

No distinction is made between homeworkers and company-based workers, with respect to paid holidays, in Belgium, Denmark, Germany, Spain, France or Luxembourg.

In some Member States, homeworkers hold a different position to company-based workers.

- In Greece, homeworkers with employees or who live in a municipality with more than 6000 inhabitants are excluded from a right to paid holidays.
- In Ireland, homeworkers have less rights to paid holidays than company-based workers.
- In Italy, homeworkers are not entitled to paid holidays.
- In Austria, homeworkers are entitled to paid holidays after 6 months of uninterrupted homework assignments.
- In Portugal, homeworkers have the same rights **as** the self-employed (and hence the same rights as company-based employees), except in the case of a work contract.
- In the UK, homeworkers have the same rights on paid holidays **as** employees providing they can prove their employee status

9.3.4. *Continuation of payment in case of illness*

No distinction is made between homeworkers and company-based workers, with respect to continuation of payment in case of illness, in Belgium, Spain, France, Italy or Luxembourg.

³² This is the case for most aspects of the formal position of homeworkers in the UK. However, the abolition of the Wages Councils in the UK in 1993 not only withdrew the minimum wage in the sectors covered (i.e. retail, textiles, etc.) but also reduced protection for homeworkers.

In other Member States, there is a difference in this respect.

- In Denmark and the Netherlands, homeworkers are excluded from continuation of payment in case of illness.
- In Germany, in the Homework Act, special supplements are payable in order to reach the earlier earned wage. For the assimilated homeworkers and the self-employed the law on the continuation of wages does not apply. They can apply for Sickness benefit if they have entered the Sickness benefit fund on a voluntary basis.
- In Greece, homeworkers with employees or who live in a municipality with more than 6,000 inhabitants are excluded from sickness benefit.
- In Austria, homeworkers are entitled to sick pay when their homework assignment has been lasting for 14 days or more. They receive basically the same as company based workers.
- In Portugal, homeworkers are not covered, except when they have a work contract.
- In the UK, homeworkers have access to sick pay if they are able to prove their status of an employee and have made contributions to the system.

9.3.5. Maternity/paternity leave

No distinction is made between homeworkers and company-based workers, with respect to maternity leave, in Belgium, Germany, Spain, France, Italy, Luxembourg, the Netherlands, Austria, or Portugal.

In other Member States homeworkers hold a different position:

- In Denmark it depends on the way the agreement concerning working hours has been negotiated with the employer.
- In Greece, homeworkers who live in a municipality with more than 6,000 inhabitants are excluded from maternity leave. Homeworkers with employees have different rights than company-based workers.
- In Ireland, homeworkers have less rights to maternity leave than company-based workers.
- In the UK, homeworkers can enjoy maternity leave if they are able to prove their status of an employee and have made contributions to the system.

9.3.6. Health and safety³³

No distinction is made between homeworkers and company-based workers, with respect to health and safety protection, in Belgium, Spain, France, Italy (the Italian law explicitly forbids certain dangerous activities to be carried out by homeworkers), Luxembourg, Sweden or the UK.

In the Netherlands there is a separate law on Homeworking, dating from 1993, which regulates working conditions at home to some extent. In Austria, the Homework Act provides special protection for homeworkers (particularly with regards to workplace arrangements and for specific types of activity).

In other Member States, homeworkers hold different positions.

- In Denmark, Germany and Ireland, homeworkers have fewer rights than company based workers.
- In Greece and Portugal, homeworkers are excluded from health and safety protection.

³³ An additional source used for this and the following section is: European Industrial Relations Review, 1996.

9.3.7. Working hours³⁴

No distinction is made between homeworkers and company-based workers, with respect to working hours, in Germany, Ireland, France, Italy, Luxembourg, the Netherlands and Sweden. In Spain, Finland, Portugal and the UK, homeworkers are excluded from provisions regarding working hours.

In Belgium, it is thought that homeworkers should be free to choose their own working time arrangements, including work on Sundays. The law offers social partners, the room to agree on special provisions for working times or Sunday labour for homeworkers, and propose to make these provisions applicable by Royal decree. In Greece, homeworkers who live in communities with more than 6,000 inhabitants are excluded from provisions regarding working hours.

In Denmark, working hours **are** regulated by collective agreements. There are therefore no general working time provisions for homeworkers.

In **Austria**, homeworkers enjoy special protection from long working hours. Those who commission homework should calculate supplying deadlines in such a way that these can be met without homeworkers having to work outside normal working hours and public holidays. For women and youths these deadlines should not require night work or other specific types of irregular work.

9.4. The formal position of homeworkers in social protection³⁵

9.4.1. Unemployment benefit

No distinction is made between homeworkers and company based workers, with respect to unemployment benefit, in Germany, Spain, Italy, Luxembourg or the UK.

In the following Member States homeworkers do hold a different position:

- In Belgium, homeworkers have to fulfil a waiting-period of seven days before they can claim benefit.
- In Denmark, homeworkers are excluded from unemployment benefit.
- In Greece, homeworkers with employees or who live in a municipality with more than 6,000 inhabitants are excluded from unemployment benefit.
- In France, homeworkers have fewer rights to unemployment benefit than company-based workers.
- **In the Netherlands, homeworkers are excluded from unemployment benefit if they do not have a work contract for a period of at least 30 days, or earns at least 40% of the minimum wage.**
- In Portugal, homeworkers are excluded from unemployment benefit, except in the case of a work contract.

9.4.2. Pensions

No distinction is made between homeworkers and company-based workers, with respect to pensions, in Belgium, Germany, Spain, France, Italy, Luxembourg and Portugal.

³⁴ An additional source used for this section is: Blanpain, Köhler and Rojot, 1997.

³⁵ The main sources used for this section are: Meulders, Plasman and Plasman, 1994; European Commission, 1995a, 1995b. Additional information on separate countries has been provided by our correspondents (see appendix 2).

In Denmark, homeworkers have diminished pension rights. In Greece, homeworkers with employees or who live in a municipality with more than 6,000 inhabitants are excluded from pensions. In the UK, access to pensions for homeworkers will hinge around being able to prove the status of an employee and then to have made contributions to the system.

9.4.3. Health cost insurance

No distinction is made between homeworkers and company-based workers, with respect to health cost insurance, in Belgium, Germany, Spain, France, Italy and Luxembourg.

In Denmark, Portugal and the UK, health cost insurance is independent of professional activity.

In Greece, homeworkers who live in municipalities with more than 6,000 inhabitants are excluded from health cost insurance. Homeworkers with employees hold different rights.

9.5. Miscellaneous

Additionally, some examples are known of provisions in collective agreements that give (additional) rights to homeworkers. In the clothing and textile sector, such provisions are found in collective agreements in Belgium, Denmark, Germany, Ireland, France, Italy, the Netherlands (**only** regarding homeworkers who earn more than **40%** of the national minimum wage) and the UK, Concerning:

- dismissal protection (not in Denmark, Ireland, Italy or the UK; in Germany only in the clothing sector);
- salaries (in Denmark only for the textile sector, concerning overtime work; in Germany only in the clothing sector; in Ireland only concerning 'shirt-production', in the UK only in some of the collective agreements);
- paid holidays (in Belgium only textile; not in Denmark, nor in Ireland; in Germany only clothing, not in France, nor in the UK);
- continuation of payment in case of illness (only Italy and the Netherlands (except when they earn less than **40%** of the minimum wage));
- health and safety protection of homeworkers (only in Germany, in the clothing sector);
- working hours (only Italy and the Netherlands (if wage is more than 40% of minimum wage));
- unemployment benefit (in Belgium, Germany (only clothing), France and the Netherlands (the latter only considers homeworkers who earn more than **40%** of minimum wage));
- (additional) pension rights (in Belgium, Germany, France and the Netherlands (the latter only considers homeworkers who earn more than **40%** of minimum wage)).

9.6. Conclusions

Summarising the previous sections, Table 9.2. provides an overview for homeworkers in the different EU Member States on relevant aspects of their formal position.

Table 9.2.: The formal position of homeworkers **as** compared to company-based workers; overview

	dismissal protection	salaries	paid holidays	paid sick- ness leave	maternity leave	health & safety	working hours	unemployment benefit	pensions	health cost insurance
Belgium	+	+	+	+	+	+	—	—	+	+
Denmark	—	— b	+	0	— b	—	— b	0	—	+ a
Germany	—	+	+	—	+	—	+	+	+	+
Greece	—	0	—	0—	—	0	—	—	—	—
Spain	+	+	+	+	+	+	0	+	+	+
France	+	+	+	+	+	+	+	—	+	+
Ireland		+	—		—	—	+			
	+	+	0	+	+	+	+	+	+	+
Luxembourg	+	+	+	+	+	+	+	+	+	+
Netherlands		+		0	+	++	++	—		
Austria	—	+	—	+	+	++	++			
Portugal	—	+	+	—	+	0	0	—	+	+ a
Finland							0			
Sweden						+	+			
United Kingdom	—	+	—	—	—	+	0	+	—	+

+

no difference (pro rate) with full-time company-based employees

++

extra protection for homeworkers
(negative) difference with full-time company-based employees

0

not covered, excluded

blank

no information available

a

independent of professional activity

b

depending on applicable collective agreement

From the overview presented in this table, a number of overall conclusions can be drawn regarding the formal position of homeworkers in the EU, particularly with regards to:

- differences in treatment **as** compared to company-based workers;
- differences in treatment in different Member States;
- specific protective regulations for homeworkers;
- the (indirect) discriminatory effects, given the amount of males **and** females who perform homework in the different Member States.

Differences in treatment **as** compared to company-based workers

In many Member States and in many aspects, homeworkers have an inferior formal position to that of company-based workers. This is particularly the case where dismissal protection, paid holidays, paid sickness leave, health & safety, working hours and unemployment benefit are concerned. With respect to salaries, maternity leave, pensions and health cost insurance, homeworkers are more often treated equally, or pro rata, to company-based workers.

To a certain extent, the reduced position of homeworkers is the consequence of thresholds to protection. For instance, in Austria homeworkers are only entitled to paid holidays after 6 months of uninterrupted homework, and can receive sick pay only after they have been on an assignment

for 14 days. Similarly, in Belgium homeworkers have to wait seven days after dismissal before they can claim unemployment benefit.

Thresholds are not the main cause of the reduced position, however. More often homeworkers are simply excluded from certain rights. For instance, in Greece, homeworkers do not hold the right to equal payment. In Italy, homeworkers hold no right to paid holidays. In Denmark and the Netherlands, homeworkers are excluded from continuation of payment in case of illness.

In some instances the inferior position of homeworkers is related to the burden of evidence that rests on their shoulders, to prove that they are in fact employed to perform homework. Hence, homeworkers are protected against unfair dismissal in the UK, providing they can prove their employee status. In Portugal they must produce a work contract in order to qualify for dismissal protection, for continuation of payment in case of illness or for unemployment benefit.

Differences between treatment in the Member States

Clearly there are some national regulations in the way in which homeworkers are treated, and in many cases, treated in an inferior way. Two countries merit specific attention: Greece, where homeworkers only enjoy protection in many aspects in cases where they do not have employees, and do not live in a municipality with more than 6,000 inhabitants; and Denmark, where many aspects of workers' formal positions are regulated by collective agreement - and on which the position of homeworkers is largely dependent.

Otherwise, a general division into three categories appears to be possible, between (1) countries where protection is largely based on the recognition of workers **as** employees - if not, an inferior position results (e.g., Portugal **and** the UK); (2) countries where protective regulation is also open to the position of homeworkers, with (e.g., the Netherlands) or without thresholds (Belgium, France, Spain); and (3) countries where special laws apply to the homeworkers' particular positions (Germany and Austria).

Specific protective regulations for homeworkers

In some cases the equal treatment of company-based workers and homeworkers results in *defacto* inferior treatment of homeworkers. This happens for example in health and safety matters, where the working conditions of homeworkers are (or can be) to a considerable extent of their own making. Another example of 'false equality' occurs in cases in which the 'burden of proof' mentioned before, places homeworkers in a disadvantaged position. **How** can homeworkers prove their hours of work, for example, when a protection against unacceptable working hours is to be enforced, or when sick pay is to be calculated? Some countries have therefore installed specific laws to protect homeworkers. So, in the Austrian and German Homework acts protection is offered, which is often less than the protection of company-based workers (hence the 'minuses' on some aspects for these countries, in Table 9.2.), but which offers better, and better suited, protection than ordinary labour law would in the absence of a Homework act.

Similarly, in the Netherlands, special provisions in the Working Conditions Act are geared to meet with homeworkers' special positions.

Indirect discriminatory effects

When we compare the formal position of homeworkers to the relative amount of homeworkers on national labour markets, **and** the division of homework over the sexes, we note a couple of Member States where this position may have the most serious consequences. This concerns first of all

Denmark, where more than 10% of the labour market regularly performs homework. Their formal position depends mostly on collective bargaining. According to Eurostat figures, however, the division between male and female homeworkers is almost 50/50. This implies, more or less, that there is no real (indirect) discrimination. Secondly, Ireland is a country where homeworkers hold a less protected position; close to **7%** of the labour market regularly perform homework. In the case of Ireland, however, the male dominance over the homework labour market is strong (almost three times **as** many men than women perform homework). **So**, if any indirect discrimination exists **as to** their formal position, this discrimination concerns men more than women.

It should be noted, however, that discrimination against those who perform homework concerns more, and perhaps additionally, different people than those captured in statistics. This discrimination is also the result of more than just the formal position of homeworkers. Therefore, the description above can **only** be referred to **as** the tip of a possible iceberg.

10. Telework

10.1. Definitions of telework³⁶

Telework is *not* a legal category, as Pennings (1997) points out. To define telework, therefore, is to give a *functional* definition, with possible links to different legal types of labour. For example, in most Member States (Greece, Spain, Ireland, France, Italy and the UK) telework is seen as a new form of homework, which is characterised by the use of information and telecommunication technology (**ICT**). The formal position of teleworkers is therefore largely the same as that of homeworkers, including the vague distinction between the employee status and the self-employed status of the homeworker, as was described in the previous chapter on homework (chapter 7). However, the use of modern technologies may bring along new forms of supervision and control for the employer, as a consequence of which teleworkers are more often formally considered to be employees. It seems that teleworkers are predominantly managerial and white collar employees, mainly in service sector companies, especially in the information technology and finance sectors. In Germany, teleworkers do not necessarily fall into the category of homeworkers (who are treated as equivalent in law to employees), but may also be self-employed persons or employees.

After consideration of all different definitions and points of view concerning telework, Pennings (1997) defines telework as:

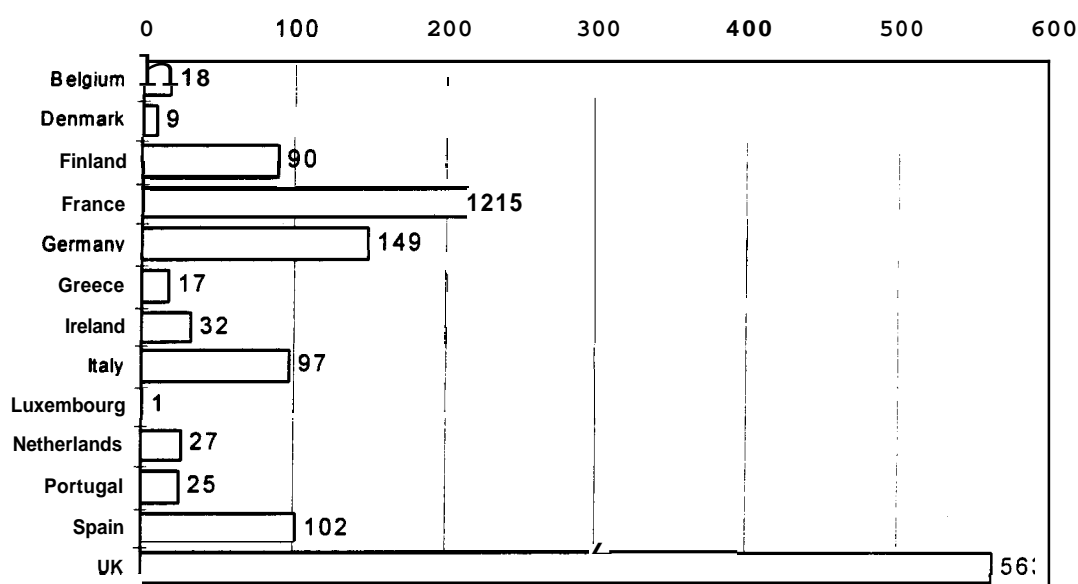
"... the work performed by a person (employee, self-employed, homeworker, ...) mainly or for an important part, at (a) location(s) other than the traditional workplace for an employer or a client, involving the use of advanced technologies".

10.2. Telework in the EU

No Eurostat data are available for the incidence of telework in the EU. Below we therefore present the estimate that was produced by Korte as part of a project by the European Foundation for the Improvement of Living and Working Conditions to explore some features of telework in the EU.

³⁶ The main sources used for this section are: Pennings, 1997; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our correspondents (see appendix 2).

Figure 10.1: Estimate of the number of teleworkers in Europe, 1994 (* 1000) (source: Korte, 1996; correspondent information on Finland, 1998).



From this overview it can be seen that the majority of teleworkers are active in the UK, followed at a distance by France and Germany. As a percentage of the population over 15 years of age, the UK and Ireland both have by far the highest percentage of teleworkers (1.21%, according to Korte). France comes next, with 0.47% of the population over 15. In Spain and Portugal 0.32% are teleworkers, whereas in all other Member States the figure is around 0.2% - 0.22%.

10.3. The formal position of teleworkers in labour regulation³⁷

10.3.1. Dismissal protection

In many Member States there is no specific legislation providing dismissal protection to teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning dismissal protection (this is the case in Denmark, Greece, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Spain, Finland, Sweden and the UK).

In Belgium, teleworkers must have a written work contract, otherwise the employee may break the obligation at any point. If there is a contract, normal labour law applies.

In Germany, teleworkers are covered by the Homeworking Act. As such they have different rights with respect to dismissal to company-based employees.

In cases where teleworkers are self-employed, the right to dismissal protection is by definition not applicable.

³⁷

The main sources used for this section are: European Commission, 1995b; European Industrial Relations Review, 1996; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our correspondents (see appendix 2).

10.3.2. Salaries

In many Member States there is no specific legislation concerning the salaries of teleworkers, although teleworkers with dependent employee status are covered by all individual and collective labour legislation concerning salaries (this is the case in Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK). In Germany, the Homeworking Act provides teleworkers, who are employees, equal payment rights.

In cases where teleworkers are self-employed, the right to equal salaries is by definition not applicable.

10.3.3. Paid holidays

In many Member States there is no specific legislation providing paid holiday rights to teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning paid holidays (this is the case in Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK). In Germany, the Homeworking Act provides teleworkers who are employees equal rights on paid holidays.

In cases where teleworkers are self-employed, the right to paid holidays is by definition not applicable.

10.3.4. Continuation of payment in case of illness

In many Member States there is no specific legislation providing rights to continuation of payments in case of illness to teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning sickness payment (this is the case in Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland). In Belgium, a special regulation states that the employee must inform the employer immediately and send medical proof within *two* days.

In Luxembourg, all those performing a professional activity for remuneration by somebody else are insured for sickness benefit. This holds true for self-employed teleworkers in Denmark, Spain, Portugal, Finland and Sweden. In Austria, Germany and Greece, self-employed teleworkers have less rights, whereas self-employed teleworkers in France, Ireland, Italy, the Netherlands and the UK are excluded from paid sickness leave.

In Belgium, a separate regulation exists for sick-pay to self-employed. During the first three months of illness, there is no right to payment. After that time a daily allowance is granted (BEF 798 for a head of family), which is raised in case the illness lasts longer than a year (BEF 1073 per day for a head of family).

In some Member States, the specific form of sickness benefit regulation may cause problems for teleworkers.

- In Germany, for teleworkers, the Homework Act requires special paid supplements in order to reach the earlier earned wage. For assimilated teleworkers and self-employed teleworkers the law on the continuation of wages does not apply. They can apply for Sickness benefit if they have entered the Sickness benefit fund on a voluntary basis.
- In Sweden, every employee is entitled to receive wages and other benefits from his employer during the first two weeks of illness. The benefit rate depends on the extent of decreased work capacity. For teleworkers the requirement on the 25 percent decrease may be problematic, as it

is difficult to distinguish the work they can now do from work which would have been done if they had been in good health.

- In the UK, statutory Sick Pay provides cover for employees who have been incapable of work for at least four consecutive weeks. It is paid on a fixed weekly rate; this may mean complications for teleworkers who do not have a fixed work pattern.

10.3.5. Maternity/paternity leave

In many Member States there is no specific legislation concerning maternity leave for teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning maternity leave (this is the case in Belgium, Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, the UK, and in Germany in cases where the teleworker is an employee or a homeworker).

Self-employed teleworkers enjoy the same rights in most Member States, except for the Netherlands (less rights) and Ireland and the UK (excluded).

10.3.6. Health and safety

In many Member States there is no specific legislation concerning the health and safety of teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning health and safety (this is the case in Belgium, Denmark, Greece, **Spain**, France, Ireland, Italy, Luxembourg, Austria, Portugal, Finland, Sweden and the UK).

In the Netherlands there is a separate law on homeworking, dating from 1993, which regulates working conditions at home to some extent. Health and safety regulation also covers teleworking at home, making the employer responsible for ensuring that the workstation in the employee's home is suitable. This regulates the number of hours which may be worked in front of a screen and ergonomic aspects of workstations.

With respect to health and safety, it is in practice difficult to regulate the conditions of persons working at home. Therefore, Labour Inspectors in theory have a duty to regulate the employment conditions of employees working at home in Austria. In Belgium, the issue is under study. In Luxembourg, Labour Inspectors are authorised to carry out unannounced spot checks on employer or employer-related premises. However, this does not apply if the workstation is situated inside a person's home.

10.3.7. Working hours

In many Member States there is no specific legislation concerning the working hours of teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning working hours (this is the case in Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK). In Germany, the Homeworking Act provides teleworkers with equal rights concerning working hours.

In some Member States other regulations concern working hours:

- In Belgium, it is considered that teleworkers (as homeworkers) should be free to choose their own working time arrangements, therefore legislation restricting employment on Sundays would not apply directly.
- In France, additional clauses in individual contracts should cover the organisation of working hours.

- In the Netherlands, health and safety legislation regulates the number of hours which may be worked in front of a screen. These rules also apply to teleworkers.

With respect to working hours, it is in practice difficult to regulate the conditions of persons working at home. Therefore, Labour Inspectors in theory have a duty to regulate the employment conditions of employees working at home in Austria. In France, a similar discussion has taken place about the employers' right to check the progress of work at a teleworkers' private home (only after the employee's permission). In Luxembourg, Labour Inspectors are authorised to carry out unannounced spot checks on employer or employer-related premises. However, this does not apply if the workstation is situated inside a person's home.

10.4. The formal position of teleworkers in social protection³⁸

10.4.1. Unemployment benefit

No distinction is made between teleworkers and company-based workers, with regard to unemployment benefit, in any of the Member States (Belgium, Germany (through the Homeworking Act), Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden or the UK).

Unemployment benefit, however, is limited in most Member States to employees who have been working for a certain period (Portugal), for a certain number of hours (Finland), who have been members of an unemployment fund (Denmark) or who have paid contributions for a certain period (Ireland, Italy). Depending on their employment status (employees, homeworkers, paid at piece rate or otherwise) it may be complicated for teleworkers to meet these requirements. For example, in Austria, teleworkers are eligible for unemployment benefit if they are employees and have accrued a certain number of qualifying periods of work. Teleworkers with frequent short-term assignments may have difficulties in meeting those requirements.

Self-employed teleworkers in most Member States are excluded from unemployment benefit. Only in Denmark, Luxembourg and Sweden may they receive unemployment benefit; in Finland it can be obtained on a flat rate basis, and in Belgium, the unemployed who become self-employed retain their unemployment benefit rights for 9 years.

10.4.2. Pensions

No distinction is made between teleworkers and company-based workers, with respect to pensions, in Belgium, Germany (through the Homeworking Act), Greece, Spain, France, Ireland, Italy, Austria, Portugal, Finland, Sweden or the UK. Moreover, in Luxembourg, all persons, who perform a professional activity for remuneration for the account of somebody else, or for their own account, or who can show periods which are assimilated with such periods of professional activities, are covered.

In some Member States, the place of residence is of relevance to the building up of pension rights. This may be a problem for teleworkers. For instance in Denmark benefit is acquired by residing in the country between the fifteenth birthday and the age of sixty-seven. Also, all residents in the

³⁸ The main sources used for this section are: European Commission, 1995b; European Industrial Relations Review, 1996; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our correspondents (see appendix 2).

Netherlands are covered by the Old Age Pensions act. In Sweden, everyone between the ages of sixteen and sixty-five have the right to a national basic pension, which among other things consists of an old age pension.

Self-employed teleworkers can receive pensions in all Member States. In Germany cover is provided for the majority, but is voluntary for some.

10.4.3. Health cost insurance

In many Member States there is no specific legislation concerning the health cost insurance of teleworkers, although those with dependent employee status are covered by all individual and collective labour legislation concerning health cost insurance (this is the case in Belgium, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Finland, Sweden and the UK).

In Germany, the Homeworking Act provides teleworkers, who are employees, with equal health cost insurance rights.

For self-employed teleworkers, health cost insurance is provided in all Member States, except for Belgium and France (where only large **risks** are covered). In Germany, cover is provided, but some cover is only available on a voluntary basis.

In Denmark and Portugal, health cost insurance exists independent from a person's professional activity, no matter whether he or she is employed, homeworking or self-employed.

10.5. Miscellaneous

The formal position of teleworkers is dependent on whether they are employees or self-employed, and is strongly connected to the formal position of homeworkers. Given the fact that many of the rights of teleworkers are dependent on whether they are employees or self-employed, clearly this distinction may often be subject to dispute. In most cases, however, teleworkers prove to be employees, for reasons discussed in the previous section. Hence, their formal position is largely similar to that of employees.

No country has **as** yet developed specific legislation governing the practice of teleworking, and in many countries it is not deemed to be necessary. This is mainly because, **as** dependent employees, teleworkers are usually covered by the majority of existing individual and collective labour regulation. Health and safety regulation in some countries, such as Austria and the Netherlands, contains provisions specifically related to workstations in the home. In Germany the law governing homeworking covers all types of work performed at home, ranging from unskilled piecework to highly skilled forms of teleworkers.

No country in the survey presented in the European Industrial Relations Review (1996) revealed any kind of sectoral agreement on teleworking, and it does not appear to be an issue at all at this level. However, there are a number of examples of formal agreements at company level, either with the staff association or the relevant trade union. These agreements are more prevalent in the information, telecommunication and finance sector. The computer multinational IBM, for example, has agreements on teleworking in several Member States, including Austria, Belgium, Germany, Spain, France and Italy.

Such company agreements generally contain clauses that the company is responsible for the provision, maintenance and running costs of any equipment. Agreements stress that teleworking arrangements are voluntary and subject to a specified notice of cancellation from both sides. Employees are guaranteed no loss of employment rights or status, and are to be treated equally.

One specific situation can be found in Italy, where there is no regulation on telework and agreements have been difficult to negotiate, mainly due to the Workers' Statute, under which it is unlawful to use audio-visual **and** similar equipment for supervising and controlling employees at a distance. Notwithstanding this situation, however, some companies have installed arrangements for teleworking.

10.6. Conclusions

Summarising the previous sections, Table 10.1. provides an overview on relevant aspects of the formal position for teleworkers in the different EU Member States who are in the position of homeworking employees. From a first glance it is already clear that this position is largely comparable to the position **of** 'typical workers', at least **far** more **so** than in the case of homeworkers **as** it was presented in the previous chapter.

Table 10.1.: The formal position of teleworkers as homeworking/employees, as compared to company-based workers; overview

	dismissal protection	salaries	paid holidays	paid sick- ness leave	maternity leave	health & safety	working hours	unemploy- ment benefit	pensions	health cost insurance
Belgium	+	+	+	+	+	+	-- A	+	+	+
Germany	—	+	+	—	+		+	+	+	+
Denmark	+	+	+	+	+	+	+	+	+B	+
Greece	+	+	+	+	+	+	+	+	+	+
Spain	+	+	+	+	+	+	+	+	+	+
France	+	+	+	+	+	+	+	+	+	+
Ireland	+	+	+	+	+	+	+	---	+	+
Italy	+	+	+	+	+	+	+	---	+	+
Luxembourg	+	+	+	+	+	+	+	+	+	+
Netherlands	+	+	+	+	+	++	++	+	+B	-
Austria	+	+	+	+	+	+	+	---	+	+
Portugal	+	+	+	+	+	+	+	---	+	+
Finland	+	+	+	+	+	+	+	---	+	+
Sweden	+	+	+	—	+	+	+	+	+B	+
United Kingdom	+	+	+	—	+	+	+	+	+	+

- + no difference (pro rata) with full-time company-based employee
- ++ extra protection **for** teleworkers
- (negative) difference with **full** company-based employees
- 0 not covered, excluded
- blank no information available
- A legislation restricting work on Sundays does **not** apply
- + B dependency on place **of** residence may be a problem **for** teleworkers

Next, in Table 10.2. we present a summarising overview of relevant aspects of the formal position of teleworkers in the different EU Member States who are in the position of homeworking self-employed.

Table 10.2.: The formal position of teleworkers as homeworking self-employed, as compared to company-based workers; overview

	paid sickness leave	maternity leave	unemployment benefit	pensions	health cost insurance
Belgium	---	+	---	+	---
Germany	---	+	0	---	---
Denmark	+	+	+	+B	+
Greece	---	+	0	+	+
Spain	+	+	0	+	+
France	0	+	0	+	+
Ireland	0	0	0	+	+
Italy	0	+	0	+	+
Luxembourg	+	+	+	+	+
Netherlands	0	---	0	+B	+
Austria	---	+	0	+	+
Portugal	+	+	0	+	+
Finland	+	+	---	+	+
Sweden	+	+	+	+b	+
United Kingdom	0	0	0	+	+

- + no difference (pro rata) with full-time company-based employees
 ++ extra protection for teleworkers
 (negative) difference with full-time company-based employees
 0 not-covered, excluded
 blank no information available
 ---A legislation restricting work on Sundays does not apply
 +B dependency on place of residence may be a problem for teleworkers

Clearly, in this case the formal position of teleworkers is, in some aspects, a lot worse than that of company-based employees.

From the overviews presented in these tables, a number of overall conclusions can be drawn regarding the formal position of teleworkers in the EU, particularly with regards to:

- differences in treatment as compared to company-based employees;
- differences in treatment in different Member States;
- specific protective regulation for teleworkers;
- the (indirect) discriminatory effects, given the amount of males and females who perform telework in the different Member States.

Differences in treatment as compared to company-based employees

As said before, there is only a small difference between the formal position of teleworkers with an employee status and the formal position of company-based employees. To begin with, in no cases are teleworking employees excluded from rights to which employees are entitled. There are, however, a number of thresholds in labour and social protection regulation in some Member States that limit the access of teleworking employees to these rights. For example, in some Member States unemployment benefit is limited to employees who have been working for a certain period

(Portugal) or who have paid contributions for a certain period (Ireland and Italy). Depending on the nature of their employment and pay conditions it may be difficult for teleworking employees to meet these requirements.

A particular problem that faces teleworking employees may be the problem of providing proof to support their claim to certain rights. For example, in Sweden, teleworking employees may have particular difficulty in proving their decreased working capacity and hence have difficulties in meeting a requirement to obtain sick benefit. In the UK, teleworking employees who are paid on piece rate, find it difficult to prove the number of hours they were working on average, which is needed in order to obtain unemployment benefit.

Certain aspects of the formal position of employees, like dismissal protection or salaries, are not relevant for teleworkers who are self-employed. In some other aspects which are still relevant, self-employed teleworkers have considerably less rights than employees. In particular regarding unemployment benefits, self-employed teleworkers are excluded in many Member States. Only in some countries (Denmark, Luxembourg and Sweden) is unemployment benefit also open for self-employed teleworkers. In several countries (France, Ireland, Italy and the Netherlands) self-employed teleworkers are also excluded from paid sickness leave. In other countries (Belgium, Denmark, Finland, Luxembourg, Portugal, Spain, Sweden and the UK) individuals, who perform professional activities for remuneration by somebody else, are entitled to sick pay, irrespective of whether they are employees or self-employed. In some other countries these rights are limited, though there is no full exclusion of the self-employed. Regarding maternity leave, self-employed teleworkers are only excluded in Ireland. In the Netherlands these rights are limited, whereas in all other Member States self-employed teleworkers hold the same rights as employees.

Regarding pensions and health cost insurance in no Member State are self-employed teleworkers excluded. In some countries (e.g. Germany) cover is provided on a voluntary basis, in some other countries (Denmark, the Netherlands and Sweden) certain requirements concerning the place of residence may be problematic for teleworkers. In most other Member States, however, self-employed teleworkers enjoy the same pension and health cost insurance rights as employees.

Differences between treatment in the Member States

In Germany, teleworking employees are covered by the Homeworking Act. As such they have different rights than company-based employees, more so than in other countries where teleworkers are either seen as workers or as self-employed.

Self-employed teleworkers have a largely comparable position to employees in Scandinavian countries (Denmark, Finland and Sweden) and in Luxembourg. In Portugal, Spain and the UK, self-employed teleworkers are only in a more inferior position with respect to unemployment benefit. In other Member States, self-employed teleworkers have less rights in more aspects of their formal position.

Specific protective regulation for teleworkers

In the Netherlands extra protection is granted to teleworking employees with regard to working conditions. In health and safety legislation and with respect to working hours, special attention is given to teleworkers.

Indirect discriminatory effects

Eurostat has no statistics on the division between teleworking men and women. On that basis little can be said about the direct and indirect discriminatory effects of the differences between the formal position of teleworkers and the formal position of company based workers.

It should be noted, however, that discrimination against those who perform telework concerns more, and perhaps also different, people than those captured in statistics. This discrimination is also the result of more ~~than~~ just the formal position of teleworkers. Therefore, the description above can **only** be referred to ~~as~~ the tip of a possible iceberg.

11. Self-employment

11.1. Definitions of self-employment³⁹

A commonly accepted definition of self-employment is the following (cf. Meager, 1993): *"The self-employed are those who work on their own account (or "for themselves") rather than for an employer in a conventional (dependent) employment relationship"*. This definition coincides with the way self-employment is perceived in Belgium, France, Ireland, Italy and the UK. In Spain, those working in companies consisting solely or mainly of workers (workers' co-operatives, workers' limited companies) are also considered to be self-employed.

The core distinguishing factor between employment and self-employment lies in the presence or absence of a contract of employment (contract of *service*, as opposed to contract of *services*), or for that matter, in a relationship of subordination. Basically, the labour force is divided between those who are employees with a contract of employment, and those who are self-employed. Self-employed individuals may perform work for others under a contract for services, and may also employ others. In most cases, individuals' employment status, whether employed or self-employed, is beyond dispute, but on occasion the distinction may be unclear. Some workers, for example homeworkers, may regard themselves as employees, while those providing them with work may consider them to be self-employed. In some countries special legal provisions have been installed to distinguish employees from the self-employed by their level of economic dependency on one commissioning party. If, for instance in the Netherlands, more than 50% of one's income is derived from one and the same commissioning party, the latter is looked at as the *defacto* employer.

11.2. Self-employment in the EU

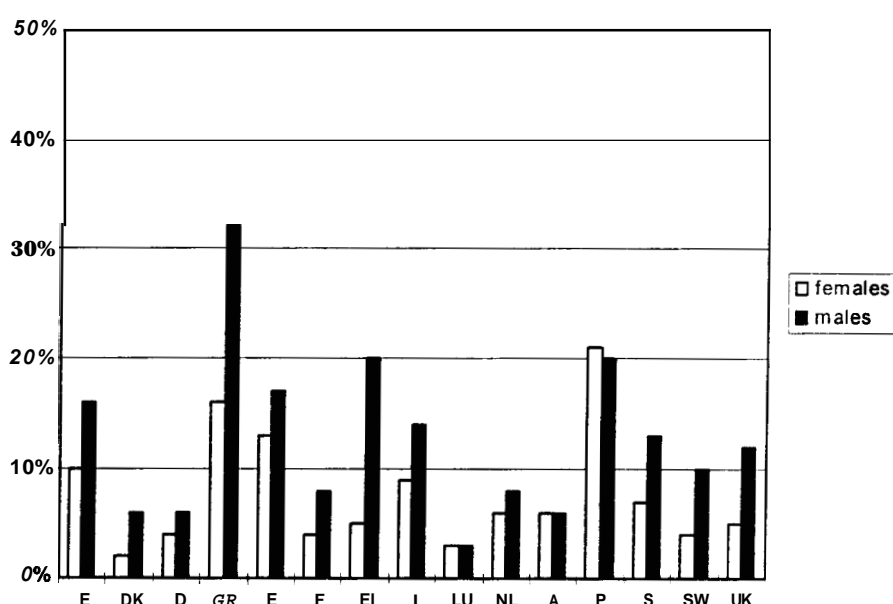
The figures in this section present the relative proportion of the self-employed on the labour market in the different EU Member States. The data used for these figures are derived from Eurostat's European Labour Force Survey database. Eurostat largely conforms to the common definition of self-employed discussed in the previous chapter⁴⁰. The database covers both the self-employed without employees and the self-employed with employees. On the following page we will present the figures for these two categories, firstly with respect to self-employed men and women as a percentage of male and female employment in general, and secondly for both groups as a percentage of the labour market.

³⁹ The main sources used for this section are: Meager, 1993; Schoukens, 1997; European Foundation for the Improvement of Living and Working Conditions, 1998. Additional information on separate countries has been provided by our correspondents (see appendix 2).

⁴⁰ Eurostat regards the self-employed with employees as 'persons who work in their own business, professional practice or farm for the purpose of earning a profit, and who employ at least one person'. 'Self-employed persons without employees' are defined as 'persons who work in their own business, professional practice or farm for the purpose of earning a profit, and who do not employ another person'.

11.2.1. The self-employed without employees

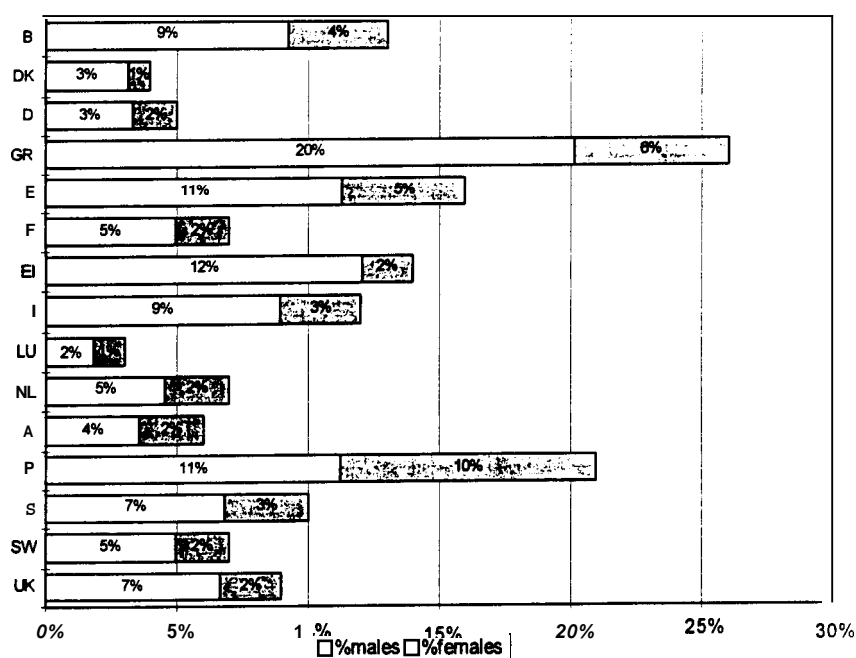
Figure 11.1: Labour market share of male and female self-employed without employees (as a percentage of male and female employment), 1997 (source: Eurostat)



This figure clearly shows the large proportion of self-employed women in the Mediterranean countries (Italy 9%, Spain 13%, Greece 16% and Portugal 21%), as opposed to distinctly lower percentages in northern Europe (all below 8%, with Belgium (10%) as the only exception). As for self-employed males, a similar pattern is visible as for the self-employed female: there is a large proportion of self-employed men in the Mediterranean countries (Italy 14%, Spain 17%, Portugal 20% and Greece even 32%) as opposed to distinctly lower percentages in northern Europe (all below 14%, with again Belgium (16%) and for men also Ireland (20%) as exceptions). These higher percentages in the South largely represent more traditional forms of self-employment (agriculture), whereas in the rest of the EU new forms of self-employment are gaining ground in the service sectors (Le Blansch et al., 1998).

Compared to women, in general a larger proportion of men are self-employed in the EU Member States. Only in Portugal is a larger proportion of women self-employed. In Austria and Luxembourg, the male and female proportions are the same.

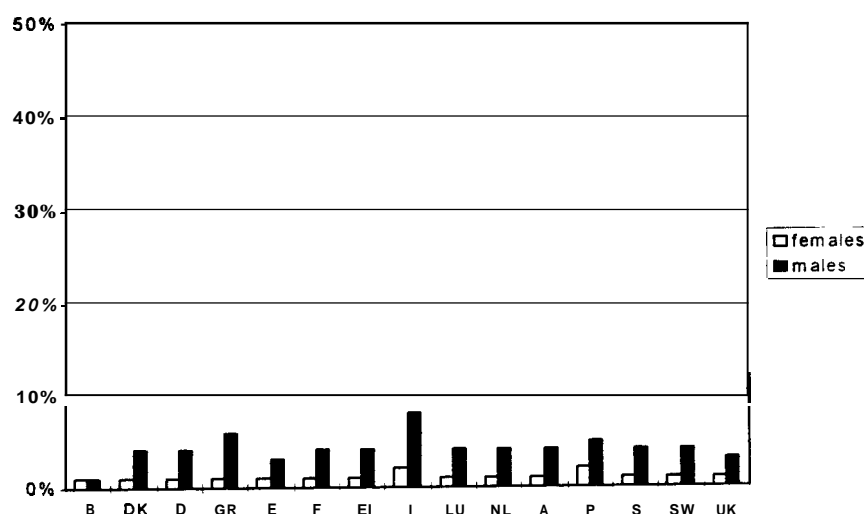
Figure 11.2: Labour market share of (male and female) self-employed without employees (as a percentage of the labour market), 1997 (source: Eurostat)



This figure shows an over-representation of men where self-employment without employees is concerned. The highest proportion of self-employed workers without employees are active in the Mediterranean countries and Ireland; this is largely related to the relatively high number of traditional farming households.

11.2.2. The self-employed with employees

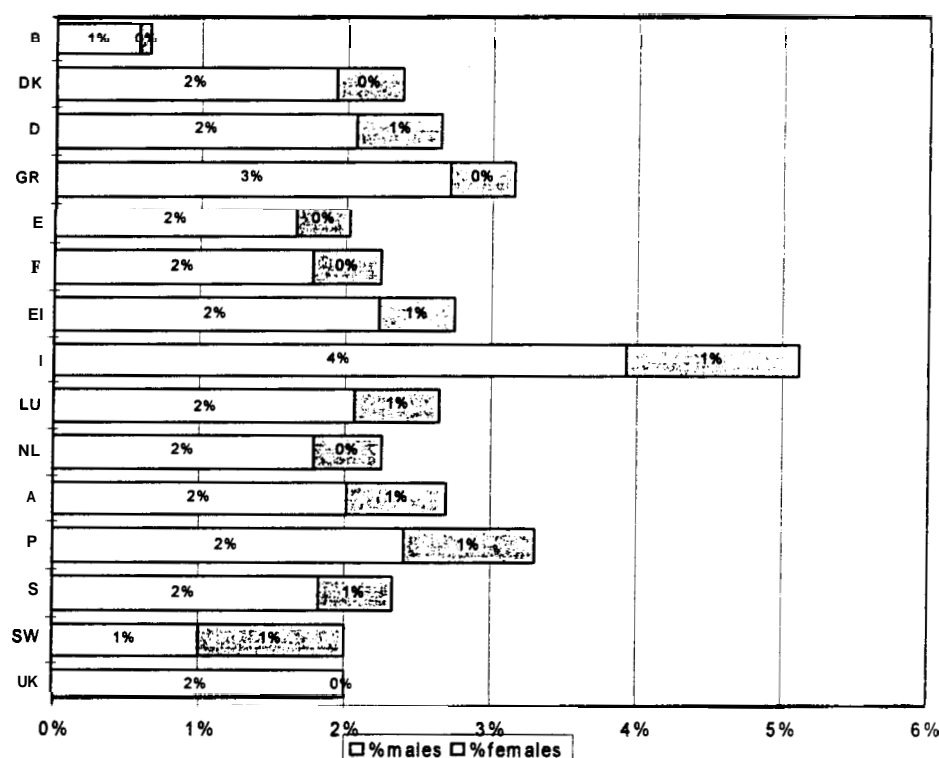
Figure 11.3: Labour market share of self-employed males and females with employees (as a percentage of male and female employment), 1997 (source: Eurostat)



Self-employed with employees form a larger proportion of the male labour force, than the self-employed females with employees do for the female labour force. Italy, Greece and Portugal have

the highest percentages of self-employed males with employees (8%, 6% and 5% respectively). In the other Member States this percentage is around 3% to 4%, except for Belgium (1%). With regard to self-employed females with employees, Italy and Portugal have the highest percentages, which still only amount to around 2%.

Figure 11.4: Labour market share of (male and female) self-employed with employees (as a percentage of the labour market), 1997 (source: Eurostat)



In fact these percentages represent the proportion of manager/owners in the economy, and therewith also indirectly indicate the prevalence of small- and medium sized enterprises in a country. From that point of view it's not hard to understand the first position of Italy, with 5% of the labour force is self-employed with employees. Furthermore, it is clear that manager/owners are predominantly male in all EU Member States.

11.3. Formal position of self-employed in labour regulation⁴¹

11.3.1. Continuation of payment in case of illness

No difference between self-employed and employees with respect to sickness benefit is made in Denmark, Spain, Luxembourg, Portugal, Finland and Sweden.

In other Member States self-employed do hold a different position:

- In Belgium, a separate regulation exists for sick-pay to self-employed. During the first three months of illness there is no right to payment. After that time, a daily allowance is granted

⁴¹ Main sources used for this section are: European Commission, 1995b. Additional information on separate countries has been provided by our correspondents (see appendix 2).

(BEF 798 for a head of family), which is raised in case the illness lasts longer than a year (BEF 1073 per day for a head of family).

- In Germany, payments are continued if it is in the public health insurance.
- In Greece, only those in IKA receive continued payment.
- In **Austria**, the self-employed can only get continuation of payment in case of illness on the basis of voluntary insurance.
- In France, Ireland, Italy, the Netherlands and the UK, no cover is provided for the self-employed.

11.3.2. *Maternity/paternity leave*

Except for Ireland, the Netherlands and the UK self-employed are entitled to maternity leave. In the Netherlands self-employed can get maternity leave on a voluntary basis.

11.4. Formal position of self-employed in social protection⁴²

11.4.1. *Unemployment benefit*

Only in Denmark, Luxembourg and Sweden can the self-employed receive unemployment benefit. In Finland it can be obtained on a flat-rate basis. In Belgium, the unemployed who become self-employed retain their unemployment benefit rights for 9 years. In all other Member States, unemployment benefit is not provided for self-employed.

11.4.2. *Pensions*

In all the EU Member States cover is provided for pensions. For Germany cover is provided for the majority but some voluntary.

11.4.3. *Health cost insurance*

No difference between self-employed and employees, with respect to health cost insurance, is made in Denmark, Greece, Spain, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the UK.

In other Member States self-employed do hold a different position.

- In Belgium and France only large risks are covered for the self-employed.
- In Germany cover is provided, but some only on a voluntary basis.

11.5. Miscellaneous

Some additional remarks can be made concerning the formal position of self-employed.

- In most Member States, the self-employed, who work on the premises of a contracting company, are protected by and work under the responsibility of this contracting company, with respect to their health and safety conditions.
- Many Member States provide fiscal and stimulating measures to the self-employed in order to facilitate their start-up and to help them survive harder times. Though these measures fall beyond the scope of **this** study, they may well have a certain protective effect in terms of securing work and social conditions. For instance, there is some evidence in Spain about the relative success of the NOW programme, providing training to self-employed women.

⁴² Main sources used for this section are: European Commission, 1995b. Additional information on separate countries has been provided by our correspondents (see appendix 2).

- In some Member States (for instance the Netherlands) and in some sectors (for instance building and construction) a tendency exists with trade unions to negotiate collective agreements (on tariffs, working hours, working conditions, training and education) which are - or may become - applicable to self-employed.

11.6. Conclusions

Summarising the previous sections, Table 11.1. provides an overview for the self-employed in the different EU Member States on relevant aspects of their formal position.

Table 11.1.: The formal position of self-employed as compared to employees; overview

	paid sickness leave	maternity leave	unemployment benefit	pensions	health cost insurance
Belgium	—	+	---	+	---
Denmark	+	+	+	+	+
Greece	---	+	0	+	+
Spain	+	+	0	+	+
France	0	+	0	+	---
Germany	—	+	0	---	---
Ireland	0	0	0	+	+
Italy	0	+	0	+	+
Luxembourg	+	+	+	+	+
Netherlands	0	—	0	+	+
Austria	---	+	0	+	+
Portugal	+	+	---	+	+
Finland	+	+	---	+	+
Sweden	+	+	+	+	+
United Kingdom	---	---	0	+	+

+

no difference (pro rata) with full-time company-based employees

(negative) difference with wage-earning employees

0

not covered, excluded

blank

no information available

From the overviews presented in this table, a number of overall conclusions can be drawn regarding the formal position of self-employed in the EU, particularly with regard to:

- differences in treatment as compared to employees;
- differences in treatment in different Member States;
- specific protective regulation for the self-employed;
- the (indirect) discriminatory effects, given the amount of self-employed men and women in the different Member States.

Differences in treatment as compared to employees

Certain aspects of the formal position of employees, like dismissal protection or salaries, are not relevant for the self-employed. In some other aspects which are still relevant, the self-employed have considerably less rights than employees. In particular, unemployment benefits of the self-employed are excluded from these benefits in many Member States. Only in some countries (Denmark, Luxembourg and Sweden) is unemployment benefit also open for the self-employed. In several countries (France, Ireland, Italy and the Netherlands) the self-employed are also excluded from paid sickness leave. In other countries (Belgium, Denmark, Finland, Luxembourg, Portugal, Spain, Sweden, and the UK) individuals, who perform professional activities for remuneration by somebody else, are entitled to sick pay, irrespective of whether they are employees or self-employed. In some other countries these rights are limited, though there is no full exclusion of the self-employed. Regarding maternity leave, the self-employed are only excluded in Ireland. In the Netherlands maternity leave rights are limited, whereas in all other Member States, the self-employed hold the same rights as employees.

In no Member State are the self-employed excluded from pensions and health cost insurance rights. In some countries (e.g. Germany), cover is provided on a voluntary basis. In most other Member States, however, the self-employed enjoy the same pension and health cost insurance rights as employees.

Differences between treatment in the Member States

The formal position of the self-employed is largely comparable to the position of employees in Scandinavian countries (Denmark, Finland and Sweden) and in Luxembourg. In Portugal, Spain and the UK, the self-employed are only in a more inferior position with respect to unemployment benefit. In other Member States, the self-employed have less rights on more aspects of their formal position.

Specific protective regulation for the self-employed

In no Member State is there any regulation that offers specific protection to the self-employed. In many Member States, however, special programmes are operative which aim to help self-employed to start their own business, to encourage them to employ personnel, and to assist them in several specific needs (capital needs, training and education, technical assistance). Although these programmes can be very beneficial to the self-employed's chances to survive economically and to improve his or her business, they do not replace or substitute the labour and social protection legislation from which the self-employed are excluded.

Indirect discriminatory effects

In all Member States, more males than females are self-employed (both in absolute and in relative terms). Consequently, no direct or indirect discrimination of women occurs as a result of an inferior formal position of the self-employed. It should be noted, however, that discrimination against self-employed people concerns more, and perhaps also different, people than those captured in statistics. This discrimination is also the result of more than just the formal position of self-employed workers. Therefore, the description above can only be referred to as the tip of a possible iceberg.

12. Family work

12.1. Definitions of family work⁴³

Eurostat defines family workers as follows:

"Familyworkers are persons who help another member of the family to run an agricultural holding or other business, provided they are not considered as employees."

As Meulders, Plasman and Plasman point out, a family worker is a person working in an enterprise belonging to a relative, generally a spouse. The work often attracts no remuneration except in kind (board, lodgings, etc.).

In most Member States, no legal definition exists for the 'family worker'. In Belgium, the definition is **known** of 'the assistant', which is broader in scope than that of the family worker. Assistants help the self-employed without being contractually bound to them. While the definition is not limited to the members of a self-employed person's family, it would nevertheless be reasonable to assume that family accounts for the vast majority of assistants.

12.2. Family work in the EU

The figures in this section present the relative amount of family workers on the labour markets in the different EU Member States. Data on family work are in general not fully reliable, due to the definitions **used**⁴⁴ and the type of work **itself**⁴⁵. The data used for the figures presented below are derived from Eurostat's European Labour Force Survey database. These data were collected using the definition cited at the beginning of the previous section. Notwithstanding this uniform operational definition, family work remains a type of labour that is hard to measure.

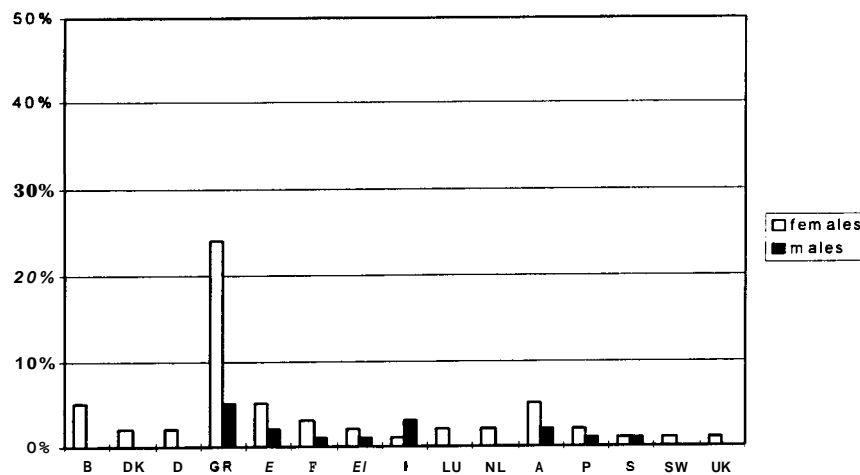
On the next page we will present the figures for family workers for all EU Member States, firstly with respect to male and female family workers **as** a percentage of male and female employment in general, and secondly concerning male and female family workers **as** a percentage of the total labour market.

⁴³ The main source used for this section is: Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our correspondents (see appendix 2).

⁴⁴ Meulders, Plasman and Plasman (1994) state: "Generally speaking, the data from the various countries cover one or another of a number of different constructs - family workers, spouses and helpers in the widest sense of the term".

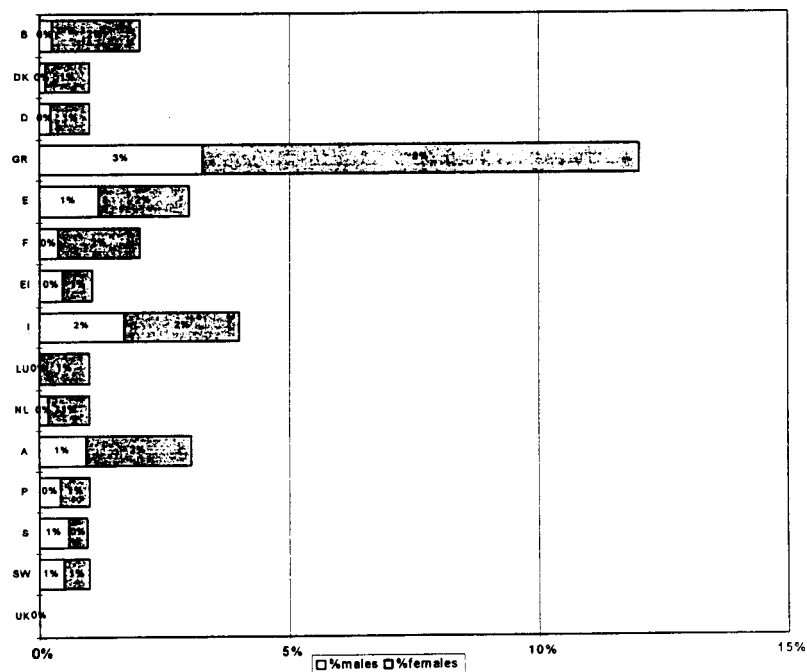
⁴⁵ Given the extent to which this type of work is carried out in the 'informal economy' (Rubery, Fagan and Smith, 1995, 234).

Figure 12.1: Labour market share of male and female family workers (as a percentage of male and female employment), 1997 (source: Eurostat)



Greece has the largest proportion of female family workers (24%), followed by Austria, Belgium and Spain (all 5%), and France (3%). The other Member States have percentages between 1% and 2%. For men the figure shows roughly the same pattern, though with distinctly lower percentages (family work is less prevalent among the male workforce). Greece has the highest percentage (5%), followed by Italy (3%), Austria and Spain (both 2%). In the other Member states, between 0% and 1% of the male workforce is family worker.

Figure 12.2: Labour market share of (male and female) family workers (as a percentage of the labour market), 1997 (source: Eurostat, 1998)



From this figure the overall picture becomes clear. Family work occurs most in Greece, followed at a distance by Italy, and next Spain and Austria. Clearly family work is mostly a female domain,

probably even more so than represented by these figures. Italy is somewhat exceptional for its large proportion of male family workers.

12.3. Formal position of family workers in labour regulation⁴⁶

12.3.1. Dismissal protection

In the following EU Member States, family workers are excluded from dismissal protection: Belgium, Germany, Denmark, Greece, Spain (unless they can prove they are wage-earners), Italy, Luxembourg and the Netherlands. In Portugal, spouses of retailers and farmers are treated **as** self-employed, and hence enjoy no dismissal protection. Other relatives enjoy the general protection of wage earners. In Austria, family members who work on the basis of a labour contract enjoy the same dismissal protection **as** other employees. **An** exception exists, however, for family members who work in private agricultural companies, and who share a household with the employer.

12.3.2. Paid holidays

In the following EU Member States, family workers are excluded from paid holidays: Belgium, Germany, Denmark, Greece, Spain (unless they can prove they are wage-earners), Italy, Luxembourg and the Netherlands. In Portugal, spouses of retailers and farmers are treated **as** self-employed, and hence enjoy no paid holidays. Other relatives enjoy the general protection of wage earners. In Austria, family members who work on the basis of a labour contract enjoy the same rights of paid holidays **as** other employees. **An** exception exists, however, for family members who work in private agricultural companies, and who share a household with the employer.

12.3.3. Continuation of payment in case of illness

No distinction is made between family workers and non-family workers, with respect to continuation of payment in case of illness, in Denmark, the Netherlands and Portugal.

In Germany, Spain (unless they can prove they are wage-earners) and Italy, family workers are excluded. In Greece, protection is enjoyed via the spouse. In Luxembourg, spouses can be exempted. In Belgium, family workers enjoy sickness benefit (in the same way as self-employed), except in the case of spouses or of children if they are students who benefit by family allowances. In Austria, family members who work in private agricultural companies, and who share a household with the employer are excluded.

12.3.4. Maternity/paternity leave

No distinction is made between family workers and non-family workers, with respect to maternity leave, in Denmark and Portugal. In these Member States family workers can obtain maternity leave.

In Germany, Greece, Spain (unless they can prove they are wage-earners), Italy and the Netherlands, family workers are excluded from maternity leave. In Luxembourg, spouses can be exempted. In Belgium, family workers enjoy maternity leave (in the same way as self-employed), except in the case of spouses or of children if they are students who benefit by family allowances. In Austria, family members who work in private agricultural companies, and who share a household with the employer are excluded.

⁴⁶ Main sources for this section are: Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our correspondents (see appendix 2).

12.3.5. Health and safety

In Belgium and Austria, the same health and safety regulations are applicable for family workers **as** for other types of workers.

12.3.6. Working hours

In Belgium family workers are excluded from regulations concerning working hours.

12.4. Formal position of family workers in social protection⁴⁷**12.4.1 Unemployment benefit**

No distinction is made between family workers and non-family workers, with respect to unemployment benefit in Denmark.

In Belgium, Germany, Greece, Spain (unless they can prove they are wage-earners), Italy, Luxembourg and the Netherlands, family workers are excluded from employment benefit.

In Portugal, spouses **of** retailers and farmers are treated **as** self-employed, and hence enjoy no unemployment benefit. Other relatives enjoy the general protection of wage earners and thus do obtain unemployment benefit.

12.4.2. Pensions

No distinction is made between family workers and non-family workers, with respect to pensions, in the Netherlands and Portugal. In other Member States distinctions are made:

- In Belgium, family workers enjoy pension rights (in the same way as self-employed), except in the case of spouses or of children if they are students who benefit by family allowances.
- In Germany, family workers can enter voluntary insurance.
- In Denmark, they can receive **a** partial pension.
- In Greece, protection is enjoyed via the spouse.
- In Luxembourg, spouses can be exempted.
- In Italy and Spain (unless they can prove they are wage-earners), family workers are excluded

12.4.3. Health cost insurance

No distinction is made between family workers and non-family workers, with respect to health cost insurance, in Luxembourg and the Netherlands. In other Member States, distinctions are made:

- In Belgium, family workers are covered for large risks only (in the same way as self-employed), except in the case of spouses or of children if they are students who benefit by family allowances.
- In Germany, family workers can enter voluntary insurance.
- In Denmark, Portugal and the UK, health cost insurance is independent from professional activity
- In Greece, protection is enjoyed via the spouse.
- In Italy and Spain (unless they can prove they are wage-earners), family workers are excluded

⁴⁷ Main sources used for this section are: Meulders, Plasman and Plasman, 1994. Additional information on separate countries has been provided by our correspondents (see appendix 2).

12.5. Conclusions

Summarising the previous sections, Table 12.6. provides an overview for family workers in the different EU Member States on relevant aspects of their formal position.

Table 12.1.: The formal position of family workers as compared to company-based workers; overview

	dismissal protection	paid holidays	paid sickness leave	maternity leave	health & safety	working hours	unemployment benefit	pensions	health cost insurance
Belgium	0	0	—	+E	+	0	0	+E	—
Denmark	0	0	+	+			+	---	+F
Germany	0	0	0	0			0	---E	---E
Greece	0	0	+C	0			0	+C	+C
Spain	0A	0A	0A	0A			0A	0A	0A
France									
Ireland									
Italy	0	0	0	0			0	0	0
Luxembourg	0	0	---D	---D			0	---D	+
Netherlands	0	0	+	0			0	+	+
Austria	---f	---f	---f	---f	+				
Portugal	---B	---B	+	+			---B	+	+F
Finland									
Sweden									
United Kingdom									+F

+

no difference (pro rata) with full-time company-based employees

(negative) difference with full-time company-based employees

0

not covered, excluded

blank

no information available

0A

excluded unless they can prove they are wage earners

---E

family workers can enter voluntary insurance

F

independent from professional activity

---B

Spouses of retailers and farmers are treated as self-employed and hence enjoy no protection; other relatives enjoy general protection of wage earners

+C

Via the spouse

---D

Spouses can be exempted

+E

Enjoy protection (same as self-employed), except in the case of spouses of children if they are students who benefit by family allowances

---f

Family members who work in private agricultural companies and share a household with the employer are excluded

From the overview presented in this table, a number of overall conclusions can be drawn regarding the formal position of family workers in the EU, particularly with regards to:

- differences in treatment as compared to employees;
- differences between treatment in the Member States;

- specific protective regulation for family workers;
- the (indirect) discriminatory effects, given the amount of male and female family workers in the different EU Member States.

Differences in treatment as compared to employees

In many Member States, family workers enjoy far less protection than wage-earning employees. In many Member States, family workers are basically excluded from most labour and social protection legislation. Dismissal protection, paid holidays and unemployment benefit are not available for family workers in most Member States. In some Member States, family workers are also excluded from maternity leave, paid sickness leave, pensions and health cost insurance,

In some Member States and on some aspects, the level of protection depends on the kind of family relation the worker holds with the employer. So, in Austria, family workers do enjoy dismissal protection, the right to paid holidays, to paid sickness leave and to maternity leave, except when they are family members who work in private agricultural companies and who share a household with the employer. In Greece, protection is enjoyed via the spouse, whereas in Luxembourg, spouses can be exempted. In Portugal, the spouses of retailers and farmers are considered to be self-employed and hence enjoy no protection.

In Spain, the main question is whether family workers are wage-earners. If they are not, they enjoy no protection.

In some countries some rights can be enjoyed irrespective of one's professional activity. Thus, family workers in Denmark and Portugal can also enjoy health cost insurance. In Germany, family workers can enter voluntary pension and health cost insurance.

Differences between treatment in the Member States

Although there are differences between the different EU Member States in the way they provide protection to family workers, these differences are hardly questions of principle. They are most of all the result of the smaller or wider circle they draw around the core family member (the employer); those who are within the closer family circle are excluded or can benefit from the protection of the core family member.

Only in Belgium is more specific regulation in place that addresses (more or less implicitly) the family worker, as a person not bound by a work contract. These people are called 'assistant self-employed' ('*helper-zelfstandige*'), and are legally excluded from almost all protective regulation. They do enjoy the right to maternity leave and to pensions, however, since they are regarded for these purposes as being self-employed.

Specific protective regulation for family workers

No specific protective regulation for family workers exists in the different EU Member States.

Indirect discriminatory effects

When we look at these findings, in the light of the fact that in all Member States most of the family workers are female, it is clear that the poor protection of family workers in labour and social protection regulation mainly affects women. Particularly in the case of family work, this poor protection intensifies the wife's economic dependence on her husband. It should be noted, however, that discrimination against family workers concerns more, and perhaps also different, people than those captured in statistics. This discrimination is also the result of more than just the formal

position of family workers. Therefore, the description above can only be referred to as the tip of a possible iceberg.

13. Final remarks

This report

In the previous chapters the basic research questions have been answered for the different types of atypical work. The number of the different kinds *of* atypical workers, both male and female, have been described for the different Member States of the EU. Their formal position has been analysed vis-a-vis the position of the 'typical' employee, and differences between these positions have been assessed. This **has** been dealt with in terms of both the nature of these differences and the extent to which these differences may result in (indirect) discrimination against women.

Given all this, we have reached the aim of this study **as** formulated in the beginning of this report, to provide insight into the nature and extent of discrimination of atypical workers in the EU Member States. To summarise, this insight comes down to the following conclusions:

- Part-time workers are **confronted** with a large number of threshold conditions in the different Member States before they enjoy protection from labour and social regulations. This is particularly the case for dismissal protection, paid holidays, continuation of payment in case of illness, maternity leave, unemployment benefit and health cost insurance. Given the fact that these distinctions are not functionally relevant for the nature of their (part-time) work and the fact that most part-time work in the EU is carried out by women, the current situation can be seen **as** discriminating against women.
- **Temporary** workers are faced with less legally guaranteed protection from labour law and social protection in countries where there is no regulation on fixed term contracts (Denmark, Ireland and the UK). Depending on collective agreements, in Denmark, fixed term contract workers may still find themselves enjoying the same rights **as** permanent workers. In many countries (Belgium, Denmark, Germany, Greece, Spain, France, Italy and Portugal), temporary workers are protected **from** 'illegal' temporary contracts in the way that these contracts are automatically converted into a permanent contract. Temporary work is not **a** particularly female phenomenon. Nevertheless, its lesser protection affects new entrants to the labour market, and can have a major impact on the integration of those outside the labour market - such as young people and returning mothers.
- Seasonal workers generally find themselves in a **similar** position to fixed term workers. In some countries (Greece, Spain, France and Austria) they enjoy extra protection (like an obligation to rehire seasonal staff).
- Casual workers constitute a 'rest' category of workers who perform work on a temporary basis and whose legal status falls between fixed-term contract workers and workers in the 'informal' or illegal economy. Because *of* their status on the labour market casual workers fall outside most of the labour law and social protection. In countries where specific legal categories exist for this type of 'in-between' workers, workers in these categories are excluded from most rights in labour law and social protection.
- The more important problems which homeworkers in many Member States face, is the requirement to prove that they are in fact employees with a work contract. If they fail to do so, they are excluded from many rights, and face thresholds to enjoy certain other rights. This is particularly the case where dismissal protection, paid holidays, paid sickness leave, working hours and unemployment benefit are concerned. It is not exactly clear to what extent these limitations are functionally relevant, nor to what extent it is the particularly female parts of the labour force who face non-functional limitations.
- Teleworkers are either more or less 'normal' employees who perform part or all of their work at home (and are able to prove this), or they are homeworkers/self-employed. In the first case their

position comes very close to the position of 'typical' workers. They may, however, have problems in some countries with pursuing a right on unemployment benefit or sickness benefit. In the latter case the position of teleworkers is the same as that of self-employed, which is the next category of atypical workers that we deal with.

- Certain aspects of the formal position of employees, like dismissal protection or salaries, are not relevant for the self-employed. On some other aspects the self-employed have less rights than employees, e.g., unemployment benefits and paid sickness leave. It is doubtful whether these limitations are not functionally relevant, however. The majority of the self-employed are male.
- In many Member States, family workers enjoy far less protection than wage-earning employees and less protection than the self-employed as well. In many Member States, they are basically excluded from most labour and social protection legislation. Dismissal protection, paid holidays and unemployment benefit are not available for family workers in most countries. In some countries, they are also excluded from maternity leave, paid sickness leave, pensions and health cost insurance. Many of these limitations are not functionally relevant for the type of work family workers perform. Given the fact that in all Member States, most family workers are female, it is clear that the poor protection of family workers in the EU mainly affects women, and thus constitutes indirect discrimination.

In conclusion, it seems that, especially with respect to the formal position of part-time workers and family workers, women are indirectly discriminated against. However, it should be emphasised once again that discrimination against atypical workers includes more than those caught in statistics. The discrimination is not solely the result of such workers' formal positions. Therefore, the discrimination concluded upon above can only be referred to as the tip of a possible iceberg.

About 'Atypical work'

Preliminary to a discussion of possible measures to counter this discrimination, the nature and background of atypical work requires reflection. In two ways it seems erroneous in itself to speak of 'atypical work'. If only semantically the term 'atypical work' suggests an opposition to 'typical work'. However, the existence of 'typical work' appears to become more and more of a fiction, given the increasing flexibility in time, place and status of work and the changes in the groups who perform this work - a fiction on which, however, a large part of the labour regulation and social security in the different Member States is still based.

The error lies not only in this opposition but also in the underlying assumption that 'atypical workers' are a **group** with something in common. This is, however, highly questionable, given the different types of work, the different kinds of people who perform this work and the different reasons why they are performing this type of work. Among the 'atypical workers' are entrepreneurs, farmers, spouses of such 'atypical workers', small part-timers whose family-income is not primarily dependent on this work, job-hoppers, persons with a very marginal labour market position, twin-workers who combine careers with childcare, highly educated professionals, etc.

From this evident diversity it also follows that a possible assumption behind a comparison of formal positions of 'atypical' and 'typical' workers, namely that any such difference is unjust and not necessarily true. First of all, these differences may be functional or justified as is for instance in the case regarding dismissal protection for the self-employed. Secondly, it is not true in every case that 'atypical workers' have a weak position on the labour market. They may well be able to arrange attractive and well-protected positions for themselves, e.g., self-employed dentists or lawyers. Thirdly, to some extent these differences may provide opportunities and entrances to the labour market and attractive work features for some groups. Some people *want* to work in a temporary job,

want to work part-time, or *want* to be their own boss - and they knowingly (though of course still not freely) accept the consequences of their wish. Moreover, the consequence of some limitations in rights (such as limited dismissal protection, less regulated working hours) may be that there are also limits to an employee's *duties* (for instance more freedom to resign without prior notice, or more flexibility in working time). There may also be, therefore, some benefits of flexibility to the individual employee (though not necessarily balancing the employers' flexibility that is acquired at the cost of the employee).

Having said this, ~~there~~ still remains a large group of (in some cases especially female) workers who, either by their own wish or forced by circumstances are performing 'atypical' work, and who face serious limitations to their level of social protection without any functional relevance and sometimes even while they are obliged to contribute to the financing of this protection. In some of these cases we can speak of a violation of basic human rights.

Improving the formal position of atypical workers

When there is a violation of basic human rights, effective action from the legislative side is called for. This role can and should be played at a national level by the governments of the different Member States. However, there are different traditions in the regulation of labour issues in the different EU Member States with some Member States giving a more important role to collective agreements than others. One could argue, however, that the issue of (potential) discrimination requires primarily legally binding regulation because of the human rights involved. This would be the basis to argue for national legislation and/or EU directives.

As to the content of such legislation or directives, first of all a critical re-examination of existing laws and regulations is required with regard to underlying assumptions on the permanency and company-based character of work, and on the division of roles between employer and employee (compare for example many health & safety regulations (incl. the European framework directive), which only address employers and employees, and hence do not concern the self-employed, unless they are sub-contractors working at another ~~firm~~); (b) thresholds that may have - unintended, indirect - discriminatory effects.

A serious question arises, however, as to whether attempts to create more security for atypical workers are prone to produce unintended effects. In Chapter 2 of this report is given the example of the *Flexibiliteit en Zekerheid* Act in the Netherlands, which led to further segmentation of the atypical labour force. Also given the previously referred to diversity of atypical workers and the plurality of motives that are at play, there are serious risks that in many cases substantive regulations will cause such side-effects. Of course this is not to say that well thought out legislation based on sound analysis could *not* work. There **is** a good argument to install such legislation and to keep an open eye for side effects and if there are any, these should be "treated" rather than do nothing.

The need for tailor-made solutions and flexible adaptation to specific situations on the labour market may imply that standard substantive rules which entail uniform operational details are not necessarily called for. One can also think of framework agreements which specify substantive standards (with a certain bandwidth) and which also involve *procedural* rules as regards the way in which the employer and employee (or: employee representatives) can make additional agreements in their local situation. This type of regulation may be more responsive to the local needs and requirements of workers and employers. Such procedural rules could only work if atypical workers are well represented, which may require additional measures to address a representation gap for atypical workers.

Again: this report

Where responsive law may be needed to empower 'atypical' workers to agree with their employer on tailor-made solutions, quite specific regulation may be needed to counter the most serious cases of marginalisation and segregation. The actual deprivation, however, of atypical workers is not only caused by the differences in formal position that follow from labour and social protection regulation as described in this report. A number of other aspects also play a role as was also pointed out in Chapter 2. More insight into the role and consequences of these aspects is required in order to determine where specific intervention is currently needed. Research questions are:

- what are the consequences of 'equal', pro-rata-treatment of atypical workers (which in practice can still result in low payments, sick benefits and pensions and thus in poor living standards);
- to what extent are protective measures in labour regulation and social protection effected, enforced and controlled in the case of atypical workers (given the atypical times and places where this work is carried out);
- to what extent is atypical work carried out illegally, and what are the consequences for the workers involved;
- to what extent does the nature of atypical work (level of skills required, repetitive nature) add to a deprived position of atypical workers;
- to what extent does the atypical nature of work (different times, places and status) complicate the access to training and to promotion and therewith add in these and possible other ways to the deprivation of atypical workers?

This report has only been able to point at a possible tip of the iceberg, where the discrimination of atypical workers is concerned. Answers to the questions mentioned above will help to pinpoint, on which aspects substantive regulations and minimum requirements are most needed. Meanwhile, however, the conclusion is that formal regulation in itself leads to indirect discrimination against a substantial part of the labour force of the European Union and thus calls for immediate action by all concerned parties in Europe.

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